
(2013) 11 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 4082 and 24013 of 2011

Kamlesh Rao

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2014) 174 PLR 65

Hon'ble Judges : M.M. Singh Bedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.M. Singh Bedi, J.—This order will dispose of two writ petitions bearing C.W.P. Nos. 4082 and 24013 of 2011 filed by Kamlesh Rao, petitioner. Petitioner in C.W.P. No. 4082 of 2011 has challenged the panel of Selection Committee constituted under the Haryana Affiliated Colleges (Security of Service) Rules, 1993, hereinafter referred to as "Rules", alleging that its constitution is violative of the said Rules and that a direction should be issued to the Chairman of the Managing Committee to constitute fresh panel of Selection Committee and fresh selection procedure for recruitment to the post of Principal at Rao Lal Singh College of Education, Gurgaon be adopted. The recommendation made by the illegal Selection Committee should not be recommended by the Vice Chancellor of the University.

2. In C.W.P. No. 24013 of 2011, the petitioner has questioned the validity of order passed by the Selection Committee, annexure P-15, dated February 19, 2011 and subsequent appointment offered to respondent No. 7 Dr. Parveen Sharma, pursuant to annexure P-19 and the approval of the Director General, Higher Education, addressed to the Principal of Rao Lal Singh College of Education, Sidharwali, District Gurgaon. The petitioner has also prayed in the said petition that she being the next meritorious candidate after respondent No. 7 who being an ineligible candidate, she should be appointed.

3. However, in the written statement filed by the Deputy Secretary, it has been admitted that on receipt of a complaint from the petitioner, an inquiry was conducted in the matter by Sh. S.P. Singh, Joint Director and as per his report annexure R-3/II, the selected candidate Dr. Parveen Sharma did not fulfill minimum qualification for the post of Principal in the College of Education prescribed by N.C.T.E./U.G.C. and that she had been awarded 12 marks for Research and Publications whereas maximum 5 marks could have been given for those achievements but at the same time a stand has been taken that the Selection Committee had been validly constituted and selection was on the basis of merit. The proceedings of the Selection Committee have been appended as annexure R-3/I indicating that 8 persons had applied and only 5 were called on account of ineligibility of remaining persons.

4. It is pertinent to observe here that respondent No. 7, the candidate who had been selected by the Selection Committee, has not been appointed. The petitioner, on one hand, has objected to the constitution of the Selection Committee and on the other hand, she claims herself to be more meritorious on the basis of the selection by the same Committee. The allegation of the petitioner is that the Managing Committee did not call any panel of experts from Director Higher Education. She has also alleged that only five persons could be the members of Selection Committee but in the present case, the Chairman of the Managing Committee in order to favour respondent No. 7, constituted Committee of eight persons, in order to ensure better stores to respondent No. 7.

5. I have perused the record which indicates that the members of the Selection Committee had adopted a criteria to assign marks for different heads which are as follows:--

The heads have further been divided in sub-heads for different trades but it has been disclosed that respondent No. 7 who was selected has not been given the assignment of Principal. In view of the said circumstances any decision given regarding the comparative merit of the petitioner vis-?-vis respondent No. 7 and regarding the validity of the Selection Committee would probably be treated as *Bruttm Fulmen*. It is a settled principle of law that no Court can be called upon to indulge in mere pass time and pass orders which would be *Brutum Fulmen*. In this context, reference can be made to *Cyriac John v. Jacob Chorion*, 1998 (1) R.C.R. (Rent) 92 wherein the Court was considering the rights of a party who was not made a party to the entire proceedings and no valid or executable order of eviction could be passed regarding the said party. In such circumstances, adjudication of the rights of the said party was observed to be *Brutum Fulmen*. Similar is the ratio of the judgment in *V. Ramachandra Rao and Others Vs. The Andhra Pradesh Regional Committee and Others*, . The relevant portion of the judgment is reproduced as under:--

