

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Total 11 cases

Reserved on : 03.09.2020
Date of Pronouncement : 10.11.2020

- 1

LPA-359-2015 (O&M)

Vinod Kumar and others

....Appellants

vs.

State of Haryana and others

....Respondents
- 2

LPA-361-2015 (O&M)

Sarabjeet Kaur and others

....Appellants

vs.

Mohan Lal and others

....Respondents
- 3

LPA-365-2015 (O&M)

Rajender Singh and others

....Appellants

vs.

State of Haryana and others

....Respondents
- 4

LPA-452-2015 (O&M)

Parvesh Kumari

....Appellant

vs.

State of Haryana and others

....Respondents

5 LPA-616-2015 (O&M)

Jai BhagwanAppellant

vs.

State of HaryanaRespondent

6 LPA-503-2015 (O&M)

Balbir Singh and othersAppellants

vs.

Nirmal Singh and othersRespondents

7 LPA-689-2015 (O&M)

Dharmender and othersAppellants

vs.

State of Haryana and othersRespondents

8 LPA-1213-2015 (O&M)

Nand Lal PooniaAppellant

vs.

State of Haryana and othersRespondents

9 LPA-622-2017 (O&M)

Randeep Singh and othersAppellants

vs.

State of Haryana and othersRespondents

10

LPA-633-2017 (O&M)

Sanjeet Kadyan and others

....Appellants

vs.

State of Haryana and others

....Respondents

11

COC-3023-2015 (O&M)

Dharmender and others

....Appellants

vs.

Shri Mahavir Kaushik Secretary Haryana Staff
Selection Commission

....Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present :- Mr. Ashok Aggarwal, Advocate with
Mr. Mukul Aggarwal, Advocate &
for appellant No.3 (LPA-359-2015)

Mr. Harikesh Singh, Advocate (LPA-359-2015)
for all appellants except appellant No.3.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Arjun Pratap Atma Ram, Advocate
for the appellants (LPA-361 & 503-2015)

Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Talwar, Advocate
for the appellant(s) (LPA-365-2015)

None for the appellant (LPA-452-2015)

None for the appellant (LPA-616-2015)

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate for
appellant No. 105 (LPA-503-2015)

Mr. Kanwal Goyal, Advocate
for appellant No.1 (LPA-689-2015)

Mr. Salil Bali, Advocate
for the appellants (LPA-633-2017 and
for the appellants except appellant No.1 (LPA-689-2015)
for the petitioner (COC-3023-2015)

Ms. Mehak Sawhney, Advocate for
Mr. Vinod S. Bhardwaj, Advocate
for the appellant(s) (LPA-1213-2015)

Mr. Deepak Achint, Advocate and
Mr. Ramniwas Sharma, Advocate
for the appellants (LPA-622-2017)

Mr. R.L. Batta, Sr. Advocate with
Mr. Mandeep K. Sajjan, Advocate
for respondent Nos.4 to 32 (LPA-359-2015)

Mr. Vivek Salathia, Advocate for the respondent(s).
(CM Nos.1523 and 1524 of 2020 in LPA-359-2015).

Mr. Karanmvir Singh Banyana, Advocate
for respondent No.24 (LPA-503-2015)
for respondent No.27 (LPA-361-2015)
for respondent No.26 (LPA-365-2015)

Mr. Ravinder Malik, Advocate
for respondents No.5 & 6 (LPA-365-2015)
for respondent No.1 (LPA-361-2015)

Mr. Vikas Chatrath, Advocate &
Mr. Amanjot Singh Sidhu, Advocate
for respondents No. 8, 9, 10, 13, 17, 35, 40, 41
(LPA-452-2015)

Mr. Ashok Gupta, Advocate and
Mr. Eklavya Gupta, Advocate
for the applicants-respondent No.5
(CM-1367-LPA-2020 in LPA-1213-2015)

Mr. R.K.Arora, Advocate
for respondents No.3,4,5,7 & 8
(LPA-622-2017)

Mr. Anurag Goyal, Advocate for
respondents No. 11 to 16 (LPA-622-2017)

Mr. Rajesh Bansal, Advocate
for respondents No.527, 530, 531, 534, 537, 539, 541, 545,
636, 692, 711 (LPA-503-2015)
for respondents No.352 to 354, 356, 357, 358, 360, 361,
470, 506, 524, 544 (LPA-361-2015).

Mr. Anand Bhardwaj, Advocate (LPA-503-2015)
for the respondents Nos. 1 to 7.

Ms. Shruti Jain Goel, DAG, Haryana

AJAY TEWARI, J.

1. This bunch of LPAs bearing LPA Nos.359, 361, 365, 452, 616, 503, 689 & 1213 of 2015 have been filed against the judgment and order dated 20.02.2015 passed by the Ld. Single Judge allowing a bunch of writ petitions filed by the unsuccessful candidates, holding the entire process to be vitiated and the selection of Art & Crafts Teacher was quashed. The contempt petition bearing COCP No.3023 of 2015 has been filed for disobeying the order dated 05.05.2015 passed in a bunch of LPAs whereby the status-quo regarding service of the appellants was directed to be maintained till the next date of hearing. The appeals bearing LPA Nos.622 & 633 of 2017 have been filed against the judgment and order dated 29.03.2017 passed by the Ld. Single Judge whereby the respondent – Haryana Staff Selection Commission (hereinafter referred to as ‘the Commission’) has been directed to proceed for re-examination for the posts of Art & Crafts Teacher. The Chairman of the Commission also filed an LPA No.1213 of 2015 in which the ground taken was that the Ld. Single Judge had made observations and drawn conclusions against him and other members of the Commission without impleading them or hearing them. In this appeal also, the selection was otherwise sought to be justified.

