

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

LPA NO. 1033 OF 2022 (O&M)

RESERVED ON : MARCH 20, 2024

DATE OF DECISION : APRIL 24, 2024

Urvashi Agnihotri

...Appellant

Versus

State of Punjab and others

...Respondents

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

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Puneet Bali, Senior Advocate with
Mr. Uday Agnihotri, Advocate,
For the appellant.

Mr. Saurav Khurana, Additional Advocate General, Punjab.

Mr. Aditya Grover, Advocate with
Ms. Nirmal Kaur, Advocate and
Mr. Vishav Kant Garg, Advocate,
For respondent No.3.

LAPITA BANERJI, J.

Consideration in the present appeal is to an order dated September 15, 2022 passed by an Hon'ble Single Judge in CWP No. 20397 of 2021, whereby the writ petition filed by the private respondent No.3 was allowed by setting-aside the Memorandum dated October 01, 2021 (Annexure P-7) as well as the appointment order of the appellant dated October 06, 2021 (Annexure R-3/1), issued during the pendency of writ petition.

2. The writ petition was filed by one Vishav Kant Garg/private respondent No.3 in the present appeal and the appellant was arrayed as private respondent No.3 in the same. The two Letter Patent Appeals preferred from the impugned order of the Hon'ble Single Judge were a)

LPA No.44 of 2023 filed by the State and b) the present LPA No.1033 of 2022 filed by the appellant. Vide order dated February 15, 2024, the LPA filed by State-respondents was “dismissed as withdrawn”.

3. Facts of the case as culled out are narrated hereinafter :

i) Government of Punjab invited applications for filling up of one post of a member in the State Commission, Punjab vide public notice dated February 14, 2021. In response to the said public notice, the appellant along with the writ petitioner applied for the same. There was no dispute with regard to *eligibility* of both the candidates. After scrutiny of applications, a provisional list of 22 candidates was published for interview.

ii) Upon assessing the suitability of candidates, the selection Committee headed by an Hon’ble Judge of this Court made a recommendation in the order of merit and the recommended list was forwarded vide letter dated August 26, 2021 by the Registrar General of this Hon’ble High Court to the State government for necessary appointment.

iii) The writ petitioner stood first in the list recommended by the Selection Committee and the appellant stood at Serial No.3. The State government after taking into consideration the recommendation, shortlisted the name of appellant for medical examination vide order dated October 01, 2021 (Annexure P-7) by ignoring the name of the writ petitioner.

iv) Consequently a writ petition was filed on October 04, 2021 challenging the aforesaid decision of the State government. Notice of motion was issued on October 06, 2021 for October 07, 2021 and the learned counsel for State accepted the same on that date. On the very same day i.e October 06, 2021, the State government issued a letter of appointment in favour of the appellant.

4. The Hon'ble Single Judge after hearing the parties framed two issues :

“i) Whether the State Government while exercising its powers under Rule 6 (10) is free to choose any candidate for appointment to the post of Member, State Commission, from panel prepared by the Selection Committee and can ignore a candidate with higher merit without assigning valid reason(s)?

ii) Whether in view of the facts and circumstances of the present case, appointment of respondent No.3 to the post in question is legally sustainable?

5. The Hon'ble Single Judge opined that there was no dispute between the parties that the appointment to the post in question is governed by the provisions of Consumer Protection Act, 2019 (for short, 2019 Act) as well as The Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission and District Commission) Rules, 2020 (for short, “Rules 2020”). Relevant clauses of the 2020 Rules are extracted hereinafter:-

“6. Procedure of appointment. (1) The President and members of the State Commission and the District Commission shall be appointed by the State Government on the recommendation of a Selection Committee, consisting of the following persons, namely: -

(a) Chief Justice of the High Court or any Judge of the High Court nominated by him- Chairperson;

(b) Secretary in charge of Consumer Affairs of the State Government - Member;

(c) Nominee of the Chief Secretary of the State-Member.

(2) The Secretary in charge of Consumer Affairs of the State Government shall be the convener of the Selection Committee.

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(6) The advertisement of a vacancy inviting applications for the posts from eligible candidates shall be published in leading newspapers and circulated in such other manner as the State Government may deem appropriate.

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(8) The Selection Committee shall consider all the applications of eligible applicants referred to it and if it considers necessary, It may shortlist the applicants in accordance with such criteria as it may decide.

(9) The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.

