

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

LPA No.972 of 2016 (O&M)

Abdul Aleem and others

... Appellants

Versus

Ombir and others

... Respondents

(2)

LPA No.973 of 2016 (O&M)

Banwari Lal and others

... Appellants

Versus

State of Haryana and others

... Respondents

(3)

LPA No.1160 of 2016 (O&M)

Hari Singh and others

... Appellants

Versus

State of Haryana and others

... Respondents

(4)

LPA No.4 of 2016 (O&M)

State of Haryana and others

... Appellants

Versus

Dinesh Kumar

... Respondent

(5)

LPA No.483 of 2017 (O&M)

Manmohan and others

... Appellants

Versus

State of Haryana and others

... Respondents

(6)

LPA No.485 of 2017 (O&M)

Mohd. Sharief and others

... Appellants

Versus

State of Haryana and others

... Respondents

Decided on : 07.12.2021

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Sachin Jain, Advocate and
Mr. Shubham Sharma, Advocate for the appellants
in LPA No.972 of 2016.

Mr. Amit Jhanji, Senior Advocate with
Mr. Jamshed Ahmed, Advocate,
Mr. Abhishek K. Premi, Advocate
Mr. Siddharth Bhukkal, Advocate and
Ms. Praneet Kaur, Advocate for the appellants
in LPA No.1160 of 2016.

Mr. Anurag Goyal, Advocate and
Mr. Shivam Malik, Advocate for the appellants
in LPA No.483 of 2017.

Mr. Shivam Malik, Advocate for
Mrs. Santosh Malik, Advocate for the appellants
in LPA No.973 of 2016 and LPA No.485 of 2017.

Ms. Shruti Jain Goyal, DAG, Haryana.

Ms. Anu Chatrath, Senior Advocate with
Ms. Daljit Kaur, Advocate and
Mr. Nitin Arora, Advocate for respondents No.1, 2, 3, 6,
8, 10, 12, 20 to 26, 28 to 30, 33, 35, 36, 37, 39, 40, 44,
47, 49, 52 to 57, 60, 62, 63, 64, 66, 68 to 73, 77 to 80,
82, 85 to 88, 91, 94, 99 to 102
in LPA No.972 of 2016.

Mr. Mazlish Khan, Advocate for respondent No.69
in LPA No.972 of 2016.

G.S. Sandhawalia, J. (Oral)

Challenge in the present six letters patent appeals i.e. LPA Nos.972, 973, 1160 & 4 of 2016 and LPA Nos. 483 & 485 of 2017, is to the decision of the learned Single Judge dated 12.05.2016 passed in three writ petitions i.e. **CWP No.17438 of 2012 'Ombir and others Vs. State of Haryana and others', CWP No.19379 of 2014 'Sneh Lata Vs. State of Haryana and others' and CWP No.17518 of 2012 'Manju Kumari and others Vs. State of Haryana and another'.**

2. The learned Single Judge vide the impugned order set aside the selection process and issued directions to the respondents to restart the selection process from the stage of interview by constituting a fresh Selection Committee. The same was to be monitored by the Director Primary Education, Haryana alongwith subject expert including the Selection Committee. Directions were given that the earlier subject expert in the selection process shall not be associated again in the fresh selection process and the same was to be initiated within two weeks from the date of receipt of certified copy of the order.

3. The posts in question are of JBT Teachers (Urdu) for District Mewat and the applications had been invited vide Advertisement dated 03.03.2012 (Annexure P-2) for 544 posts. The qualifications were as per the Haryana Primary Education (Group C)

District Cadre Service Rules, 1994 as amended in the year 2003.

4. While issuing notice of motion on 03.06.2016, the Coordinate Bench as such directed that the selection process as per the directions given by the learned Single Judge shall be kept in abeyance.

5. The same was on account of the fact that the selected candidates have filed the present set of appeals on account of the fact that they were not arrayed as private respondents in the writ petitions and, therefore, the order as such was passed at their back without hearing them. Secondly, it has also been brought to the notice of this Court that while issuing notice of motion on 06.09.2012 in CWP No.17438 of 2012, the writ petitioners who had not made the grade had also not impugned the selection of the 75 candidates duly selected, the result of which was declared on 17.08.2012. The order dated 06.09.2012 reads as under:-

“Counsel for the petitioners contends that the petitioners through this writ petition are not impugning the selection of the 75 candidates made by the respondents, result whereof has been published on 17.8.2012 (Annexure P-6). She contends that the petitioners are putting forth their claim to the remaining posts which have been left unfilled.

Notice of motion for 25.1.2013.”