2. All these cases are being decided by this common order since common questions of law and facts are involved therein. For the sake of convenience, the facts are being taken from LPA No. 359 of 2015. It may be mentioned here that though the facts of COCP No.3023 of 2015 and LPA Nos.622 & 633 of 2017 are different but they are otherwise related to the facts of the present case.

3. The essential facts of the aforesaid cases are that the respondent No.3-Haryana Staff Selection Commission had issued advertisement bearing Advertisement No.6/2006 on 20.07.2006 for filling up of 816 posts of Art & Crafts Teacher (Category No.22) alongwith other thousands of posts in the School Education Department, including, though not limited to, posts of PTIs & Sanskrit Teachers (we are consciously mentioning these two categories of posts because those two selections were also challenged, albeit with diametrically opposite result, but more of that later). The last date of receipt of applications was 21.08.2006. The essential qualifications prescribed for the post were Matriculation from Haryana School Education Board or an equivalent qualification recognized by Haryana School Education Board; two years' diploma in Art & Crafts Examination conducted by the Haryana Industrial Training Department or an equivalent qualification recognized by the Haryana Education Department and knowledge of Hindi upto Matriculation standard. While referring to the note appended with the advertisement, it was submitted that the qualifications and eligibility were to be seen on the last date for submission of applications. A public notice was published in the newspapers on 12.06.2008 by the respondent No.3-Commission stating that on account of large number of applications received in response to the aforesaid advertisement pertaining to the posts of DPE, Art

& Crafts Teacher and Physical Training Instructor, it had been decided to hold written test. The date for written test for recruitment as Art & Crafts Teacher was provided as 13.07.2008. It was further mentioned that the test shall be of 100 objective type multiple choice questions of 2 marks each. The qualifying marks for different categories were also provided. It was further mentioned that candidates three times the number of vacancies shall be called for interview on the basis of their performance in the written test. 25 marks were provided for viva-voce and total marks obtained in the written test and viva-voce was to determine the merit of the candidates in their categories.

4. Before the aforesaid scheduled date for written test a public notice was issued on 30.06.2008 cancelling the test and thereafter, another public notice dated 11.07.2008 was issued by the Commission mentioning therein that keeping in view large number of applications for the aforementioned posts of DPE, Art & Crafts Teacher and PTIs and as per the conditions in the advertisement, the respondent No.3-Commission had decided to shortlist the candidates eight times the number of vacancies in respective categories for interview on the basis of merit obtained in the academic qualifications. Minimum marks for each category was also provided. The short-listed candidates were to be interviewed on dates to be specified. On 18.07.2008 dates were specified to be from 16.09.2008 to 24.10.2008. Before the interview could take place, another public notice dated 31.07.2008 was issued by the Commission mentioning that on re-consideration of the matter in respect of the above three categories of posts, it was decided to call all eligible candidates for interview. After the interviews, the result was declared on 25.03.2010 and, for the first time mentioning the criteria adopted for selection, viz. 60 marks for academic qualifications and 30 marks for interview. The

aforesaid 60 marks for academic qualifications were further divided into different qualifications, namely Matric, 10+2, Diploma in Art & Crafts and higher qualification.

5. Aggrieved by the decision of the respondent No.3-Commission, various writ petitions were filed on the ground that the entire selection was vitiated for the reason that the criteria for selection was changed midstream. Further the selection pertaining to the post of PTIs, applications for which were invited from the same advertisement and same process of selection was adopted, had been set aside by this Court in CWP No.15656 of 2010 titled as *Sanjeev Kumar and others vs. State of Haryana and others*, decided on 11.09.2012 which was upheld by this Court in LPA No.1555 of 2012 titled as *Vijay Kumar and others vs. Sanjeev Kumar and others*, decided on 30.09.2013 and later on upheld even by the Supreme Court in Civil Appeal No.2103 of 2020, titled as *Ramjit Singh Kardam and others vs. Sanjeev Kumar and others*, decided on 08.04.2020.

6. Before proceeding further in the matter, it would be apposite to deal with the cases related to the selection for the posts of PTIs and Sanskrit Teachers (to which reference was made earlier).

7. Various writ petitions were filed to challenge the selection and appointment of Physical Training Instructors (PTIs) including the main writ petition of Sanjeev Kumar's case (supra) bearing CWP No.15656 of 2010. The main ground taken for challenging the selection was the frequent change in criteria laid down by the Commission. It was averred that the Commission was not functioning as an independent multi member body but it was being run by the Chairman as a personal fiefdom and the other members had abdicated their powers to him and were acting as rubber stamps. Reply had

been filed to those petitions wherein the main contention taken was that if a candidate appears in the interview and participates therein, then only because the result of the interview is not palatable to him, he can not turn round subsequently contend that the process of interview was unfair or there was some lacuna in the process. It had further been asserted that the selection criteria was the discretion of the Commission in the absence of the statutory Rules/Instructions laying down the same and the Commission was competent to lay down its own criteria and to amend, modify and regulate the criteria and move forward to make the selection finally on that basis.

