

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

**CWP-20397-2021 (O&M)
Date of decision : 15.09.2022**

Vishav Kant Garg

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Aditya Grover, Advocate,
for the petitioner.

Ms. Anu Chatrath, Addl.A.G., Punjab.

Mr. Atul Lakhanpal, Senior Advocate,
with Mr. Arjun Lakhanpal, Advocate,
for respondent No.3.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing the process of appointment of respondent No.3 to the post of Non-Judicial Member, State Consumer Disputes Redressal Commission, Punjab (for short, 'the State Commission') in disregard of the recommendation made by the Selection Committee; further prayer is for directing the respondents to appoint petitioner for the post in question.

2. Facts are not in dispute.
3. Government of Punjab invited applications for filling up one post of Member, State Commission vide public notice dated 14.02.2021. In response to public notice, petitioner along with other

candidates, including respondent No.3 submitted applications within stipulated period and there is no dispute regarding their eligibility by either side. After scrutiny of applications, a provisional list of 22 candidates was published for interview and schedule reads as under:-

“SCHEDULE OF INTERVIEW

Venue: Committee Room of Hon’ble High Court of Punjab and Haryana At Chandigarh

<i>DATE</i>	<i>ROLL NO.</i>	<i>REPORTING TIME</i>
25.08.2021	1 to 22	1:00 pm (in Court Room No.5)

”

4. Upon assessing suitability of candidates, the Selection Committee made recommendation in order of merit and it was forwarded by Registrar General of this Court to the State Government for appointment vide letter dated 26.08.2021.

5. The State Government after taking into consideration the recommendation, shortlisted name of private respondent for medical examination vide order dated 01.10.2021 (P-7) and ignored the petitioner.

6. Feeling aggrieved against the aforesaid action, present writ petition was filed on 04.10.2021, in which notice of motion was issued on 06.10.2021 for 07.10.2021 and learned State counsel accepted the notice on behalf of respondent Nos.1 & 2. On the same day, i.e. 06.10.2021, the Government issued appointment order (R-3/1), in favour of respondent No.3.

7. It is contended by learned counsel on behalf of petitioner that he is higher in merit than respondent No.3. Despite that, the State Government just to frustrate the purpose of the present writ petition, appointed private respondent No.3 to the post in question vide order dated 06.10.2021, in total disregard of the recommendation made by Selection Committee; thus, their actions are in complete negation of Rule 6 of Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020 (for short, 'Rules of 2020'). Further contended that while ignoring the legitimate claim of petitioner, no reason at all has been assigned by the State Government and as such, their actions are violative of Articles 14 & 16 of the Constitution. Also contended that in view of Rule 6(10) of the Rules of 2020, it is obligatory upon the State Government to follow the recommendation made by the Selection Committee, instead of disturbing the same on the basis of pick and choose. Lastly contended that recommendation made by the Selection Committee are sacrosanct for the purpose of appointment to the post in question and as such, the appointment of respondent No.3 is not legally sustainable.

8. On the other hand, learned State counsel as well as learned Senior Counsel for private respondent submitted that in view of the provisions of Rule 6(10) of the Rules of 2020, the State Government is fully empowered to make appointment from the panel, but it is not obligatory for them to follow the order of merit as recommended by the Selection Committee. Learned counsel for the respondents vehemently

argued that State Government is free to choose any candidate from panel so prepared by the Selection Committee. Also contended that it is not the case of petitioner that private respondent is ineligible for the post in question, nor there is any allegation of *mala fide* against the authorities while appointing respondent No.3. Learned State counsel made reference to para No.7 of the short reply filed by respondent Nos.1 & 2, and specifically submitted that “*The State government is bound only to the extent that it cannot make appointment from outside the panel recommended by the Selection Committee.*” Lastly submitted that petitioner-Vishav Kant Garg as well as another candidate i.e. Mr. Yadvinder Pal Singh Baath, who were higher in merit than respondent No.3 have already been appointed as Members of the District Commission(s) at Faridkot and S.B.S. Nagar, respectively and as such, they were rightly ignored for the post in question.

