

***Before S. Muralidhar & Avneesh Jhingan, JJ.***

**RAVINDER SINGH—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**LPA No. 110 of 2019**

October 09, 2020

***Constitution of India, 1950—Art. 226 and 227—Punjab Urban Development Authority—Appointment of law officers—Holistic view vs. Equity—In process of appointment for a post in a public sector organization through an open selection process, a candidate (Respondent 4) had approached the Court—Held, merely because he had approached the Court would not be a reason enough to consider him to be placed on a better footing than other candidates whose applications including his were rejected because of some defects in them—The said order of appointing him to the said post was held inequitable—The candidate who had satisfied all the requirements earlier, qualified the written test, though secured less than the respondent in question was eligible and thus, appointed to the said post.***

*Held*, that the present Appellant was a person who had appeared in the exam after fulfilling all the requisite conditions and had secured 51.75 marks. He was at Serial No. 3 in the merit list of SC candidates uploaded by the Department on 7<sup>th</sup> December, 2018. It is only on account of the impugned order of the learned Single Judge, that Respondent No. 4, who had obtained 53.5 marks, stole a march over the present Appellant. Having come to know about the above facts upon inquiring from the Department, the Appellant filed the present appeal.

(Para 13)

*Further held*, that merely because one of those candidates had approached the Court, whereas the other 52 had not, would *ipso facto* not place Respondent No. 4 on a better footing as far as ‘equity’ was concerned. This was a process of appointment to a post in a public sector organization through an open selection process involving a large number of candidates.

(Para 20)

*Further held*, that in any event, merely because Respondent No. 4 approached this Court, would not be reason enough to consider him to be placed on a better footing than 52 candidates whose applications were also rejected on similar grounds. This would distort the entire appointment process by way of an open selection. In fact in the instant case, the candidate who satisfied all the requirements, i.e. the Appellant, found himself worse off than Respondent No.4 who did not care to complete all the requirements despite more than one opportunity being granted for that purpose. Resultantly, the relief granted to Respondent No. 4 has proved to be adverse to the Appellant, a person otherwise fully eligible to be appointed to the very post to which Respondent No. 4 has been directed to be offered appointment to by the impugned order of the learned Single Judge. It is therefore plain that the result brought about by the impugned order is inequitable.

(Para 22)

Sonia G. Singh, Advocate, *for the Appellant*.

Ravinderjeet S. Dhaliwal, Respondent No. 4 in person.

Sudeepti Sharma, A.A.G., Punjab.

**DR. S. MURALIDHAR, J.**

**CM-244-LPA-2019**

(1) This is an application for condoning the delay of 43 days in filing the main appeal.

(2) Having heard learned counsel for the parties, the Court is satisfied that sufficient grounds have been made out for condoning the delay.

(3) Accordingly, the delay in filing the appeal is condoned. The application is disposed of.

**LPA No. 110 of 2019**

(4) This is an appeal directed against the judgment dated 2<sup>nd</sup> November, 2018 of a learned Single Judge of this Court in CWP No. 24404 of 2018. By the impugned judgment the aforesaid writ petition, filed by the Respondent No. 4 herein, came to be allowed.

(5) The facts in brief are that 16 posts of ‘Law Officers’ were advertised by the Punjab Urban Development Authority (‘PUDA’) by an advertisement dated 8<sup>th</sup> July 2018. Of the 16 advertised posts, 2 were reserved for persons belong to the Scheduled Caste

(Balmiki/Mazhabi). The applications were to be submitted online. Along with the application form, the candidates were required to upload documents pertaining to their educational qualifications.

(6) A list of candidates who had submitted an incomplete form was uploaded by the PUDA on 7<sup>th</sup> August, 2018 and one more opportunity was given to all such candidates to complete the process. It appears that Respondent No. 4 whose name figured in the said list, did not upload the documents pertaining to his educational qualification as well as other relevant documents even after 7<sup>th</sup> August 2018.