6. Similarly, in CWP No.17518 of 2012, the order was passed on 07.09.2012 to the same extent and the writ petition was

ordered to be heard with CWP No.17438 of 2012. The said order reads as under:-

“Counsel for the petitioners, inter-alia, states that the petitioners have no grouse against the selection and appointment of the candidates in pursuance to the advertisement issued by the respondents and the result whereof has been published on 17.8.2012 (Annexure-P-3) and they are putting-fourth their claim to the remaining unfilled seats which have not been filled because of non-availability of the eligible candidates. He contends that the petitioners fulfil the requisite statutory qualification prescribed under the Rules and their non-selection thus is not sustainable. He further placed reliance upon the notice of motion issued by this Court in CWP No. 17438 of 2012.

Notice of motion for 28.1.2013.

To be listed alongwith CWP No. 17438 of 2012.”

7. CWP No.19379 of 2014 was ordered to be heard with CWP No.17438 of 2012 vide order dated 17.09.2014, which reads as under:-

“Adjourned to 26.02.2015.

To be listed along with CWP No.17438 of 2012.

8. In view of the said factual aspect, which is not denied by the other side, we are of the considered opinion that the order of the learned Single Judge on this aspect is also not sustainable, as it is the settled principle that before passing any adverse order, other party likely to be effected should be heard. The impugned order has violated the principle of *audi alteram partem* while issuing directions without hearing or putting the second party to notice and,

therefore, the order is not sustainable on this account.

9. The reasoning which weighed with the learned Single Judge, who had examined the record and come to the conclusion that three candidates selected namely Mohd. Shahir, Muhamad Ali and Vahid Ahmad who were at Serial Nos.14, 15 & 17 in the select list respectively and had attempted the answer sheets on the reverse page and the answer sheets on third page were blank and the information given under the RTI Act was not correct.

10. In pursuance of the earlier order Dr. Hasim Khan, Principal, Government Senior Secondary School, Bima, Block Ferozepur Jhirka, District Mewat, subject expert is present. The answer sheets of the candidates have been duly examined in open Court and have been doubled checked by the help of the Urdu language expert on the establishment of this Court namely Mr. Syed Kashif, Urdu Translator. It has been found that the candidate who is at Serial No.14, whose roll number is 15 namely Mohd. Shahir, has answered only two wrong questions out of 15. Whereas candidate who is at Serial No.15 namely Muhamad Ali, whose roll number is 32, has answered only three questions wrongly out of 15 and candidate who is at Serial No.17 namely Vahid Ahmad, whose roll number is 58, has answered 7 questions correctly.

11. In such circumstances, the answer sheets of all other candidates are also similarly filled, with one set of blank paper and

the proforma set of questions, which seems to be the dictation given to the candidates by the subject expert, answered in Urdu, which was the consideration before the Selection Committee. All the candidates have answered the said proforma on different dates ranging between 23.06.2012 to 26.06.2012. We have not able to find any discrepancy in the said answer sheets, which would necessarily have led to the conclusion that the selected candidates were not entitled for the appointment. Similarly, reference as such has been made to one candidate Mohd. Jaber and which has been relied by the learned Single Judge that out of 15 words he had rightly attempted all the words, but he had been given zero marks in the interview. His answer sheet has also been examined with the help of the subject expert and cross checked with the assistance of the Urdu Translator. Rather the said candidate has attempted questions, but all were wrongly attempted and have not been properly written, as confirmed by the subject expert now. Therefore, the findings as such recorded by the learned Single Judge are also not justified. Similarly, reference to Neeru Verma has been made and it was recorded that out of 15 words, she had rightly attempted 14 words, but the subject expert has verified that she had rightly attempted only to the extent of 7 words. Therefore, the findings recorded in that aspect are also not justified.

12. Even on merits also, this Court is of the considered

opinion that the reasoning as such given by the learned Single Judge is not justified and the judgment is not sustainable, as the issue of Urdu dictation was within the ambit of subject expert and was a domain in which the learned Single Judge should have feared to tread. The law on this aspect has already been settled in '**H.P. Public Service Commission Vs. Mukesh Thakur & another**', (2010) 6 SCC 759. The same view was taken in '**Ran Vijay Singh & others Vs. State of U.P. & others**', (2018) 2 SCC 357. Relevant portion of the judgment passed in the case of **Ran Vijay Singh (supra)** reads as under:-

“ 31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes

prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

33. The facts of the case before us indicate that in the first instance the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible. Fortunately, the Division Bench did not repeat the error but in a sense, endorsed the view of the learned Single Judge, by not considering the decisions of this Court but

sending four key answers for consideration by a one-man Expert Committee.”