*(10) The Selection committee shall recommend a panel of names of candidates for appointment **in the order of merit for the consideration of the State Government.***

(11) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.

(12) Every appointment of a President or member shall be subject to submission of a certificate of physical fitness as indicated in the annexure appended to these rules, duly signed by a civil surgeon or District Medical Officer.

(13) Before appointment, the selected candidate shall furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as a President or member.”

6. Before the Hon’ble Single Judge it was argued on behalf of writ petitioner/respondent No.3 that the State government in order to render the writ petition infructuous, appointed the appellant vide order dated October 06, 2021 in total disregard of the recommendation made by the Selection Committee. The action of State government was in complete negation of the 2019 Act and 2020 Rules and also violative of the provisions of Articles 14 and 16 of the Constitution of India. It was contended on behalf of the writ petitioner that the State government could not have adopted a “pick and choose policy” and the recommendation of the Selection Committee was sacrosanct regarding appointments to the post in question.

7. *Per Contra*, it was argued on behalf of the State that pursuant to Rule 6(10) of the 2020 Rules, the State government was fully empowered to appoint any candidate from the panel and it was not obligatory on its part to only appoint people following the order of merit as recommended by the Selection Committee. The State government was only bound to the extent that it could not make appointment outside the panel recommended by the Selection Committee. Since the appellant was an *eligible* candidate, there was no mala fide in appointing her instead of the writ petitioner.

8. The Hon'ble Single Judge after going through the 2019 Act and 2020 Rules, came to the finding that the selection process culminating into the appointment had to be made in the following manner :

Stage I : *As per sub-rule 1, a Selection Committee of the following persons shall be constituted:-*

- (i) *Chief Justice of the High Court or his nominee as Chairperson;*
- (ii) *Secretary, Incharge of Consumer Affairs of the State Government;*
- (iii) *nominee of the Chief Secretary of the State.*

Stage II : *After scrutiny of the applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee (sub-rule 7).*

Stage III : *The Selection Committee shall consider all the applications of eligible candidates and if it considers necessary, may shortlist the applicants in accordance with such criteria as it may decide (sub-rule 8).*

Stage IV : *Keeping in view the requirements of the State Commission, the Selection Committee shall determine its procedure for making recommendation (sub-rule 9).*

Stage V : *After taking into account (i) suitability, (ii) record of past performance, (iii) integrity and (iv) adjudicatory experience, the Selection Committee "shall recommend a panel of names of candidates for appointment in the order of merit for consideration of the State Government" (sub rules 9 & 10).*

Stage VI : *The State Government "shall verify or cause to be verified the credentials and antecedents of the recommended candidates" (sub rule 11).*

Stage VIII: *A Member, State Commission shall be appointed by the State Government on recommendation of the Selection Committee (sub rule 1).*

Stage IX : *Every appointment of a Member shall be subject to the submission of a Certificate of physical fitness, issued by the Civil Surgeon or District Medical Officer (sub rule 12).*

Stage X: *Before appointment, the selected candidate shall furnish an undertaking that he/she does not or will not have any financial or other interest, which is likely to prejudice his/her functioning as Member (sub rule 13)."*

9. The Selection Committee comprising of an Hon'ble Judge of this High Court as Chairman, Secretary, Food Civil Supplies and Consumer Affairs being an officer of IAS rank and Principal Secretary, Water Supply and Sanitation also being an officer of an IAS rank duly assessed all the *eligible* candidates as per the criteria laid down for selection and made recommendation to the State government in the order of merit for appointment as a non-judicial member, State Consumer Disputes Redressal Commission, Punjab, vide letter dated August 26, 2021. The following names were recommended in order of merit :

- "1. Vishav Kant Garg*
- 2. Yadwinder Pal Singh Baath*
- 3. Urvashi Agnihotri"*

10. The said names had been recommended for the purpose of appointment which was to be offered after thorough scrutiny of documents as is evident from the list hereinabove. The writ petitioner's name featured in the first position whereas the appellant's name featured in the third position.

11. The Hon'ble Single Judge observed that despite the writ petitioner being higher in merit compared to the appellant was clearly ignored by the State government. Despite the State respondents trying to

justify their action of appointment of appellant, as being more suitable such an action on their part was held to be totally unfounded.