9. Heard learned counsel for the parties and perused the records.

10. The points for consideration of this Court would be as under:-

(i) *Whether the State Government while exercising its power under Rule 6(10) is free to choose any candidate for appointment to the post of Member, State Commission, from panel prepared by the Selection Committee and can ignore a candidate with higher merit without assigning valid reason(s)?*

(ii) *Whether in view of the facts and circumstances of the present case, appointment of respondent No.3 to the post in question is legally sustainable?*

11. There is no dispute that appointment to the post(s) in question is governed under the provisions of the Consumer Protection Act, 2019 (for short, 'the Act of 2019') as well as Rules of 2020 and relevant part of the same reads as under:-

Act of 2019

“Chapter IV

Consumer Disputes Redressal Commission

42. Establishment of State Consumer Disputes Redressal Commission - (1) *The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State.*

(2) The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette:

Provided that the State Government may, by notification, establish regional benches of the State Commission, at such places, as it deems fit.

(3) Each State Commission shall consist of—

(a) a President; and

(b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

43. Qualifications, etc., of President and members of State Commission. – *The Central Government may, by notification, make rules to provide for the qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission.”*

Rules of 2020

“2. Definitions.—*(1) In these rules, unless the context otherwise requires, -*

(a)

(b) “Selection Committee” means the Selection Committee referred to in sub-rule (1) of rule 6;

(2)

3. Qualifications for appointment of President and members of State Commission.—*(1) A person shall not be qualified for appointment as President, unless he is, or has been, a Judge of the High Court;*

(2) A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses-

(a) an experience of at least ten years as presiding officer of a district court or of any tribunal at equivalent level or combined service as such in the district court and tribunal:

Provided that not more than fifty percent of such members shall be appointed; or

(b) a bachelor’s degree from a recognized university and is a person of ability, integrity and standing, and has special knowledge and

professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine:

(3) *At least one member or the President of the State Commission shall be a woman.*

5. Disqualification for appointment of President or member of State Commission and District Commission.—A person shall be disqualified for appointment as the President or a member of a State Commission or District Commission if he –

(1) *has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or*

(2) *has been adjudged to be insolvent; or*

(3) *of unsound mind and stands so declared by a competent court; or*

(4) *has been removed or dismissed from the service of the State Government or Central Government or a body corporate owned or controlled by such Government; or*

(5) *has, in the opinion of the State Government, such financial or other interest as is likely to prejudicially affect his functions as the President or a member.*

6. Procedure of appointment.—(1) *The President and members of the State Commission and the District Commission shall be appointed by the State Government on the recommendation of a Selection Committee, consisting of the following persons, namely: –*

(a) Chief Justice of the High Court or any Judge of the High Court nominated by him-Chairperson;

(b) Secretary in charge of Consumer Affairs of the State Government – Member;

(c) Nominee of the Chief Secretary of the State—Member.

(2) The Secretary in charge of Consumer Affairs of the State Government shall be the convener of the Selection Committee.

(3) No appointment of the President, or of a member shall be invalid merely by reason of any vacancy or absence in the Selection Committee other than a vacancy or absence of the Chairperson.

(4) The process of appointments shall be initiated by the State Government at least six months before the vacancy arises.

(5) If a post falls vacant due to resignation or death of a member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.

(6) The advertisement of a vacancy inviting applications for the posts from eligible candidates shall be published in leading newspapers and circulated in such other manner as the State Government may deem appropriate.

(7) After scrutiny of the applications received till the last date specified for receipt of such applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee.

(8) The Selection Committee shall consider all the applications of eligible applicants referred to it and if it

considers necessary, it may shortlist the applicants in accordance with such criteria as it may decide.

(9) The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.

(10) The Selection committee shall recommend a panel of names of candidates for appointment in the order of merit for the consideration of the State Government.

(11) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.

(12) Every appointment of a President or member shall be subject to submission of a certificate of physical fitness as indicated in the annexure appended to these rules, duly signed by a civil surgeon or District Medical Officer.

(13) Before appointment, the selected candidate shall furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as a President or member.”

12. Rule 2 (*ibid*) defines the Selection Committee and according to which “Selection Committee” means the Selection Committee referred to in sub-rule (1) of rule 6.

13. Rule 6 deals with the procedure for appointment to the post in question. After careful examination of this rule, it is clearly

discernable that journey right from scrutiny of the applications, till final stage of appointment, shall culminate in the following manner:-

Stage I : As per sub-rule 1, a Selection Committee of the following persons shall be constituted:-

- (i) *Chief Justice of the High Court or his nominee as Chairperson;*
- (ii) *Secretary, Incharge of Consumer Affairs of the State Government;*
- (iii) *nominee of the Chief Secretary of the State.*

Stage II : After scrutiny of the applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee (*sub-rule 7*).