8. The aforesaid matters were heard at length by the Ld. Single Judge and after hearing both the parties and perusing the record summoned by him, the Ld. Single Judge while allowing the said writ petitions on 11.09.2012 held as under:-

“On a question put by this Court to the counsel for State, who on instructions, stated that there is no proceeding book or file being maintained nor is it available where the record is maintained of the meeting(s) held by the Commission or the decision(s) taken by the Commission and there is no agenda circulated for the meeting. This indicates that the Commission is nonfunctional. Rather the records indicate that the Chairman is all in all and solely functions as a Commission. Strange as it may sound but this decision dated 3.8.2008 is the only decision by the Commission in the total selection process. In none of the earlier decisions, which have been taken in the chequered process of selection, any of the Members of the Commission been consulted, associated or a party thereto. It has not been stated in the reply nor do records indicate that any of the decisions taken by the Chairman was/were ratified by the Commission. What is apparent from the record and as stated in Court by the counsel for the State on instructions, as recorded above, Commission is

nothing but one man show. There is no semblance of a collective responsibility or decision making process as is postulated in the notifications under which the Commission is constituted. The very concept and spirit of the Commission stands butchered and banished due to there being no consultation, association and participation by any of the Members of the Commission in the present selection process for filling up the posts of PTIs. The decisions in pursuance, whereto selection process has been initiated, processed and concluded, cannot be said to be that of the Commission. Members of the Commission, except for being Members of the Selection Committee for holding interviews, have not participated in any decision or its making process which reveals a very gloomy rather a negative picture of the Commission and its functioning. The records reveal and point to only one conclusion that the selection in question does not pass the test of it being in accordance with law as the powers conferred on the Commission has not been exercised as per the mandate of the statute and therefore the decisions taken in and during the selection process cannot be said to be that of the Commission rendering the selection illegal.

In the light of the above, which has led this Court to conclude that the selection cannot be sustained, the other grounds taken and the pleas raised by the parties need not be gone into by this Court as they have been rendered academic for deciding the lis in this case.

These writ petitions are thus allowed. The purported selection made by the Haryana Staff Selection Commission in pursuance to the advertisement No. 6/2006, result whereof was published on 11.4.2010 relating to category No. 23 for the posts of PTIs, is hereby quashed. A direction is issued to the Haryana Staff Selection Commission to hold a fresh selection, in accordance with law, within a period of five months from the date of receipt of certified copy of this order.”

9. After quashing of the selection and appointment of PTIs, the successful candidates whose selections were quashed had filed an LPA bearing LPA No.1555 of 2012 wherein following grounds were taken:-

“i. a substantial number of selected candidates were not heard by the learned Single Judge before setting aside their selection; the selected candidates were impleaded as party respondents by way of Civil Misc.No.17080 of 2011 which was allowed on 16.12.2011 and they were issued notice in the main case for 02.05.2012. The Registry reported for 02.05.2012 that “1389 notices have been received/served. 53 notices have been received unserved. 320 notices have not been received either unserved or served.”. The learned Single Judge did not deem it appropriate to effect service on the unserved selected candidates and heard the arguments and reserved judgement on 02.05.2012 itself. The decisions of this Court in (i) Anoop Singh versus State of Haryana, 2008 (2) RCR (Civil) 626; and (ii) dated 7th September, 2009 passed in RA No.332 of 2006 in CWP No.16873 of 2004 (iii) dated 20th May, 2013 in LPA No.1864 of 2012 and other connected appeals (Parminder Kaur & Ors. vs. Dalbir Singh & Ors.) lay down that an order passed without notice to the persons interested, stands vitiated and cannot sustain;

ii. the only plea that the ‘selection criteria’ was changed amidst the selection process was factually incorrect and could not be raised by the writ petitioners who were estopped by their acts and conduct. The decisions of the Hon’ble Supreme Court in Dr. G. Sarana vs. University of Lucknow, (1976) 3 SCC 585 and of this Court in (i) Surinder Kaur & Ors.vs. State of Punjab & Ors., 1995 (5) SLR 579; and (ii) Baljinder Singh Teja & Anr. vs. Punjab & Haryana High Court, Chandigarh, 2008 (3) SLR 598 have been relied upon;

iii. the vague, evasive and sweeping allegations made against eligibility of some of the selected candidates with the sole object

of getting the records summoned for holding a roving enquiry, ought not to have been entertained as ruled by the Supreme Court in Sadananda Halo and Ors. vs. Momtaz Ali Sheikh & Ors. (2008) 3 SCC 619;

iv. the selection has been set aside on the ground(s) like lack of competence in formulation of the 'selection criteria' which was neither pleaded nor urged. The learned Single Judge ought not to have improved the case of writ-petitioners by summoning the original records and then opining that the 'selection criteria' was laid down by the 'Chairman' and not by the 'Commission'. Such a recourse is impermissible in law as is held in (i) Ganeshi Ram vs. District Magistrate, AIR 1967 SC 356; and (ii) BSN Joshi & Sons Ltd. vs. Nair Coal Services, (2006) 11 SCC 548;

v. there is a mark distinction between 'change in criteria' and 'change in the method of selection' which has been overlooked by learned Single Judge. The 'selection criteria' of 60 marks for basic/essential qualifications and 30 marks for viva voce adopted by the Commission in the instant case has got an implied seal of approval of this Court in Jagmal vs. State of Haryana & Ors., (2007) 1 SLR 177 where the selection criteria comprising 50% marks for academic performance and 50% for viva voce was held to be not suffering from any arbitrariness. The minor changes in the selection criteria, if at all, cannot have devastating effects like quashing of the selection of thousands of candidates as observed by the Apex Court in Chandra Parkash Tiwari vs. Shakuntla Sukla, (2002) 6 SCC 127;

vi. the 'principle of ratification' is fully attracted to the facts and circumstances of the case in hand as (a) no member of the Commission has objected to the selection by interview only; (b) all the Members have taken interview; and (c) all the Members have prepared the result. Various judicial-precedents decisions including in (i) Parmeshwari Prasad Gupta vs. Union of India, (1973) 2 SCC 543; (ii) Union of India vs. Sukumar Sen Gupta &