12. Upon perusal of the original records, the Hon'ble Single Judge recorded that the recommendations of the Selection Committee was put up before the Director, Department of Food Civil Supplies and Consumer Affairs and the said authority after going through the record advised appointment pursuant to recommendation of the Selection Committee in the order of merit, subject to verification of antecedents and other formalities. The advice of the Director was approved by the Secretary of the department. However, the minister proposed the name of appellant as the candidates at serial No.1/writ petitioner and candidate at serial no.2 of the recommended list were already on the list of members of the District Commission. It was noticed in the impugned order dated September 15, 2022 that the minister failed to take into consideration that the Selection Committee prepared the merit list after assessing all the selection criteria including "work experience" of the candidates. Therefore, the question of giving preference to the appellant for having experience of working in the State Commission did not and could not arise.

13. It was categorically noted in the impugned judgment that neither under the Act of 2019 nor under the Rules of 2020 or the standing orders of the department, the minister had any authority to record any such opinion. In case of a difference of opinion between the secretary and the minister-in-charge, the matter had to be submitted before the Hon'ble Chief Minister through the Chief Secretary, pursuant to the Rules of business of the Government of Punjab, 1992. There was no material on record to say that such a course of action had been followed by the Hon'ble Minister while taking a divergent view.

14. In the circumstances delineated hereinabove, the Hon'ble Single Judge held that the minister exceeded his jurisdiction while re-assessing the merit of the writ petitioner vis-à-vis that of the appellant and the Hon'ble Chief Minister instead of independently considering the matter and without recording any reason as to why he differed with the advice given by the secretary on the basis of the opinion of minister-in-charge, appointed the appellant. Such an action was a result of total non-application of mind and in complete violation of Rule 6(10) of 2020 Rules. Therefore, the Hon'ble Single Judge came to the finding as under :

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17. *As already noticed, the Selection Committee after taking into account suitability on the basis of (i) record of past performance, (ii) integrity and (iii) adjudicatory experience, recommended panel for appointment in order of merit for consideration of the State Government. Thus, in the opinion of this Court, consideration by the State Government under Rule 6 (10) does not give any leverage to them for choosing a candidate from the panel, who is lower in merit instead of a candidate higher in merit, without assigning any valid reason. Of course, if during verification of credentials & antecedents of a candidate in terms of Rule 6 (11), something adverse has surfaced or it is noticed that such a candidate is suffering from any disqualification under Rule 5 i.e (a) conviction and sentence for an offence involving moral turpitude; or (b) adjudged insolvent; or (c) declared of unsound mind; or (d) removed or dismissed from public employment on earlier occasion (e) having any financial interest which is likely to affect his/her functioning as Member; then certainly he or she can be confronted by the State Government. But even in such a scenario also, fairness demands that consideration must be in a proper manner with due application of mind and if a candidate with higher merit really deserves to be ignored, then only, the 'next in merit' can be considered. In the opinion of this Court, if the State Government is allowed to choose any candidate from the panel irrespective of his or her merit, without assigning any cogent reason(s), then recommendation made by the Selection Committee would be rendered otiose and that would be complete negation of the Rule 6. Besides this, Rule 6 (1) clearly envisages that appointments shall be made by the State Government on the recommendation of the Selection Committee. As such, the State Government has to follow the recommendation of the Selection Committee and it cannot ignore the merit without assigning any valid reason(s) in view of the provisions Rule 6 (10) discussed hereinabove. In*

*other words, except the observations made hereinabove, there would be no power with the State Government to ignore a candidate higher in merit and choose a person of lesser merit, just as a matter of course, as has happened in the present case while appointing respondent No.3.
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15. Resultantly, the writ petition was allowed and the impugned memo dated October 01, 2021 and the appointment order dated October 06, 2021 issued during the pendency of writ petition in favour of the appellants were quashed and/or set-aside. The State government was directed to proceed in the matter afresh as per law and strictly on the basis of recommendations made by the Selection Committee.

16. Mr. Bali, learned senior counsel appearing on behalf of the appellant submitted that the State was well within its power to select any member from the panel recommended by the Selection Committee and as long as the State government took the recommendation into consideration and made an appointment from the *eligible* list of candidates, the action of State government could not be faulted. The appellant had ten years of working experience in District Consumer Forum, Union Territory, Chandigarh and also five years of working experience in the Haryana State Consumer Commission, Panchkula as member- a post similar to the post on which she had been appointed. The reason for recommending the name of the appellant over and above all the candidates whose names appeared at serial Nos.1 and 2, was unambiguously stated by the Food and Supply Minister. Therefore, the recommendation of the minister was well reasoned and did not suffer from any infirmity.

17. During the pendency of the present appeal being LPA No.1033 of 2022, the State-respondents filed application to withdraw the appeal filed by it. Furthermore, it decided to comply with the judgment passed by the

Hon'ble Single Judge and decided to issue fresh appointment letter in the order of merit to the writ petitioner subject to final outcome of the pending appeal. Services of the appellant were terminated vide letter dated January 31, 2022. Such facts may be culled out from the affidavit dated April 06, 2023, filed by the Secretary, Department of Food and Civil Supplies and Consumer Affairs, on behalf of respondents No.1 and 2.

18. This Court has heard the arguments of the parties and perused the materials placed on record and is of the considered view that the recommendations of the High Court have always been held to be binding upon the State Government. Similarity may be drawn in this case with the provisions of Article 233 of the Constitution of India. The High Court is expected to know better in regard to the *suitability* of a person belonging either to the judicial service or to the Bar for being appointed as a District Judge as held by the Supreme Court in “***Chandra Mohan v. State of Uttar Pradesh***” AIR 1966 SC 1987. If the said principle is applied then it was for the Selection Committee headed by the serving Judge of this Court to select the candidates who keeping in view the criteria fixed had selected the persons barred on their merit and performance.

19. Similarly, in “***State of Haryana v. Inder Prakash Anand HCS and others***” 1976 (2) SCC 977, four Judges Bench of the Supreme Court held that if the recommendations of the High Court are not binding on the State, the consequences of the same would be unfortunate.

20. In “***Hari Datt Kanintha v. State of Himachal Pradesh***” 1980 (3) SCC 189, it has been held that the merit alone must guiding factor in making the recommendations and if the State Government finds it difficult to accept the recommendations of the High Court, it should communicate to

the High Court and effective consultation should be done for achieving the true object.

21. In “*State of Bihar v. Bal Mukand Sah*” (2000) 4 SCC 640, a constitutional Bench of the Apex Court observed that to effectively ensure the dispensation of justice, through such agencies and secure efficient administration of justice for the suffering litigating humanity it is necessary to ensure the recruitment of the best available talent both at the grass-root level as well as at the apex level of the District Judiciary. Thus it was incumbent on the authorities to appoint only those candidates who are recommended by the High Court for appointment at the apex level of the District Judiciary as the High Court is the expert body controlling the District Judiciary and has a pivotal role to play in the recruitment of judicial officers.

22. The Hon’ble Single Judge has referred to judgment of the Apex Court in “*S. Chandramohan Nair v. George Joseph and others*” (2010) 12 SCC 687, to hold that even though the State Government was not bound to accept the recommendation(s) made by the Selection Committee, it would have to record reasons for not doing so and the State Government could not arbitrarily ignore or reject the recommendations of Selection Committee. Furthermore, he held in case the appointment made by the State Government was made a subject matter of judicial scrutiny then it was duty bound to produce the relevant records including the recommendations of the Selection Committee to show that there were valid reasons for not accepting the recommendation and called for the original records to examine the same.

23 While on the other hand Mr Bali, Learned Senior Counsel referred to the same judgment to argue that the State government was not

bound to accept the recommendations of the Selection Committee but only reasons had to be recorded in writing for not accepting the same.

24. In *S. Chandramohan Nair (supra)* the issue related to the appointment of a member of the Kerala State Consumer Disputes Redressal Commission. The majority of the Selection Committee initially recommended the names of one V.S and one K.V but the Chairman of the Committee did not agree with them. He recommended the name of S.Chandramohan Nair (CN) to be included in the selected list and the name of KV to be excluded. The appellant was appointed by the government. A Co-ordinate Bench of High Court of Kerala set-aside the appointment of the appellant since it was only recommended by the Chairman and not the other members. Aggrieved CN filed appeal.

25. After analysing the provisions of Consumer Protection Act, 1986, the Amendment Act of 2002 and Kerala Consumer Protection Rules, 2005, the Apex Court was of the opinion that in the event the Chairman or the members of Selection Committee did not want to agree with the candidature of a particular person then the opinion of the majority would constitute the recommendation of Selection Committee. However, while recommending the name of the appellant at the final stage, the members of the Selection Committee were in agreement. The minister recommended the name of KV which was not accepted by the Hon'ble Supreme Court as the recommendations of the Selection Committee could not be brushed aside. There was no difference of opinion amongst members of the Selection Committee in the present case and no reason at all for brushing aside the recommendation of the Selection Committee.