Stage III : The Selection Committee shall consider all the applications of eligible candidates and if it considers necessary, may shortlist the applicants in accordance with such criteria as it may decide (*sub-rule 8*).

Stage IV : Keeping in view the requirements of the State Commission, the Selection Committee shall determine its procedure for making recommendation (*sub-rule 9*).

Stage V : After taking into account (i) suitability, (ii) record of past performance, (iii) integrity and (iv) adjudicatory experience, the Selection Committee “shall recommend a panel of names of candidates for appointment in the order of merit for consideration of the State Government” (*sub rules 9 & 10*).

Stage VI : The State Government “shall verify or cause to be verified the credentials and antecedents of the recommended candidates” (*sub rule 11*).

Stage VIII: A Member, State Commission shall be appointed by the State Government on recommendation of the Selection Committee (*sub rule 1*).

Stage IX : Every appointment of a Member shall be subject to the submission of a Certificate of physical fitness, issued by the Civil Surgeon or District Medical Officer (*sub rule 12*).

Stage X : Before appointment, the selected candidate shall furnish an undertaking that he/she does not or will not have any financial or other interest, which is likely to prejudice his/her functioning as Member (*sub rule 13*).

14. In the present case, Selection Committee decided its criteria and procedure on 25.08.2021 for making recommendation and which is extracted as under:-

**“MINUTES OF THE MEETING OF THE
SELECTION COMMITTEE FOR SELECTION OF
MEMBER OF THE STATE COMMISSION AND
PRESIDENT/MEMBER OF THE DISTRICT
COMMISSIONS IN THE STATE OF PUNJAB, HELD
ON 25.08.2021 at 02:00 PM”**

*Present: Hon’ble Mr. Justice Rajan Gupta, Chairman.
Sh. Rahul Tiwari, IAS, Secretary, Food, Civil
Supplies and Consumer Affairs, Member.
Smt. Jaspreet Talwar, IAS, Principal
Secretary, Water Supply and Sanitation,
Member.*

Re:- To decide the criteria to be adopted for appointment of Member of the State Commission in the State of Punjab.

The appointment of the Member of the State Commission in the State of Punjab are to be made by the Selection Committee as provided under Sections 42 and 43 of the Consumer Protection Act, 2019 and the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and Members of the State Commission and District Commission) Rules, 2020.

*The Selection Committee has discussed the matter regarding fixation of criteria and procedure for allocation of marks, selection and recommendation of suitable names to the State Government for appointment to the vacant posts of **Member of the State Commission** in the State of Punjab. For the aforesaid selection, an interview of the shortlisted candidates is to be conducted. The Selection Committee resolves to adopt the following criteria/procedure for allocation of marks out of a total of **100 marks**.*

Academic qualification

*For the post of Member (where minimum qualification as per rules is Graduation/Bachelor's Degree) there shall be **10 Marks** for academic qualification. The allocation of marks for academic qualification will be as follows:-*

<i>Graduation (1st Division)</i>	<i>-</i>	<i>4 Marks</i>
<i>Graduation (2nd Division)</i>	<i>-</i>	<i>2 Marks</i>
<i>Post Graduation (1st Division)</i>	<i>-</i>	<i>3 Marks</i>
<i>Post Graduation (2nd Division)</i>	<i>-</i>	<i>2 Mark</i>
<i>Ph.D.</i>	<i>-</i>	<i>3 Marks</i>

Marks of only one Post Graduation Degree (having highest marks) and one Ph.D. shall be followed.

Experience

*As per rules, a person shall not be qualified for appointment as Member, unless he is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine. As such, 1.0 mark (upto minimum of **20 marks**) shall be awarded for every year of such experience beyond the minimum mandatory period of 15 years.*

Interview

*There shall be an interview/viva-voce of **70 marks**. The candidates would be assessed on the basis of the following:-*

- (i) knowledge and ability to apply law in different facts and circumstances;*
- (ii) ability to communicate with counsels, witnesses and parties calmly and courteously;*
- (iii) integrity on the basis of record;*
- (iv) ability to handle the workload;*
- (v) alertness, intelligence, outlook and bearing of the candidate;*
- (vi) Ability of analysis and cogent drafting of orders; and,*
- (vii) Vision for the assignment.*

Final result shall be prepared by adding marks of academic qualification, experience and interview.

