

LPA No.1677 of 2017(O&M)

Sr.No.221

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

LPA No.1677 of 2017(O&M)

Reserved:13.12.2022

Date of Decision: 22.12.2022

Meena Rani

.....Petitioner

versus

Jatinder Pal Kaur and others

.....Respondents

**CORAM: Hon'ble Mr. Justice Gurmeet Singh Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan**

Present: Mr. Amit Jhanji, Sr. Advocate with
Ms. Nitika Garg, Advocate
for the appellant.

Mr. Mohit Garg, Advocate
for respondent No.1.
Mr. Anant Kataria, DAG, Haryana.

Harpreet Kaur Jeewan, J.

1. By way of filing the present letter patent appeal, appellant prayed for setting aside the order dated 08.08.2017 (Annexure P-A1) passed in CWP No. 19516 of 2011 whereby selection of Meena Rani (appellant herein) to the post of Anganwadi worker was quashed and Jatinder Pal Kaur (respondent No.1 herein) was given an appointment as an Anganwadi Worker at village Dadiana, Block Ambala.

2. Succinct facts are that by way of filing civil writ petition, Jatinder Pal Kaur (respondent No.1) sought quashing of the

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order/merit list (Annexure P-2) whereby Meena Kumari (appellant) was given an appointment as an Anganwari Worker at village Dadiana, Block Ambala on the ground that Jatinder Pal Kaur (respondent No.1) had actually been given higher marks in the interview than appellant, consequently, she had obtained higher total marks in the final selection process. However, the said position was altered by awarding more marks to Meena Kumari (appellant) after the interview was already over. It was specifically contended that Jatinder Pal Kaur (respondent No.1) was awarded 8 marks in the interview whereas Meena Kumari (appellant) was awarded 7 marks. Since both were the daughters-in-law in the village, therefore, they were given 8 marks each under that criteria. Similarly, both were awarded 45 marks on account of their educational qualifications. Since the candidates who had qualified the matriculation examination in 2nd and 3rd division, they were to be awarded 45 marks on the basis of the criteria fixed. It was further contended that after the interview was over, Meena Kumari (appellant) was awarded '2' marks more in the interview by changing the original number '7' to '9' and the total marks of '60' obtained by her were changed to '62' by converting the numbers '0' to '2'. Consequently, Meena Kumari (appellant) was declared selected whereas Jatinder Pal Kaur (respondent No.1) was placed at No.1 in the waiting list. Hence the appointment of appellant was challenged.

3. In the written statement (Annexure A-2) filed by the Director, Women & Child Development Department, Haryana on

behalf of State of Haryana and respondent No.1, it was alleged that no cutting has been made in the marks of the interview. It was further submitted that there was no need to make any cutting, Meena Kumari (appellant) could have been awarded more marks at the first instance at the time when interview was conducted. The writ has been filed only to harass Meena Kumari (appellant) as Jatinder Pal Kaur (respondent No.1) was unsuccessful candidate.

4. Learned Single Judge allowed the writ petition by observing that the original marks awarded in the interview as '7' to Meena Kumari (appellant) were subsequently increased to '9' and the total marks therefore, were changed to '62'. The said exercise cannot be said to be proper even if there was no malafide intention. A submission was made before the learned Single Judge that there was disparity in the marks obtained by Jatinder Pal Kaur (respondent No.1) was in the matriculation examination (i.e.227 out of 600 equivalent to 37.8%) and the marks obtained by Meena Kumari (appellant) who received 49% in the matriculation examination (i.e. 294 out of 600) and the selection committee has subsequently realized that Meena Kumari (appellant) deserve to be selected in place of Jatinder Pal Kaur (respondent No.1) on account of disparity in the marks of matriculation, it therefore, awarded 2 marks more in the interview. The said argument was not accepted by the learned Single Judge on the ground that the selection committee/competent authority having already fixed the criteria by which anybody who has secured less than 60% marks in the matriculation examination

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was to be awarded only total of 45 marks, therefore, even if Jatinder Pal Kaur(respondent No.1) had secured less marks in the matriculation examination than Meena Kumari (appellant), she cannot be discriminated against on that ground, since the criteria was already decided prior to the selection process.

