

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

LPA No.315 of 2021 (O&M)

Reserved on : 19.12.2022

Pronounced on : 06.01.2023

Jyoti

... Appellant

Versus

State of Haryana and others

... Respondents

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

Present: Mr. H.S. Saini, Advocate for the appellant.

Mr. Sharan Sethi, Addl. AG, Haryana.

Mr. Sunil Hooda, Advocate for
Mr. Samrat Malik, Advocate for respondent Nos.4 to 11, 13
to 19, 21 to 28, 30 to 34, 36 to 40, 43 to 51, 53 to 65, 67, 69
to 76.

Mr. Jasbir Mor, Advocate for respondent No.20.

G.S. Sandhawalia, J.

Present Letters Patent Appeal has been filed by the unsuccessful writ petitioner whose claim for quashing the selection list for the post of Pharmacist dated 16.03.2013 (Annexure P-4) and for quashing the selection and appointment of respondent Nos.4 to 76 was repelled.

2. The reasoning given by the learned Single Judge was that the result had been declared on 16.03.2013 and the petitioner had only secured 42.94 marks, whereas the last candidate of the General Category had secured 50.08 marks. Resultantly, by noticing that the petitioner had participated in the selection process, she could not challenge the same in view of the law laid down in **CWP No.10141 of 2008 'Varun Vir Vs.**

UHBVNL and others' decided on 04.03.2010. It was also noticed that **CWP No.9852 of 2014 'Meenakshi Saini Vs. State of Haryana and others'** decided on 21.05.2014 (Annexure R-24/1) had also been dismissed on the same grounds and the criteria adopted by the Commission did not seem to be suffering from any infirmity.

3. The argument raised by Mr. Saini as such was that 65 posts had been advertised for the General Category for the post of Pharmacist, which was subsequently increased to 73 and there was no written test prescribed and the appointment was to be done on the basis of prescribed qualifications. The criteria had been fixed on 12.04.2010 (Annexure R-3/1), whereby 50 marks were given for the academic qualification and the interview was to carry 25 marks. The argument raised by the counsel was that 7 marks had been purposely awarded for interview as per the information supplied on 03.05.2013 (Annexure P-6) and only one candidate at Sr. No.38 namely Kavita had secured more marks for academic qualifications i.e. 36.57 as per information supplied on 20.10.2014 (Annexure P-10) and, thus, the grouse was that less marks had been purposely awarded to ensure that the successful candidates were given higher marks in the interview to make sure that they would make the final cut.

4. It was, accordingly, contended and which has been specifically averred in the writ petition that selected candidates belonged to District Rohtak and Jhajjar, which was the constituency of the then Chief Minister, Haryana and, therefore, it was arbitrary selection made in

non-transparent manner by the respondent No.3-Haryana Staff Selection Commission. Reliance was placed upon the judgment authored by one of us i.e (G.S. Sandhawalia, J.) titled as **Deepak Kumar Vs. State of Haryana and others' 2017 (4) SCT 650** to submit that in similar circumstances directions had been issued for appointment of the petitioner against the post of Shift Attendant.

5. The said contention had also been noticed while issuing notice of motion on 12.11.2021 and the State was directed to file an affidavit as to whether all the vacancies had been filled up or not. Necessary affidavit has been filed by Dr. Virender Kumar Bansal, Director General Health Services-II, Haryana wherein it has been that the Department had given appointment to all 73 candidates of General Category. One candidate who was at Sr. No.3 namely Seema Sharma daughter of Ishwar Singh did not join the duty and, therefore, her appointment had been cancelled on 26.03.2014 and the appointment letter had been issued to the first candidate in the wait list namely Rakesh Kumar son of Om Parkarsh, who was at Sr. No.114.

6. A perusal of the writ petition would go on to show that the petitioner firstly only challenged the appointment of respondent No.4 and neither impleaded the members of the Selection Committee or levelled any allegations of malafide and impleaded the relevant selected persons. It was subsequently by virtue of an amendment made that the private respondents No.4 to 75 were impleaded who were the other candidates and the candidate namely Neetu, who was earlier at Sr. No.4 in the array

of parties, was arrayed as respondent No.76.

7. We have also perused the select list (Annexure P-10) which is the roll number wise list of the selected candidates of General Category, where the break-up of academic marks and viva voce has been shown. A perusal of the said list would go on to show that for viva voce 19 to 22 marks were given and the writ petitioner as noticed was one of the few candidates who was also awarded less marks for interview which is stated to be 7 marks as per the information supplied. The selected candidates as such also have got marks ranging from 28.80 to 36.57 marks as per the academic qualifications and, thus, they have made the cut and it is not that they got abysmal marks in the academic qualifications as contended by the counsel. There was no specific allegations of malafide as to why such persons were awarded less marks or that some of the Board Members or Selection Committee were against her and awarded less marks for the purpose to keep her out of the select list.