Sd/-

Member

Sd/-

Member

Sd/-

Chairman”

15. The Selection Committee duly assessed all the eligible candidates as per above criteria and made recommendation to the State Government in order of merit for District-wise appointments vide letter dated 26.08.2021 (P-6) and relevant part of the same reads as under:-

“I am directed to refer to you on the subject cited above and to say that in order to fill up 01 post of Non-Judicial Member, State Consumer Disputes Redressal Commission, Punjab, Hon’ble Selection Committee has finalized the selection process. Vide minutes of the meeting dated 26.08.2021, the Hon’ble Selection Committee has recommended panel of the names. The minutes of the meeting are as under:-

“The matter with regard to declaration of the final result for the post of Non-Judicial Member, State Consumer Dispute Redressal Commission, Punjab, during the pendency of CWP Nos.16298 of 2021 and 16374 of 2021 titled as “Sushma Garg Vs. State of Punjab and others” and “Kanwaljeet Singh Vs. State of Punjab and others”, respectively, has been discussed at length. Ms. Sushma Garg and Mr. Kanwaljeet Singh, petitioners have been provisionally permitted to appear for interview by the Hon’ble High Court vide order dated 24.08.2021. It has been further ordered that result of the petitioners shall not be declared without permission of this Court and same be kept in a sealed cover.

The Committee has perused the Roll Number wise final result as at Annexure ‘A’ and merit-wise final result as at Annexure ‘B’ and the same are approved. The Committee resolves to recommend the following panel of names, for the post of Non-Judicial Member, State Consumer Dispute

Redressal Commission, Punjab, in order of merit, as under:-

- 1. Vishav Kant Garg*
- 2. Yadwinder Pal Singh Baath*
- 3. Urvashi Agnihotri*

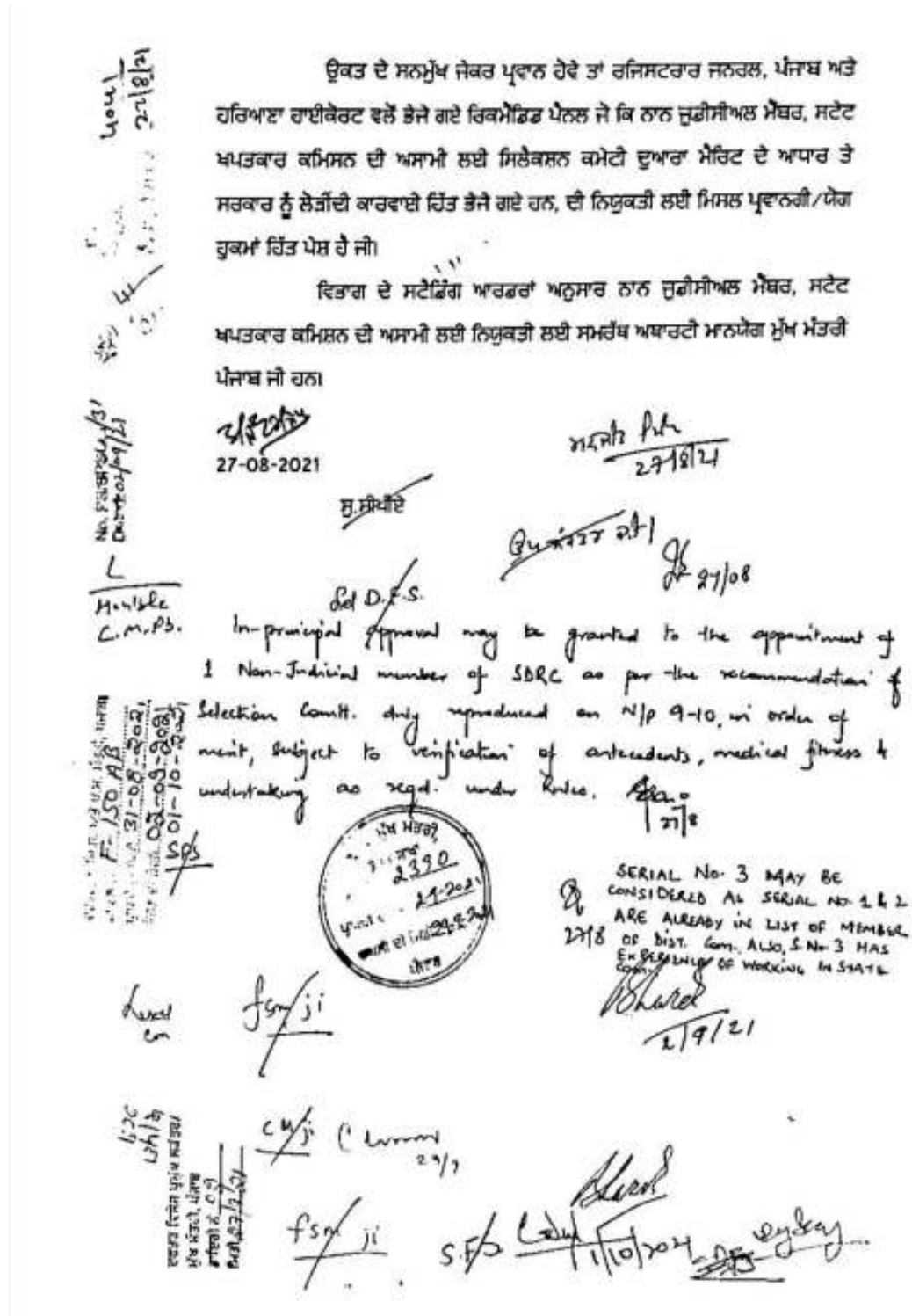
Result of Ms. Sushma Garg and Mr. Kanwaljeet Singh has been kept separately in a sealed cover as per the orders passed by the Hon'ble High Court in CWP Nos.16298 of 2021 and 16374 of 2021.

