

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 2358 of 2016 (O&M)

Date of Decision: 15.12.2022

Date of Reserved: 05.12.2022

Bharat Bhushan

.....Appellant

Vs.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Abhilaksh Grover, Advocate, for the appellants.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

None for respondent no. 2.

HARPREET KAUR JEEWAN, J.

The present Letters Patent Appeal is against the order dated 22.10.2016, passed by the learned Single Judge, whereby the Civil Writ Petition No. 2286 of 2009, titled as **Kuldeep Singh vs. The State of Haryana and others** filed by Kuldeep Singh (respondent No. 3 herein), was partly allowed and selection of the appellant to the post of Assistant Food & Supplies Officer was set aside.

2. The brief facts of the case are that the selection of appellant (respondent no. 3 in the writ petition), on the post of Assistant Food & Supplies Officer (hereinafter referred to as 'AFSO') conducted by Department of Social Justice and Empowerment, Haryana, in pursuance to the advertisement dated 29.08.2006, was challenged. The advertisement was placed for selection of one post from the candidates suffering from

orthopaedic disability. The other posts were also advertised. The interviews were conducted in four zones of the State and independent Interview Committee were constituted for each zone. The criteria for selection consisted of 20 marks out of which 5 marks for academic qualifications, 5 marks for experiences and 10 marks for viva voce. Total 1022 candidates appeared before the Interview Committees. Respondent No. 3 who was also one of the applicant, challenged the selection of Bharat Bhushan (appellant herein), on the said post. The State, as well as Bharat Bhushan contested the said writ petition.

3. During the proceedings of the writ petition, an interim order dated 23.09.2009 was passed, calling the original records of the selection and the same was also examined by the learned Single Judge and it was observed by the learned Single Judge in the said interim order that there was overwriting and it was apparent that initially the selected candidate was given 7 marks in the interview which were overwritten to make 9. Even the total marks were initially written as 10.80, which were overwritten to make 12.80.

4. After hearing learned counsel for the parties and considering the reply filed by the State, as well as by Bharat Bhushan, the learned Single Judge dismissed the writ petition while making the following observations:-

- (i) The record reveals the clear overwriting and manipulation of the figures on the original result/calculation sheet;
- (ii) There is no valid explanation for this overwriting coming forth either from the original record or the pleadings put in

by the authorities in this case, including those put in by the members of the Committee (Interview Committee) and the convener; and

(iii) The selection for the post of AFSO would go through Haryana Selection Commission or the Public Service Commission but this selection was done by the Department. The action of the respondents constituting Departmental Selection Committee without taking the post out of the purview of the Commission was wrongful and improper action which belied chances of a fair and proper selection consistent with the constitutional scheme in Article 14 and Article 16 of the Constitution.

(iv) The selection of the appellant Bharat Bhushan was born in fraud and fraud vitiated everything.

5. This fact was also considered by the learned Single Judge that the appellant/respondent no. 3 was working since long and if his selection is set aside, it would cause undue hardship but the learned Single Judge holding that when the job is ill gotten it is inevitable and a natural consequence of disgraceful acts which cannot be brushed under the carpet. The Court cannot accept the reprieve that the idiom 'let's forgive and forget' pardons. The appellant has had a long run only due to law's delays and he could reap no benefit in equity by long standing employment pending litigation in challenge to the selection. The learned Single Judge further observed the selection has to be set aside with no option left to Court since justice is the supreme virtue. Reliance was also placed upon

the judgments of the Supreme Court in Union of India v. O.Chakradhar, (2002) 3 SCC 146 and Krishan Yadav and another v. State of Haryana and others, (1994) 4 SCC 165, and it was held that in a case where there is deliberate act in a matter of selection, such acts cannot be ignored, since public interest is involved and private interest must succumb. On the aforesaid reasons, the learned Single Judge, partly allowed the writ petition setting aside the selection of the appellant/respondent no. 3, illegal and vitiated by fraud and it was further held that the respondent no. 3 herein (petitioner before the learned Single Judge) will get no benefit from this, since the post vacated by appellant/respondent no. 3 would be re-advertised and filled in accordance with law.

6. Learned counsel for the appellant submitted that the overwriting in the interview sheet is just a clerical error. All the four persons who have signed the sheet have signed the said overwriting. It was further pointed out that there is over-writing even in the entry at serial No. 7, on the same sheet, on which the name of the appellant is there. The same is also being signed. So it is not a single case of overwriting against the petitioner's entry but there are other clerical errors which have been signed by the Interview Committee. So merely on this ground, the selection of the appellant could not have been set aside by the learned Single Bench.

7. We have considered the said submissions and perused the original record which had been directed to be produced. The overwriting pointed out in the entry at serial No. 7 regarding candidate, Ashok Kumar, can be distinguished from the facts of the present case. In the said entry, earlier the marks of qualifications were written as 6.15 but these have been

corrected as 3.15. The qualification of a person remains the same and it can be verified. This fact can also be verified if the marks for qualification have been given correctly as per the criteria or not. Moreover, it is observed that there is no cutting or overwriting in the marks awarded to the said candidate in the interview and even there is no cutting in the total marks. This means right at the first instance when the writing was made to the said sheet, the said clerical error was corrected and there is no manipulation in the total marks made. This distinguishes the case of the appellant. In his case, the total marks awarded were later on changed and in order to increase the total marks and to make it 12.80, there is no correction done in the marks given in the qualification but the marks given in the interview were increased from 7 to 9. There is a clear cut observation which can be made with the naked eye that the marks awarded to the appellant, Bharat Bhushan have been increased by making a manipulation in his marks, which were previously awarded in the interview. It cannot be said to be a clerical error at all and the learned Single Judge has rightly held that it is a case of fraud and such manipulation has been done subsequently in order to do favoritism to a candidate.

8. We also agree with the observations made by the learned Single Bench that the selection on the said post was done by Departmental Selection Committee without taking out the same out of the purview of the Hon'ble Staff Selection Committee, as there is no justification for the same.

9. We have further observed that the Departmental Selection Committee has not conducted any written examination which could have brought on record the objectivity in evaluation. Merely by holding a viva voce for selection to such a senior post, cannot bring any objectivity and selection is bound to be surrounded with subjectivity. The subjectivity in evaluation is further evident that even the marks awarded in the viva voce have been later on manipulated to give favour to one of the candidates.

10. Considering the totality of the aforesaid circumstances, we are of the considered opinion that the learned Single Judge has rightly set aside the selection of respondent no. 3 (the appellant herein) and further ordered that the post would be re-advertised in accordance with law and respondent no. 3 (the appellant) would have a right to apply and the State would consider his case, as well as that of Kuldeep Singh Dhaka (respondent No. 3 herein), even if in the meanwhile, he may have become over-age. In this way the learned Single Judge has taken care of the fact that due to over-age, the appellant would get a chance to appear before consideration for selection. The order passed by the learned Single Judge is based on the facts on record and is justified on the principles of equity as well.

11. In such circumstance, we do not see any reason to interfere with the impugned order of the learned Single Judge.

12. Consequently, the present appeal is devoid of any merits and is accordingly, dismissed.

The original record has been handed over to the State Counsel

Mr. Hitesh Pandit, Addl. A.G., Haryana, in Court today.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

December 15, 2022

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Whether Speaking	Yes
Whether Reportable	No