Ors., (1990) Suppl. SCC 545; (iii) M/s Shankar Dass Rup Lal Aggarwal vs. Governor-General-in-Council, 1951 PLR 231; and (iv) SS Lamba vs. Punjab State Leather Development Corporation, 1994 (4) SCT 192 have been relied upon to say that 'ratification' can be by actual implementation or by conduct and it will have retrospective effect from the date the original order was passed;

vii. the Supreme Court in (i) AA Calton vs. Director of Education, (1983) 3 SCC 33; and (ii) NT Devin Katti etc. vs. Karnataka Public Service Commission &Ors. (1992) 2 SLR 378 has laid down that the selection process starts with the issuance of 'advertisement'. The 'selection criteria' relied upon by the writ petitioners was also not formulated prior thereto, hence the so-called original criteria as well as the revised one both were evolved during the 'course of selection' only;

viii. the factual pleas on 'age limit' of selected candidates, 'recognition' of their 'academic qualifications', 'genuineness' of the academic certificates, 'equivalence' of the basic or essential qualifications etc., were raised by the writ petitioners only to open the Pandora's box full of disputed facts which could neither be proved nor decided in exercise of writ jurisdiction;

ix. the qualifications possessed by the selected candidates are duly recognized by the University Grants Commission and since the State Government or its agencies have no role to play in this regard, the unfounded allegations of accepting unrecognised qualifications are totally false and baseless. Two decisions of this Court in (i) Charan Singh &Ors.vs. State of Haryana, 2004(3) RSJ 611; and (ii) Manoj Kumar &Ors. vs. State of Haryana & Ors., 2007(1) SLR 684, were cited in the aid of this contention."

10. After perusing the record and hearing the parties at length, a Division Bench upheld the decision given by the Ld. Single Judge and dismissed the LPA filed by the successful candidates.

11. Coming to the case of recruitment for Sanskrit Teachers, one unsuccessful candidate filed a writ petition bearing CWP No.9167 of 2010 titled as *Anil Arya vs. The State of Haryana and others* seeking quashing of selection made to the posts of Sanskrit Teacher under the same advertisement.

12. The stand taken by the petitioner in CWP No.9167 of 2010 was that his qualifications were much higher than those of the selected candidates and this reveals that the selection was vitiated as having been made on extraneous considerations. He further gave the date of the candidate (respondent No.4 in that case) who as per him had been wrongly declared to be eligible since he had been given extension thrice despite being over-age only for the reason that he was a relative of some high-up in the Government.

13. The Ld. Single Judge, however, observed that it is the settled principle that the petitioner having taken a chance in the selection process and at the end of the day having not made the cut, he is not entitled to challenge the interview process or the grant of marks and consequently dismissed the writ petition on 24.1.2018.

14. Aggrieved by the judgment passed by the Ld. Single Judge, the petitioner (in that case) filed an LPA No.1376 of 2018 which was also dismissed by a Division Bench vide order dated 20.11.2018 while holding that having higher qualification does not mean that the person should have been awarded higher marks in the interview and that it is well settled that challenge to interview process is not open to a person who has participated in the selection process.

15. At this stage, it has to be mentioned that after the decision of the Division Bench quashing the selection of PTIs, the successful candidates approached the Supreme Court by way inter-alia Civil Appeal No.2103 of

2020 passed in Ramjit Singh Kardam's case (supra), which considered the following issues (in para No32 of the judgment dated 08.04.2020):-

- i) Whether the respondent writ petitioners who had participated in the selection were estopped from challenging the selection in the facts of the present case?
- ii) Whether the respondent writ petitioners could have challenged the criteria of selection applied by Commission for selection after they had participated in the selection?
- iii) Whether the decision dated 30.06.2008 to cancel the written examination and the decision dated 11.07.2008 to call the candidates for interview 8 times number of vacancies on minimum percentage of marks as fixed therein and the decision dated 31.07.2008 to call all the eligible candidates for interview were arbitrary decision to change selection criteria published on 28.12.2006, which have effect of downgrading the merit in the Selection?
- iv) Whether it was obligatory for the Commission as a body to take all decisions pertaining to Selection on the post of PTI including the decision of not holding written examination, decision to screen on the basis 8 times of vacancies and decision to call all eligible candidates and whether aforesaid decisions were taken by the Chairman alone?
- v) Whether on 03.08.2008, a decision was taken by the commission fixing the criteria for the selection on the post of PTI which was signed by all the members on 03.08.2008 as claimed by the Commission?
- vi) Whether without there being any specific allegations of mala fide against the Chairman and members of the Commission and without they having been impleaded by name as party respondents, the writ petitioners could have challenged the allocation of marks in viva-voce and High Court was right in accepting the claim that candidates who got highest marks for academic qualifications ranging between 40 to 48.74 marks have

been awarded just 7 to 9 marks in the viva-voce and as against it there are hundreds of selected candidates who have been awarded 20 to 27 out of 30 marks in the viva-voce to ensure that they outclass the academically bright candidates?

vii) Whether no fresh selection can be held as directed by learned Single Judge since as per 2012 Rules, the post of PTI has been declared as a dying cadre and the post has merged into the post of TGT Physical Education?

16. Thereafter, the Supreme Court answered the aforesaid points in the following manner:-

Ans.1: The writ petitioners, who had participated in the selection are not estopped from challenging the selection in the facts of the present case.

Ans.2: The writ petitioners could have very well challenged the criteria of selection, which was declared by the Commission only in the final result declared on 10.04.2010.

