

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 20.02.2024
Date of Decision : 22.03.2024

LPA No. 2018 of 2019 (O&M)

Jyoti Sharma

... Appellant

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Sunil Sharma Nehra, Advocate for the applicant-appellant.

Mr. Hitesh Pandit, Additional Advocate General, Haryana,
for respondent nos. 1 to 2.

Mr. Kanwal Goyal, Advocate for respondent No.3.

Mr. Anurag Goyal, Advocate for respondent No.18.

SANJEEV PRAKASH SHARMA, J.

By way of this Letters Patent Appeal, the appellant seeks to assail the judgment and order dated 08.11.2019 passed by the learned Single Judge whereby Civil Writ Petition No. 24569 of 2018 preferred by the petitioner along with respondent nos. 16 and 17 was dismissed and the prayer made by the petitioners for directing the official respondents to consider them for appointment on the post of Dental Surgeon (Class-II) in pursuance to advertisement dated 02.05.2017 coupled with corrigendum dated 27.11.2017 was rejected.

2. During the pendency of this LPA, respondent no.18 Seema Devi, who was the last selected candidate, has also been impleaded as a party respondent.

3. Originally the case set up by the writ petitioners before the learned Single Bench was with reference to the action of the official respondents in not publishing the criteria for selection in the advertisement or the corrigendum. During pendency of the writ petition, the appellant restricted her claim with respect to not awarding of 0.5 marks in relation to her publication in Journal of Indian Society of Pedodontics and Preventive Dentistry in terms of the criteria fixed by the respondents for awarding of marks of a publication in an Indian Journal with ISSN i.e. indexed with abstracting and Indexing Journal of International repute i.e. SCOPUS/ PUBMED- Medline. It was her submission that the official respondents have only awarded 0.5 marks for the said publication, whereas she was entitled to be awarded 1 whole mark for it as published material in the Indian Journal was also indexed and published in the journal of International repute. Further case of the appellant is that upon being awarded 1 mark, she would have fallen in the select list over and above respondent no. 18- Seema Devi.

4. In brief, the facts of the case are that Haryana Public Service Commission had advertised 55 posts of Dental Surgeon (Class-II) laying down essential qualifications. The appellant possessed the qualifications and participated in the selection process and was called for interview. It was contended by the writ petitioner that the result was declared but it did not disclose that how many marks were awarded to the petitioners in personal interview/viva voce. During the pendency of the writ petition, the result was also handed over and it was pointed out that cut off marks for the Dental Surgeon was 67.47 and the appellant had secured 67.42 marks. The criteria for selection was also placed before the Court, which was stated to be a secret document. As per the said criteria laid down by the Commission for assessing the relative merit of the candidates through viva-voce for selection to the post

of Dental Surgeon, 50% marks were to be required to be obtained for short listing subject to a maximum 50 marks, for academic qualification/ personal achievements and 37.5 marks were allotted, which were to be counted as under:-

- “(a) Recruitment/ short listing test 50 marks
50% of marks obtained by the candidate in Recruitment/ Short listing test.
(Subject to a maximum marks of 50)
- (b) Academic Qualifications/ Personal Achievements 37.5 marks
- | | | |
|---|-----------------|-----------|
| Matric | 50.0% to 59.99% | 07 marks |
| | 60.0% and above | 08 marks |
| 10+2 | 50.0% to 59.99% | 07 marks |
| | 60.0% and above | 08 marks |
| Degree in Dental Surgery (BDS) from recognized University/ Institute | 50.0% to 59.99% | 07 marks |
| | 60.0% and above | 08 marks |
| Consistency | | 06 marks |
| 50% and above in any two out of (Matric, 10+2 & Degree) | | 05 marks |
| 60% and above in any two out of (Matric, 10+2 & Degree) | | 06 marks |
| MDS | | 01 mark |
| Publication | | 02 mark |
| (i) Credit for publication article/ case report etc. in an international journal indexed with Web of Science/ SCOPUS/Pubmed-Medline (Magzines) | | 01 mark |
| (ii) Credit for published article/ case report etc. in an Indian Journal with ISSN (Abstract of paper presented in a Conference will not be counted as publication). However, an Indian Journal with ISSN which is being Indexed with Abstracting and indexing journals of international repute will be considered at par with 1 above. | | 0.5 marks |
| (iii) Credit for writing a Chapter in a Foreign Book with ISBN. | | 1 Mark |
| (iv) Credit for writing a Chapter in an Indian Book with ISBN. | | 0.5 Marks |
| (v) Text or Reference Book published by International | | 02 marks |

/ National publisher with ISBN.