26. The said judgment was thereafter followed by the Apex Court in a three Judges Bench in "*Meena Verma v. State of Himchal Pradesh*

and another” 2018 AIR (SC) 4764, wherein it was noticed that two candidates i.e appellant and respondent No.2 had obtained equal marks after evaluation of eligibility criteria but the State Government chose to appoint the appellant who was at Sr. No.3 by noting that the said candidate had better public experience. Accordingly it was held that once the Selection Committee had drawn a panel on the basis of performance, the High Court was correct in setting aside the appointment of the appellant. The facts herein are also similar. Once the Selection Committee had scrutinized the candidates, it was not for the State Government to choose the person lower in merit without even justifying or giving any sustainable reasons or not having interacted with the candidates.

27. In LPA No.1037 of 2022 “*Ashish Kumar Grover and others v. State of Punjab and others*” decided on February 15, 2024, a similar issue was decided by a Co-ordinate Bench for appointment to the post of President, District Consumer Disputes Redressal Forum. The Co-ordinate Bench held that once the recommendations were sent by the Selection Committee, the first candidate had to be appointed to the post and it was not for the State government to choose persons lower in merit without having interacted with the candidate. The said judgment authored by one of us G.S.Sandhawalia, Acting Chief Justice has been upheld in SLP No.11196 of 2024 decided on April 01, 2024.

28. This Court holds that the candidates whose names appear at serial Nos.1 and 2 of the selection panel could not be made *ineligible* by the minister-in-charge for being Members of the District Consumer Commission. Had that being so, then the said candidates would not have been called for or made to go through the rigours of the selection process.

The act of the minister gives a distinct impression to the mind of this Court

that calling of other *eligible* candidates in the selection process is merely an eyewash and the appointment of the appellant was already premeditated. The eligibility criteria along with qualifications and disqualifications of a candidate was stipulated in 2020 Rules and the detailed notice issued by the Principal Secretary. Rules 4 and 5 of the 2020 Rules read hereunder:

“4. Qualification for appointment of President and member of District Commission – (1) A person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge.

(2) A person shall not be qualified for appointment as member unless he –

(a) is of not less than thirty-five years of age;

(b) possesses a bachelor’s degree from a recognized University; and

(c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine.

(3) At least one member or the President of the District Commission shall be a woman.

(5) Disqualification for appointment of President or member of State Commission and District Commission – A person shall be qualified for appointment as the President or a member of a State Commissioner or District Commission if he–

(1) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude; or

(2) has been adjudged to be insolvent; or

(3) is of unsound mind and stands so declared by a competent court; or

(4) has been removed or dismissed from the service of the State Government or Central Government or a body corporate owned or controlled by such Government; or

(5) has, in the opinion of the State Government, such financial or other interest as is likely to prejudicially affect his functions as the President or a member.”

29. The eligibility criteria in terms of the detailed notice reads as under :

Eligibility Criteria

As per rule 3 (2) and 3 (2)(b) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the Presidents and Members of the State Commission and District Commission) Rules, 2020 which are made under the provisions of the Consumer Protection Act, 2019, described as hereunder :

3 (2) “A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses;

(b) a bachelor’s degree from a recognized University and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine.”

30. Once the Rules and the detailed notice determined the eligibility criteria of the candidates and the disqualifications, the minister-in-charge could not arbitrarily and capriciously negate the order of merit recommended by the Selection Committee. The minister-in-charge sought to sit over in appeal over the decision of the Selection Committee headed by a Serving Judge of this Hon’ble Court, which under no stretch of imagination can be a permissible course of action. Under Rule 6(11) the only ground to take a different view could have been if at the time of verification some adverse material cropped up regarding the credentials and antecedents of the recommended candidate which had escaped the notice of the Selection Committee, which was not the reason that prevailed with the Minister. Thus, accepting the arguments made by Mr. Bali, learned senior advocate would result in giving a stamp on such an arbitrary and illegal course of action adopted initially by the State.

31. Consequently, this Court finds no infirmity in the order passed by the Hon’ble Single Judge. Accordingly, LPA No.1033 of 2022 is dismissed. Connected applications, if any, are also hereby disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

APRIL 24, 2024
Shalini

Whether speaking/reasoned :	Yes
Whether reportable :	Yes