Ans.3: The decisions dated 30.06.2008, 11.07.2008 and 31.07.2008 were arbitrary decisions without any reason to change the selection criterion published on 28.12.2006 which have effect of downgrading the merit in the selection.

Ans.4: The Commission being a multi-member body, all decisions pertaining to mode of selection and criteria was to be taken by the Commission itself, there being no rules or resolution delegating the said power to Chairman or any other member.

The decision of not holding written examination dated 30.06.2008, decision to screen on the basis of eight times of vacancies and percentage of marks dated 11.07.2008 and decision dated 31.07.2008 to call all eligible candidates, were all decisions taken by the Chairman himself, which decisions cannot be said to be decisions of the Commission.

Ans.5: The decision dated 03.08.2008 was never taken on 03.08.2008 as claimed and the said resolution was prepared

subsequent to declaration of the result when the learned Single Judge asked for criteria of the selection, which was produced in a separate loose sheet signed by all members.

Ans.6: The High Court had summoned the original records of the Commission including the marks awarded to the candidates both on basic qualification as well as essential qualification as well as viva voce. The observations, which have been made by the Division Bench in paragraphs 34 and 36 were inferences drawn by the High Court based on pattern of the marks allocated to some of the selected candidates and non-selected candidates. The observation of the High Court that “it cannot be a mere coincidence that 90% of the meritorious candidates in academics performed so poorly in viva voce that they could not secure even 10 marks out of the 30 marks or that the brilliance got configured only in the average candidates possessing bare eligibility” where inferences drawn from result sheet and re-affirms the allegations of malice-in-law. The inferences drawn by the High Court, thus, cannot be said to be unfounded nor are based on no material or perverse so as to call for any interference by this Court in these appeals. We, thus, do not find any substance in the submission of Shri Sibal that since no specific allegations against Chairman and members have been made and they being not impleaded as the parties, the allegations in the writ petition regarding allocation of marks in viva voce cannot be looked into by the High Court. Point No.6 is answered accordingly.

Ans.7: The selection on the post of PTI vide advertisement No.6/2006 was under the statutory rules then existing and selection process, which has been initiated under erstwhile rules was to be continued and had not to be scrapped as is clear from the Scheme of Rules, 2012. In any view of the matter, when the selection for 1983 posts of PTI was set aside and the High Court directed to hold a fresh selection, the selection process was to be

continued and completed under the orders of the High Court. We, thus, reject the submission of the learned counsel for the Commission and the State that fresh selection cannot be held as per direction of the learned Single Judge affirmed by the Division Bench. We, however, are of the view that selection initiated vide advertisement No.6 of 2006 has to be proceeded further from the stage the criterion was arbitrarily changed by the Chairman. The completion of selection has to be only from amongst the candidates who had applied against post of PTI, including those who were selected.

The learned Single Judge after quashing the select list published on 11.04.2010 directed for fresh selection on post of PTI. The learned Single Judge, however, did not issue appropriate consequential directions for holding the fresh selection. There was no defect in the advertisement dated 20.06.2006 and mode of selection as envisaged by public notice dated 28.12.2006. The arbitrariness crept thereafter from the stage of scrapping the written test scheduled to take place on 20.07.2008. The directions ought to have been issued to complete the process from that stage i.e. the stage of holding the written test. All the candidates who had applied for the post of PTI including those selected, ought to have been permitted to take the written test. We need to clarify that in the facts of the present case there was no requirement of fresh advertisement and inviting fresh applications. In the event fresh applications are called, large number of applicants who participated in the selection would have become over age. All the applicants who had applied in response to advertisement No.6 of 2006 had right to participate in selection as per criterion notified on 28.12.2006. The direction of learned Single Judge needs modification and clarification to the above effect.

17. Coming back to the facts of the instant appeals, the main arguments raised by counsel for the appellants were that there was a difference between the criterion fixed for the posts of Art & Crafts Teacher and for the

posts of PTIs. Therefore, the decision regarding quashing of selection process for the posts of PTIs would have no effect in the present cases. It was further argued that since the unsuccessful candidates participated in selection process, they were not entitled to challenge the selection. Further it was urged that the selection for the posts of Art & Crafts Teacher was made as per the original criterion which was fixed on 21.08.2006 i.e. the last date of submission of application and not on the criterion fixed later, and on this ground also, the present case was distinguishable from the case of PTIs.

18. These cases were heard at length by the Ld. Single Judge and after hearing both the parties and perusing the record summoned by him, the Ld. Single Judge held as under:-

- i) The criteria, as was finally followed for the purpose of making selection, was never disclosed till such time the result was declared and in fact the criteria was changed.
- ii) Initially the selection was to be made on the basis of written test and interview and later it was changed to interview and then to marks in academic qualification and interview.
- iii) There are basic defects in the process of selection from the very beginning as the respondent No.3-Commission had not been working as a multi member body and there was no decision by the Commission as such. The entire decision making was by the Chairman individually in consultation with the Secretary of the Commission.
- iv) No criteria was laid down for selection before or immediately after the advertisement was issued, rather the criteria on the basis of which the selections were sought to be justified was tailor-made to ensure selection of particular candidates.
- v) Even the criteria for selection of different posts was fixed arbitrarily.

19. Resultantly, the Ld. Single Judge held the entire selection process vitiated and not in some isolated cases on account of eligibility or otherwise and the writ petitions filed by the unsuccessful candidates for quashing the entire selection of Art & Crafts Teacher were allowed.