*(02/No. of Authors for each Minimum 1
Mark for each)
(Subject to maximum of 02 marks)*

- Sports: 4.5 marks*
- i) Participation at International sports event 01 mark
in a sports recognized by Indian Olympic
Association*
- ii) Participation at Asiad sports event 02 marks
in a sports recognized by Indian Olympic
Association*
- iii) Participation at Olympic sports event 4.5 marks
in a sports recognized by Indian Olympic
Association.*
- (subject to maximum of 02 marks in case of participation in (i) & (ii)*
- (subject to maximum of 4.5 marks in case of participation in (i) to (iii)*
(subject to maximum of 4.5 marks)
- (c) Viva-voce : 12.5 marks”*

5. The issue in the present appeal as raised by the appellant after having known her own marks and that of respondent no.18 related only to the aspect as to how many marks should have been allotted to her for the publication. It is the contention of the appellant that the learned Single Judge has failed to take into consideration the said aspect and ousted the appellant only on the ground that role of assessment with regard to awarding of marks for qualification, experience and publication of work is not of the Court but of the Selection Committee consisting of experts. Learned Single Judge was of the view that non awarding of marks on a particular point is the perception of the Committee, who are experts in the field, which cannot be pierced through judicial intervention.

6. Learned counsel for the appellant has, however, submitted before this Court that there was no element of expertise required for allotting of marks in

relation to publication. He has invited our attention to Annexure P-16 to submit that the publication of the article of the appellant was published in PUBMED. The Article of Esthetic improvement of white spot lesions and non-pitted fluorosis using resin infiltration technique was published in the Journal of Indian Society of Pedodontics and Preventive Dentistry – ISSN 0970-4388 and its extract was on Pubmed-Medline magazine being indexed with it as such. He, thus, submits that in terms of the provisions of the circular (supra), the appellant was entitled to receive 1 mark, while the official respondents allotted 0.5 marks and lowered down her merit wrongfully. Resultantly, the appellant was ousted from the selection. If the appellant would have been awarded 1 mark, she would have obtained 67.92 marks, more than the last person who has scored 67.47 marks. Learned counsel for the appellant further submits that there is no element of expert opinion required at this stage. It may also be noticed that even the Haryana Public Service Commission has not set up a case that granting of marks for publication is a subject matter of expert opinion.

7. We have considered the submissions and carefully gone through the judgment passed by the learned Single Judge.

8. We find that the learned Single Judge has considered the law as laid down in **Kanpur University and others vs Samir Gupta and others (1983) 4 SCC 309** where the result was found to be erroneous and the Supreme Court directed re-evaluation of answer sheets and accordingly held the students entitled for admission.

9. Judgment in **Kiran Malhotra vs H.P. University and another 2003 (1) SimLC 123** and Division Bench judgment of Patna High Court in **Md. Nafis Nawaz Khan and others vs. State of Bihar 2015(29) SCT 504** were also noticed. It also noticed the law laid down in **Kiran Gupta vs State of U.P.**

(2000) 7 SCC 719, Anzar Ahmad vs State of Bihar and others (1994) 1 SCC 150 and Dr. Basavaiah vs Dr. H.L.Ramesh and others (2010) 8 SCC 372. In paras 25 and 45 of **Dr. Basavaiah's case** (supra), Hon'ble the Supreme Court held as under:-

“25. The Division Bench in the impugned judgment allowed the appeal filed by Dr. H.L. Ramesh, respondent no. 1 herein, on the short ground that the appellants herein did not have Doctorate degree in Sericulture. Therefore, they were not qualified for appointment as Readers in Sericulture. In the impugned judgment, the court did not properly comprehend the advertisement in which it was clearly mentioned that the prescribed qualification was Doctorate degree or equivalent published work. According to the affidavit which has been filed by the University, the Expert Committee consisting of highly qualified five distinguished experts evaluated the qualification, experience and the published work of the appellants. They found them eligible and suitable. The relevant portion of the affidavit reads as under:-

"All the abovesaid members of the committee are experts in the field of Sericulture. The said selection committee thoroughly scrutinized the relative merits and demerits of each candidates and made its recommendations. It is needless to mention that the selection and appointment of teachers is to be made in terms of Section 49 of the Act. This respondent University has strictly followed the Government orders issued from time to time regarding reservations. After taking into consideration the orders issued by the Government and the guidelines issued by the University, the recommendation of the expert selection committee has been accepted by the University and accordingly impugned orders have been issued."

45. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no malafide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.”

