Before G.S. Sandhawalia & Vikas Suri, JJ.

RACHNA KUMARI AND OTHERS—*Appellants*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

LPA No.1659 of 2016

May 04, 2022

Constitution of India, 1950—Arts. 226 and 227—Challenge to the result of Post Graduate Teachers in different subjects—No selection criteria fixed in the advertisement— Criteria disclosed at the time of declaration of result—Absence of written examination—Maximum marks given/allotted to interview—Stipulation that the eligibility and suitability of the candidates and mode of criteria would be binding upon the candidates—Held, the candidates are estopped from challenging the selection criteria having participated in the selection procedure and not being selected—Further the selection criteria was managed by experts in respective fields—Delay—Latches more that decade passed since appointments made—LPA dismissed.

Held that, the challenge in essence before the Learned Single Judge was the result of Post-Graduate Teachers of different subjects which had been cleared pertaining to the advertisement dated 07.06.2012. The argument before the Learned Single Judge was that no selection criteria had been fixed in the advertisement and the same was only disclosed at the time of declaration of result. The same was rejected on the ground that the petitioners had taken part in the selection process and it had been stipulated in the advertisement that the eligibility and suitability of the candidates and the mode of criteria would be binding upon them. No challenge had been made to the same earlier and after having taken part in the selection the petitioners were estopped from raising challenge to the same. Similarly, the right of the Selection Board to frame the selection criteria was held to have been done by the respective experts in the fields as the Members of the Board had been appointed by a statute who were experts in their fields.

(Para 2)

Further held that, the findings which have been recorded by the Learned Single Judge that petitioners had participated in the process and now they cannot turn around and say that the criteria is not justified. The principle being settled beyond the anvil of doubt that the

candidates are estopped from challenging the criteria once having taken part and not being selected. In the absence of the written examination having taken place, there was no challenge raised at that point of time by the petitioners who had opted to apply on the strength of their academic qualifications. Only after having not made the grade, they approached this Court and therefore, now cannot turn around and submit that the criteria prescribed was wrong whereby 33 marks had been awarded for interview. The said principle would be squarely applicable on all four corners since the criteria had been put in public domain and the petitioners had been well aware of it and having taken part in it with open eyes.

(Para 10)

Further held that, in such circumstances, we are of the considered opinion that the judgment passed by the Learned Single Judge rejecting the claim of the appellants does not suffer from any illegality or infirmity which would warrant interference. One cannot lose sight of the factual aspect that a period of almost a decade has gone by since the process had been finalized and appointments made. At this point of time to put the clock back, to the detriment of the private-respondents in the absence of any specific averments made against any candidate or the Selection Committee, would be highly inequitable.

(Para 15)

Ashok Bhardwaj, Advocate
for the appellants in LPA-1659, 1627, 1658, 2522-2016, LPA-2387-2017 & LPA-977-2018.

Tushar Wadhwa, Advocate for Sanjiv Gupta, Advocate
for the appellants in LPA-1138-2016.

Hitesh Pandit, Addl.A.G., Haryana.

G.S. SANDHAWALIA, J.

(1) The present judgment shall dispose of 7 appeals bearing LPA-1659, 1138, 1627, 1658 & 2522-2016, LPA-2387-2017 and LPA-977-2018, arising out of a common judgment passed by the Learned Single Judge the lead case of which was CWP-11736-2013 titled *Jagbir Singh Vs. State of Haryana & another* and 64 other writ petitions had alsobeen dismissed on 15.02.2016. It is to be noticed that the present appeals are filed by petitioners of different writ petitions

which would be clear from the array of parties.

(2) The challenge in essence before the Learned Single Judge was the result of Post-Graduate Teachers of different subjects which had been cleared pertaining to the advertisement dated 07.06.2012. The argument before the Learned Single Judge was that no selection criteria had been fixed in the advertisement and the same was only disclosed at the time of declaration of result. The same was rejected on the ground that the petitioners had taken part in the selection process and it had been stipulated in the advertisement that the eligibility and suitability of the candidates and the mode of criteria would be binding upon them. No challenge had been made to the same earlier and after having taken part in the selection the petitioners were estopped from raising challenge to the same. Similarly, the right of the Selection Board to frame the selection criteria was held to have been done by the respective experts in the fields as the Members of the Board had been appointed by a statute who were experts in their fields. The 67 marks being awarded for academic excellence and 33 marks for the interview did not give a discretion to the Selection Board on account of the fact that there was no written examination.