20. Initiating the arguments of the appellants, Sh. Ashok Aggarwal, Senior Advocate has vehemently argued that the criterion for the posts of PTIs was duly fixed initially on 21.08.2006 i.e. last date for receiving applications. Thereafter notice was issued on 28.12.2006 that examination shall be held for the post of PTIs on 21.01.2007. The examination was to have 100 objective type multiple choice questions and minimum qualifying marks were prescribed. 25 marks were kept for viva-voce. Thereafter written test was held on 21.01.2007 as per schedule. However, this test was cancelled. Thereafter again notice was published on 11.06.2008 fixing date of examination as 20.07.2008 for PTIs. The earlier criterion of minimum qualifying marks and 25 marks for viva-voce was kept intact. The written test scheduled for 20.07.2008 was again cancelled on 30.06.2008. Thereafter by notice dated 12.07.2008, the Commission decided to shortlist eight times the candidates and all were to be interviewed in September/October, 2008. However, again on 31.07.2008, another notice was issued whereby it was decided to call all candidates by changing the earlier decision of 12.07.2008.

Mr. Aggarwal submitted that in the present case of Art & Crafts Teacher, the criterion was not changed and therefore no parallel can be drawn with the aforesaid case pertaining to PTIs.

21. Sh. Rajiv Atma Ram, Sr. Advocate has argued that in the case of Sanskrit Teachers also, a civil writ petition bearing CWP No.9167 of 2010 was filed in this Court and the Ld. Single Judge dismissed the petition and upheld the similar criterion. He has further pointed out that the decision of the Ld. Single Judge was upheld in LPA No.1376 of 2018 on 20.11.2018. He has further pointed out to some factual errors which as per him occurred in the impugned judgment of the Ld. Single Judge. As per him, these errors

occurred because the Chairman of the Commission and the Members were not impleaded. It is his submission that the Ld. Single Judge was unduly influenced by his erroneous conclusions and in fact this led him to draw a parallel between the selection of Art & Crafts Teachers and PTIs, whereas the present case should have been decided on the basis of Sanskrit Teachers' case.

22. Sh. Akshay Bhan, Sr. Advocate appearing for some of the appellants has argued that the selection of PTIs and Art & Crafts Teachers are different and therefore the Ld. Single Judge could not have used that parallel. He has argued that the Ld. Single Judge selectively considered the record without giving the selected candidates any chance for rebutting his conclusions and that is why there are factual errors in the impugned judgment regarding certain individual candidates.

23. Sh. Ashish Aggarwal, Sr. Advocate appearing on behalf of the unsuccessful candidates has drawn attention of the bench to Para Nos.54 & 75 of the Supreme Court judgment in Ramjit Singh Kardam's case (supra) and has argued that the Supreme Court had emphasized that the selection should have been made on the original criteria and in the present case it was so done.

24. Mr. Kanwal Goyal, Advocate appearing for one of the appellants has emphasized on para No.74, which reads as under:-

"74. We may also notice one more submission of the learned counsel for the appellant. Learned counsel for the appellant submits that in pursuance of selection dated 10.04.2010, the appellants were appointed and they have now continued for more than nine years and at this juncture, it is not equitable to throw out them from their posts. In the present case, result of the selection dated 10.04.2010 was published on 11.04.2010 and the writ petitions were filed in May, 2010 itself, i.e., immediately. Selection was set aside by learned Single Judge on 11.09.2012.

The continuance of the appellants is only by way of interim order. This Court has also passed an order on 29.11.2013 for maintaining status quo, which order has been continued till this date. When the continuance of a person on a post is by virtue of an interim order, the continuance is always subject to outcome of the litigation. The displacement of appellants from their posts is inevitable consequence of upholding of the judgment of the High Court. A Constitution Bench of this Court in C. Channabasavaih Etc. Etc. Vs. State of Mysore and Others, AIR 1965 SC 1293 has made following observations in paragraph 9 in such a situation, which is beneficial to record, is as follows:-

“9. It is very unfortunate that these persons should be uprooted after they had been appointed but if equality and equal protection before the law have any meaning and if our public institutions are to inspire that confidence which is expected of them we would be failing in our duty if we did not, even at the cost of considerable inconvenience to Government and the selected candidates do the right thing.....”

25. On the other hand, Sh. R.L. Batta, Sr. Advocate, Mr. Mandeep K. Sajjan, Mr. Vikas Chatrath, Mr. Amanjot Singh and Mr. Ravinder Malik counsel appearing on behalf of some of the original petitioners (unsuccessful candidates) have argued that the present case would be covered by the decision of the Supreme Court in Ramjit Singh Kardam's case (supra) which is related to selection of PTIs and not by the case of Sanskrit Teacher i.e. Anil Arya's case (supra).

26. In the circumstances, the case before the present Bench has been rendered simple in view of the fact that both sides depend upon a decision of a particular case in their favour and, in fact, no other decision was cited before us. If we come to the conclusion that the facts of the present case would be covered by the decision in Ramjit Singh Kardam's case (supra), these appeals which have been filed by the successful candidates have to be dismissed and

on the contrary if we are persuaded that the facts of the present case are covered by Anil Arya's case (supra), the appeals have to be allowed.

27. Taking up the case of Anil Arya's case (supra), as mentioned above, in that case the sole ground taken for establishing that the selection was invalid was that the petitioner in that case had much higher qualifications than the selected candidate and the fact that he had been given lessor marks which clearly revealed that the selection was vitiated by extraneous circumstances. None of the other grounds which were pressed by the petitioners in the case/s of PTIs and the present case of Art & Crafts Teacher were averred or pressed and consequently that decision proceeded on one ground. It has to be thus held that the decision of that case would not cover the facts of the present case.

28. It would be useful to remember that the original advertisement (being Advertisement No.6/2006) was related to filling up thousands of posts in the School Education Department and it was thereafter that the Commission embarked on this mammoth exercise during which these thousands of selections were finalized. In the circumstances, it would be futile to argue that each one of these selections was an independent water tight compartment which had no relation with each other. Many of these categories of posts were from the same cadre/s with common emoluments, seniority and promotional avenues. This argument may have been valid if, for instance, by one advertisement completely different sets of posts were advertised like Teacher, Clerk and Class-IV and then one could argue that these were independent selections; but as mentioned above this argument would not apply in the present case.

29. In this context, paragraph Nos.44 & 55 of the judgment of the

Supreme Court in Ramjit Singh Kardam's case (supra) assume great significance and are quoted herein below:-

“44. After the advertisement of the vacancies of PTI, the Commission issued a public notice on 28.12.2006 deciding to hold a written examination of 200 marks and viva voce test of 25 marks to select the best suitable candidates for 1983 posts of PTI. The public notice further contemplated minimum qualifying marks 50% for general category and 45% for SC and BC and 40% for ESM. The above criteria evolved by the Commission for selection on the posts was implemented by holding the written examination on 21.01.2007 which examination was cancelled after receiving some complaints and reports regarding malpractices in examination. Even though examination was cancelled but the Commission continued with the same criteria for completing the selection which was so notified on 11.06.2008 again in which examination on the same pattern was to take place on 20.07.2008. On 30.06.2008 a type note by the Superintendent (Recruitment-I) was prepared mentioning that the Chairman had ordered that written test for the posts of DPE, Art and Crafts Teacher and PTI, Education Department, Haryana, scheduled to take place, may be “cancelled on administrative reasons”. The note dated 30.06.2008 was approved by the Chairman and he also approved the notice to be published for cancellation of the proposed written examination, neither the note nor the order of Chairman approving the note give any indication of “administrative reasons” for cancellation of the examination. Another important change which was effected in the criteria for selection was the notification with the approval of a note dated 10.07.2008 which mentioned that the worthy Chairman had issued oral direction that in respect of advertisement No.6 of 2006 Category No.23, candidates are required to be short-listed 8 times of the vacancy and called for interview. Short-listing was to be done on the percentage of the marks of the candidates with minimum percentage mentioned therein. The Chairman on 11.07.2008

approved the notice to be published in the Newspapers with detail regarding short-listing of the candidate's category wise with minimum percentage. The above criteria was also given up when another note dated 31.07.2008 was approved by the Chairman where the Chairman decided that all the eligible candidates be called for interview changing the earlier criteria. The interview was fixed between 02.09.2008 and 17.10.2008 and the candidates were interviewed by eight Committees.

55. As per advertisement dated 20.07.2006, the Commission had published the criteria for selection on 28.12.2006 which was implemented also, hence, there was no occasion to give up the merit selection in midway. Further, when no reasons are forthcoming to support the so called 'administrative reasons' in the decision dated 30.06.2008 which was so stated by Chairman for the scrapping the written test, we have to hold the said decision arbitrary and without reason. The written test consisting of 100 objective type of multiple choice questions out of which 60 questions relating to academic knowledge of the respective subjects including skill and method of teaching ability and 40 questions relating to general knowledge, general English and Hindi upto matric standard was well thought screening test, easy to conduct and easy to evaluate. The Commission being recruiting body abdicated its obligation of screening out the best candidates; The competitive examination, are means by which equality of opportunity was to be united with efficiency. By the above method favouritism was to be excluded and the goal of securing the best man for the job was to be achieved. We, thus, conclude that decision dated 30.06.2008 for not holding the written examination and steps taken consequent thereto were all arbitrary decisions, unsustainable in law."

30. In paragraph No.44, the Supreme Court itself refers as follows:-

"On 30.06.2008 a type note by the Superintendent (Recruitment-I) was prepared mentioning that the Chairman had ordered that written test for the posts of DPE, Art and Crafts Teacher and

PTI, Education Department, Haryana, scheduled to take place, may be “cancelled on administrative reasons”.

31. This clearly indicates that the Supreme Court was considering all these actions as part of one selection. Likewise, in paragraph No.55 the Supreme Court commented that by not resorting to the method of written test the Commission abdicated its obligation..... Likewise in paragraph Nos.24 & 25 of the judgment in Ramjit Singh Kardam’s case (supra), the Supreme Court held that non-disclosure of the criterion without declaring the same beforehand was impermissible. Para Nos.24 & 25 are reproduced herein below:-

“24. Shri Manoj Swarup, learned senior counsel appearing for the respondent writ petitioners submits that the writ petitioners were unaware of the criteria which was to be applied by the Commission in the Selection and they came to know about the criteria of 60 marks for Academics Qualifications and 30 marks for Interview only by final result dated 10.04.2010 when it was mentioned in the final result.

25. The Commission could not have held any selection without declaring the criteria beforehand. The written examination which was re-notified on 11.06.2008 was not proceeded with without any valid reason. Written examination is sure mode of finding out merit in the candidates and looking to number of the candidates which was more than 20,000, the Commission has rightly taken a decision to hold a written test of 200 marks and interview of 25 marks which ought to have adhered by the Commission.....”

It cannot be said that this declaration would apply only to the case of PTIs and not to Art & Crafts Teachers.

32. At this stage, we may also refer to the answers given by the Supreme Court to the questions which were posed by it and more particularly to the answers given to Question Nos.4 & 5 (supra) which are being

reproduced (at the cost of repetition):-

Ans.4: The Commission being a multi-member body, all decisions pertaining to mode of selection and criteria was to be taken by the Commission itself, there being no rules or resolution delegating the said power to Chairman or any other member.