10. It also considered the judgment of Hon'ble the Supreme Court in *Madan Lal and others vs State of Jammu & Kashmir 1995 (2) SCT 880* and Division Bench judgment of this Court in *Shashindra Singh (Km.) vs Union of India and others 2010 (3) RSJ 682*, to submit that the appellant and other writ petitioners having participated in the selection process were **estopped** from challenging the same subsequently. Although the principles enshrined in the aforesaid judgments are now settled and there can be no two views about the Courts non-interference in matter relating to answers which are subject matter of expert opinion.

11. Similarly in cases relating to awarding of marks during interview, this Court would loath from interfering in such selection process and merely because a particular person may claim to be more meritorious and educationally more qualified, he/ she cannot claim to have done better in the interview process.

12. Thus, principally it is now settled that the Court while exercising power under judicial review would not tinker with the marks granted to any candidate who has appeared in interview nor it would attempt to change the marks granted in the written examination by a particular examiner.

13. However, the position becomes totally different when this Court finds that in an arbitrary manner marks are not added for any educational qualification or publication which a particular candidate has already obtained. There is no element of selection or expert opinion while granting marks in relation to educational qualification or publication and is purely factual in nature. Thus, in the present selection, a person who scores less than 60% in matriculation, would be granted only 7.5 marks while another candidate who scores more than 60% would be granted 8 marks with respect to his educational qualification and so on and so forth.

14. Similarly for the publication a candidate who has no publication to his credit would not get a single mark while another candidate, whose publication is in a local Indian journal, would be allotted 0.5 marks. But candidate's paper published in magazine of international repute, would be allotted 1 mark. If any candidate, whose paper has been published in the international magazine, is not awarded his due marks, judicial review can be claimed for redressal of the grievance and such act of denying marks would amount to an act of arbitrariness and perversity on the part of the concerned selecting body.

15. Having stated so, we find that while the learned Single Judge did notice various judgments, however, failed to take notice of the fixed criteria laid down by the Haryana Public Service Commission for calculating the total marks. We find that the appellant was entitled to award of 1 mark for her publication in international magazine as noticed above and the action of the official respondents in only granting 0.5 marks is found to be arbitrary and unjustified. The appellant would have, therefore, scored higher marks than respondent no.18 and would have been placed in the select list. Denial of selection has resulted in depriving her of valuable right for consideration of employment on the touch stone of principles of equality enshrined under Article 16(1) of the Constitution of India.

16. Faced with the said situation, learned counsel appearing for respondent no.18 has submitted a compendium of judgments in support of his submissions that even if she has secured lesser marks as she has been appointed and there is no misrepresentation or malafide on her part and the sole reason for denial of appointment to the appellant was on account of wrongful allotment of marks by the Recruiting Commission, she should be albeit allowed

to continue. In support of her claim, she relies on Chief Engineer, M.S.E.B. vs Suresh Raghunath Bhokare (2005) 10 SCC 465; Vikas Pratap Singh and others vs State of Chhattisgarh and others (2013) 14 SCC 494; Gaurav Pradhan and others vs State of Rajasthan and others (2018) 11 SCC 352; and Civil Appeal Nos. 429-430 of 2021 Anmol Kumar Tiwari and others vs The State of Jharkhand and others 2021 INSC 101.

17. In the recent judgment Vivek Kaisth and another vs The State of Himachal Pradesh and others (2024) 2 SCC 269, Hon'ble the Supreme Court observed as under:-

“34. The appellants were not entitled for any equitable relief in view of the High Court as they were the beneficiaries of an illegality committed by the Selection/appointing authority. But then it failed to take this question further, which in our opinion, it ought to have done. What the High Court never answered was as to how much of this blame of “illegal” selection and appointment would rest on the High Court (on its administrative side). Undoubtedly, with all intentions of timely filling of the vacancies, the High Court still cannot escape the blame. From the very initiation of adding future 40 vacancies after the select list was published, the High Court has been privy to the selection/appointment process. The decision of the three-member committee which included representatives of the High Court (dated 21.10.2013) to initially add four more posts to the vacancies, and the fact that the High Court never had any objection to the additional appointments, although these appointments were made under its watch, are significant facts. After these appointments were made, it was the High Court which posted these officers in different districts in the State under Article 235 of the Constitution of India. It then trained them as Judicial Officers. Not one note, letter, or an objection of any kind has been placed before us which can give even the slightest hint that the High Court, at any point of time, had objected to these appointments! The objection has only come for the first time in form of additional affidavits before the High Court in the writ proceedings when the validity of these two appointments was challenged. The additional affidavit filed by the Registrar General of the High Court before the Division Bench of the High Court says that these appointments were not made in consultation with the High Court. This, however, does

not reflect the correct position, to say the least. The High Court has placed the entire blame on the 41 post selection exercise undertaken by the State Commission. This is not the correct position, though undoubtedly the Commission as the selecting authority must ultimately bear the brunt, yet the blame must be shared equally by the State Government and the High Court.

