

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**Letters Patent Appeal No.95 of 2020 (O&M)
Decided on : 27.02.2020**

Prabhdeep Singh

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present: Mr. ADS Jattana, Advocate
for the appellant.

G.S. Sandhawalia, J.

The present Letters Patent Appeal has been filed by one of the unsuccessful writ petitioner, whereas second writ petitioner namely Jagandeep Singh has been arrayed as proforma respondent No.5.

The appeal is directed against the judgment of the Learned Single Judge dated 30.11.2016 whereby **CWP No.23278 of 2010 'Jagandeep Singh and another Vs. State of Punjab and others'** was dismissed. Challenge has also been raised to the subsequent review application, which was dismissed on 26.09.2019, while upholding the earlier order. Accordingly, the application for condonation of delay of 1078 days in filing the appeal is allowed.

The primary grouse as such of the appellant herein is that the private respondents were not present on the date of the counselling which had been fixed and, therefore, the appellant was entitled for being appointed

as Art & Craft Teacher against the advertisement dated 11.12.2006 in the reserved category seats for Freedom Fighter/their descendents.

It is the case of the appellant that counselling was fixed for 10.03.2010 and the petitioners were present, whereas respondents were absent. They having appeared on subsequent dates 25.03.2010 and 30.03.2010 (Annexure P-8) were not entitled as such for appointment. In such circumstances, challenge had been made for setting aside their appointment.

Learned Single Judge dismissed the writ petition on the ground that Balraj Singh-respondent No.4 had filed a writ petition bearing **CWP No.12667 of 2009 'Balraj Singh Vs. State of Punjab and others'** on behalf of his brother who was away to Australia that he be allowed to appear on his behalf and documents/certificates had to be submitted for verification. Interim order dated 20.08.2009 (Annexure R-1) had been passed in his favour. The writ petition had been rendered infructuous, as an appointment letter dated 09.04.2010 had been offered and that Balraj Singh was also appointed on the said post.

It was also noticed that **CWP No.5568 of 2009 'Mandeep Singh Vs. State of Punjab and others'** had been filed by another brother of the said respondents that his documents were not being verified and directions had been issued that the same be verified on 23.02.2010 and if he makes the cut the consequential action regarding the appointment was to follow. Resultantly, the writ petition had been dismissed on account of delay and laches also while noting that private respondents' merit was

higher than the marks obtained by the petitioners.

The matter was firstly brought before the Division Bench by filing **LPA No.239 of 2017 'Parbhdeep Singh Vs. State of Punjab and others'**. On account of no legal infirmity being pointed out in the impugned order, the appeal was withdrawn with liberty to approach the Learned Single Judge, vide order dated 25.07.2017, which reads as under:-

“Learned counsel for the appellant has not been able to point out any legal infirmity in the impugned order but points out to a factual error which has occurred therein. He, therefore, prays for permission to withdraw the instant appeal with liberty to file appropriate proceedings before the learned Single Judge.

Dismissed as withdrawn the liberty aforesaid granted.”

It was, thereafter, that the review was also dismissed on the ground that the detailed discussion in the main order is sought to be reviewed and that the candidates had been given special opportunity, as per directions issued by this Court.

The stand of the State before the Learned Single Judge was also that the petitioners therein were paternal grandsons of freedom fighter's and the private respondents who also belong to the same category had secured higher marks and, therefore, had been recommended for appointment on the basis of marks obtained in matriculation and Diploma in Arts and Craft.

There is no dispute on this account also that the present

appellant, who was petitioner No.2 has only scored 134.37 marks, whereas the private respondents have scored 138.64 and 136.22 marks and, therefore, were higher in merit, as per the criteria fixed. It is also a matter of record that one of the brothers namely Balraj Singh had filed a writ petition, in which interim order was passed on 20.08.2009, whereby he had been permitted as such to submit his documents and certificates on behalf of his brother, which was fixed for that day, much prior to the petitioners being called.

Admittedly, even as per the notice dated 02.03.2010 (Annexure R-4), counselling was done on the said date also, whereas another opportunity had been given on 25.03.2010 to those candidates who were absent in the counselling on an earlier account. As per the documents attached by the State, it would be apparent that Manjinder Singh had appeared on 25.03.2010 (Annexure R-5), whereas Balraj Singh had attended the counselling on 30.03.2010 (Annexure R-6). Both of them have made the cut on merit as such and it is not that they are placed below in the merit list than the present appellant.

In such circumstances, in view of the directions passed by this Court in the litigation preferred by the private respondents and since the State itself as such had given another date of counselling. The same would be clear from the communication dated 02.03.2010 where decision had been taken regarding the candidates who were absent in the counselling which was conducted on an earlier occasion, which decision in principle as such has not been challenged, the appellant as such cannot

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have any grouse against the selection of the respondents. Even otherwise earlier the appeal had been dismissed as withdrawn on the ground that the factual error occurred was to be pointed out before the Learned Single Judge, which admittedly could not be done.

In such circumstances, in the absence of the same the orders passed by the Learned Single Judge do not suffer from any infirmity warranting interference, therefore, the present appeal is without any merit. Accordingly, the present appeal stands dismissed in limine.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

FEBRUARY 27, 2020
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No