

(2016) 05 SHI CK 0176
In the High Court Of Himachal Pradesh
Case No : LPA No. 211 of 2010

Santosh Kumari	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 16-05-2016

Acts Referred:

Citation : (2016) sup HimLR 3018

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Tarlok Singh Chauhan J.

Bench : Division Bench

Advocate : Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Mr. Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, Deputy Advocate General, for the Respondent Nos. 1 and 2; Ms. Ranjana Parmar, Senior Advocate with Ms. Komal Kumari, Advocate, for

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.(Oral) - CMP No. 1339 of 2016. CMP No. 1339 of 2016. LPA No. 211 of 2010 was dismissed in default vide order dated 23.12.2015, constraining the appellants/applicants to file this application for restoration of the LPA. Granted. The LPA is restored to its original number. The application is disposed of.

LPA No. 211 of 2010.

2. The appeal is taken on Board.

3. Heard.

4. This Letters Patent Appeal is directed against the judgment and order dated 11th August, 2010, passed by the learned Single Judge in CWP (T) No. 5978 of 2008, titled as Meena Kumari and others v. State of Himachal & another, whereby the writ petition came to be dismissed, for short "the impugned judgment".

5. The appellants-writ petitioners have sought the following main reliefs, on the

grounds taken in the memo of the Original Application, which was transferred to this Court on the abolition of the Himachal Pradesh State Administrative Tribunal, for short "the Tribunal" and came to be diarized as CWP (T) No. 5978 of 2008:-

"a) Quash the impugned part of the order (A-1) to the extent it excludes the 1) to the extent it excludes the category of the Craft Teachers for category of the Craft Teachers for being appointed to the posts of JBTs by applying principle of severability as by applying principle of severability as the same has been issued arbitrarily, malafidely and illegally by the respondents; respondents;

b) Direct the respondents to consider Direct the respondents to consider the applicants for appointment to the posts of JBTs. posts of JBTs.

6. It is a moot question-whether the conscious decision made by the State, in terms of Annexure A-1 can be questioned.

7. The Writ Court has discussed at page-2 of the impugned judgment that the State has taken a conscious decision.

8. The writ petitioners-appellants fall in the category of C&V Cadre and cannot be appointed as JBT teachers. It was for the writ petitioners-appellants to show this how the conscious decision taken by the Government is bad in law. There is no whisper in the writ petition or the appeal relating to this fact.

9. We are of the considered view that the Writ Court has rightly held that the conscious decision taken by the State cannot be questioned.

10. The Apex Court in *Sidheshwar Sahakari Sakhar Karkhana Ltd. v. Union of India and others*, 2005 AIR SCW 1399, has laid down the guidelines and held that Co 1399 urts should not interfere in the policy decision of the Government, unless there is arbitrariness on the face of it.

11. The Apex Court in a latest decision reported in *Manohar Lal Sharma v. Union of India and another*, (2013) 6 SCC 616, also held that interference by the Court 6 SCC 616, on the ground of efficacy of the policy is not permissible. It is apt to reproduce paragraph 14 of the said decision as under:

"14. On matters affecting policy, this Court 14. On matters affecting policy, this Court does not interfere unless the policy is unconstitutional or contrary to the statutory provisions or arbitrary or irrational or in abuse of power. The impugned policy that allows FDI up to 51% in multi- 51% in multi-brand reta brand reta brand retail trading does il trading does not appear to suffer from any of these vices." vices

12. The Apex Court in the case titled as *Mrs. Asha Mrs. Asha Sharma v. Chandigarh Administration and others*, reported in 2011 AIR SCW 5636 has held that policy decision cannot be quashed on the ground that another decision would have been more fair, wise, scientific or logical and in the interest of society. It is apt to reproduce para 10 of the aforesaid judgment herein:

"10. The Government is entitled to make The Government is entitled to make pragmatic adjustments and policy decisions, which may be necessary or decisions, which may be necessary or called for under the prevalent peculiar circumstances. The Court may not strike down a policy decision taken by the Government merely because it feels that another decision would have been more fair or wise, scientific or logic. The more fair or wise, scientific or logic. The principle of reasonableness and nonarbitrariness in governmental action is the core of our constitutional scheme and structure. Its interpretation will always depend upon the facts and circumstances of a given case. Reference in this regard can also be Reference in this regard can also be made to Netaji v. State of West Bengal [(2000) 8 SCC 262 : (AIR 2000 SC 3313)]."

13. It appears that the respondents-State Government have examined all aspects and made the decision. Thus, it cannot be said that the decision making process is bad. The Court cannot sit in appeal and examine the correctness of the policy decision.

14. The Apex Court in the case titled as Bhubaneswar Development Authority and another v. Adikanda Biswal and others, reported in (2012) 11 SCC 731 has laid down the same principle. It is apt to reproduce para 19 of the judgment, supra, herein:

"19. We are of the view that the High Court was not justified in sitting in appeal over the decision taken by the statutory authority under Article 226 of the Constitution of India under Article 226 of the Constitution of India.

It is trite law that the power of judicial review under Article 226 of the Constitution of India is not directed against the decision but is confined to the decision making process. The judicial review is not an appeal from a decision, but a review of the manner in which decision, but a review of the manner in which the decision is made and the Court sits in judgment only on the correctness of the decision making process and not on the correctness of the decision itself. The Court confines itself to the question of legality and is concerned only with, whether the decision is concerned only with, whether the decision making authority exceeded its power, committed an error of law, committed a breach of the rules of natural justice, reached an unreasonable decision or abused its powers." powers."

15. This Court in the judgments delivered in CWP No. 621 of 2014, titled as Nand Lal & another v. State of H.P. & others and CWP No. 4625 of 2012, titled as Gurbachan v. State of Himachal Pradesh & others, decided on 15.07.2014, has also laid down the same proposition of law.

16. Having said so, no interference is required. Accordingly, the impugned judgment is upheld and the appeal is dismissed along with pending applications.