In *Hammersmith Borough Council v. Boundary Commission for England* (unreported) some of the electors of the affected constituencies Hammersmith and Fulham complained that the commission adopted methods and calculations

not authorised by the House of Commons (Redistribution of Seats) Act, 1949. They moved for a mandatory injunction addressed to the Commission with a view to rendering their report a nullity. The matter came up before Harman, J., and he refused it. He pointed out that even if he granted an injunction, and even if it were obeyed, the Home Secretary and Parliament could, if they wished, simply ignore it and proceed to legislate; and he considered the whole matter "entirely unsuited to judicial intervention" vide Law and Order by Allen (second edition, page 171). It was this view of Harman, J., that was approved by the Master of Rolls in (1955)¹ All England. Reporter 331 (supra).

16. Applying the view of Harman, J., to the instant case, it appears to me that even if the Regional Committee's Report to the Legislative Assembly was bad for non-compliance with correct procedure or nonobservance of a bye-law, the Legislative Assembly could still in its wisdom accept that report and make it the basis of its legislation. In such a case, I think it will be futile for a Court of law to decide the report of the Regional Committee to be bad, for, that would be ineffective declaration, a mere Brutum Fulmen and a court of law will surely not make an order which it knows will be ineffective.

6. As the decision of the Committee constituted to appoint/select a Principal has been challenged by the petitioner and at the same time the petitioner claims a right to be appointed as Principal on the basis of the selection made by the said Committee being next in merit, the petition would be not maintainable in view of the principle of estoppel. Beside this it will be an exercise in futility to enter into the adjudication of the validity of selection of respondent No. 7 who has not been appointed.

7. The petition bearing C.W.P. No. 4082 of 2011 is thus dismissed.

8. Mr. Mutneja, learned counsel for the petitioner submits that the action of the respondents suffers from the vice of arbitrariness and violative of Articles 14 and 16 of the Constitution of India. He sought a writ in the nature of Mandamus directing the respondents to offer the post of Principal of the College to the petitioner being next meritorious candidate. It has been claimed that as per the guidelines of the Director Higher Education, Haryana, a Committee is required to recommend the name of other two candidates to be kept in waiting list other than the candidate recommended by the Selection Committee. As no waiting list was prepared by the Selection Committee but as per the record the petitioner was No. 2 on merit, on the basis of comparative selection, she should be appointed.

9. I have considered the claim of the petitioner. A perusal of record indicates that no waiting list was prepared, even otherwise, waiting list is to operate if any vacancy is unfilled during the life of waiting list. The vacancy available on account of resignation of an appointee, cannot be utilized for a waiting list candidate. In this context, reference can be made to judgment in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, . and Gujarat State Deputy

Executive Engineers" Association v. State of Gujarat 1994 (2) S.L.R. 710. In Parminder Singh v. State of Punjab and others, 2009 (3) S.C.T. 663, following the above said judgments, it has been held that when vacancy stands consumed after selection, its availability on resignation of the candidate does not create any right in the petitioner to seek appointment from the waiting list. In Satish Kumar v, Vice Chancellor, Kurukshetra University 1998(1) S.C.T. 138, it was laid down that mere selection of a candidate and being in the waiting list does not give an indefeasible right to appointment. The waiting list becomes extinct and select list exhausted once the vacancies advertised are filled up. Similar is the ratio of Division Bench judgment of this Court in Mrs. Pushpa Sharma v. State of Haryana, 1997(3) S.C.T. 618. It was held in the said judgment that the purpose of waiting list is only to make use of, for appointment against unfilled posts/ vacancies.

10. In view of the above circumstances, the writ petition bearing C.W.P. No. 24013 of 2011 seeking appointment despite the fact that no waiting list had been prepared and the petitioner cannot be directed to be appointed as Principal in place of respondent No. 7 who otherwise has resigned, is thus dismissed.

11. It is not out of place to observe here that the selection process has again been initiated in which the petitioner will have an opportunity to participate and compete with other candidates. It will be open to the respondents to appoint the petitioner as Principal in case she falls within the parameters of the criteria laid down and is able to steal a march over the other candidates.

Original record returned.