

2024:PHHC:057689-DB

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

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LPA-940-2024 (O & M)
Date of Decision: 29.04.2024

B.R. Ambedkar National Institute of Technology, Jalandhar and others
.....Appellant(s)

Versus

Dr. Jaspreet Kaur and others
....Respondent(s)

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

Present: Mr. Vivek Singla, Advocate,
for the appellants.

Mr. Prateek Pandit, Advocate,
for the caveators/respondent Nos.1 and 2.

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

CM-2308-LPA-2024

1. Application for condonation of delay of 1 day in re-filing the appeal is allowed, in view of averments made in the application supported by affidavit of the counsel for the appellants.
2. Delay condoned.
3. CM stands disposed of.

CM-2309-LPA-2024

4. Application for condonation of delay of 11 days in filing the appeal is allowed, in view of averments made in the application supported by affidavit of the official of the appellant-Institute.
5. Delay condoned.
6. CM stands disposed of.

2024:PHHC:057689-DB**LPA-940-2024 (O & M)**

7. Consideration in the present appeal is to the judgment dated 16.01.2024 passed by the learned Single Judge in CWP-1990-2021 wherein, the amended writ petition was allowed in the second round of litigation, the first time having been remanded back on account of the fact that the amended writ petition had not been decided. By virtue of the amendment, an order dated 25.01.2021 (Annexure P-10) was subject matter of consideration which was the decision of the Board taken in its 42nd meeting. The Board, in principle, came to the conclusion that the reservation policy of the Government of India as per Central Educational Institutions (Reservation in Teacher's Cadre) Act, 2019 (in short 'the 2019 Act') had been circulated subsequently after the advertisement had been issued and, therefore, did not approve the recommendations of the Selection Committee for the posts of Associate Professors and Professors against Advertisement Nos.10 and 11 of 2019.

8. The writ petitioners as such, in principle, had applied in pursuance of Advertisement No.11 of 2019 (Annexure P-3). It is their categorical case that the reservation would apply to the direct recruitment and they were not in the said category. The said plea found favour with the learned Single Judge and even counsel for the appellants conceded before the learned Single Judge that the 2019 Act was not applicable to the writ petitioners since the writ petitioners were not going to be appointed on the posts of Professors and they were to be granted the pay scale of Rs.10,500/- which was payable to the professors.

9. The argument that the advertisement was a joint advertisement and could not be bifurcated was rejected by the learned Single Judge and it was held that the Board had the right to cancel the advertisement but could not act in arbitrary and whimsical manner and the reasons should be germane to the purpose

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to be achieved. Reliance was placed upon the Constitution Bench judgment of the Apex Court in ***Maneka Gandhi vs. UOI, (1978) 1 SCC 248*** and it was noticed that the Screening Committee had found the writ petitioners eligible and the interviews had been conducted and recommendations forwarded. Resultantly, by holding the 2019 Act not applicable, the learned Single Judge found that it was unjust, arbitrary and unreasonable on the part of the respondents to cancel the process. It was noticed that merely because it was a joint advertisement but the fate of the petitioners could not be as such clubbed together and the process had been mechanically cancelled whereas the case should have been bifurcated from the ones who had applied for direct recruitment. Resultantly, directions were given to consider recommendations of the Selection Committee and pass appropriate orders within a period of 3 months.

10. Counsel for the appellants has vehemently submitted that there were justifiable reasons as such with the Board of Governors (in short 'BOG') and the writ petition itself was not maintainable in as much as directions were sought to complete the selection process. Reliance was placed upon three-Judge Bench judgment of the Apex Court in ***Jai Singh Dalal vs. State of Haryana, 1993 (2) SCT 230*** to convince us that there was only a right of consideration and not a right of appointment and the learned Single Judge had passed directions contrary to the settled principle. It is submitted that being a joint advertisement, the Board was well justified as such to hold back the recommendations and there was no *malafides* and it was a policy decision.

11. We have gone through the advertisement in question. A perusal of the same would go on to show that 13 vacant posts in 10 departments were advertised, with which we are not concerned. Apart from that, there was a separate opening as such of the in house candidates, which would be clear from

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Note 6, which reads thus:-

“Note 6: This being an advertisement governed by the flexible recruitment rules, the no. of positions for internal candidates are not restricted by the no. of positions advertised at various levels. However, the total no. of faculty positions will not exceed the sanctioned position for the institute. Instruction from MHRD issued till the date of interviews will be applicable. Therefore, apart from the vacancy advertised in the above departments, the eligible internal candidates may also apply for the post of Professor in the following departments also in addition to 10 departments for which advertisement is given.

1. *Biotechnology*
2. *Industrial & Production Engineering*
3. *Textile Technology*
4. *Physics*
5. *Chemistry”*

12. The writ petitioners are stated to be working as Associate Professors in the Department of Chemistry and, therefore, a perusal of the above would go on to show that it was a separate opening as such for the eligible internal candidates who had applied for the posts of Professors in the departments given which was in addition to 10 departments for which advertisement was given. A perusal of the 2019 Act, which came into force from 07.03.2019, would go on to show that the reservation is only for direct recruitments as per Clause 3. The said provision reads thus:-

“3. (1) Notwithstanding anything in any other law for the time being in force, there shall be reservation of posts in direct recruitment out of the sanctioned strength in teachers’ cadre in a Central Education Institution to the extent and in the manner as may be specified by the Central Government by notification in the Official Gazette.

