

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-234-2023 (O&M)
Date of decision : 04.03.2024

Haryana Public Service Commission

.....Appellant

Versus

Shiwani Yadav and others

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Ms. Harpriya Khaneka, Advocate, for the appellant.
Mr. Bhupinder Malik, Advocate, for respondent No.1.
Mr. Deepak Balyan, Addl. Advocate General, Haryana.

G.S. SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The consideration being sought by the appellant - Commission in the present appeal is to the judgment dated 06.12.2022 passed by the learned Single Judge in CWP-10639-2022 filed by Shiwani Yadav (respondent No.1 herein).
2. The learned Single Judge has directed that the recommendation of the writ petitioner be maintained by the Commission in the facts and circumstances of the case, while noting that it be not treated as precedent in any other circumstances. A further direction has been issued to accommodate the writ petitioner against one of the vacant posts of Assistant Professor (College Cadre) in the subject of Mathematics. The interest of the private respondent (respondent No.5) has been protected to the extent that a post which became vacant in the General category has been ordered to be offered to

the candidate next in merit and in case, the private respondent is next meritorious, his case has been ordered to be considered in accordance with law.

3. The reason which weighed with the learned Single Judge to exercise the extra ordinary writ jurisdiction on the ground of equity is that the writ petitioner being appointed had joined on 10.07.2019 and by virtue of the result being revised on 06.04.2022, the Commission as such published a notice (Annexure P-15) that due to an inadvertent error, Roll No. 52046 was declared qualified in General category, whereas the candidate with the said Roll number had remained successful in BC-B category. Resultantly, the result dated 02.07.2019 was revised to the extent that Roll No. 52046 was declared successful in BC-B category, and recommendation for Roll No. 51440, which was issued to the writ petitioner, who was the last selected candidate of BC-B category, was withdrawn. Accordingly, Roll No. 50951, which was issued to the private respondent, was declared qualified in General category. Resultantly, without any specific notice as such, the appointment of the writ petitioner being threatened, jurisdiction of the writ court was invoked.

4. Before the learned Single Judge, an affidavit of the Joint Director Administration, Office of the Director Higher Education, Haryana, was also filed, wherein it transpired that the writ petitioner was still working at Government College, Kharkhara (Rewari), in view of the interim order dated 18.05.2022 passed in the writ petition. It was also mentioned that there were 350 un-advertised posts of Assistant Professor in the subject of Mathematics, which were lying vacant with the department, but the contest was that the writ petitioner had no right of appointment against those posts, since the same were not advertised. It was, thus, the contention that the recommendation of the writ

petitioner had been withdrawn vide communication dated 18.04.2022 (Annexure A-2). The learned Single Judge, thus, came to the conclusion that appointment of the writ petitioner was as per the recommendation of the Commission and she was continuing in service for the last more than four years, and more than 350 vacant posts were available. It was also observed that the writ petitioner had no role to play in the initial result or in the revised result and, therefore, she was to be accommodated against one of those posts which were lying vacant. It was noticed that one Poonam Rani, who had applied in BC-B category for being considered for appointment, had been recommended against the General category, and subsequently through the revised result she was reverted back to the BC-B category. She being higher in merit, the writ petitioner's recommendation had been withdrawn. Keeping in view the principle of equity as such, her appointment has been sustained.

5. Learned counsel for the Commission has vehemently submitted that the Commission is under bounden duty and cannot as such recommend more names than the posts which were advertised.

6. We are of the considered opinion that it is a case where the writ petitioner was never at fault and she worked for more than four years and by virtue of the interim order, as noticed by the learned Single Judge, she is still continuing in service, which fact is also acknowledged by the State itself. The principle of equity, thus, would come into play and we can fall back on the judgment of the Apex Court in **Vikas Pratap Singh and Ors. Vs. State of Chhattisgarh and Ors., 2013 (14) SCC 494** to that extent. The error, if any, was not on part of the writ petitioner. It is not a case of fraud or misrepresentation. The writ petitioner having been recommended by the Commission and having joined on the post cannot be as such put to

disadvantage because of the juggling of the list at subsequent stage after a period of more than four years. The appointment letter dated 10.07.2019 (Annexure P-9) cannot, thus, be rendered a dead letter.

7. Another aspect which is to be noticed is that the vested right as such which has accrued to the writ petitioner was taken away without even putting her to any notice and by publishing a notice dated 06.04.2022 (Annexure P-15) and thereafter followed up with the necessary communication dated 18.04.2022 (Annexure A-2) inter-se the appellant and the State. The principle of natural justice would, thus, also come into play, which has been grossly violated by taking away her vested rights.

8. In such circumstances, we do not feel that the learned Single Judge erred in any manner while exercising the extra ordinary writ jurisdiction and creating the extra space as such for the writ petitioner.

9. It is also to be noticed that the State has chosen not to file any appeal till now. Hence, the judgment dated 06.12.2022 passed by the learned Single judge is made absolute.

10. Appeal is, accordingly, dismissed.

11. All the pending applications stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

March 04, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	No