5. We have heard the learned counsel for the parties. Learned counsel for the appellant submits that the post of Anganwadi Worker is not a 'civil post', therefore, the writ petition was not maintainable. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Ameerbi and others 2007(11) SCC 681***. We do not agree with the said submissions. In ***LPA No.258 of 2012 Nisha Rani and others vs. ADC, Sirsa and others***, decided on 10.01.2013 the appellants challenged before the Division Bench of this Court the dismissal of various writ petitions which were filed by them seeking the appointment to the post of Anganwadi workers. Such writ petitions were dismissed by the learned Single Judge on the ground that the writ petition for appointment to the post of Anganwadi worker was not maintainable. However, learned Division Bench of this Court has held that since the appointment to the post of Anganwadi Workers give certain rights to such appointees, if there is illegal action on the part of the respondents, it would give a cause of action to the appellants to seek enforcement of their rights. The action or non-action of the respondents would be subject to judicial

review and where the respondent is a State which is amenable to writ jurisdiction under Article 226 of the Constitution of India, writ would clearly be maintainable. Relevant observations made by the Division Bench in ***Nisha Rani's case (supra)*** reads as under:-

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*The aforesaid writ petition has been dismissed by the learned Single Judge vide orders dated 12.8.2011, on the ground that this writ petition for appointment to the post of Anganwari workers is not maintainable. While dismissing the said writ petition, the learned Single Judge has referred to the Division Bench decision of this Court in “**Darshana Devi Vs. State of Haryana and others**” 2009(1) PLR 174, which in turn has relied upon the judgment of the Supreme Court in the case of “**State of Karnataka Vs. Ameerbi and others**” 2007(11) SCC 681. This order of the learned Single Judge is assailed in the present appeal.*

Since, the writ petition is dismissed as not maintainable, the matter obviously is not considered on merits. We have gone through the judgment of the Division Bench of this Court in the

case of Darshana Devi (Supra) which too is the judgment dismissing writ petition as not maintainable simply by referring to the judgment of the Supreme Court in the case of State of Karnataka (Supra). A perusal of the said judgment of the Apex Court of State of Karnataka (Supra) would disclose that in that case Ameerbi had filed an application under the Administrative Tribunal Act before the Karnataka State Administrative Tribunal. Thus, Ameerbi had approached the Karnataka State Administrative Tribunal for the same emoluments and allowances which according to them were payable under the Integrated Child Development Service (ICDS) Programme started by the Central Government in the year 1975. Though the ICDS programme was started by the Central Government in the year 1975, its application was given in the hands of the respective States under this Scheme thus Anganwari workers were employed by the State of Karnataka. The State took the preliminary objection to the maintainability of the said O.A. on the ground that they were not the holders of the

Civil post and therefore, they could not moved such an application before the Administrative Tribunal. A special Bench of the Administrative Tribunal rejected the contention of the State holding the application to be maintainable on the ground that they are the holders of civil posts. It is thus, decision of the Tribunal, which was challenged by the State of Karnataka before the Supreme Court. The Supreme Court held that these Anganwari workers are not the holders of civil posts and as a consequence reversed the decision of the Tribunal and dismissed the O.A. filed by the Anganwari workers. The entire discussion of the Supreme Court revolves around this issue namely whether Anganwari workers are the holders of civil posts and the application under the Administrative Tribunal Act filed by them was maintainable? While discussing this issue, the Supreme Court also went into ICDS programme under which those Anganwari workers in the State of Karnataka were appointed. It was, inter alia, noted that that was the only scheme in the State of Karnataka for Anganwari workers; it did not entail full time work

as these workers were may work for a maximum period of 4½ years; these workers were allowed to do other works and even contest elections; for filling up the post of Anganwari workers no advertisement was required to be made nor were there any provision in the recruitment rules for appointing the Anganwari workers. These are the considerations which primarily weighed with the Supreme Court in coming to the conclusion that these Anganwari workers were not holders of civil posts. In the present case, we are concerned with the maintainability of writ petition filed by the appellants herein involving the provisions of Article 226 of the Constitution of India. For filing a writ under Article 226 of the Constitution of India, there is no requirement that the petitioners are to hold civil posts which is necessary concomitant insofar as approaching the Administrative Tribunal under the Administrative Tribunal Act is concerned. Therefore, ex facie, reliance placed upon the judgment in the case of State of Karnataka (Supra) to hold that writ petition is not maintainable, would be an erroneous approach. It is stated at the

costs of repetition that in the judgment rendered by the Supreme Court in that case de hors that it is the Administrative Tribunal which has no jurisdiction, it is well settled that ratio of the case is what it decides as the issue raised in the said case was altogether different namely whether Anganwari workers are holders of civil posts and as to whether it has right to approach Tribunal or not and that is not the yardstick under relevant provision for approaching the High Court under Article 226 of the Constitution of India, this judgment would have no relevance to the issue at hand. We are, therefore, of the opinion that the learned Single Judge was not correct in relying upon the judgment in the case of State of Karnataka (Supra). No doubt the learned Single Judge has referred to the judgment in the case of Darshana Devi (Supra), wherein writ petition was held to be not maintainable following the case of State of Karnataka (Supra). Judgement in the case of Darshana Devi (Supra) is that of a Division Bench. Normally, in such a case we could not have taken a contrary view and the only other course of

