

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105

LPA No.309 of 2020

Date of Decision: 17.05.2022

Surender Singh

.....Appellant

Versus

Haryana Staff Selection Commission and others

.....Respondents.

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

Present: Mr. A.S. Tewatia, Advocate for the appellant.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present Letters Patent Appeal is to the order dated 07.09.2018 passed in CWP No.14626 of 2008 titled '*Surender Singh vs. Haryana Staff Selection Commission and others*' by the writ appellant. The appellant is not satisfied with a sum of Rs.5,00,000/- granted as compensation along with costs of Rs.50,000/-, as directed to be paid by the learned Single Judge vide the impugned order.

The matter was pertaining to the selection of 'A' Class Naib Tehsildar in pursuance to the advertisement No.12/2007 dated 07.09.2007. The appellant had applied in the physically handicapped category and out of 44 posts advertised, there were 3 seats for physically handicapped category. On account of the marks obtained in the written examination, appellant was also called for interview. However, since his roll number did not figure against the three posts, which had been notified for final selection, the appellant had sought certain information regarding his answer sheets of the

written examination. On receiving the response that the answer sheets could not be supplied on 18.07.2008, the appellant chose to file the writ petition.

The stand of the respondents in the written statement was that the record was destroyed on 02.08.2008 i.e. prior to the filing of the writ petition. It is further pleaded that appellant has obtained 276 marks as against 312 marks of last selected candidate in this category and thus, could not make the cut.

Perusal of the result declared on 22.06.2008 (Annexure P-3) would also go on to show that the three candidates had been declared successful and the cut off marks was fixed as 312 for this reserved category. The learned Single Judge noticed that waiting list has not been prepared and the name of the appellant figured at serial No.38 in the result sheet and there were two candidates, who were higher in merit in this category and they had not approached the Court for relief along with the appellant. It is on that account, keeping in view the fact that the writ petition had been decided after a period of a decade from the date when the result was declared, compensation has been awarded to the appellant while coming to the conclusion that it was a wiser course as such and would lead to administrative chaos by interjecting the present appellant into the service, which would also lead to seniority, fitment and promotion disputes, that could not be reconciled easily.

The State at that point of time on account of the interim orders had taken instructions and agreed to pay a sum of Rs.5,50,000/- as compensation.

Counsel for the appellant has vehemently tried to convince us that the consideration for appointment should have been made by the learned Single Judge.

We have perused the paper book. After the writ petition had been dismissed, LPA No.1516 of 2018 had been filed before this Court and it had been dismissed as withdrawn on 19.12.2019 with liberty to file a review petition. Thereafter, the review petition (RA-CW-19-2020) was dismissed on 12.02.2020 by the learned Single Judge by making the following observations:-

“The appellant is present in Court. He is 44 years of age. His left leg is polio stricken and the gait is slightly abnormal but he is otherwise of robust built.

Heard learned counsel for the parties on the review application.

What is really asked for is change of opinion which I am not prepared to do in the limited review jurisdiction conferred by Order XLVII Rule 1 read with Section 114 CPC.

The review application is dismissed.”

We are of the considered opinion that the learned Single Judge granted the benefit of compensation on the ground that answer sheets have been destroyed before the prescribed time. Therefore, suspicion has been raised on the conduct of the Commission and which had not acted on its own instructions. The demand of the appellant-writ petitioner, thus, cannot rightly be granted as the same could not be on the basis of mere pleadings made in the writ petition. Therefore, no such formative ground could have weighed with the learned Single Judge to rely upon that the fact that the answer-sheets have been wrongly checked and the appellant was liable to get more marks as claimed in the writ petition. The discretion exercised by the learned Single Judge was justified in the facts and circumstances of the case.

On 19.04.2022, we passed the following order:-

“State counsel shall seek instructions why the order of learned Single Judge has not been implemented in

spite of the fact that more than 3½ years have passed. However, in case payment has not been made, State counsel shall ensure that the demand draft of the said amount be produced in Court by the next date of hearing.

Adjourned to 17.05.2022.”

In pursuance of the same, a demand draft dated 13.05.2022 amounting to Rs.5,50,000/- has been produced. The same has been handed over to Mr. Tewatia. Photocopy of the same had been taken on record. The same is without prejudice to the rights of the appellant to pursue his legal remedy, if any.

Keeping in view the above, we are of the considered opinion that learned Single Judge’s order is not liable to be modified to the extent which the appellant is seeking and as such he has no absolute right of appointment in the absence of any material before this Court regarding the fact that his answer-sheet was not adequately marked or that less marks have been given with mala fide purpose/intention.

In such circumstances, there is no merit in the present appeal and the same is dismissed.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

May 17, 2022
Sachin M.

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