35. xxx xxx xxx

36. *What is also important for our consideration at this stage is that the appellants in the present case have been working as Judicial Officers now for nearly 10 years. They are now Civil Judge (Senior Division). These judicial officers now have a rich experience of 10 years of judicial service behind them. Therefore, unseating the present appellants from their posts would not be in public interest. Ordinarily, these factors as we have referred above, would not matter, once the very appointment is held to be wrong. But we also cannot fail to consider that the appellants were appointed from the list of candidates who had successfully passed the written examination and viva voce and they were in the merit list. Secondly, it is nobody's case that the appellants have been appointed by way of favouritism, nepotism or due to any act which can even remotely be called as "blameworthy". Finally, they have now been working as judges for ten years. There is hence a special equity which leans in favour of the appellants. In a recent Constitution Bench decision of this Court in **Sivanandan C.T. and Ors. v. High Court of Kerala and Ors.** (2023) SCC OnLine SC 994 though the finding arrived at by this Court was that the Rules of the game were changed by the High Court of Kerala by prescribing minimum marks for the viva voce, which were not existing in the Rules and therefore in essence the appointment itself was in violation of the Rules, yet considering that those persons who had secured appointments under this selection have now been working for more than 6 years it was held that it would not be in public interest to unseat them. It was stated in Para 58 as under: -*

"58. The question which now arises before the Court is in regard to the relief which can be granted to the petitioners. The final list of successful candidates was issued on 6 March 2017. The candidates who have been selected have been working as District and Sessions Judges for about six years. In the meantime, all the petitioners who are before the Court have not functioned in judicial office. At this lapse of time, it may be difficult to direct either the unseating of the candidates who have performed their duties. Unseating them at this stage

would be contrary to public interest since they have gained experience as judicial officers in the service of the State of Kerala. While the grievance of the petitioners is that if the aggregate of marks in the written examination and viva-voce were taken into account, they would rank higher than three candidates who are respondents to these proceedings, equally, we cannot lose sight of the fact that all the selected candidates are otherwise qualified for judicial office and have been working over a length of time. Unseating them would, besides being harsh, result in a situation where the higher judiciary would lose the services of duly qualified candidates who have gained experience over the last six years in the post of District Judge.”

And therefore, one of the directions in the said case was as under:

‘60. XXX

XXX

In terms of relief, we hold that it would be contrary to the public interest to direct 44 the induction of the petitioners into the Higher Judicial Service after the lapse of more than six years. Candidates who have been selected nearly six years ago cannot be unseated. They were all qualified and have been serving the district judiciary of the state. Unseating them at this stage would be contrary to public interest. To induct the petitioners would be to bring in new candidates in preference to those who are holding judicial office for a length of time. To deprive the state and its citizens of the benefit of these experienced judicial officers at a senior position would not be in public interest.”

The case at hand is on a similar footing if not better than the petitioners in the above case.”

19. The post in question is that of a Medical Doctor in Dentistry and respondent no.18 has been performing her duties. It is not a case where she can be said to be in any manner unqualified. The appellant is also found to be higher in merit. The appellant, therefore, would be entitled to consideration for appointment and her appeal deserves to be allowed. The Haryana Public Service Commission is, therefore, directed to accordingly revise her result after allotting her one mark for the publication in terms of the criteria for selection

laid down by them and place her in the merit. Since person lower in merit to her has been recommended by the Haryana Public Service Commission for appointment and the State has already appointed the said person, namely, respondent no.18 –Seema Devi, the appellant would be entitled to the same benefit from the same date. The benefit shall be notional. However, she would be entitled to seniority as per her inter-se merit and continuity in service. She would be also entitled for notional pay fixation accordingly.

20. As far as respondent no.18-Seema Devi is concerned, keeping in view the law laid down by Hon'ble the Supreme Court in **Vivek Kaisth's** case (supra), it is directed that respondent no.18 shall continue to perform her duties and her appointment shall be treated as against the subsequent future vacancy. She would be entitled for substantive appointment from the date the said post has fallen available. However, no recovery shall be made for the intervening period and her services shall be allowed to continue.

21. The appeal is allowed accordingly.

22. All pending applications shall stand disposed of.

23. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

22.03.2024
VS

(VIKAS SURI)
JUDGE

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