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

Date of decision : 14.03.2023

1. CWP-6392-2019

Rajiv Kumar

..... Petitioner

versus

State of Punjab and others

..... Respondents

2. CWP-183-2016

Rajiv Kumar

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Mukesh Kumar Bhatnagar, Advocate
for the petitioner in CWP-183-2016.

Mr. Gurcharan Dass, Advocate
for the petitioner in CWP-6392-2019.

Mr. Inderpreet Singh Kang, AAG, Punjab.

Mr. D.S. Bhinder, Advocate with
Mr. Sukhjinder Sekhon, Advocate
for respondents No.2 to 5.

PANKAJ JAIN, J. (Oral)

These are two writ petitions preferred at the behest of the candidates who selected in the selection process but could not succeed. Since both writ petitions involve common question of law in the background of same set of facts, they are being taken together for adjudication. For convenience, the facts are being taken from CWP-6392-2019.

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2. Respondent No.2 was earlier a college imparting education in the field of engineering and technology and was a constituent college of IK Gujral Punjab Technical University, Kapurthala. However vide Act No.5 of 2015, the same became Maharaja Ranjit Singh Punjab Technical University. Respondent No.2-College before becoming University vide public notice issued in the year 2013 initiated process for appointment to the post of Professor and Assistant Professor. Petitioner participated therein. However before the said selection process could attain finality and reach at logical end, the University came into being. The process was thus aborted and a fresh selection process was initiated vide public notice dated 06.11.2015 wherein similar number of posts were advertised under the newly found University and there was some change in the criteria as well. Petitioner has admittedly participated in the reap initiated process as well but could not succeed. Petitioner in the present writ petition in CWP-6392-2019 has laid challenge to the second advertisement as well.

3. Mr. Gurcharan Dass and Mr. Bhatnagar appearing for the petitioner have argued that once the selection process was initiated and the petitioner appeared on account of change of name, the process ought not have been aborted. It has been further contended that the newly formulated criteria under the process initiated by University, experience marks were reduced from 10 to 5 and while formulating the same statutory regulations of the UGC which are binding on the University were also violated.

4. Mr. Gurcharan Dass while referring to P-6 i.e. comparative chart of the candidates who participated in the process submits that though petitioner was having experience, yet he has not been awarded any marks.

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In case he gets 05 marks, he would have exceeded the marks obtained by selected candidate namely Meenu. He further submits that the proposed criteria was also never finalized as minutes of meeting finalizing the same has not been placed on record.

5. Per contra, Mr. Bhinder submits that after by operation of law on dint of Act No.5 of 2015, the University came into being. The college seized to exist and it was on account of this that the earlier initiated process was aborted. The process was re-initiated by freshly constituted University. The petitioner having participated in the re-initiated process and failed cannot be allowed to cry foul later on. He further submits that the criteria was a part of advertisement and the petitioner before applying for this, pursuant to second advertisement were well in the knowledge of the same. It has been further ascertained that apart from raising bald allegation that the petitioner is in violation of UGC regulation, nothing cogent has been pointed out in the writ petition or at the time of oral arguments, thus the present writ petitions deserves to be dismissed.

6. I have heard counsel for the parties and have gone through the records of the case.

7. There is no serious dispute w.r.t. the facts of the case. Trite it is that mere participation in the selection process and even the selection does not vest a candidate with a right. Thus in the considered opinion of this Court, the petitioner merely by participating in the selection process cannot find fault and challenge the abortion thereof that too in the background of the fact that the newly University re-advertised the post and the petitioners themselves participated in the same. Mr. Gurcharan Dass though has relied

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upon the regulations of UGC placed on record as Annexure P-7. However, he has not been able to point out any regulation which stands violated. Moreover, the regulation prescribing minimum qualification for the post and not the criteria. He is not in a position to point out that any person not possessing the minimum qualification has been appointed.

8. Resultantly, the submission raised by Mr. Gurcharan Dass sans merit and is hereby rejected.

9. Coming on to the third limb of argument w.r.t. grant of marks by the interview board, as per the settled law, this Court while exercising jurisdiction under Article 226/227 of the Constitution of India cannot interfere with the subjective satisfaction of the interview board.

10. Reference can be made to law laid down by Division Bench of this Court in case of *Anu Radha vs. State of Haryana and others*, reported as 2010 (2) SLR 662, wherein it was observed as under:-

“xx xx xx

19. An administrative or quasi judicial body such as a Selection Committee has normally to be left to devise its own procedure, subject to the same being fair and reasonable. Selection has to be made by assessment of relative merits. It is not necessary to give any reasons for the assessment. Reference may be made to judgments of the Hon'ble Supreme Court in *Union of India v. M.L. Capoor and others*, AIR 1974 Supreme Court 87, *National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman*, 1992(3) SCT 488 : AIR 1992 Supreme Court 1806, para 7 and *Mohan Kumar Singhania v. Union of India*, 1992(1) SCT 546 : AIR 1992 Supreme Court 1. Though, the selection authority has to be given free play in joints,

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the power of awarding marks in interview is coupled with the duty to select the best and cannot be exercised arbitrarily.

20. Judicial review is basic structure of the Constitution. Its depth depends on nature of decision. No decision may be exempt from judicial review except decisions such as employment of troops and entering into international treaties (*State of N.C.T. of Delhi v. Sanjeev*, 2005(2) Apex Criminal 338 : AIR 2005 Supreme Court 2080).

