

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

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LPA-273-2022 & CMS-692 & 693-LPA-2022

DATE OF DECISION: JULY 04, 2022

Anita Yadav

.....Appellant

VERSUS

Pt. B.D.Sharma University of Health Sciences and others

....Respondents

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

**Present: Mr. S.K.Garg Narwana, Sr.Advocate with
Mr. Nitin Sachdeva, Advocate,
for the appellant.**

**Mr. S. K. Aggarwal, Advocate,
for respondent No.1.**

**Ms. Rajni Gupta, Addl. Advocate General, Haryana,
for the State.**

AUGUSTINE GEORGE MASIH, J.

CM-692-LPA-2022

**Application is allowed as prayed for subject to all just
exceptions.**

**Exemption is granted from filing certified/true typed copies of
impugned order dated 24.03.2022, Civil Writ Petition alongwith annexures
and short reply/written statement on behalf of respondent No.3.**

LPA-273-2022 & CM-693-LPA-2022

Present is an appeal preferred by respondent No.3, who was

arrayed as a party respondent by name, although she had decided the appeal while exercising the powers of the Appellate Authority under the Haryana Public Premises and Land (Rent & Eviction) Act, 1972 (hereinafter referred to as “the 1972 Act”), praying for expulsion/setting-aside of the findings/strictures/observations/adverse remarks recorded in Para 15 of the order dated 24.03.2022 passed by the learned Single Judge in Civil Writ Petition No.14120 of 2021.

Learned senior counsel for the appellant contends that the appellant had passed the order dated 24.03.2021 in the official capacity as the Appellate Authority in good faith while exercising her quasi-judicial powers. It is contended by him that the comments, which have been made by learned Single Judge, were not necessary for the decision of the case as an integral part thereof.

Learned senior counsel while relying upon the observations made by Hon'ble Supreme Court in the matter of 'K', a Judicial Officer, AIR 2001 SC 972, contends that the comments/observations/findings returned by the learned Single Judge were not absolutely necessary and rather in case the same are allowed to continue, it has a potential to prejudice the career of the appellant. Assertion has also been made that nothing has come on record, which would indicate that the appellant had exercised the jurisdiction for some ulterior motive or being influenced by considerations, rather than the merits of the case as has been observed by the learned Single Judge. Even the writ petitioner has not so asserted in the writ petition.

Counsel for the appellant, on the basis of other factual aspects as have been recorded with regard to the decision taken by the Assistant Collector Ist Grade, exercising the powers of the Collector, contends that

factum of grant of various opportunities to the respondents in the writ petition is based upon the records, which is not disputed. He, however, has submitted that the observations of the Court with regard to the judicial work and conduct of the appellant would go a long way in adversely affecting her career and rather prejudice the same. Prayer has, thus, been made that the observations made in Para 15 of the judgment dated 24.03.2022 passed by the learned Single Judge may be expunged/set-aside.

We have considered the submissions made by counsel for the appellant and on an earlier occasion has called for the complete original records of the proceedings before the Assistant Collector Ist Grade, Rohtak. Accordingly, the record in original was produced in Court and had been retained for perusal and consideration.

On perusal of the same, the findings and the observations of the learned Single Judge with regard to various opportunities having been given to the private respondent for firstly to cross-examine the witness produced by the respondent-University and thereafter opportunities given to the private respondent to lead evidence stands established from the records. The period, therefore, spent during the proceedings before the Assistant collector Ist Grade being based on record does clearly show that ample opportunities were given to the private respondent to cross-examine the witnesses of the University and to lead her own evidence.

The order, therefore, passed by the Appellate Authority i.e. Divisional Commissioner, Rohtak Division, Rohtak-appellant herein, wherein the matter was remanded to the Assistant Collector Ist Grade for fresh decision on the ground that the opportunity to cross-examine the witnesses of the petitioner and to lead her cross-examination has not been

granted, was factually incorrect. Further the Assistant Collector Ist Grade, who has passed the order, was exercising the powers of the Collector as had been conferred upon the said Officer by the Government. This aspect, therefore, is unassailable in the order, which has been passed by the learned Single Judge.

Learned Single Judge has proceeded to comment on the basis of the records, which were not taken into consideration by the appellant while exercising its quasi-judicial authority and performing the functions of an Appellate Authority. It being the first appeal, the records were required to be looked into before making any observation on the records and that too contrary thereto. To the said extent, may be, the observations of learned Single Judge, being based upon the records, are borne therefrom with regard to the number of opportunities having been granted for cross-examining the witnesses of the University and for leading evidence by the private respondent. The subsequent observations with regard to the order having been passed under the influence of other considerations rather than the merits appears to be uncalled for, especially when there is nothing on record to substantiate the same and particularly when it is not even the case of the respondent-University, who was the petitioner before the writ Court that the said order has been passed with the malafide intention or with ulterior consideration.

In the light of the above, we are of the opinion that the observations to the extent, as has been stated above, deserve to be set-aside and we order accordingly. It goes without saying that as a consequent thereof would be that subsequent direction as issued to the Chief Secretary to Government of Haryana be not taken as a mandate to be acted upon.

With the above observations, the appeal stands disposed of.

As the main appeal stands decided, no orders are required to be passed on CM-693-LPA-2022, which is an application for stay of the order impugned.

The original records be handed over to Ms. Rajni Gupta, learned Additional Advocate General, Haryana, under proper receipt by the Special Secretary of this Court.

(AUGUSTINE GEORGE MASIH)
JUDGE

July 04, 2022
khurmi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No