

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC:022287-DB

Date of Decision: 15.02.2024.

1. Letters Patent Appeal No. 1037 of 2022

Ashish Kumar Grover and othersAppellants
versus
State of Punjab and othersRespondents

2. Letters Patent Appeal No. 1066 of 2022

Pushvinder SinghAppellant
versus
State of Punjab and othersRespondents

3. Letters Patent Appeal No. 1138 of 2022

Lalit PathakAppellant
versus -
State of Punjab and othersRespondents

4. Letters Patent Appeal No. 54 of 2023

Ajit AggarwalAppellant
versus -
State of Punjab and othersRespondents

5. Letters Patent Appeal No. 113 of 2023

Ranjit Singh BathAppellant
versus -
State of Punjab and othersRespondents

6. Letters Patent Appeal No. 802 of 2023

Amrit AnjanaAppellant
versus -
State of Punjab and othersRespondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKAS SURI, JUDGE

Present : Mr. D.S.Patwalia, Senior Advocate with
Mr. A.S.Chadha, Advocate, for the appellants in
LPA No. 1037-2022.

Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate,
Mr. Rajat Sheokand, Advocate and
Mr. Sourabh Sheoran, Advocate, for the appellant in
LPA No. 113 of 2023.

Mr. J.S.Mundi, Advocate, for the appellant in
LPA No. 1066 of 2022.

Mr. Pardhuman Garg, Advocate, for the appellant in
LPA No. 54 of 2023.

Mr. Lokesh Chander Aggarwal, Advocate,
for the appellant in LPA No. 802 of 2023.

None for the appellant in LPA No. 1138-2022.

Mr. Shailendra Jain, Senior Advocate with
Mr. Munish Kumar, Advocate, for respondent No. 5 in
LPA Nos. 113-2023, 1037-2022 and 1066-2022.

Mr. Anil Kumar Sharma, Advocate, for respondent
No.6 in LPA Nos. 113-2023, 1037-2023 and 1066-2023.

Mr. R.D.Bawa, Advocate with
Mr. Samuel Gill, Advocate and
Mr. Randhir Bawa, Advocate, for respondent No.5 in
LPA No. 802 of 2023.

Mr. Sukhandeep Singh, Advocate, for respondent No.1 in
LPA No. 37 of 2023 and for respondent No.4 in LPA
No. 1138 of 2022.

Mr. Kshitij Sharma, Advocate, for respondent No.7
in LPA No. 1134-2023.

Mr. Rakesh Singla, Advocate for respondent No.4 in
LPA No. 54 of 2023.

Mr. Vidul Kapoor, Advocate, for respondent No.4 in
LPA No. 113 of 2023.

Mr. Salil Sabhlok, Sr. Deputy Advocate General, Punjab.

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

The present appeals seek consideration of the orders dated 15.09.2022 passed by the learned Single Judge in Civil Writ Petition No. 11409 of 2021 whereby the writ petition filed by the petitioners (appellants herein) was allowed and the orders dated 11.06.2021 and 23.06.2021 (Annexures P-8 & P-10) passed by the respondent-State of Punjab were

quashed and the State Government was directed to proceed in the matter afresh strictly in accordance with the recommendation dated 05.04.2021 made by the Selection Committee duly conveyed vide communication dated 06.04.2021 by the Registrar General of this Court.

2. The candidates in question were being recommended by the Selection Committee for the post of the President, District Consumer Disputes Redressal Commission by the Department of Food Civil Supplies and Consumer Affairs, Government of Punjab on whole time basis in various districts. The said posts were nine in number and were advertised vide advertisement dated 09.01.2021. The reasoning which weighed with the learned Single Judge after appreciation of the facts and the Rules in question was that the Selection Committee had proposed a criteria/procedure for allocation of marks out of total of 100 marks on 02.04.2021. 10 marks as such were accordingly fixed for the academic qualification whereas 0.5 marks (20 marks) were for every year of service/practice at Bar. Interview/viva-voce was fixed for 70 marks and the candidates were to be assessed on the basis of the following assessment:-

- (i) knowledge and ability to apply law in different facts and circumstances;*
- (ii) ability to communicate with counsels, witnesses and parties calmly and courteously;*
- (iii) integrity on the basis of record;*
- (iv) ability to handle the workload; and,*
- (v) alertness, intelligence, outlook and bearing of the candidate.*

The Selection Committee shall award marks to the candidates according to the aforementioned norms.

Final result shall be prepared by adding marks of academic qualification, experience and interview.