action was to refer the matter to the Larger Bench, however, for the reasons which we would be giving hereinafter, we come to the conclusion that the case of Darshana Devi (Supra) is per incuriam as it does not take into consideration certain important material and rules which are cited before us and a reading thereof, clinches the issue in favour of the petitioners holding that the writ petition under Article 226 of the Constitution of India would be maintainable. It is for this reason that while holding that the case in Darshana Devi (Supra) is per incuriam we are not referring the matter to the Full Bench. Now we proceed to give those reasons.

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The case of the petitioners in the writ petition is that they were duly selected as Anganwari workers but had not been given appointment. Since the appointment to the post of Anganwari workers gives certain rights to such appointees, it is a illegal action on the part of the respondent when there was a cause of action to the appellants to seek enforcement of their right. This action or non-action of the respondents would thus has to be

subject to judicial review and since respondent is a State which is amenable to writ jurisdiction under Article 226 of the Constitution of India, writ would clearly be maintainable. We, thus, set aside, the judgment of the learned Single Judge and remit the case back to the writ Court as per the roster for decision of the writ on merits. Writ petitioners shall also be listed before the Single Bench for decision on merits.”

6. In the light of the said decision, the contentions raised by the learned counsel for the appellants were repelled to which we are in agreement.

7. Learned counsel for the appellant has further submitted that there was no tampering with the marks because in the last column of the merit list (Annexure P-2), the word ‘selected’ has been written in front of name of the name of Meena Kumari (appellant). This indicates that she was selected right at the first instance, therefore, in the final column of remarks she has been mentioned as selected candidate.

8. We have considered the said submissions in the light of the record. The vernacular document of Annexure P-2 clearly indicate with naked eyes that initially ‘7’ marks have been awarded

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in the interview under column No.15 to Meena Kumari (appellant) and '60' marks were awarded in total, but later on the number '7' has been changed to '9' in column No. 15 and '0' has been changed to '2' in total marks changing the same from '60' to '62'. It is also apparent that Jatinder Pal Kaur (respondent No.1) was having '61' marks in total, therefore, it is apparent that manipulation has been made in the said marks to bring the total marks as highest and above Jatinder Pal Kaur (respondent No.1), as such learned Single Judge has rightly observed that changing of the marks from '7' to '9' and from '60' to '62' is not an exercise which could be said to be proper.

9. No justification has been given in the written statement filed to the writ petition, only the manipulation and cutting has been denied which is otherwise apparent on record with naked eyes. It is further evident that one of the member of the selection committee, Smt. Santosh has filed an affidavit dated 27.07.2011 which is appended alongwith the writ petition as Annexure P-3 wherein she has specifically stated that at the time when her signatures were obtained on the selection list there were no cuttings on it. At that time Jatinder Pal Kaur (respondent No.1) was having total marks as 61 and after her signatures on the selection list, cutting was done and the numbers of Meena Kumari (appellant) were increased from 60 to 62. Though she has subsequently filed

another affidavit dated 01.12.2011 (Annexure 4/4) stating that at the time of signing the previous affidavit she was told that the said affidavit is to be filed alongwith the performa but she was not told that the said affidavit will be used in a case/appeal against Meena Kumari (appellant). The subsequent affidavit cannot brush aside the facts which are evident on record with naked eye that the manipulation of the marks awarded to Meena Kumari (appellant) in the interview as well as in the total marks was made by making over writing. The said over writing is not signed by any of the member of the selection committee. The overwriting is only in the case of the candidate who was selected and there is nothing on record that such overwriting was made against the records of the other candidates.

10 It is a well settled law that a *'fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss'*. It has been so held by the Hon'ble Supreme Court of India in **S.P.Changalvaraya Naidu (dead) Vs. Jagannath (dead), 1994(1) R.R.R.253**. The relevant portion of the said judgment is reads as follows:-

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7. *The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case,*

Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the, illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

8. *The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is*

a deception in order to gain by another's loss. It is a cheating intended to got an advantage.

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It is also well settled that “fraud” vitiates everything as held by the Hon’ble Supreme Court in Civil Appeal NO.2576 of 2010 **M/s Munjal Showa Ltd. Vs. Commissioner of Customs and Central Excise (Delhi-IV)** on 23.09.2022.

11. Consequently, no grounds are made out to interfere in the present appeal, hence the present appeal stands dismissed with the aforesaid observations.

(Gurmeet Singh Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

22nd December, 2022
ShivaniKaushik

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