The recommendation of the names is as per their ranking in merit for the purpose of appointment. The appointment shall be offered to the candidates after thorough scrutiny of documents."

You are, therefore, requested to take further necessary action in the matter, accordingly."

A careful perusal of the above extract leaves no manner of doubt that names were forwarded as per their ranking in order of merit for the purpose of appointment to be offered by the State Government, after thorough scrutiny of documents of respective candidates in terms of Rule 11. It is clearly discernable from the above recommendation that petitioner is higher in merit than respondent No.3; yet he has been ignored by the State Government. Although, official respondents tried to justify their action on the premise that after consideration of the recommendation made by the Selection Committee, the State Government while exercising its powers under Rule 6(10) thought it appropriate to appoint respondent No.3 being more suitable, but that is totally unfounded.

16. This Court has gone through the original records and relevant part of the same (scanned) is recapitulated as under:-



A perusal of above extract reveals that on receipt of recommendation from the Selection Committee, matter was put up before the Director, Department of Food, Civil Supplies & Consumer Affairs and after going through the same, he advised for appointment of

1 Non-Judicial Member as per the recommendation of Selection Committee, in order of merit, subject to the verification of antecedents and other formalities. Aforesaid advice was concurred by Secretary of the Department; but the Minister, humorously proposed the name of respondent No.3 on the premise that candidates at Serial Nos.1 & 2 were already on the list of Members, District Commission; and that respondent No.3 has an experience of working with the State Commission. However, the Minister did not realize that merit list was prepared by the Selection Committee on the basis of due assessment of candidates including their “work experience” in terms of the selection criteria already noticed. Also noteworthy that neither under the Act of 2019; nor as per the Rules of 2020; or in terms of the Standing Orders of the Department, the Minister had any authority for recording such an opinion. Even as per the Rules of Business of the Government of Punjab, 1992 (As amended up to 28th February, 2005) also, in case(s) of difference of opinion between the Secretary of the Department and Minister-in-charge; the matter shall be submitted to the Chief Minister through Chief Secretary and reference in this regard can be made to Rule 28(1)(xxix) thereof, which reads as under:-

28. (1) The following classes of cases shall be submitted to the Chief Minister through the Chief Secretary before issue of orders, namely:-

(i) to (xxviii)

(xxix) Cases in which there is a difference of opinion between the Secretary and the Minister-in-charge; and

(xxx)”

There is no material on record to substantiate that above course was followed in the present case. On the other hand, the Minister had exceeded his jurisdiction while re-assessing the merit of petitioner vis-à-vis respondent No.3 in view of the fact that as per Standing Order dated 07.12.2018 (Annexure I, Sr. No.11), the Chief Minister is the competent authority for appointment to the post in question. However, the Chief Minister, instead of giving his independent consideration to the matter, simply put his signature and there is not even a whisper as to whether he agreed with the advice of Secretary or the Minister. Above all, the Chief Minister being the competent authority, did not assign any reason(s) at all while appointing respondent No.3; thus, the same is non-application of mind and complete negation of the Rule 6(10).