Sd/-

Member

Sd/-

Member

Sd/-

Chairman”

3. After interaction, a district wise merit-list had accordingly been drawn by the Selection Committee and thereafter recommendations of the Committee were duly sent to the State Government on 06.04.2021 through the Registrar General of this Court to fill up the above 9 posts by specifically mentioning that “*the recommendation of the names was as per their ranking in merit for the purpose of appointment*”. The appointment was to be offered to the candidates after thorough scrutiny of the documents which was within the domain of the State Government. As per Rule 6(11) and the State Government was to verify the credentials and antecedents of the recommended candidates.

4. Keeping in view the above and as per Rule 6(11) of 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 of 2020”), since the Selection Committee, consisted of a nominee Judge as a Chairperson having been appointed by the Chief Justice; Secretary-in-charge of the Consumer Affairs of the State Government and a nominee of the Chief Secretary of the State, as members, a finding was arrived that the action of the State Government interfering with the merit-list and issuing appointment orders by giving preference to the candidates, who were at Sr. Nos. 2 and 3 of each district, was unwarranted.

5. As per the recommendations made by the Selection Committee, the inter-se merit chart position of the candidates, forwarded was juggled by the State Government, as reproduced in para-17 of the judgment dated 15.09.2022 passed by the learned Single Judge which is as follows of some candidates for example:-

District	Name (Petitioner No.)	Merit Position	Appointee(s) (Respondent No(s))	Merit Position
Fatehgarh Sahib	Kamal Kant (P.No.1)	1	Pushvinder Singh (R.No.6)	2
Sri Muktsar Sahib	Ashok Kumar Garg (P.No.2)	1	Sukhdeep Kaur (R.No.9)	2
Bathinda	Phool Singh (P.No.3)	2	Kanwar Sandeep Singh (R.No.8)	3
Ropar	Kuljit Pal Singh (P.No.4)	1	Ashish Kumar Grover (R.No.7)	2
Kapurthala	Sunita Kumari Sharma (P.No.6)	2	Lalit Pathak R.No.6)	3

6. The relevant chart reproduced hereinabove by the learned Single Judge would show as to how the *inter-se* seniority of the candidates was fixed. The original record had been called for and it was accordingly noticed that the Chief Minister, Punjab as per the orders passed on 03.06.2021 approved the names of respondents No. 4 to 9 just as a routine matter in utter disregard of the recommendations made by the Selection Committee. It was in such facts and circumstances, a pick and choose policy had been followed by the State Government while the Selection Committee had recommended the petitioners’ names for appointment in order of merit for consideration of the State Government after taking into account the suitability of the candidates on the basis of (i) record of past performance (ii) integrity and (iii) adjudicatory experience and accordingly recommended district-wise panel.

7. As noticed above, the Selection Committee had fixed the criteria for selection of the candidates on the basis of knowledge and ability to apply law, ability to communicate, integrity, ability to handle the workload and intelligence. In such circumstances, the action of the Government as such to review the same and turn it around and upset the merit-list has rightly been set aside by the learned Single Judge.

8. The argument, which has thus been raised by the learned senior counsel for the appellants that Rule 6(10) of the Rules of 2020 gives a right to the State Government to reconsider the recommendations as such in the panel of names sent in order of merit, is not liable to be accepted in the facts and circumstances more so when the State Government has chosen to withdraw the appeals filed against the order passed by the learned Single Judge being aware of the fact that there was no reasoning on the record to show that the Chief Minister could take a view contrary to the Expert Committee which had been set up including the nominee of the Chief Justice who was a sitting Judge at that point of time. The effort as such to disturb the merit-list actually amounts to interference in the panel of names and selection of the appropriate candidates.

9. The recommendations of the High Court have always been held to be binding upon the State Government and similarity can be drawn in view of 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 to be appointed as District Judge as held by the Supreme Court in ***Chandra Mohan vs. State of Uttar Pradesh AIR 1966 SC 1987***. If the said principle is applied, it was for the Selection Committee headed by the serving Judge of this Court who keeping in view the criteria fixed which had selected the persons and fixed their merit.

10. Similarly, in ***State of Haryana vs. 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 are unfortunate.

11. In ***Hari Datt Kanintha vs. State of Himachal Pradesh (1980)3 SCC 189***, it has been held that the merit alone must guide it 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.

12. In *State of Bihar vs. Bal Mukand Sah (2004) 4 SCC 640*, a constitutional Bench of the Apex Court observed that it was for the High Court to see at the grass route level of the district judiciary to ensure the dispensation of justice being the expert body in the field and has a pivotal role to play in the recruitments of judicial officers.

13. Learned Single Judge has also relied upon the judgment of the Apex Court in *S.Chandramohan Nair vs. George Joseph and others (2010) 12 SCC 687*, while quoting the observations made in paragraph-17 thereof. The said judgment was thereafter followed by the Apex Court consisting of three Judges Bench in *Meena Verma vs. State of Himachal 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 but the State Government chose to appoint the appellant who was at Sr.No.3 by giving a 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 and placed the candidates in seriatim on the basis of said performance, the High Court was correct in setting aside the appointment of the appellant. The facts herein are also identical. Once the Selection Committee had scrutinized the candidates, it was not for the State Government to choose the persons lower in merit without even justifying or giving any reasoning and not having interacted with the candidates.

