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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-358-2022

DECIDED ON: 7th MAY, 2022

MOHINDER SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravi Sharma, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J (ORAL)

Challenge in this appeal is to the order dated 4th March, 2020 whereby, the writ petition preferred by the appellant challenging the order of termination of his services dated 24th October, 2016 (Annexure P-15) stands dismissed on the ground that the appellant belongs to the Backward Class 'B' category and secured 26.45 marks (Academic 19.45 marks plus viva voce 7.00 marks) out of 75 marks, whereas the last selected candidate under Backward Class 'B' category had secured 35.05 marks out of 75 marks and therefore the appellant had not been selected and has been wrongly granted the appointment letter.

Learned counsel for the appellant has asserted that the appellant had applied for the post of driver. He had participated in the selection process and when the result was declared his name did not figure in the said selection list. He submitted a representation to the respondents on receipt of information

under the Right to Information Act that his driving licence was not valid. On verification of the driving licence the same having been found to be correct, a detailed representation to this effect had been submitted by the appellant to the respondents. When the said representation, had not been decided, he had preferred CWP-28378-2013 in this Court titled as **Mohinder Singh vs. State of Haryana and others** which was disposed of vide order dated 24th February, 2014 directing the Director General State Transport Haryana to decide the legal notice within a period of one month. As the said authority did not proceed to decide the representation, the appellant had filed a contempt petition where the Director General State Transport, Haryana produced an order indicating that he had already issued directions for appointment of the appellant on the post of driver. Appellant was appointed as Heavy Vehicle Contract/Daily Wages basis driver vide letter dated 14th January, 2015. Appellant preferred a civil suit seeking seniority from the date his similarly placed employees have been appointed along-with arrears of pay etc.

During the proceedings before the civil court when the matter was taken up, then the order of termination has been passed after issuance of show cause notice to the appellant on the above referred two facts. This order of termination was challenged by the appellant before learned Single Judge which on the basis of the reply of the respondents has resulted in dismissal of the same.

Counsel for the appellant states that because of non-filing of the replication learned Single Judge has proceeded to decide the writ petition against the appellant. Counsel contends that the above facts needed to be controverted.

Having considered the submissions made by the counsel for the

appellant we are not inclined to accept the same for the simple reason that on a

reply filed by the respondents, where specific aspect relating to his marks obtained had been mentioned, the appellant should have, at that stage, if the same were not correct, filed a replication to the written statement.

Even before us in the present appeal there is no controversion of the factual aspect in this regard. The grounds of appeal also do not indicate to the contrary. If that be so, the fact as has been recorded by learned Single Judge being un-controverted and the findings therefore as a consequence thereof also have to be approved.

A candidate who has competed in the selection process and has not obtained the requisite marks for appointment to the post, that too on merit in the category in which he had applied, he has no right for appointment to the said post. If there be an error on the part of the appointing authority to appoint such a person who is not otherwise entitled to on merit, the right approach for the appointing authority is issuance of a show cause notice, granting an opportunity of responding thereto and thereafter proceeding to pass an order as per the statutory rules. In the present case, admittedly this exercise has been carried out by the respondents and therefore no illegality can be found in the process which has been adopted by the respondents while taking action against illegal appointment granted to the appellant.

Finding no merit in the present appeal, the same therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

7th MAY, 2022
sham

Whether speaking/reasoned Yes/No
Whether reportable Yes/No