(3) Reliance was placed upon the judgment in ***Anzar Ahmad*** *versus* ***State of Bihar & others***[1], wherein 50% marks for interview had been upheld and the earlier judgment of the Apex Court in ***Ashok Kumar Yadav*** *versus* ***State of Haryana***[2] and ***Mohinder Sain Garg*** versus ***State of Punjab & others***[3], had been distinguished. Similarly, reliance was placed upon the views of Apex Court in ***Siya Ram*** *versus* ***Union of India***[4] and another judgment of this Court in ***Gurjit Singh*** *versus* ***State of Punjab***[5], along with the judgment in ***Jagmal*** *versus* ***State of Haryana***[6].

(4) It was also noticed that in the absence of mala-fides alleged against the Selection Committee and its Members and neither they being arrayed as party, the claim could not be agitated. Challenge raised to the exemption from passing the HTET/STET and B.Ed

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[1] 1994 (1) SCC 150
[2] AIR 1987 SC 454
[3] 1991 (1) SCC 662
[4] 1998 (2) SCC 566
[5] 1999 (3) SCT 248
[6] 2007 (1) SLR 177

examination was held not amounting to dilution of standards since there was an amendment to the Haryana State Education School Cadre (Group B) Service Rules, 2012 the vires of which were challenged in this Court and upheld in ***Shivani Gupta & others*** versus ***State of Haryana & others***[7] by the Division Bench. It was noticed that it was a one time measure and the candidates had to pass the examination and they had been granted exemptions within the stipulated time-frame and there was no dilution.

(5) Lastly, it was noticed that the argument that lower marks had been awarded in interview to candidates, who had higher marks in academics, was also distinguished by keeping into consideration the chart to submit that the same belied the case of petitioners since even the candidates who had got higher marks in academics had also been selected and therefore, it was not that the majority of the persons with lessor marks had been selected. The percentage of selected candidates who had higher academic marks was also quite large and therefore, it could not be said that there was any arbitrariness in the awarding of the marks.

(6) Counsel for the appellants has vehemently argued that the judgment of the Apex Court in ***Ramjit Singh Kardam & others*** *versus* ***Sanjeev Kumar & others***[8], would apply to the facts and circumstances wherein on account of the higher marks awarded to thecandidates who did not have that good marks in academic qualifications, the selection had been set aside of Art & Craft Teachers by this Court.The same had been upheld by the Apex Court and thus, it is submitted that the select list was liable to be quashed and the Learned Single Judge was not correct in dismissing the writ petitions.

(7) State Counsel, on the other hand, submits that the interview marks have given as per the prescribed criteria and in the absence of any mala-fides against specific candidate(s) or against the Selection Committee or the Members of the Board, the present appeals are liable to be dismissed and has thus justified the judgment passed by the Learned Single Judge.

(8) A perusal of the paperbook would go on to show that as per the terms of advertisement No.1/2012 dated 07.06.2012 (Annexure P-1), applications were invited for appointment against the posts of Post- Graduate Teachers (PGT) in various subjects totalling 4271. The

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[7] 2013 (1) SCT 545
[8] 2020 (2) SCT 491

cut-off date was 28.06.2012 and the fees was to be deposited by 29.06.2012. The date had been extended upto 15.07.2012. The Haryana School Teachers Selection Board had informed that in case of large scale applications, shortlisting of candidates for interview could be done by holding a written examination or on the basis of an academic criteria or percentage cut-off to be adopted by the Board and the decision of the Board was final and binding upon the candidates. Same reads as under:

> "The prescribed essential qualification does not entitle a candidate to be called for interview. In the event of number of applications being large scale the Haryana School Teachers Selection Board (HSTSB) may short list the candidates for interview by holding a written examination or on the basis of academic criteria or percentage cut off to be adopted by the Board. The decision of the Board in all matters relating to acceptance or rejection of an application, eligibility/suitabilityof the candidates, mode of, and criteria for selection etc. will be final and binding on the candidates. No inquiry or correspondence will be entertained in this regard."

(9) It is not disputed that the criteria thereafter was put in public domain wherein the marks for the academic criteria was fixed at 67 and the viva-voce was fixed at 33. In pursuance of the same, the petitioners had taken a chance and participated in the interview process. Relevant break-up of the criteria which was prescribed reads as under:

"CRITERIA

Criteria adopted by the Haryana School Teachers Selection Boardfor the posts of PGT's against Advt.No.1/2012 is as under:-

Academic criteria		**67 Marks**
1	Basic Qualification Graduation. 0.10 of the percentage of marks obtained.	10 marks
2	(a) Essential Qualifications: Post Graduation (M.A.) 0.35 of the percentage of marks obtained (b) B.Ed 0.5 of the percentage of marks obtained.	35 Marks 5 Marks

3	Higher Qualifications: 5 Marks 1) P.hd in the concerned subject 2) M.Phil in the concerned subject	 3 Marks 2 Marks
4	STET/HTET 0.8 of the percentage of marks obtained.	8 marks
5	Sports/NCC i) Participation at National Level ii) Participation at Internation Level iii) NCC C grade Certificate iv) NCC B Grade Certificate (Maximum 4 marks of 5(i) to 5(iv))	4 marks 1 marks 2 marks 1 marks 1 marks 1 marks
6	Viva Voce	33 Marks

(10) A perusal of the writ petition which has been appended in thecase of Rachna Kumari, i.e. CWP-8767-2015 would go on to show thatthe petitioner had obtained 31.48 marks in the academics and had been awarded as many as 20 marks in the interview. The claim was that persons who had obtained less than 31 marks had been selected. It is thus apparent that even the petitioner herself had also been awarded as manyas 20 marks out of 33 but had failed to make the cut and then started knocking the doors of the Court. In such circumstances, the findingswhich have been recorded by the Learned Single Judge that petitioners had participated in the process and now they cannot turn around and say that the criteria is not justified. The principle being settled beyond the anvil of doubt that the candidates are estopped from challenging thecriteria once having taken part and not being selected. In the absence of the written examination having taken place, there was no challenge raised at that point of time by the petitioners who had opted to apply on the strength of their academic qualifications. Only after having not made the grade, they approached this Court and therefore, now cannot turn around and submit that the criteria prescribed was wrong whereby 33 marks had been awarded for interview. The said principle would be squarely applicable on all four corners since the criteria had been put in public domain and the petitioners had been well aware of it and having taken part in it with open eyes would be bound by the observations of the Apex Court in ***Madan Lal and others*** *versus* ***State of J&K and others***[9]***; K.A. Nagamani*** *versus* ***Indian Airlines and others***[10]***; Manish Kumar Shahi***

[9] (1995) 3 SCC 486
[10] (2009) 5 SCC 515

versus ***State of Bihar and others***[11]**;** ***Madras Institute of Development Studies and another*** *versus* ***K. Sivasubramaniyan and others***[12] **and** ***Ashok Kumar and another*** *versus* ***State of Bihar and others***[13].

(11) Another aspect which is to be taken into consideration is that a perusal of the writ petition would go on to show that there was no specific averment of mala-fide levelled against the members of the Selection Committee at any point of time for the Court to come to the conclusion that the selection was on the basis of a process to give benefit to a certain set of persons and law is settled on the said issue. Reliance can be placed upon the observations made in **Chandra** ***Prakash Singh & others*** *versus* ***Chairman, Pruvanchal Gramin Bank***[14]**,** wherein it was held that mere general statement would not be sufficient indication of ill will and bias and mala-fides is to be shown for determining the administrative action unsustainable. Relevant portion of the judgment reads as under:

> "25. In State of Punjab v. V.K. Khanna, this Court held that the concept of fairness in administrative action has been the subject-matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the Court and no strait-jacket formula can be evolved therefore. Further it is stated that as a matter of fact, fairness is synonymous with reasonableness and on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed—it is the appreciation of this common man's perception in its proper perspective which would prompt the Court to determine the situation as to whether the same is otherwise reasonable or not. Similarly, the existence of mala fide intent or biased attitude cannot be put on a strait-jacket formula but depends upon facts and circumstances of each case. Further, it is said that whereas fairness is synonymous with reasonableness—bias stands included within the attributes

[11] (2010) 12 SCC 576
[12] (2016) 1 SCC 454
[13] (2017) 4 SCC 357
[14] (2008) 12 SCC 292

> and broader purview of the word "malice" which in common acceptation means and implies "spite" or "ill will". Mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence availableon record to come to the conclusion as to whether, in fact, there was a bias or a mala fide move which resulted in the miscarriage of justice. It is also held that the test of bias is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there exists a real danger of bias, administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise."

(12) Similarly, in ***Union of India and another*** *versus* ***Ashutosh Kumar Srivastava & another***[15]**,** the Apex Court has held that presumption is in favour of the administration that it exercises its power in good faith and for public benefit and sufficient material is to be produced to suggest malafides of the authority concerned.

(13) Reliance placed by counsel for the appellants in ***Ramjit Singh Kardam*** *(supra)* would also not take him long way since in the said case, the selection to the post of Physical Training Instructors which had been set aside by this Court and upheld by the Division Bench was on the ground that a decision had been taken initially to hold a written examination of 200 marks which had also been held, but subsequently cancelled on account of mal-practices in the examination. Thereafter again the examination was to take place but was cancelled on account of administrative reasons. Resultantly, decision was taken that candidates are required to be shortlisted 8 times the number of vacancies and were to be called for the interview. Said criteria was given up that all eligible candidates were to be called on account of the change in the earlier criteria. Resultantly, the Division Bench of this Court had observed that the alteration in the mode of selection was being made and the power was entrusted to the Commission but the same had been done by the Chairman on his

[15] (2002) 1 SCC 188

own. Resultantly, it was held that the statutory notifications did not permit him to device the mode of selection, the Commission being a multi-member body. Resultantly, scrapping of the selection process was upheld. Rather it was noticed that it was a case of malice in law as alteration of the criteria had been made and thus even in the absence of Members of the Commission and the Chairman having not been impleaded as party respondents, it was held that the decision was not justified as it affected the merit selection. Relevant portion reads as under:

> "62. The malice in law has been dealt as "something done without lawful excuse". The malice in law is also mala fide exercise of power, exercise of statutory power for purposes foreign to those for which it is in law intended. In the present case, the power to device the mode of selection and fix the criteria for selection was entrusted on the Commission tofurther the object of selection on merit to fill up post in State in consonance with the provisions of Articles 14 and 16 of the Constitution of India. When the alteration of criteria has been made, which has obviously affected the merit selection as we have found above, the allegations which have been made in the writ petition against the Commission in conducting the selection are allegations of malice-in-law and not malice-in-fact.
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> 63. The High Court had summoned the original records of the Commission including the marks awarded to the candidates both on basic qualification as well as essential qualification as well as viva voce. The observations, which have been made by the Division Bench in paragraphs 34 and 36 were inferences drawn by the High Court based on pattern of the marks allocated to some of the selected candidates and non- selected candidates. The observation of the High Court that "it cannot be a mere co-incidence that 90% of the meritorious candidates in academics performed so poorly in viva voce that they could not secure even 10 marks out of the 30 marks or that the brilliance got configurated only in the average candidates possessing bare eligibility" where inferences drawn from result sheet and re-affirms the allegations of malice-in-law. The inferences drawn by the High Court, thus, cannot be said to be unfounded nor are based on no materialor perverse so as to

> call for any interference by this Court in these appeals. We, thus, do not find any substance in the submission of Shri Sibal that since no specific allegations against Chairman and members have been made and they being not impleaded as the parties, the allegations in the writ petition regarding allocation of marks in viva voce cannot be looked into by the High Court. Point No.6 is answered accordingly."

(14) While discussing point No.6, the Apex Court had also taken into consideration that the law is settled regarding the factum of impleading the Chairman and the Members of the Commission and there has to be malice levelled against them and in the absence of the same, challenge cannot be raised but in the peculiar facts and circumstances, upheld the decision of this Court.

(15) In such circumstances, we are of the considered opinion that the judgment passed by the Learned Single Judge rejecting the claim ofthe appellants does not suffer from any illegality or infirmity which would warrant interference. One cannot lose sight of the factual aspect that a period of almost a decade has gone by since the process had been finalized and appointments made. At this point of time to put the clock back, to the detriment of the private-respondents in the absence of any specific averments made against any candidate or the Selection Committee, would be highly inequitable.

(16) Resultantly, in view of the above discussion, the present appeals being bereft of any merit are accordingly, dismissed. All pending application(s) are also disposed of, accordingly.

Dr. Payel Mehta