

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA Nos.5 of 2013 with LPA No. 59 of 2020.

Reserved on : March 03, 2021.

Date of Decision : April 06, 2021.

LPA No. 5 of 2013

State of Himachal Pradesh

....Appellant.

Versus

Suresh Kumar Sharma & Others

....Respondents.

LPA No. 59 of 2020.

Bachittar Singh & Others

....Appellants

versus

Suresh Kumar Sharma & Others

....Respondents.

Coram:

The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?¹

For the Appellants

:

Mr. Ashok Sharma, A.G. with Mr. Adarsh Sharma, Ms. Rita Goswami & Mr. Nand Lal Thakur, Addl. A.Gs. and Mr. Yudhvir Singh Thakur, Dy. A.G. for the appellant in LPA No.5 of 2013.

Mr. Jagdish Thakur, Advocate for the appellants in LPA No. 59 of 2020.

For the respondents:

None for respondent No.1 in both the appeals.

Mr. Ashok Sharma, A.G. with Mr. Adarsh Sharma, Ms. Rita Goswami & Mr. Nand Lal Thakur, Addl. A.Gs. and Mr. Yudhvir Singh Thakur, Dy. A.G. for respondent No.2 in LPA No. 59 of 2020.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Ms. Neelam, Advocate vice Ms. Archna Dutt, Advocate for respondent No.2 in LPA No. 5 of 2013 and for respondent No.3 in LPA No. 59 of 2020.

Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rajesh Kumar, Advocate for respondents No.3, 4 & 6 in LPA No. 5 of 2013 and for respondents No.4, 5 & 7 in LPA No. 59 of 2020.

Mr. Devender K. Sharma, Advocate for respondent No.5 in LPA No, 5 of 2013 and for respondent No.6 in LPA No. 59 of 2020.

Mr. Jagdish Thakur, Advocate for respondents No.7 to 11 in LPA No. 5 of 2013.

Mr. Avinash Jaryal, Advocate for respondents No.12 & 13 in LPA No. 5 of 2013 and for respondents No.8 and 9 in LPA No. 59 of 2020.

Anoop Chitkara, Judge.

Challenging the judgment passed by learned Single Bench of this Court, the private respondents as well as the State of Himachal Pradesh have come up before this Court under clause 10 of the Letters Patent of High Court of Judicature at Lahore, applicable to the Himachal Pradesh High Court seeking its reversal. Since both the LPAs are challenging the same judgment as such are being taken up and decided together.

2. In both matters the petitioner was arraigned as respondent No.1. As per the instructions received by his counsel, later on the petitioner got employment somewhere-else, on a better footing, as

such learned counsel representing him states that he is not seriously contested the petition.

3. Aggrieved by the inclusion of those persons as experts, who according to the petitioner/respondent No.1, could not have been, the petitioner/respondent No.1 challenged the same by filing original application before the erstwhile Administrative Tribunal. After the abolition of the Tribunal, the matter was transferred to this Court and re-registered as CWP(T) No.8312 of 2008. The grievance of the petitioner taken up in Original Application was that his candidature did not figure in the result of lecturer (School cadre) Commerce, despite the fact that he was more qualified and he has also passed the screening test and had six years teaching experience.

4. The legal grouse of the petitioner was that in all, the Subordinate Service Selection Board had advertised 32 posts of School Cadre Lecturer (Commerce). Out of these, 15 were in General Category. The petitioner claimed to be a post graduate in commerce and thus applied for the same. The second respondent conducted the screening test on 3rd January, 2001, whereas, as per the results declared in the Newspaper on 2nd September, 2001, Annexure A-2, his name had duly figured in the list of candidates, who had cleared the screening test. After that he was asked to appear for the interview on 21st November, 2001, which he could not qualify.

5. The grudge is that the Selection Committee was comprising Chairman, Subject expert, Principal, Government College Hamirpur and Director Nominee, however, on the date of interview only three members were present i.e. Chairman, Director Nominee and Member. His grievance is that in the interview Board, subject expert was not present. Although Director Nominee was from the stream of the commerce, and as such he had answered all the questions put by the Nominee Director in the field of commerce. However, when the results were declared and published in Newspaper, 'Divya Himachal', on 8.1.2001 his name did not appear.

6. In a nutshell, the grievance of the petitioner is that in the interview board, the Principal was from the field of economics, as such, he be not termed as subject expert and the nominee of the Director, although was from the field of commerce, but he was not designated as subject specialist. As such, due to this improper composition of the Board, the Committee could not screen him properly and did not select him.

7. In reply filed by the State, it is stated that the Director Nominee was from the stream of commerce as such no prejudice was caused to him. Further stand is that he has only challenged it after participating in the interview and after realizing that he could not qualify the same. Had he been qualified it, then he would have no grievance at all. Thus the said respondent has prayed for dismissal of the original application.

8. Out of the selected candidates, 11 persons have filed M.A. Nos.1017 and 1153 of 2002 in OA No. 485 of 2002, under Order 1 Rule 10 CPC read with Rule 8(3) of the Administrative Tribunal Rules seeking impleadment on the ground that in the original application the selection of the entire category had been challenged due to absence of expert, as such they were necessary party. After that they were arraigned as respondents 3 to 13. During the pendency of the Original Application, the Government abolished the State Administrative Tribunal. Consequently, the matter was transferred to this Court and re-registered as CWP(T) 8312 of 2008. Vide judgment dated 3.4.2012, learned Single Judge allowed the petition and quashed the appointments of private respondents No.3 to 13.

9. Challenging the said judgment, the private respondents as well as the State have come up before this Court by filing separate appeals as mentioned above.

10. We have heard learned counsel for the parties and gone through the record.

11. Learned Single Judge has given reasoning that the purpose of associating the subject expert is to analyze the in-depth study of the candidate of the subject and assessment/suitability of the candidates. Learned Single Judge further holds that the department did not assign any reason for not including a subject expert in the interview and went on to hold that the Principal belongs to economics and as such he could not be treated as subject expert of commerce.

Thus, according to learned Single Judge, out of the three interview members, only one i.e. government nominee had the knowledge of commerce and other two did not. Be that as it may, it was not the issue before the learned Single Judge. The grievance of the petitioner was non-participation of the expert from the field of commerce and he specifically pleaded that four persons were in the interview Board, whereas in his case only three were present. He never objected to inclusion of Principal and other persons. It appears that the learned counsel representing the petitioner did not bring the pleadings to the knowledge of learned Single Judge, which led to the oversight and resultantly incorrect findings. On the face of it, 32 candidates were selected as per advertisement Annexure A-4 and due to misfortune, 11 selected candidates chose to be arraigned as parties and were added as respondents No.3 to 13, however, the remaining selected candidates were fortunate enough, and did not make any such application for impleadment.

12. Learned Single Judge, instead of giving relief to the petitioner, quashed the appointments of respondents 3 to 13 and did not even touch the selection of the other candidates. This is otherwise ignoring the fact that the advertisement of selected candidates, wherein 32 names were mentioned, whereas the petitioner was concerned only with the batch in which subject expert did not participate, more particularly his own selection and that is why he has arraigned them as party. Out of the total selected candidates, it was only eleven

candidates who on their own became party. We are of the considered opinion that the attention of the learned Single judge was not drawn correctly to the facts.

13. Given above, both the appeals are allowed and the judgment dated 3.4.2012, passed by learned Single Judge in CWP(T) No.8312 of 2008 is set aside. Pending application(s), if any, shall also stand disposed of.

**(L. Narayana Swamy)
Chief Justice.**

**(Anoop Chitkara),
Judge**

April 06, 2021 (ps)

High Court