14. The argument raised by learned counsel for one of the appellants, namely, Ranjit Singh that his appointment has not been challenged by anyone is without any basis. Once the issue has been decided and it has been held that

the action of the State Government is not justifiable, the said appellant has no right for being appointed on the said post as the arbitrary decision of the State Government itself has been set aside.

15. We have also seen the table approved by the Selection Committee for the post of the President of the District Consumer Redressal Forum, Kapurthala, which would go on to show that the candidate, namely, Lalit Pathak at Sr. No.3 who got 53.5 marks was recommended for appointment against the candidate at Sr. No.1, namely, Rajesh Bhatia who got 70.5 marks which further affirms the view which we have taken above. The said table reads as under:-

District Kapurthala		
Name	Total marks	Merit position
Rajesh Bhatia	70.5	1
Sunita Kumari Sharma	60	2
Lalit Pathak	53.5	3
Taranjit Singh @ Tarnjit Singh	31.5	Not recommended by the Selection Committee.

16. Keeping in view the above we are of the considered opinion that the impugned order passed by the learned Single Judge does not suffer from any infirmity which would warrant interference. Resultantly, all the appeals are dismissed.

17. In Letters Patent Appeal No. 802 of 2023 arising out of Civil Writ Petition No. 8869 of 2022, the argument raised is that on the basis of the recommendations sent by the Selection Committee, respondent No.4-Sant Parkash Sood had been selected and was at Sr. No.1 for appointment on the post of President, District Commission, Sangrur. The appellant-writ petitioner, namely, Ms. Amrit Anjana was at Sr. No.2 and she staked her claim on account of the fact that District Malerkotla had been carved out from the part

of District Sangrur and therefore, being at Sr. No.2 she should be appointed and sought appointment on that post on the basis of the recommendations sent by the Selection Committee.

18. During the course of arguments before the learned Single Judge, apparently it transpired that the said respondent, namely, Sant Parkash Sood had resigned within a period of six months from the date of appointment and therefore, the appellant-writ petitioner staked her claim on that post being at Sr.No.2 in the merit list. The said claim had been opposed by the respondent-State of Punjab before the learned Single Judge on the ground that the selection process stood concluded and the appellant-writ petitioner has no right to claim for appointment on the post of President, District Commission, Sangrur and secondly, there was no advertisement regarding the same post of President, District Commission for District Malerkotla.

19. The learned Single Judge as such repelled the claim of the appellant-writ petitioner on the ground that the vacancy stood consumed at the relevant point of time and even the said person, namely, Sant Parkash Sood had not been impleaded as party respondent to the petition and therefore, there was no justification as such to stake her claim for appointment on that post. We also do not find any ground as such to accept the argument of learned counsel for the appellant-writ petitioner that mainly because she was at Sr. No.2 in the merit list, after the appointment she would have any right. The recommendations were sent by the Selection Committee in the order of merit district wise and the first candidate had to be appointed on the said post and having done so the post being consumed, the person at Sr. No.2 would only have a right if the person at Sr. No.1 had not joined. In the appeal, the said respondent, namely, Sant Parkash Sood has been impleaded as respondent No.4 for the first time and secondly another person, namely, Jot Naranjan

Singh Gill had been arrayed as respondent No.5 and cannot be permissible as neither he was neither party in the writ petition before the learned Single Judge nor any relief was claimed against him.

20. Only because an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure has been filed by the appellant-writ petitioner regarding the new developments which had taken place showing that he had assumed the charge of the post of the President, District Commission, Sangrur on 17.05.2022 could not give any reason to this Court in appeal to dilate on his appointment since it was never the subject matter of challenge before the learned Single Judge. Even otherwise, in such circumstances, the application for impleadment of the said two respondents in the appeal would not be liable to be allowed at this belated stage in view of the above facts and circumstances. Thus, the Letters Appeal No. 802 of 2023 is also dismissed.

21. Keeping in view of the above, we issue a further direction that the posts of the Presidents of the District Consumer Redressal Forums be filled up at the earliest as per the merit list sent by the Selection Committee on 06.04.2021 so that the justice delivery system under the Consumer Protection Act is not affected. The persons shown at Sr. No.1 of the merit list be appointed by offering them appointments. In case they do not join within 15 days from the date of offer, the next candidate so on be offered the said appointment.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

15.02.2024
ravinder

(VIKAS SURI)
JUDGE

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No