8. Thus, in the absence of any such averments or allegations made against the Members of the Selection Committee, we are of the considered opinion that the argument which is raised is only an argument of desperation and having participated in the selection process, she could not turn around and say that the selection was bad in any manner. Reliance can be placed upon the judgment of the Apex Court in **Ramjit Singh Kardam Vs. Sanjeev Kumar and others, 2020 (2) SCT 491**, wherein the issue of the selection for the post of Physical Training

Instructor (PTI) was subject matter of consideration which was set aside by this Court and was subject matter of consideration before the Apex Court. Question No. (vi) was framed that whether without there being any specific allegations of malafide against the Chairman and members of the Commission and without them having been impleaded by name as party respondents, challenge could be raised to the allocation of marks in viva-voce. Resultantly, it was held that there were two well-known concepts in law of “malice in fact” and “malice in law”. It was, accordingly, held that since an alteration of criteria had been made, which obviously affected the merit selection, the allegations which had been made against the Commission in conducting the selection are allegations of malice in law and not malice in fact and, therefore, the selection which was set aside was correct.

9. The allegations as such now made in the present case as noticed are of malice in fact. Apparently, the criteria was never challenged and in the absence of allegations of any malafide and by not impleading the concerned persons nothing has come on record to show that the Commission as such was prejudiced in favour of some persons to select them. Reliance can also be placed upon the judgment passed in **Ratnagiri Gas and Power Private Limited Vs. RDS Projects Limited and others, (2013) 1 SCC 524**, wherein it was held that particulars would have to be furnished to prove the malafides on the part of the decision maker. It was also held that vague and general allegations unsupported by the requisite particulars would not provide a sound basis

for the Court to conduct an inquiry into their veracity. It is settled principle that administrative action is presumed to be bonafide unless it is to the contrary satisfactorily established. There is every presumption in favour of the administration that the power had been exercised bonafide and in good faith and allegations of such serious nature demands proof of a high degree of credibility as it is a serious indictment of the institution concerned.

10. Therefore, in the absence of the Members of the Commission being personally impleaded and neither any allegations of malafide being levelled against them, we are of the considered opinion that the argument raised by counsel for the appellant does not cut much ice and is not legally sustainable in view of the settled law. As noticed we have also referred to the select list to show that the selected candidates had also got marks between 28.80 to 36.57 marks for the academic qualifications and the writ petitioner had also got 35.94 marks for the academic qualifications. Merely because she had secured only 7 marks in the interview does not mean that the Commission as such was biased with any malafide purpose against her.

11. Reliance placed by the counsel for the appellant upon the judgment passed in **Deepak Kumar (supra)** would be without any basis since the record as such had been called in that case. It had then been noticed that the majority of the candidates who had secured 35 marks had been given less than 15 marks in the interview to ensure that they did not make the final cut. A categorical finding was recorded that the argument

which had been raised was in principal substantiated and that there was a reasonable inference which could be drawn that there was favoritism, which had been resorted to be the Selection Committee and the power was misused for serving an unauthorized purpose. It was also noticed that there were as many as 60 vacancies continuing and the petitioner could be adjusted against the said vacancies and the benefit had been granted.

12. In the present case as notice above, the record does not show as such that against the marks awarded for academic qualifications higher marks were given in interview rather the marks are varying between 9 to 21 and, therefore, the range as such of the academic marks is between 28.80 to 36.57. Resultantly, we do not see any ground which is made out to interfere in the well reasoned order passed by the learned Single Judge.

13. It is also a matter of record that the judgment relied upon by the learned Single Judge in **Meenakshi Saini (supra)** is also pertaining to same selection, wherein the petitioner had got 10 marks in the viva voce and 34.14 marks in the academic qualifications. The learned Single Judge had dismissed the writ petition on the ground that merely because the petitioner had been granted lesser marks in the interview would not be a ground for setting aside the selection since the criteria was not under challenge. Mere apprehension on the part of the petitioner could not be a ground for interference in the selection, in the absence of any allegation of malafide and the same reasoning would apply here also.

14. Accordingly, we are of the considered opinion that in view of the affidavit filed by the respondents and in the absence of any vacant post also at this stage no relief can be granted to the appellant after a period of almost a decade since the date when the result was announced. Resultantly, there is no merit in the present appeal and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

January 06, 2023
Naveen

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes