

(2009) 08 SHI CK 0044
In the High Court Of Himachal Pradesh

Ranjit Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citation : (2009) 08 SHI CK 0044

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—By means of this writ petition, the petitioner has challenged the order dated 23rd March, 2007 passed by the erstwhile State Administrative Tribunal, dismissing the O.A. No. 2624 of 2005, filed by the present petitioner.

2. The facts giving rise to the filing of the present petition are that the State of H.P. has formulated a policy for appointments of Sahayak Secretaries in Gram Panchayats. One post of Sahayak Secretary in Gram Panchayat Charna, respondent-4, was lying vacant and therefore, applications were invited for filling up the said post. The last date for submission of applications was 9.9.2005. The petitioner applied for the said post. According to the petitioner, interviews for the said post were held on 14.9.2005 and the Selection Committee which conducted the interview comprised of Block Development Officer, respondent No. 3, Pradhan, Gram Panchayat, Charna, and BDC Chairman. Shri Bhimi Raj, respondent No. 6 was the Pradhan of the Gram Panchayat, Charna. According to the petitioner, about 20 candidates appeared in the interviews and the respondent No. 7 was selected as Sahayak Secretary. The petitioner, aggrieved by the appointment of respondent No. 7 as Sahayak Secretary, challenged her selection before the learned H.P.State Administrative Tribunal and one of the main grounds raised was that respondent No. 7 is a close relative of respondent No. 6. It was specifically stated that respondent No. 6 is brother-in-law of respondent No. 7 being the first cousin of the husband of respondent No. 7. Reply to this original application was filed by the parties and the respondent No.

7 in her reply stated that the family of the replying respondent and the family of the Pradhan are living separately from a long time. However, no specific reply was given with regard to the relationship. A preliminary objection was raised that an appeal lies against the order of selection. The learned Tribunal vide its order dated March 23rd, 2007 dismissed the appeal on the ground of statutory remedy being available to the applicant. Hence, the present petition.

3. We have heard S/Sh. Bimal Gupta and Karan Singh Kanwar counsel for the petitioner, Mr. R.K.Bawa, Advocate General, for respondents No. 1 to 3, Mr. Rajnish K.Lal counsel for respondents No. 4 and 5 and Shri Sanjeev Bhushan, counsel for respondent No. 7.

4. It would be pertinent to mention that after we heard the matter in part on 14th May, 2009, we had directed respondent No. 7 to file an affidavit showing what is the exact relationship between her husband and respondent No. 6 Bhimi Raj. Affidavit has been filed and it has been clearly stated that Bhimi Raj is the son of Bali Ram who in turn is the son of Bholar. Shri Chander Mohan, husband of respondent No. 7 is the son of Jalam Singh son of Bholar. Thus, it is apparent that Bhimi Raj and Chander Mohan husband of respondent No. 7 are first cousins being the sons of two real brothers.

5. As far as the remedy of appeal is concerned, we are of the considered view that since the selection was made in the year 2005 and we are in the year 2009, even if such remedy is available, the petitioner after such a long lapse of time should not be put back to square one and therefore, we have heard the main writ petition on merits.

6. The main challenge by the petitioner is on the allegation of bias. It is urged that since respondent No. 7 was the wife of his first cousin respondent No. 6 Shri Bhimi Raj should have not taken part in the selection process and that the entire selection process is vitiated by bias.

7. On the other hand, Shri Sanjeev Bhushan, learned Counsel for the respondent No. 7, has strenuously argued that since the petitioner has taken part in the selection process he is estopped from challenging the constitution of the Selection Committee. Various authorities have been cited by both sides.

8. The basic authority in this regard is G. Sarana Vs. University of Lucknow and Others, In that case a Selection Committee of the Vice Chancellor of the University and four Professors was constituted to make recommendations for selecting a candidate to the post of Professor of Anthropology. There were only two candidates who applied for the said post; Dr. G.Sarana and Dr. K.S.Mathur. The petitioner appeared for the interview and thereafter the name of Dr. Mathur was recommended by the Selection Committee. It was at this stage that the petitioner Dr. Sarana filed an application leveling allegations that two of the experts were biased against him and were favourable to the selected candidate. Various grounds of bias were alleged but these allegations were in relation to the dealings held in their professional capacity as Professors and not personal

relationship. The Apex Court held as follows:

"9. It is needless to emphasize that the principles of natural justice which are meant to prevent miscarriage of justice are also applicable to domestic enquiries and administrative proceedings. (See *A.K. Kraipak v. Union of India*). It cannot also be disputed that one of the fundamental principles of natural justice is that in case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias by which is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute. (See *Nageswara Rao v. A.P. State Road Transport Corporation* and *Gullapalli Nageshwar Rao v. State of A.P.*)

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14. From the above discussion, it clearly follows that what has to be seen in a case where there is an allegation of bias in respect of a member of an administrative board or body is whether there is a reasonable ground for believing that he was likely to have been biased. In other words, whether there is substantial possibility of bias animating the mind of the member against the aggrieved party.

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee." Shri Bhushan, learned Counsel for respondent No. 7 submits that in the present case also there is waiver by the petitioner and he cannot be permitted to challenge the selection of respondent No. 7.

9. Reliance is also placed on *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, , *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, *Shri Bhajan Dass Kaith v. H.P. Public Service Commission* and *Anr.* 1998(2) S LC 253.

10. In our opinion these judgements are not relevant to the case. The other relevant judgement cited is *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, wherein the Apex Court made the following observation:

It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

11. It would also be pertinent to refer to judgement of the Apex Court in *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, page 273.

On the aspect relevant to the present case, there is divergence of opinion between the two judges. In this case, a Committee of Senior Judges of the Punjab and Haryana High Court was constituted on the administrative side to look into the appointments made by the Public Service Commission to the Punjab Civil Services Judicial Branch, when the said Committee was headed by one Shri Ravinderpal Singh Sidhu. The Committee made certain recommendations. When this matter came up on the judicial side, the Judges who were members of the Committee were also part of the Bench. Justice S.B.Sinha held as follows:

83. We also fail to understand as to why two senior Judges who had headed the Committee should have been made part of the Bench. It was not a case where the doctrine of necessity was required to be invoked. It may be that the counsel appearing on behalf of the judicial Officers did not object to the learned Judges who were members of the Committee to hear the matter.

84. There is no quarrel with the proposition that the allegation of bias may be capable of waived. (See G. Sarana Vs. University of Lucknow and Others, However, in this case, bias as regards the subject matter on the part of the members of the Committee who heard the writ petition is apparent on the face of the record. Therein this Court was considering a question as to whether a bias as regards a special matter would invalidate proceedings. What was in question therein was the justifiability of the constitution of selection committee and as the Appellant therein had voluntarily appeared before it and had taken a chance of having favourable recommendation from it, he was not permitted to turn around and question the validity of the constitution of the committee.

12. However, Justice Dalveer Bhandari, took a different view and held as follows:

131. The appellants submitted that the judicial officers have not been fairly treated by the High Court. It was urged that the two senior judges who were members of the Committee (appointed by the High Court) should not have been part of the Full Bench constituted by the Chief Justice. In the facts and circumstances of this case, I do not find any merit in this submission of the appellants. In these cases, before hearing commenced, the learned Counsel appearing for the appellants clearly consented to hearing of the matter by the judges of the full bench. After giving clear consent before the High Court, they cannot be permitted to make any grievance before this Court. This tendency should not be encouraged.

137. The two judges, who were part of the full bench, did not have bias of any kind against the appellants. They had no pecuniary or any other interest in the matter. They have discharged their judicial functions as judges. Therefore, I find no merit in the submission that the two judges, who were part of the Committee ought not to have heard this matter." As far as Dr. G.Sarana's case (supra) is concerned, as noted by us, there were only two candidates. The Selection Committee was known to the candidates and if Dr. Sarana had felt that Selection Committee was not properly constituted and was biased against him he could

have raked up this matter before the recommendations were made. Having waited for the recommendations to be made, the Supreme Court held that he had waived his right.

13. In Madan Lal's case (supra) it is true that the Apex Court observed that a person who has appeared in the interviews cannot challenge the constitution of the Committee after the result is found unfavourable. But these observations have to be read in the context of that case. The allegations in respect of bias were that respondent No. 13 was the daughter of the Chairman of the J & K State Public Service Commission and daughter-in-law of another member. The Court while dealing with this contention found that both the Chairman and the Member who were related with the candidate had disassociated themselves from the selection process and thus came to the conclusion that the process was not vitiated.

14. In our considered view, both these judgements do not apply to the facts of this case. The question whether a selection is vitiated on account of bias is a question of fact to be determined on the facts of each case. Supposing a person appears in the interview before a Commission, the interviews may be held over a large number of dates. The candidate may not be aware of who are the other candidates or what is their relationship with the members of the Selection Committee. Such a person cannot ever waive his right because he is not aware of his right at all. He only becomes aware of his right when he acquires the knowledge as to the relationship between the members of the Selection Committee and the candidate. When a person goes to appear for an interview he may not be aware of who are the other candidates. How can he be expected to raise an objection at that stage? In Dr. Sarana's case, there were only two candidates and obviously Dr. Sarana knew that Dr. Mathur was the other candidate.

15. Another point in issue is that can this Court uphold a selection made by a Selection Committee wherein a close relative of one of the members of the Selection Committee is appointed. In such eventuality the best course is for the member of the Selection Committee to disassociate himself from such a selection. The candidates may or may not know about their relationship but he (member) is definitely aware of what his the relationship is with the candidate. It is better that he should recuse from the selection process and not take part in the proceedings. It is a well settled principle of law that justice should not only be done but should appear to have been done. The faith of the public in authorities like the Public Service Commission and other Selection Committees shall be totally eroded if selection of relatives is allowed to be made and these are not permitted to be challenged on the technical ground that the person who has appeared in the interview cannot challenge the selection after the result is declared. This principle may apply in cases where the number of candidates is small and all the facts forming the basis of the allegations of bias are known before hand. In our considered view, this principle will not be attracted where the

bias is of close relationship of a member of the Selection Committee with the candidate or where the bias is not known to the candidate who challenges the same or where the facts which are the basis of the bias are not known to the other candidates.

16. In the present case, the respondent No. 7 never clearly admitted her relationship with the respondent No. 6. In fact, in the reply to the writ petition filed in this Court, the respondent No. 7 took up the plea that her relation with the Pradhan is a very distant one. Even before this Court, the respondent No. 7 was trying to plead that she was distantly related to the Pradhan. Only when an order was passed directing her to specify the relationship that it has now been admitted that her husband and the Pradhan are first cousins. Such a relationship, by no stretch of imagination, can be said to be a distant relationship. Therefore, the selection of the respondent No. 7 is vitiated on account of the law laid down in Dr. Sarana's case itself.

17. In view of the above discussion, the writ petition is allowed. The order of the learned Tribunal in O.A. No. 2624 of 2005 is set-aside and the appointment of Smt. Sangita as Sahayak Secretary is quashed.

18. In view of the fact that a number of years have elapsed the respondent No. 4 is directed to invite fresh applications and hold fresh interviews for selection of Sahayak Secretary.