(2) For the purpose of reservation of posts, a Central Education Institution shall be regarded as one unit.”

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13. It is not disputed that an *inter se* communication from Union of India was also received on 05.11.2019 (Annexure P-13), which was also placed on record by the writ petitioners and also relied upon by the respondents as Annexure R-3. A perusal of the same would go on to show that the appellants were allowed to continue with the flexible faculty structure, which was to provide reservation of posts in appointment by direct recruitment. Apparently, a clarification had also been received from the Union of India, Ministry of Human Resource Development, Department of Higher Education. Clause 6 of the same reads thus:-

“6. As per provisions under the Act, the Institutes are required to maintain their rosters according to the strength of the teachers’ cadre. The NITs / IIST while continuing with the prevailing flexible faculty structure, shall provide for the reservation of posts in appointments by direct recruitment.”

14. The reasoning given by the BOG as such to deny the recommendation is, thus, apparently totally without any basis since it is apparent that the provisions of the 2019 Act itself and the advice received from the Union of India are to the contrary. Therefore, the order which had been quashed by the learned Single Judge was rightly done.

15. The said order would also go on to show that it does not talk about the fact that it was a common recruitment and could not be bifurcated, which is now sought to be argued. It is settled principle that the order should have stated so but it is not the reason as such which prevailed with the BOG. It is in such circumstances one can fall back on the law laid down by the Apex Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405*** that the order itself has to contain reasons and cannot be supplemented, either in reply or by way of arguments.

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is that there was only a right of consideration which may be attractive at the first blush but keeping in view the law laid down by the Apex Court, we are also of the considered opinion that the learned Single Judge had come to the conclusion that the decision of the BOG was arbitrary. The Constitution Bench of the Apex Court in ***Shankarsan Dash vs. Union of India, (1991) 3 SCC 47***, while dealing with the issue of waiting list and the reasons which had prevailed not to operate it, has held that if a Court comes to the conclusion that it is an arbitrary exercise, then it can interfere as such. The relevant portion of the judgment reads thus:-

*“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha and Others*, [1974] 1 SCR 165; *Miss Neelima Shangla v. State of Haryana and Others*, [1986] 4 SCC 268 and *Jitendra Kumar and Others v. State of Punjab and Others*, [1985] 1 SCR 899.*

17. In ***R.S. Mittal vs. Union of India, 1995 (3) SCT 284***, the matter

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Tribunal. Recommendations had duly been done by the Selection Board on 25.01.1998 but the Government did not make any appointment and issued fresh advertisement on 22.02.2019. The action was sought to be defended and the Apex Court, while keeping the facts in mind, held that the appointing authority could not ignore the select panel or decline to make appointment on its whims and there has to be a justifiable reason to decline to appoint a person.

18. In *East Coast Railway and another vs. Mahadev Appa Rao and others, (2010) 7 SCC 678*, the posts of Chief Typists were to be filled. Matter had been taken to the Tribunal, who dismissed the Original Application that the test had been cancelled. Matter was then taken to the High Court and the order passed by the Tribunal was set aside and directions were issued to proceed with the selection process in pursuance to the earlier notification. The matter was then tested before the Apex Court. The Apex Court came to the conclusion that the order passed by the competent authority did not specify any reason for cancellation of the typewriting test and in the absence of any reasons, it was held that the authority did not properly apply its mind before passing the order of cancellation of the test. Resultantly, it was held by the Apex Court, while modifying the order of the High Court, that firstly the authority had to come to the conclusion that earlier the test had suffered from any procedural or other infirmity. The decision as such regarding the power of the judicial review to test the decision of the State was, however, upheld. Para No.13 of the *East Coast Railway's case (supra)* reads thus:-

“13. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion

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or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

19. The judgment relied upon by Mr. Singla in **Jai Singh Dalal's case (supra)** is a case where there was a change in eligibility criteria and in such circumstances, the Apex Court had refused to interfere.
20. The Division Bench of our Court in **Ritu vs. State of Haryana and others, (2013 (3) SCT 281** has also held that if there is an arbitrary action, the right of the appointment in the wait list cannot be taken away.
21. In such circumstances, once a finding of fact has been arrived at as such that the action was arbitrary, as we have also noticed that the reasons which were found not to be justifiable, the direction as such to proceed ahead with the selection process cannot be faulted in any manner. The bifurcation as such has been rightly noticed by the learned Single Judge. Having not been so kept in mind, the action of the decision of the BOG would not stand judicial scrutiny.
22. In such circumstances, we do not find any valid or tangible reason to interfere as such with the order of the learned Single Judge and the same stands dismissed. Pending applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

29.04.2024
shivani
Whether reasoned/speaking
Whether reportable

(LAPITA BANERJI)
JUDGE

Yes
Yes