

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

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LPA No.690 of 2022 (O&M)
Date of Decision: August 22nd, 2022

Ashish Chopra

...Appellant

Versus

High Court of Punjab and Haryana, Chandigarh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. D.K. Chopra, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.1605-LPA of 2022

Prayer in this application under Rule 3-A (1) Chapter VI Part-B, Volume V of the High Court Rules and Orders is for grant of leave to file the accompanied appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the counsel, the same is allowed.

Leave to file appeal is granted.

CM No.1606-LPA of 2022

Prayer in this application is for condonation of delay of 53 days in re-filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the applicant-appellant, the same is allowed.

Delay of 53 days in re-filing the appeal stands condoned.

CM No.1607-LPA of 2022

Prayer in this application is for placing on record documents Annexures A-1 to A-4.

Application is allowed subject to just exceptions.

Documents Annexure A-1 to A-4 are taken on record.

LPA No.690 of 2022

Challenge in this appeal is to the judgment dated 19.05.2022 passed by the learned Single Judge, whereby the writ petition preferred by the appellant, who had applied for the post of a Clerk in pursuance to a notice dated 05.01.2019 issued by the Society for Centralized Recruitment of Staff in Subordinate Courts of the State of Punjab and Haryana, wherein 352 posts were advertised, where the appellant also participated but his merit number was not declared or displayed, has been dismissed. Appellant has approached the Court with an assertion that there was a note in the advertisement itself that the number of vacancies could be increased or decreased without any notice depending upon the number of vacancies as on the date of preparation of the merit list and posting.

Counsel contends that the result of the examination for the post of Clerk was declared on 24.03.2021 and only 352 posts of Clerks were filled up and accordingly the list up to 352 in merit was displayed. Counsel contends that as per the note, it was mandated upon the respondents to fill up all vacancies on the date of preparation of the merit list and posting, which according to his information, is much higher than the actual posts filled up. Counsel contends that since there was a mandate in the note itself, respondents were required to fill up all the vacancies which were available on the said date of declaration of result or at the time of posting. Non-compliance of the said mandate calls upon the Court to issue a writ of mandamus to the Society for filling up the posts as were available on the said date as referred to above. Prayer has thus been made for setting aside

the judgment passed by the learned Single Judge and considering the candidature of the appellant for appointment to the post of Clerk in case he comes in the merit.

We have considered the submissions made by the counsel for the appellant and with his assistance, have gone through the judgment passed by the learned Single Judge as also the pleadings.

Note which was a part of the advertisement as issued on 05.01.2019, on which reliance has been placed by the counsel for the appellant, reads as follows:-

***“Note:** The number of vacancies may be increased or decreased without any notice, depending upon the number of vacancies as on date of preparation of merit list and posting”.*

A perusal of the note makes it apparent that the discretion was upon the appointing authority for increasing or decreasing the number of vacancies. The said discretion having not been exercised by the said authority would not confer any right upon the candidates beyond the advertised posts i.e. 352 in number. The fact remains that according to the merit, 352 persons have been appointed on the advertised posts leaving no vacancy available on which the candidature of the appellant or similarly placed candidates could be considered. The contention of the counsel for the appellant that there was a mandate as per the said note is not correct and cannot be accepted. The judgment of the Hon'ble Supreme Court on which reliance has been placed by the learned Single Judge i.e. ***High Court of Kerala Versus Reshma A. and others 2021 (1) SCT 311*** also makes it apparent that the number of posts advertised have to be stuck to. The said judgment, therefore, cannot be faulted with.

An argument has been raised by the counsel for the appellant that on earlier two occasions, it has so happened that the number of vacancies which have been filled up, are more than the posts which were advertised. This argument also cannot be accepted as we have already stated that as per the note, the discretion was with the appointing authority and there being no mandate for either increasing the posts or decreasing the same and the discretion being in the appointing authority, the contention of the counsel for the appellant cannot be accepted nor would Article 14 of the Constitution be attracted in such circumstances when there is no mandate for the relief which is being sought by the appellant.

Present is a case where the right of selection also has not been conferred upon the appellant. It is settled proposition of law that even a selected candidate against an advertised post can be denied appointment at the discretion of the appointing authority. Appellant is on a weaker footing than those selected candidates as well. Reference in this regard can be made to the judgment passed by the Hon'ble Apex Court in ***Commissioner of Police and another Versus Umesh Kumar 2020 (10) SCC 448***.

In view of the above, finding no merit in the present appeal, we dismiss the same.

(AUGUSTINE GEORGE MASHI)
JUDGE

August 22nd, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes