

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

Reserved on : 20.02.2024

Date of Decision : 06.03.2024

LPA No. 1893 of 2018 (O&M)

Sanjeev Singh

... Appellant

Versus

Rohit Hurria and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Anmol Rattan Sidhu, Senior Advocate assisted by
Mr. Shiv Kumar, Advocate, for the appellant.

Mr. D. S. Patwalia, Senior Advocate assisted by
Mr. Kannan Malik, Advocate and
Mr. Armaan Dahiya, Advocate, for respondent no.1.

Mr. Deepak Balyan, Advocate, for respondent nos. 2 and 4.

SANJEEV PRAKASH SHARMA, J.

Appellant- Sanjeev Singh has preferred this appeal assailing the judgment and order dated 12.11.2018 passed by the learned Single Bench, whereby the writ petition filed by respondent no.1- Rohit Hurria, was allowed and the selection of the appellant on the post of Senior Manager (Estate), was set aside.

2. The brief facts are that an advertisement was issued on 15.09.2008 inviting applications for appointment on various posts in Haryana State Industrial & Infrastructure Development Corporation- respondent no.2 (for short, 'the respondent-Corporation'), which included two posts of Deputy General Manager (Estate). The essential qualifications laid down were 1st Class B.E./ B.Tech or MBA or both having minimum 12 years relevant post qualification experience in a public undertaking or an organisation of repute.

3. The writ petitioner – respondent no. 1 being eligible applied for the said post. He was already working with the respondent Corporation as Technical Manager since 28.10.1991 and had been promoted as Senior Manager Technical on 16.01.1996 and thereafter on the post of Assistant General Manager (Projects) on 06.07.2004. He was, therefore, aspirant for the post of Deputy General Manager (Estate). Interviews were conducted for selection on 15.01.2009 by a Selection Committee headed by the Financial Commissioner & Principal Secretary (Industries), Government of Haryana with two other members.

4. While the result was not declared/ published, one Divya Kamal was appointed on one of the posts of Deputy General Manager (Estate) in February, 2009, however, the other post was left unfilled. On the other hand, the post of Deputy General Manager (Estate) which had been advertised, was downgraded to Senior Manager (Estate) and the appellant was appointed on the said post on the recommendation of the Selection Committee.

5. It would be noticed that five posts of Senior Manager (Estate) were separately advertised under the same advertisement. The appellant had not applied for the post of Senior Manager (Estate) and had only participated in the interview conducted for the post of Deputy General Manager (Estate). The appellant was not an employee of the respondent- corporation.

6. The writ petitioner has stated that after moving application under the Right to Information Act, he came to know through one person Vikas Chaudhary, who approached this Court by way of CWP No. 16012 of 2014 – **Vikas Chaudhary vs Haryana State Industrial & Infrastructure Development Corporation and others** in relation to the inter-se seniority of Senior Managers with the present appellant (respondent no.4 in the writ petition) about the aforesaid facts and that the appellant had been appointed as Senior Manager (Estate).

From the result which was declared, copy of which was obtained through the RTI Act, and the pleadings made in the writ petition filed by Vikas Chaudhary (supra), the writ petitioner learnt that Divya Kamal had secured 71 marks and was selected and appointed as Deputy General Manager (Estate) and the writ petitioner – Rohit Hurria secured 61 marks, Jai Parkash secured 59 marks, Rajiv Kumar Sharma secured 59 marks, Sanjay Garg secured 57 marks, Vinit Bhatia secured 56 marks, Vikas Chaudhary secured 55 marks, Sanjeev Moudgil secured 55 marks and Sanjeev Singh secured 54 marks. However, none of them were selected as Deputy General Manager (Estate). Appellant Sanjeev Singh had obtained 54 marks but was selected on the post of Senior Manager (Estate) though he had never applied for the said post. The writ petitioner, therefore, claimed his appointment as Deputy General Manager (Estate) and prayed to quash the appointment of the appellant (respondent no.4 in the writ petition).

7. The learned Single Bench in its judgment has examined the claim of the writ petitioner and after having noticed various judgments passed by the Apex Court including Secretary, State of Karnataka Vs. Umadevi (2006) 4 SCC 1 (*Umadevi-3*), Nagendra Chandra etc. Vs. State of Jharkhand and others (2008) 1 SCC 798, Ashok Kumar Sonkar Vs. Union of India & others (2007) 4 SCC 54, Municipal Corporation, Jabalpur Vs. Om Prakash Dubey (2007) 1 SCC 373, R.N.Nanjundappa Vs. T. Thimmiah & another (1972) 1 SCC 409, State of Madhya Pradesh Vs. Bhailal Bhai AIR 1964 SC 1006, Parminder Kaur & others Vs. State of Punjab & others 2017 (2) PLR 498, State of U.P. and others Vs. Arvind Kumar Srivastava and others (2015) 1 SCC 347 and Madan Lal Vs. High Court of Jammu & Kashmir and others (2014) 15 SCC 308, reached to the following conclusion:-

“22. It is fundamental to service law that no one can get a job in Government or public sector, if he has not applied for it within time fixed pursuant to a public notice/advertisement issued inviting applications from eligible candidates for filling advertised posts/vacancies in public sector undertakings etc. created by statute. Employers have also to obey the principles of Constitution enshrined in Article 14 so that their acts are not criticized as arbitrary, unreasonable and discriminatory. Besides, Article 16 guarantees equal opportunity to all citizens to apply and compete for public posts. Merely because respondent No.4 has continued to work since 2009 will not cure the patent defect and illegality inherent in his appointment. If the Selection Committee had reached the conclusion that respondent No.4 was “ideally suitable” or fell in relaxation rule of ‘exceptional merit’, then the Board of Directors should have been sounded to act according to the dictates of law of procedural fairness by calling other talented and ideally suitable persons by public advertisement in order to give all candidates who may wish to apply an opportunity of consideration. The Board could have taken a decision to advertise a single post of Senior Manager and invite fair competition from all eligible candidates for the post. There were other suitable options before the HSIIDC and the Selection Committee to have deferred the entire selection process qua one post of Senior manager (Estate) and to have re-initiated it once again having discovered a jewel in the crown to run their clubs. The 4th respondent would then have been pitted against his peers coming forwarded had they known the Corporation is looking for a suitable person to run their Gymkhana Clubs in properties developed by them in Haryana. It is often said it is not the decision but the decision making process that is open to judicial review. The decision making process in this case is seriously flawed to a point difficult to maintain. The Court cannot turn a blind eye to a fraud committed on public appointment by reason of sympathy or compassion alone.”

8. Discussing accordingly, learned Single Bench concluded and quashed the appointment of the appellant as well as decision leading to his appointment with further declaration that the post of Senior Manager (Estate) held by the appellant would be treated as vacant and would be re-advertised. At the same time, the respondent-Corporation was directed to consider the case of the writ petitioner against the second advertised post of Deputy General Manager (Estate) for appointment from the date, Divya Kamal was appointed with notional consequential benefits. The judgment passed by the learned Single Bench has not been challenged by the respondent-Corporation, however, the concerned respondent i.e. the appellant has preferred the present appeal.

9. Learned Senior counsel appearing for the appellant, *inter alia*, would submit that the learned Single Bench ought not have interfered with the appointment of the appellant at a belated stage. Further, it was pointed out that respondent no.1 had also been promoted later on as Deputy Manager (Joint Venture) vide order dated 30.09.2011. He submitted that the Selection Committee had taken a conscious decision to offer appointment to the appellant on the post of Senior Manager (Estate) on the basis of his assessment and merit and the concerned post of Deputy General Manager (Estate) was downgraded. Since the appellant had worked for such a long period, his appointment ought to have been saved.

10. Learned Senior counsel in his written submissions while relying upon judgment of this Court in CWP No. 30035 of 2017 - **Mukesh vs State of Haryana and others**, decided on 03.03.2020 pleaded that this Court has previously dealt with cases wherein even if a litigant was found entitled for appointment over and above an already working employee and acceptance of such a prayer would lead to an ouster from service of another employee, who is already in service, it has held

that such an ouster would be bad in law, for the reasons that such an employee is not at fault and ought not to be punished for the wrong doing of the State. It is also submitted that so far as the writ petitioner is concerned, he was a fence sitter and did not approach the Court within time and on both the counts, therefore, he has prayed that the order passed by the learned Single Bench be set aside.

11. Per contra, counsel appearing for the writ petitioner has supported the judgment and pointed out that a person who has been able to obtain employment through a back door method, cannot claim equity as he has been unauthorisedly appointed, his services cannot be allowed to continue.

12. We have carefully examined the facts of the case as have been culled out hereinabove and also given our thoughtful consideration to the judgments cited at bar.

13. From the perusal of the proceedings of the interview held on 15.01.2009, we find that the appellant has neither scored the highest marks in interview nor scored overall second highest marks. The person, who scored the highest marks, namely, Divya Kamal obtained 22 marks in interview and overall scored 71 marks was selected. The writ petitioner was awarded 10 marks in the interview but on the basis of his overall performance, he scored 61 marks. One Sanjeev Moudgil scored 11 marks in interview and in written he scored 44 marks and thus, he scored overall 55 marks. The writ petitioner was then second highest. However, the Selection Committee did not recommend his name without giving any reasons and has made certain observations after the tabulation of marks of all the 23 candidates, who appeared in the interview. The same are as under:-

“The Selection Committee found only one candidate suitable for appointment as Dy. General Manager (Estate) namely Sh. Divya Kamal and accordingly recommends his name for

appointment. However, the committee found one candidate viz. Sh. Sanjeev Singh ideally suitable for appointment at the Sr. Manager level rather than at the level of DGM keeping in view his experience in managing the Gymkhana Club at Faridabad which would come handy to HSIIDC as the Corporation is executing various projects of integrated Townships (IMTs) where clubs form an integral part of the infrastructure to be developed. Therefore, the Committee recommended that the Corporation may consider giving him a counter offer for the post of Sr. Manager (Estate) and the post may suitably be downgraded in case he accepts the offer.”

14. The learned Single Bench has noticed the said aspect and this Court too finds it absolutely amazing that the Selection Committee, which was required to make selection for the post of Deputy General Manager has made recommendations for appointment of a Senior Manager (Estate). It is also noticed that there was no occasion for the Selection Committee to make mention of the appellant's name and state that he is ideally suitable for appointment as Senior Manager (Estate). Since they were not required to examine the candidates for the post of Senior Manager, there was no occasion for them to have found who was ideally suitable for the post of Senior Manager. Thus, the recommendations made by the concerned Selection Committee goes beyond the scope of selection and apparently results in choosing an individual for a particular post on whims and fancies of the members of the Selection Committee as if they are the owners of a private company or corporation.

15. The functions of HSIIDC are statutory in nature and no one can be allowed to convert the rule of law to rule of thumb. The approach adopted by the Selection Committee which included Y. S. Malik Chairman of FCI, Dheera Khandelwal, MD/HFC, Professor Satish Kapoor, Former Head of Department, University Business School, Panjab University, Chandigarh, and Rajeev Arora,

MD/ HSIIDC, Member, is thus found to be an autocratic action, which is anathema to Article 14 of the Constitution of India. Law has to be applied equally to all who are similarly situated. All the applicants, which included the writ petitioner as well as the appellant, had singularly applied for the post of Deputy General Manager (Estate). To choose one of them for another post of Senior Manager (Estate) was, therefore, wholly uncalled for and unjustified. We agree with the observations made by the learned Single Bench in this regard.

16. We also agree with the observations that a person, who has been appointed on a post for which he has not even applied, cannot be said to have been appointed in accordance with law, and therefore, amounts to committing fraud with the public at large in relation to public appointment and no amount of sympathy or compassion can be attached to such an action. A person who has been able to obtain employment by a back door method ought to go out the same way. His appointment, therefore, cannot be protected, even if he has worked for several years. Since the appointment is illegal, the same cannot be saved. The entire edifice of a public appointment rests on the principle of equality in employment in terms of Article 16(1) of the Constitution of India. No one, whosoever be highly placed may be, can tinker with such selection. Candidates, who appeared before the interview authorities, come with full faith towards the selection committee with a belief that the selection committee would select only the best amongst them. Such selection committee, therefore, cannot be allowed to act in a manner which results in wavering the public faith.

17. Having reached to the aforesaid conclusion that the findings arrived at by the learned Single Bench do not warrant any interference, we feel that the order passed by the learned Single Bench, however, needs to be modified so far as it relates to directing the post of Senior Manager (Estate) to be advertised is

concerned. It is noticed that the post of Senior Manager (Estate) occupied by the appellant was downgraded post of Deputy General Manager (Estate) by the Selection Committee, which could not have been done. Therefore, the post of Deputy General Manager (Estate), which was existing at the time of selection, is restored, while upholding the direction of the learned Single Bench regarding quashing of the appointment of the appellant on the post of Senior Manager (Estate). We direct the respondent-corporation to now consider the writ petitioner, the second highest meritorious candidate, for appointment on the post of Deputy General Manager (Estate) from the date the other candidate, namely, Divya Kamal, was appointed. He would, of course, be granted notional benefits from the said date. However, actual benefits would be granted to him from the date of the passing of the judgment by the learned Single Bench. The other consequential benefits shall follow in his favour.

18. Accordingly, with the aforesaid observations, the appeal is dismissed.
19. All interim orders also stand vacated.
20. All pending applications shall stand disposed of.
21. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

06.03.2024
VS

(VIKAS SURI)
JUDGE

Whether speaking/reasonedYes/No

Whether reportableYes/No