

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107 and 108

2024:PHHC:040248-DB

LPA Nos.114 and 168 of 2024 (O & M)

Date of Decision: 20.03.2024

Sanjay Kumar and others

.....Appellant(s)

Versus

State of Haryana and others

.....Respondent(s)

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

Present: Mr. B.S. Rana, Sr. Advocate,
with Mr. Nayandeep Rana, Advocate,
for the appellants.

Mr. Deepak Balyan, Addl. A.G., Haryana.

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

CM-269-LPA-2024

1. Application for condonation of delay of 4 days in filing the appeal is allowed, in view of averments made in the application duly supported by affidavit of appellant No.1.

2. Delay condoned.

3. CM stands disposed of.

Main Cases

4. The present judgment shall dispose of two appeals as both the appeals arise out of the common judgment dated 16.10.2023 rendered by the learned Single Judge in *CWP-22244-2023, Ravinder Rathee and others vs. State of Haryana and another* wherein, challenge to condition No.14 in the petitioners' letter of appointment was repelled and also the challenge to guideline No.2 in general notice dated 13.09.2023 making it compulsory to participate in the cadre change drive. For the purpose of dictating, *LPA-114-2024, Sanjay Kumar and others vs. State of Haryana and others* is being referred to.

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5. The learned Single Judge came to the conclusion that the entire litigation had been finally closed by the Apex Court in ***Civil Appeal No. 7136 of 2022, Vikas Kumar and another vs. State of Haryana and others*** vide order dated 13.09.2022 wherein, 9870 posts, which were originally advertised were to be filled up first from the selected candidates as per the result declared on 14.08.2014. Thereafter, the additional 2233 candidates who had qualified HTET after the cut off date were to be appointed below the first category as per their *inter se* merit. It was noticed that specific directions had been given that the litigation as such would stand closed by the above arrangement while reproducing the relevant portions of the order of the Apex Court. It was also noticed that the writ petitioners were given appointment during the pendency of the litigation in the year 2018 and not on the basis of seniority and they were lower in merit vis-a-vis the other candidates of 2017 batch and, therefore, were never allotted a district permanently and they were appointed in pursuance of the interim orders of this Court during pendency of the litigation. That being so it was a reason to include Condition No.14 in the letter of appointment, which stipulated that they were temporarily being allotted the district which was subject to change and, therefore, once the transfer drive had been undertaken vide general notice for permanent district allotment mandating the 2017 batch PRTs to give their option, it was necessary for them to participate in it and there was nothing illegal and irregular about the said condition which had been imposed in the light of the aforesaid order.

6. A perusal of the appointment letter would go on to show that the appointment was subject to the decision of LPA-686-2016, Pardeep Kumar vs. Government of Haryana and LPA Nos.712, 720, 882, 851, 852, 1631 of 2016 and

CWP No. 2203 of 2016. The said LPAs came to be decided by this Court on

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20.07.2022 (Annexure P-10) and was authored by one of us i.e. G.S. Sandhawalia, J. The petitioners, thus, were the beneficiaries of interim order dated 08.05.2017, apparently passed during the pendency of the second round of litigation. It was specifically noticed that interim orders are always subject to the final outcome and the fact that since they were not qualified as per the advertisement and the cut off date, therefore, could not have march over the ones who have duly qualified. The directions were accordingly given that the State will not fill up the vacancies beyond the number which was advertised and, therefore, the ones who had originally qualified before the cut off date were granted the relief.

7. The relevant part of the order passed by the Apex Court in *Vikas Kumar's case (supra)* reads as under:-

“28. In the above facts and circumstances and taking into consideration the stand of the State of Haryana as communicated by its learned counsel, we are of the view that in the present case this litigation of more than a decade could be put to a quietus and the mammoth exercise of holding the selections for 9870 posts in the year 2012 be given its full benefit. We pass the following order:

(i) The total number of advertised posts i.e. 9870 to be filled up first from the selected candidates declared in the result dated 14.08.2014.

(ii) In the event, the selected candidates from the above category do not join, then the remaining vacancies shall be filled up from the list of wait-listed candidates declared along with successful candidates on 14.08.2014.

(iii) After filling up of the 9870 vacancies as provided above, the 2233 candidates who qualified the HTET after the cut-off date, sometimes in June, 2013 will be appointed as per their inter se merit enbloc below the above 9870 candidates.

(iv) In case, there still remain any wait-listed candidates

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from the wait-listed list of 14.08.2014 who could not be accommodated in the advertised posts of 9870, will be appointed enbloc as per their merit below the 2233 candidates.

(v) The seniority will be as per their merit position in their respective lists.

(vi) No dispute for seniority would be entertained of any candidate inter se different lists.

(vii) No claim for seniority or for any arrears would be entertained for any period not worked by the candidates of any of the above lists.

(viii) Salary would be paid for the period, for which such candidates have actually worked but not paid salary after due verification of their working both from the records and physically.

(ix) The 2012 selections will stand closed with the above arrangement.

(x) Exercising our powers under Article 142 of the Constitution, we increase the number of advertised posts beyond 9870 to accommodate the candidates as directed above and no more.

(xi) All the appeals are disposed of as directed above.

(xii) The impugned judgment shall stand modified to the aforesaid extent.”

8. The Apex Court, while exercising its powers under Article 142 of the Constitution of India and on account of concession given by the State, has directed the appointment beyond the advertised vacancies to the extent of 2233 by directing that after filling up the 9870 vacancies, the candidates who had qualified the HTET after the cut off date, would be appointed keeping in view the communication which was received from the Director of Elementary Education.

It was only in the peculiar facts and circumstances and to put an end to the

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passed while exercising powers under Article 142 of the Constitution of India while specifically stating that the 2012 selections would stand closed.

9. The appellants herein are, thus, the beneficiaries of the said order and were not originally in the zone of consideration also. They are equally bound by the conditions in their appointment order whereby it was specifically said that it was subject to the outcome of the litigation. The Supreme Court has already closed the door and put a quietus to the litigation and the conditions in the appointment letter were that the appointment would be subject to the final outcome of the litigation. Therefore, since the number of persons to be adjusted in the district is much more than what was advertised, the contention of the senior counsel that options had been asked for from more districts than those which had been offered in the advertisement (Annexure P-1) would not take the appellants a long way. It is only on account of the litigation spanning over a decade as such the matter has festered and, therefore, the temporary appointment made at the time of appointment in the year 2017 was only to deal with the exigency at that point of time. It is the decision of the State as such which would make it mandatory to participate in the transfer policy drive and, therefore, there can be no objection to the fact that the appointment order itself was a conditional order i.e. 'subject to the outcome of the litigation' which culminated by the orders passed by the Apex Court.

10. Resultantly, we do not find any illegality in the judgment dated 16.10.2023 passed by the learned Single Judge declining to interfere in the action of the respondents wherein it had been made mandatory upon the appellants to take part in the transfer policy. We are informed that the said exercise has been completed and is pending subject to the permission of the Election Commission.

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11. Accordingly, the present appeals stand dismissed. Pending applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

20.03.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No