Scope of judicial review extends to remedying injustice wherever found. Power exercised by any public authority is for the purpose for which the same is conferred. No authority can function arbitrarily or mala fide. (*Dwarka Nath v. I.T.O. Special Circle, D. Ward Kanpur and anr.*, AIR 1966 Supreme Court 81, *Hochtief Gammon v. State of Orissa & Ors.*, AIR 1975 Supreme Court 2226, *Comptroller and Auditor-General of India v. K.S. Jagannathan*, (1986)2 SC 679, Para 18-20, *Kumari Shrilekha Vidyarthi etc. v. State of U.P. & ors.*, 1991(1) SCT 575 : AIR 1991 Supreme Court 537, *Epuru Sudhakar v. Govt. of A.P.*, 2006(4) RCR (Criminal) 616 : 2006(3) Apex Criminal 447 : (2006)8 SCC 161, *Rameshwar Prasad (VI) v. Union of India*, AIR 2006 Supreme Court 980, *Express Newspapers Pvt. Ltd. v. UOI*, AIR 1986 Supreme Court 872 and *S. Partap Singh v. State of Punjab*, AIR 1964 Supreme Court 72). With expanding scope of judicial review, there are instances of interference even in cases earlier considered to be purely executive functions. In *Center for Public Interest Litigation v. Union of India*, 2005(4) RCR (Criminal) 707 : 2005(4) SCT 603 : 2005(3) Apex Criminal 711 : AIR 2005 Supreme Court 4413,

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appointment of Chief Secretary was set aside with the observation that on sensitive posts, appointments must be transparent and of persons above any suspicion. In ***Prakash Singh and others v. Union of India and others, 2006(4) RCR (Criminal) 439 : 2006(3) Apex Criminal 359 : 2006(8) SCC 1***, directions in the matter of police reforms were issued. Appointments to Public Service Commissions had to be of persons of integrity. However, in the present case, we are not directly concerned with appointment of members of the Commission but only with the issue of selection being on merits. This is possible only when persons of high integrity are appointed as Chairman or members of Public Service Commission. The observations of the Hon'ble Supreme Court, commenting upon unsatisfactory state of affairs of appointments to the commissions have already been referred to in this regard.

21. In ***M.V. Thimmaiah and others v. Union Public Service Commission and others, 2008(1) SCT 569 : 2008(1) RAJ 493 : (2008)2 SCC 119, para 21***, principles for judicial review of recommendations of Selection Committee were reviewed and it was observed that scope for interference was limited to situations where selection is actuated by mala fides and violation of statutory provisions.

After referring to judgments in ***Surya Dev Rai v. Ram Chander Rai, 2004(1) RCR (Civil) 147 : AIR 2003 Supreme Court 3044, P.M. Bayas v. Union of India, 1993(3) SCT 111 : (1993) 3 SCC 319, Ashok Kumar Yadav v. State of Haryana, (1985)4 SCC 417, Ajay Hasia v. Khalid Mujib Sehravardi, (1981)1 SCC 722, UPSC v. S. Thiagarajan, 2007(2) SCT 187 : 2007(1) RAJ 926 : (2007)9 SCC 548, G. Sarana (Dr.) v.***

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University of Lucknow, (1976)3 SCC 585, Kunda S. Kadam v. Dr. K.K. Soman, (1980)2 SCC 355, Ashok Nagar Welfare Assn. v. R.K. Sharma, 2002(1) RCR (Civil) 512 : (2002)1 SCC 749, Union of India v. Mohan Lal Capoor, (1973) 2 SCC 836, Lila Dhar v. State of Rajasthan, (1981)4 SCC 159, R.S. Dass v. Union of India, 1986 Supp SCC 617, State of U.P. v. Rafiquddin, 1987 Supp SCC 401, UPSC v. Hiranyalal Dev, (1988)2 SCC 242, Mehmood Alam Tariq v. State of Rajasthan, (1988)3 SCC 241, Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan, (1990)1 SCC 305, National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman, 1992(3) SCT 488 : 1992 Supp (2) SCC 481, Indian Airlines Corpn. v. Capt. K.C. Shukla, 1992(3) SCT 740 : (1993)1 SCC 17, C.P. Kalra v. Air India, 1994 Supp (1) SCC 454, Anil Katiyar v. Union of India, 1997(2) SCT 157 : (1997)1 SCC 280, All India State Bank Officers' Federation v. Union of India, 1997(1) SCT 91 : (1997) 9 SCC 151, Union of India v. N. Chandrasekharan, 1998(1) SCT 631 : (1998)3 SCC 694., Inder Parkash Gupta v. State of J&K, 2004(2) SCT 680 : (2004)6 SCC 786, K.H. Siraj v. High Court of Kerala, 2006(3) SCT 146 : (2006)6 SCC 395, it was concluded :-

"22. Keeping in view the ratio laid down by this Court in several decisions, now we shall examine the argument of learned Senior Counsel for the appellants which had been addressed. But we may at the very outset observe that the Court while considering the proceedings of the Selection Committee does not sit as a court of appeal. Courts have limited scope to interfere, either selection is actuated with mala fide or statutory provisions have not been followed....."

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22. From the survey of above case law, it is clear that while Selection Committee can devise its own procedure, the same has to be fair and reasonable having nexus to the object of selecting the best. Criteria adopted by Selection Committee is open to judicial review on well known grounds of illegality, irrationality and impropriety.”

11. Finding no merits in the present writ petitions, the same are ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

14.03.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No