17. As already noticed, the Selection Committee after taking into account suitability on the basis of (i) record of past performance, (ii) integrity and (iii) adjudicatory experience, recommended panel for appointment in order of merit for consideration of the State Government. Thus, in the opinion of this court, consideration by the State Government under Rule 6(10) does not give any leverage to them for choosing a candidate from the panel, who is lower in merit instead of a candidate higher in merit, without assigning any valid reason. Of course, if during verification of credentials & antecedents of a candidate in terms of Rule 6(11), something adverse has surfaced or it is noticed that such a candidate is suffering from any disqualification under Rule 5 i.e. *(a) conviction and sentence for an offence involving moral turpitude; or (b) adjudged insolvent; or (c) declared of unsound*

mind; or (d) removed or dismissed from public employment on earlier occasion (e) having any financial interest which is likely to affect his/her functioning as Member; then certainly he or she can be confronted by the State Government. But even in such a scenario also, fairness demands that consideration must be in a proper manner with due application of mind and if a candidate with higher merit really deserves to be ignored, then only, the 'next in merit' can be considered. In the opinion of this Court, if the State Government is allowed to choose any candidate from the panel irrespective of his or her merit, without assigning any cogent reason(s), then recommendation made by the Selection Committee would be rendered otiose and that would be complete negation of the Rule 6. Besides this, Rule 6(1) clearly envisages that appointments shall be made by the State Government on the recommendation of the Selection Committee. As such, the State Government has to follow the recommendation of the Selection Committee and it cannot ignore the merit without assigning any valid reason(s) in view of the provisions Rule 6(10) discussed hereinabove. In other words, except the observations made hereinabove, there would be no power with the State Government to ignore a candidate higher in merit and choose a person of lesser merit, just as a matter of course, as has happened in the present case while appointing respondent No.3.

18. In support of the above conclusion, reference can be made to **S. Chandramohan Nair v. George Joseph & others, (2010) 12 SCC 687**, wherein, Hon'ble Supreme Court while dealing with the appointment of Member, Kerala State Consumer Disputes Redressal Commission, it was *inter alia* opined:-

“17. An analysis of these provisions shows that appointment of judicial and other members is required to be made by the State Government on the recommendation of the Selection Committee. If the Chairman and/or the members of the Selection Committee do not agree on the candidature of any particular person, then opinion of the majority would constitute recommendation of the Selection Committee. Though, the State Government is not bound to accept the recommendation made by the Selection Committee, if it does not want to accept the recommendation, then reasons for doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendation of the Selection Committee. If the appointment made by the State Government is subjected to judicial scrutiny, then it is duty-bound to produce the relevant records including recommendation of the Selection Committee before the court to show that there were valid reasons for not accepting the recommendation.”

Moreover, the State Government must realize that the Selection Committee was headed by a nominee Judge of Hon’ble the Chief Justice; two senior Government officers were associated as members of the Committee; and the recommendation were unanimous. Thus, in such a situation, instead of ignoring the recommendations of the Selection Committee, the same ought to have been respected by the State Government so as to lend credence to the appointment of Member, State Commission who is supposed to discharge the *quasi judicial* functions in a welfare State.

19. In view of the facts and circumstances discussed hereinabove, the irresistible conclusion would be that action of the State Government while appointing respondent No.3 and ignoring the genuine claim of petitioner is incompatible with Rule 6(10) & (11) of the Rules of 2020; thus not legally sustainable.

Consequently, both the points formulated in para 10 are answered accordingly.

20. As a result thereof, writ petition is allowed; impugned Memo. dated 01.10.2021 as well as appointment order dated 06.10.2021, issued during the pendency of present writ petition in favour of respondent No.3, are quashed and set aside. The State Government shall proceed in the matter afresh as per law strictly on the basis of recommendation made by the Selection Committee.

15.09.2022
atulsethi

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No