

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

203

LPA-474-2022 (O&M)
Decided on 23.11.2023

Satbir Singh and Others

... Appellants

Versus

State of Haryana and Others

... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. RK Malik, Senior Advocate with
Mr. Varun Veer Chauhan, Advocate for the appellants

Mr. Deepak Balyan, Additional AG, Haryana

AMAN CHAUDHARY, J.

CM-1126-LPA-2022

For the reasons stated in the application, delay of 7 days is hereby
condoned, subject to all just exceptions.

Main Appeal

1. The present Letters Patent Appeal has been filed to challenge the
judgment dated 25.04.2022, vide which, the learned Single Judge has dismissed
the civil writ petition preferred by the appellant.

2. Learned Senior counsel would contend that the learned Single
Judge has erroneously dismissed the petition seeking quashing of the order
passed by respondent No.3, cancelling the appointment and interview of the
appellants, without taking into consideration that no notice had been issued
prior thereto and also their services could not be terminated without following
the due process of law.

3. On the contrary, learned State counsel justifies the order of
dismissal by submitting that the appellants were appointed in contravention of

the government rules, since as per letter dated 13.03.1996, these posts were meant for the dependents of deceased government employees. Thus, prays for dismissal of the present appeal.

4. Heard the learned counsel for the parties.

5. Facts germane to the present case are that when some schools in the State of Haryana were upgraded, a circular was issued sanctioning 93 regular posts of Mali-cum-chowkidar in the grade of Rs.750-940/-. The process of selection was undertaken by the Sub Divisional Education Officer, Bhiwani, respondent No.4, according to the directions of the Director Secondary Education Haryana, Chandigarh, issued to him on 29.9.97. Upon a requisition, Employment Exchange, Bhiwani sponsored the names of 70 candidates, including those of the appellants. Thereafter, interviews were conducted and final merit list was prepared. Seven candidates, out of whom six are the appellants, were appointed in the year 1997.

6. Prior to allowing the appellants to join the post, they got their medical fitness certificate from Chief Medical Officer, Bhiwani in terms of Rule 3.1 of the Pb. C.S.R Vol.1, part-1 and character and antecedent report from the competent authority, as required by the terms outlined in the appointment letter. It was also provided in Clause-2 thereof, that one month's notice or pay and allowance in alternative was required to be given on either side in case of resignation or discharge. However, respondent No.3 without adhering to the same or granting an opportunity of hearing passed the impugned order. Pertinently, this Court vide interim order dated 08.12.1997, stayed the operation of the said order. Thereafter, the appellants are stated to have been granted even promotions and are continuing on the posts.

7. Notably, one selected candidate, who had joined alongwith the appellants, challenged the action of the respondents by way of filing a civil suit,

which was decreed in his favour, but no challenge to the same having been made at the hands of the Department, attained finality, which fact remains uncontroverted.

8. It is a fundamental principle of natural justice that no person should be condemned unheard. Upon having joined the posts by the appellants, pursuant to the order of appointment, a vested right had accrued in their favour to hold the post of Mali-cum-Chowkidar and as such had legitimate expectations of continuing in service. Concededly, neither any notice nor hearing was granted to the appellants before passing of the order by respondent No.3, which goes against the principles of natural justice and Hon'ble the Supreme Court while dealing with a case wherein the appointment of the appellant had been cancelled without affording an opportunity of being heard observed in **Shridhar vs. Nagar Palika, Jaunpur**, 1990 Supp SCC 157, that such an order would be rendered void and consequently, set it aside.

9. In the case at hand, the regular sanctioned posts were created and a direction to fill the same had been issued, after which, the selection process was ensued and the appellants were selected on basis of their merit determined and joined in terms of the appointment letter. Their appointment could not be termed to be illegal in any manner, as it was bestowed with approval. They were thus, not backdoor entrants or appointed as stop gap arrangement, who could be shown the door in the manner that it was without observing the principles of natural justice. There is no dispute as regards the availability and permanency of posts or there being any breach of statutory rules or that qualifications were not fulfilled by the appellants. It is trite to say that there being no fault on their part, the appellants should not suffer adverse consequences of termination, that too after having served for the last 26 years. The action of the respondent, is marred

with the vice of arbitrariness.

10. The Constitution Bench of Hon'ble the Supreme Court in **A.K. Kraipak and others vs. Union of India and Others**, (1969) 2 SCC 262, dwelling on the role of the principles of natural justice under the Constitution of India, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously.

11. The principles of natural justice having jurisdictional basis, the State is expected to comply with the same and act with fairness, so as to prevent miscarriage of justice. In essence, natural justice would mean the natural sense of what is right and wrong.

12. In wake of the aforesaid discussion, we are of the opinion that the action of the respondents is *ex facie* arbitrary and therefore, the writ petition deserved to succeed. The impugned judgement is set aside. The appeal is accordingly allowed.

13. Pending applications, if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

23.11.2023

gsv/mkk

Whether speaking / reasoned: YES / NO

Whether Reportable: YES / NO