

(2019) 08 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 381 Of 2019 (O&M)

Rds Public College, Kala Ka Road, Rewari Through Its
President

APPELLANT

Vs

Dr. Madhvi Sharma And Others

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2019) 08 P&H CK 0056

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : R.K.Malik, Sunil Hooda, Lalit Rishi, Deepak Balyan, B.L.Gupta

Final Decision : Allowed

Judgement

Krishna Murari, CJ

1. This intra-court appeal filed under Clause X of the Letters Patent seeks to challenge the judgment and order dated 15.01.2019 passed by the learned Single Judge allowing the writ petition filed by the respondent-petitioner herein.

2. Respondent-petitioner approached this Court under Article 226 of the Constitution of India challenging the action of the appellant institution in refusing to approve the proceedings of the Selection Committee dated 26.03.2016 recommending the name of the respondent-petitioner for appointment on the post of Principal. A further writ of mandamus was claimed to command the appellant-institution to approve the proceedings of the Selection Committee and to issue direction to the respondents to issue letter of appointment.

3. Facts in brief leading to the dispute can be summarized as under:-

Appellant institution, which is a Government aided private college, affiliated to Maharishi Dayanand University, Rohtak, issued an advertisement dated 12.12.2015 inviting applications for appointment on the post of Principal of the

institution in regular pay scale. The respondent-petitioner was one of the applicants for appointment on the said post. She was called for interview, which was held on 26.03.2016 and in all 9 candidates were interviewed. The allegation made in the writ petition is that the name of the respondent-petitioner was recommended by the Selection Committee at Sr. No.1 and another candidate Dr. Gita Yadav was recommended at Sr. No.2. However, the Vice Chancellor of Maharishi Dayanand University, Rohtak did not approve the proceedings of the Selection Committee and vide letter dated 12.08.2016 required the appellant institution to re-advertise the post.

Learned Single Judge vide order impugned in this appeal allowed the writ petition. Aggrieved by the same, the appellant institution has filed the instant intra court appeal.

4. The writ proceedings before the learned Single Judge were contested on behalf of the university by filing the written statement alleging that the selection procedure stood invalidated on account of non compliance of the eligibility criteria/instructions dated 07.08.2003 issued by the Director General, Higher Education, Haryana, duly adopted by the University laying down the requirement of at least minimum three eligible candidates at the time of interview having more than API score of 400 in category III and since in the case in hand only two recommended candidates, namely, the answering respondent-petitioner and one Dr. Gita Yadav had API score in category-III of more than 400, the Vice Chancellor disapproved the recommendation of the Selection Committee. Thus, the reason for recording disapproval to the recommendations made by the Selection Committee was violation of condition in the instructions dated 07.08.2003 requiring more than 3 candidates having API score of more than 400 available for being recommended for appointment against one post. The learned Single Judge has taken note of the stand taken by the appellant University that the subsequent instructions issued by the University dated 17.06.2015 contain a condition where under the Selection Committee can relax the condition of having three eligible candidates of more than 400 API score against one post, subject to there being ample material on record of efforts undertaken to elicit a good response e.g. issuance of advertisements at least twice in well circulated newspapers, one of which must be of a National Daily, posting advertisement on website and intimation to the university. It may be relevant to reproduce the amended instructions dated 17.06.2015 issued by the University addressed to all the Directors/Principal of the colleges affiliated with Maharishi Dayanand University, Rohtak:-

"I am directed to inform you that as per past practice, interview for the selection of Principal, Professor, Associate Professor and Assistant Professor in Education Colleges were conducted even if a single eligible candidate applied against a post or appeared before the Selection Committee. Now the matter under reference has been considered by the University Administration and decided that in future there must be three eligible candidates against one post (Teaching and Non-

Teaching). However, this condition may be relaxed purely on merit by furnishing proofs of efforts undertaken to elicit a good response e.g. issuance of advertisements at least twice in well circulated newspapers, one of which must be of a National Daily, posting advertisement on website and intimation to the University.

You are, therefore, requested to adhere to the above instructions strictly."

5. Learned Single Judge has further returned a finding that the post of Principal was earlier advertised by the appellant institution on 04.02.2015 but the interview was not conducted and this advertisement was allowed to lapse. Subsequently, this post was re-advertised on 11.06.2015 after getting approval from the Director General, Higher Education, Haryana and subject experts being members of the Selection Committee were also nominated. The meeting of the Selection Committee was held on 06.08.2015 but since none of the candidates had secured minimum API score of 400, the committee did not proceed any further to hold the interview.

6. Admittedly, the appellant institution before us did not contest the proceedings before the learned Single Judge but has filed the present appeal mainly on the ground that the assumption of the learned Single Judge that the Selection Committee relaxed the requirement is patently incorrect as factually no decision was taken so as to grant any relaxation and as such the impugned judgment suffers from patent error on law on the face of record. It has also been pleaded that no relaxation was granted either by the Managing Committee or by the Selection Committee and thus the learned Single Judge has committed a manifest error in law in allowing the writ petition on the ground that power of relaxation was exercised while making recommendation of only two names as against three recommendations required. It is also submitted that the power of relaxation was discretionary and if the same has not been exercised it cannot be presumed nor could be subject to judicial review.

7. We have considered the arguments advanced on behalf of the appellant institution.

8. Concededly there was a requirement regarding availability of three candidates having more than 400 API score in the instructions dated 07.08.2003. Equally undisputed is the fact that the university vide notification dated 17.06.2015 vested the institution in question with the power to relax the said condition in case there were efforts undertaken earlier but there was no good response such as issuance of advertisements at least twice in well circulated newspapers etc. Equally undisputed is the fact that there is no material on record to indicate that the power conferred upon the appellant institution of relaxation was ever exercised. Once the power of relaxation was not exercised which is the sole case set up by the appellant institution in the present appeal and there is no material on record of the writ petition to even remotely indicate that the power was ever exercised by the appellant institution and there was no material available with

the Vice Chancellor with regard to efforts made earlier for appointment on the post in question and the same having not evolved good response, no infirmity can be attached to the decision of the Vice Chancellor in rejecting the recommendations of the Selection Committee.

9. This vital aspect of the matter in issue has been overlooked by the learned Single Judge. Learned Single Judge failed to consider that there was no material available on the record of the writ petition to demonstrate that the power of relaxation conferred upon the institution was ever exercised. Learned Single Judge proceeded on the assumption that since the power of relaxation is there and since only two names were recommended, the power must have been exercised. Mere existence of a power is not itself sufficient to demonstrate that it was exercised unless there exists material on record indicating the same. It is more than apparent that in case the appellant institution would have exercised this power, the recommendation of the Selection Committee forwarded to the university for approval ought to have accompanied with record of the previous efforts made in this regard to demonstrate that though efforts were made earlier but since there was no good response, the power of relaxation is being exercised.

10. The presumption by the learned Single Judge of exercise of power by the appellant institution is based on no material on record and since the same is the basis of the judgment of the learned Single Judge it becomes totally unsustainable in law.

11. In view of the aforesaid facts and discussion, no exception can be taken to the orders passed by the Vice Chancellor disapproving the recommendation of the Selection Committee. Accordingly, the impugned judgment passed by the learned Single Judge is not liable to be sustained and is hereby set aside. The appeal accordingly stands allowed.