

(2013) 05 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 877 of 2013

Jasbir Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : AIR 2013 P&H 190

Hon'ble Judges : Surya Kant, J;R.P. Nagrath, J

Bench : Division Bench

Advocate : Sukhvinder Singh Nara, for the Appellant;

Final Decision : Dismissed

Judgement

Surya Kant, J.—This order shall dispose of two Letters Patent Appeals bearing Nos. 877 and 878 of 2013, as identical issues are involved therein. The facts are briefly extracted from LPA No. 877 of 2013. The appellant impugns the order dated 29.4.2013 whereby the learned single Judge, his writ petition challenging the condition of requirement of Rs. 3 lacs per annum or more as professional income for an Advocate to be eligible for the post of President of District Consumer Disputes Redressal Forum in the State of Haryana, has been dismissed. The appellant had challenged the aforesaid condition on the premise that requirement of Rs. 3 lacs per annum or more professional income by an Advocate was wholly arbitrary, irrational and it violates the doctrine of proportionality as well as it does not satisfy the test of Article 14 read with Article 16 of the Constitution. The learned single Judge took notice of the fact that an Advocate with not less than 10 years standing is eligible for the subject post, hence the prescription of professional income of Rs. 3 lacs per annum was neither un-reasonable nor arbitrary or irrational.

2. Still aggrieved, the appellant has preferred this appeal.

3. We have heard learned counsel for the appellant at some length and gone through the record. We have also gone through the two decisions cited in support

of this appeal in Hemani Malhotra Vs. High Court of Delhi, and Om Kumar and Others Vs. Union of India,

4. There is indeed no quarrel that the Competent Authority/Selection Committee is well within its right to short list the candidates in a selection process by laying down a uniform, transparent and just criteria. In the instant case, it has come on record that against 10 posts of President, District Consumer Disputes Redressal Forum, more than 400 Advocates have applied besides the serving or retired Judicial Officers. In such a situation, the decision taken by the Competent Authority/Selection Committee to shortlist the candidates from amongst Members of the Bar appears to be just and fair and it calls for no interference.

5. Adverting to the criteria of shortlisting, it appears to us that in exercise of its power of judicial review, the writ Court would be well within its right to see that the criteria of shortlisting does not suffer from the vice of arbitrariness or irrationality nor does it offend the constitutional rights of a candidate. It may be seen that serving Judicial Officers with whom the Members of the Bar are to compete for the subject posts, are drawing monthly salary of about Rs. 90,000 or so while those who are retired are also drawing pension of about Rs. 60,000/- per month. The pay scale of the post of President of District Consumer Disputes Redressal Forum, is Rs. 57700-70290 which means that the monthly salary of the incumbent would be more than Rs. 1,00,000/-. As against this, an Advocate with monthly income of Rs. 25,000/- per month has been made eligible to compete. It thus cannot be said that the Competent Authority/Selection Committee have acted in a arbitrary or whimsical manner.

6. It is urged on behalf of the appellant that the shortlisting criteria has been evolved after issuance of the advertisement which is impermissible in law. We, however, do not find any error in this regard, for the occasion to invoke the shortlisting process would arise only after receiving the applications when the strength of total candidates is known. Learned counsel for the appellant in all fairness relied upon the principle of proportionality as explained by the Supreme Court in Om Kumar and others (supra) with special reference to the following observations:-

66. It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Hence the Court deals with the merits of the balancing action of the administrator and is, in essence, applying "proportionality" and is a primary reviewing authority.

67. xxx xxx xxx xxx

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying proportionality.

However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on Wednesbury principles applies.

7. There can indeed be no quarrel with the settled proposition of law that wherever the Court finds an administrative action to be laced with arbitrariness and the action taken harsher than the nature of offence, nothing precludes the writ Court to interfere within exercise of its powers under Article 226 of the Constitution and strike down such an action. This principle, in our considered view, is not attracted to the facts and circumstances of the instant case where a vast majority of Members of the Bar with 10 years standing would be having professional income of more than Rs. 25,000/- per month. In view of the above, we do not find any merit in the present appeals and the same are dismissed.