13. However, certain other factors are also to be noticed, which have been urged in this matter. There were averments regarding the fact that against 544 posts only 261 applications have been received and 233 persons were called for interview. It is not disputed that only 75 candidates were selected in the first round and as per the affidavit dated 30.11.2021 of Mr. Vijay Kumar Yadav, Joint Director Administration, Directorate of Elementary Education Haryana, Panchkula, only 63 persons joined who have filed the present set of LPAs as against the 75 selected.

14. On 26.07.2018, the Coordinate Bench was of the opinion that the appointment of the candidates could not be questioned, but resolved the problem, since a small number of persons had been appointed against 544 posts, therefore, constitution of a fresh Selection Committee was directed, to be done with two experts from outside the State of Haryana and third from the department of Government having knowledge of Urdu language besides being connected with ground realities, so that the unselected candidates could get a second chance. Relevant portion of the order dated 26.07.2018 reads as under:-

“A perusal of the aforesaid order shows that the Court issued notice of motion with a stipulation that selection/appointments of candidates would not be questioned. Even before us, learned counsel for the

original petitioner(s) reassert the said statement. Even otherwise, we find that 75 persons were selected and appointed way back in the year 2012 and they have been performing their duties and also teaching the students. As it is out of 544 posts, only 75 teachers have been selected and appointed and have been working. We do not think that in such a precarious situation the selection and appointment of 75 candidates should be set at naught in such a summary manner. This Court has already made an interim order in these appeals protecting their employment. After hearing all the parties to these appeals, we are inclined to confirm the interim order extending relief to the 75 selected candidates, who have been employed.

The next question is about resolution of the problem regarding the original petitioner(s).

Learned counsel for the original petitioner(s) submit that their petitioners are brilliant candidates and were erroneously rejected in the selection process. Learned counsel for the original petitioner(s) has also made allegations in the nature of mala fides but it is not necessary for us to go into the same as none of the selected candidates were arrayed as party respondent(s) in the original petitions.

We then find that 233 candidates were called for interview after scrutiny of applications numbering 261 which were received. Since we have also taken a prima facie view about the erroneous constitution of Selection Committee as aforesaid since T.K. Sharma, Commissioner and Sneha Lata, Director did not know Urdu, we think that out of 233 minus (-) 75 candidates i.e., 158 candidates should be given one more chance to reappear for interview/viva voce before a freshly

constituted Selection Committee. The reason is non availability of Urdu teachers in the open market. The experience shows that out of 544 posts advertised only 263 had applied. Therefore, taking a pragmatic view of the matter, according to us, it will be proper to allow those 158 candidates only to reappear for interview/viva voce. Since, we have found that constitution of Selection Committee was palpably wrong we call upon the State Government to file an affidavit for constitution of a fresh selection Committee.

Suffice, it to say that the Selection Committee should consist again of three members who should be of such a stature and considerate who would be appropriate to select the JBT primary teachers. To say in other words they should not be so highly qualified that the requirement of having primary teachers would be done away with. The ultimate object is that large number of primary teachers in Urdu language are badly needed for the Mewat District. We, therefore, direct the State Government to file an affidavit by the concerned Education Secretary giving the names of three suitable experts in Urdu language who shall be from the colleges and universities. The two experts should not be from the State of Haryana and third from the department of Government knowing Urdu language and also well connected with the ground realities.

The affidavit shall be filed on or before 2.8.2018. If necessary the Director in the Urdu language who is concerned with the matter may remain present in the Court to assist the State counsel.

Put up on 2.8.2018 at 2.00 P.M.

If there is a delay in compliance of the present order, the Secretary, Education Department of Government shall remain present in the Court.

Copy of this order be given *dasti* under the signatures of the Bench Secretary of this Court.

A photocopy of this order be placed on the connected files.”

15. Three persons were nominated on the Committee by the Government namely Prof. Wajeehuddin Shehper Rasool, HOD Urdu, Jamia Milia Islamai Delhi, Dr. Ali Abbas, Asst. Prof., Department of Urdu, P.U. Chandigarh and Dr. Hasim Khan, Urdu Lecturer, Government Sr. Secondary School, Nagina Mewat (who is also present today to assist the Court as per directions).