The decision of not holding written examination dated 30.06.2008, decision to screen on the basis of eight times of vacancies and percentage of marks dated 11.07.2008 and decision dated 31.07.2008 to call all eligible candidates, were all decisions taken by the Chairman himself, which decisions cannot be said to be decisions of the Commission.

Ans.5: The decision dated 03.08.2008 was never taken on 03.08.2008 as claimed and the said resolution was prepared subsequent to declaration of the result when the learned Single Judge asked for criteria of the selection, which was produced in a separate loose sheet signed by all members.

33. A perusal of these reveal that the Supreme Court had commented on the entire selection process and the fact of the Commission having been reduced to a one man body which even went to the extent of fabricating record. These are some of the precise findings of the Ld. Single Judge in the present case which have been reproduced in paragraph No.18 above. The judgment of the Supreme Court in Ramjit Singh Kardam's case (supra) is not only on the facts of that case but is a scathing indictment of the entire functioning of the Commission. Their Lordships have minutely dissected the stratagems employed by the Commission to pervert the entire selection process, and would apply to the entire gamut, rather than, as argued by the learned counsel for the appellants, be restricted only to the facts of that case.

34. In fact at the time of hearing LPA No.1213 of 2015 (which was filed by the Chairman of the Commission), we put it to the learned counsel for

the Chairman as to under which authority the Chairman had exercised power unilaterally in the absence of other members but he could point out any such thing. Further we pointedly asked the counsel as to the reason for fixing and re-fixing different criteria within days, but no answer was forthcoming. Alongwith LPA No.361 of 2015 the appellants have placed on record document Annexure R-7 which are collective photocopies of the different criteria fixed for different posts. For instance, for the posts of Lecturers in Economics, English, Geography, Hindi, History, Political Science, Punjabi and Sanskrit the criterion which was fixed was written examination of 200 marks and a viva-voce of 20 marks. However, for the posts of Lecturer in Fine Arts, Home Science, Public Administration, Physics and Sociology, on the same date, a totally different criterion was fixed. Likewise, for the posts of Social Studies Master, Hindi Teacher, Sanskrit Teacher and Punjabi Teacher, the criterion (also fixed on 21.08.2006) was different to the criterion fixed for Math Master, Science Master and DPE. The criterion for making selection to the post of Home Science Lecturer was different from all the above and that of Art & Crafts Teacher and PTI were also stand alone. Again we put it to the counsel appearing for the State/Commission to explain reasons for these different criteria fixed on the same date for related posts but no explanation was forthcoming.

35. In these circumstances, we are constrained to hold that the decision of the Supreme Court in Ramjit Singh Kardam's case (supra) would apply to the facts of the present case on all force. The primary argument raised by the learned counsel for the appellants is that in the present case, there is no malice involved because criterion was not changed. This argument, however, does not carry weight. In the present case of Art & Crafts Teacher, the

advertisement was issued on the same date as of PTIs i.e. 20.07.2006 with last date as 21.08.2006. Thereafter public notice was issued on 11/12.06.2008 by the Commission stating that it was decided to hold written test with 100 multiple choice of questions of 2 marks each and qualifying marks were mentioned. Further, candidates for three times number of vacancies would be called for interview and 25 marks were kept for viva-voce. This notice of 11/12.06.2008 was common for both PTIs and Art & Crafts Teacher.

36. Thereafter vide notice dated 30.06.2008, it was stated that written test had been cancelled. This notice also pertained to both PTIs and Art & Crafts Teacher amongst others. Thereafter vide public notice dated 11.07.2008, it was stated that the Commission had decided to shortlist eight times candidates for interview and short-listing to be done on the basis of academic qualification and by prescribing minimum marks. Similar notice was also issued on 12.07.2008.

37. Thereafter on 18.07.2008, dates for scheduled interview were published pertaining to both PTIs and Art & Crafts Teacher on 31.07.2008, again it was decided to call all the eligible candidates for interview by changing the earlier decisions. Separate notices were issued on the same day i.e. 31.07.2008 for PTIs and Art & Crafts Teacher respectively.

38. The chronology of events as discussed aforesaid would show that both the PTIs' and Art & Crafts Teacher's selection was processed in a similar fashion and most of the public notices were same. There can be no doubt that even in the present case pertaining to Art & Crafts Teacher, there had been change in the criterion midway alike the PTIs' selection processes. Therefore, it cannot be said that parallel cannot be drawn between the two. Resultantly, the judgment rendered by Supreme Court in Ramjit Singh Kardam's case

(supra) would certainly apply in the present case as well.

39. One last prayer which is made that in case this Court dismiss the appeals, it should at least permit the selected candidates to work till the fresh selections are made in terms of the judgment of the learned Single Judge. This precise contention was considered by the Supreme Court in Ramjit Singh Kardam's case in para No.74 (supra) and Their Lordships were pleased to reject it. In the circumstances, this plea is also rejected.

However, in the light of aforesaid judgment of Supreme Court, the candidates who had been selected and had worked on the post of Art & Crafts Teacher shall not be asked to refund any of the salary and other benefits received by them as against their working on the posts. No refund shall also be asked from those candidates, who after their selection worked and retired from service. Furthermore, the entire process be completed by the Commission within five months, which was the time fixed by the Ld. Single Judge for completing the process, in accordance with law.

40. Consequently, the present appeals are dismissed.

41. As regards the contempt petition bearing COCP No.3023 of 2015, the same is dismissed as having been rendered infructuous.

(AJAY TEWARI)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

November 10, 2020
ashish/anuradha

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No