16. The State had challenged the aforesaid order dated 26.07.2012 by filing SLP, which was converted to **Civil Appeal Nos.725-729 of 2021 'State of Haryana and others Vs. Dinesh Kumar etc.,** in which initially on 07.01.2019 the order of status quo had been passed. However, since in pursuance to the directions issued by this Court interviews had already taken place from 03.11.2018 to 05.11.2018, eventually, the civil appeals had been disposed of by noticing that the result of the interviews had not been declared as the consequence of the status-quo order passed therein. However, request was made to decide the LPAs. The Apex Court has noticed the fact regarding the fresh selection committee was to be constituted for considering the applications only of the remaining 158 candidates. Relevant portion of the order dated 26.02.2021 reads as under:-

“3 The appeals arise from an interim order of a Division Bench of the High Court of Punjab & Haryana dated 26 July 2018. The State of Haryana instituted these proceedings under [Article 136](#) of the Constitution to challenge the interim order of the Division Bench. By an order dated 7 January 2019, notice was issued on the Special Leave Petitions and an order of status quo was passed by this Court.

4 An application was moved by the private respondents for vacating the interim order dated 7 January 2019. Since the Letters Patent Appeals are still pending before the High Court, we were of the view that it would be appropriate to take up the proceedings for final disposal which we have accordingly done with the consent of the learned counsel for the parties.

5 The dispute in the present case pertains to the recruitment of JBT – Urdu teachers in Mewat District pursuant to an advertisement which was issued on 3 March 2012. From the record of proceedings, it appears that there were 544 posts for which only interviews were held for making the selection; 261 candidates applied and 233 were called for interview. Finding fault with constitution of the Selection Committee, the Single Judge set aside the entire selection and directed that it should be carried out afresh from the stage of interview by constituting a fresh Selection Committee. In the Letters Patent Appeals, the Division Bench of the High Court passed an interim order. The High Court in the course of its impugned order protected the appointments of 75 teachers who had already been appointed. However, while doing so, the High Court directed the State to constitute a fresh Selection Committee for the purpose of considering the applications only of the remaining 158 candidates who would appear for the interview. The manner in which

the Selection Committee was to be constituted has been indicated in the order of the High Court.

6 It is common ground between the learned counsel appearing on behalf of the contesting parties that in pursuance of the order of the High Court, a Selection Committee was constituted by the State and interviews were held in the month of November 2018. The results of the interviews have not been declared as a consequence of the interim order of status quo passed by this Court. In our view, the ends of justice would be met if all the Letters Patent Appeals before the High Court are taken up for hearing and final disposal expeditiously and, in the meantime, the interim order of this Court dated 7 January 2019 is maintained pending the disposal. We are inclined to make this direction in order to obviate any administrative difficulty resulting from the enforcement of the interim directions pending the disposal of the appeals.

7 We accordingly order and direct that the interim order dated 7 January 2019 passed by this Court directing the maintenance of status quo shall continue to hold the field pending the disposal of the Letters Patent Appeals, being LPA Nos 4/2016, 972/2016, 973/2016, 483/2017 and 485/2017. All the rights and contentions of the parties are kept open to be urged before and decided by the High Court. The High Court is requested to expedite the disposal of the Letters Patent Appeals, preferably within a period of three months from the date on which a certified copy of this order is placed on its record. The interviews held in furtherance to the interim order of the Division Bench will abide by the result of the LPAs.

8 The appeals are accordingly disposed of.

9 Pending applications, if any, stand disposed of.”

17. In pursuance of the said order, the State was directed to file an affidavit as to how many candidates were interviewed by the Selection Committee as constituted under the interim order passed by this Court on 26.07.2018 and 11.09.2018. All the appointed candidates who had not filed the appeal, were also to be intimated regarding the pendency of the present proceedings and the help of the subject expert was also called for alongwith the records.

18. The State has also placed on record the list of candidates interviewed between 03.11.2018 to 05.11.2018 which would go on to show that out of 158 candidates who were to appear, only 75 candidates have appeared before the fresh Selection Committee, which would also be clear from the affidavit of the Joint Director dated 30.11.2021. Perusal of the record further would go on to show that the said Committee has now recommended only 59 more out of 75 candidates.

19. Resultantly, this Court is of the opinion that in view of the directions issued by the Coordinate Bench, which have not been interfered by the Apex Court also, a quietus has to be given to the said selection process and the State shall take positive steps to fill up the balance seats against the said posts of the candidates, which have been duly recommended by the fresh Selection Committee. The needful be done within a period of three months from today. The original record shall be returned to the counsel for the State.

20. Accordingly, the candidates will be offered appointment as per the terms of the advertisement. However, since they have not worked on the said posts, they will not be entitled to claim any financial benefits. Their seniority, however, would be placed at the bottom of the candidates already selected and they would be given notional benefit of service, from the date of appointment of the candidates selected earlier.

21. The appeals are, accordingly, disposed of.

(G.S. SANDHAWALIA)
JUDGE

December 07, 2021
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No