(7) On 24<sup>th</sup> August, 2018, PUDA published a list of candidates whose applications were liable to be rejected and this included the name of Respondent No. 4. Apparently, a further opportunity was granted at this stage to upload the documents in order to complete the applications. Again, Respondent No. 4 failed to upload the requisite documents. Ultimately, on 12<sup>th</sup> September, 2018 PUDA uploaded a list of candidates whose forms had been rejected because they were incomplete. This list included the name of the Respondent No. 4.

(8) Thereafter, online e-admit cards were uploaded by PUDA on 19<sup>th</sup> September, 2018 for the written test. Naturally, no e-admit card pertaining to Respondent No. 4 was uploaded. The written test was scheduled for 23<sup>rd</sup> September, 2018.

(9) When his name did not figure in the list of persons to whom e-admit cards were issued, Respondent No. 4 filed CWP No. 24404 of 2018 in this Court. Two days before the date of the written test i.e. on 21<sup>st</sup> September, 2018, the learned Single Judge issued notice of motion in the aforesaid writ petition and permitted the Respondent No. 4 to undertake the written test. The said order further directed that the result of the Respondent No. 4 not be declared. Apparently, Respondent No. 4 on the strength of the above interim order dated 21<sup>st</sup> September, 2018 took the written test. However, his result was not declared.

(10) In the reply filed in CWP No. 24404 of 2018, apart from pointing out that more than one opportunity has been granted to the candidates to rectify the defects in their application forms, PUDA further stated that there were as many as 52 candidates who were similarly situated as Respondent No. 4 and whose application forms were rejected.

(11) When the writ petition was heard on 2<sup>nd</sup> November, 2018, on the directions of the learned Single Judge, a sealed cover containing the result of Respondent No. 4 was opened and it was found that he had

obtained 53.5 marks. The learned Single Judge was informed that the “last candidate in the General Category has secured 68.5 marks and the last candidate in the category of SC (Balmiki/Mazhabi) has secured 51.75 marks”.

(12) In the circumstances, the learned Single Judge decided to grant relief to Respondent No. 4 by invoking ‘equity’ and on the ground that Respondent No. 4 had approached the Court before the date of the written test. According to the learned Single Judge, the case of Respondent No. 4 was “distinguishable from 52 other candidates since he had at least approached this Court in time before the test”. The learned Single Judge was of the opinion that this was a “holistic view” of the matter and accordingly allowed the writ petition with a direction to PUDA to declare the result of the Respondent No. 4 and offer him appointment in view of his secured merit subject to the fulfillment of other terms and conditions.

(13) The present Appellant was a person who had appeared in the exam after fulfilling all the requisite conditions and had secured 51.75 marks. He was at Serial No. 3 in the merit list of SC candidates uploaded by the Department on 7<sup>th</sup> December, 2018. It is only on account of the impugned order of the learned Single Judge, that Respondent No. 4, who had obtained 53.5 marks, stole a march over the present Appellant. Having come to know about the above facts upon inquiring from the Department, the Appellant filed the present appeal.

(14) It may be noticed that at the outset while directing notice to issue in the application for condonation of delay on 21<sup>st</sup> January, 2019, this Court stayed the operation of the impugned judgment dated 2<sup>nd</sup> November, 2018. That interim order has continued since.

(15) This Court has heard the submissions of Ms. Sonia G. Singh, learned Counsel for the Appellant and Mr. Ravinderjeet S. Dhaliwal, learned Counsel for the Respondent No. 4, who was the original writ petitioner in CWP No. 24404 of 2018.

(16) One of the preliminary objections raised by Respondent No. 4 was that the present Appellant was not a party to the main writ petition and therefore has no *locus standi* to file the present appeal.

(17) It is seen that there was no occasion for the present Appellant to know that Respondent No. 4 would be filing a writ petition seeking the relief that he did, when, in fact, his name did not figure in the list of candidates to whom e- admit cards were issued. There is no way, therefore, that Respondent No. 4 could have anticipated

Respondent No.4 being granted relief by the learned Single Judge. There was no occasion, therefore, for the present Appellant to even seek impleadment in the writ petition.

(18) On the contrary, what the learned Single Judge ought to have noticed is the fact that the grant of relief to Respondent No. 4 would adversely affect those candidates whose names had already appeared in the merit list. Consequently, this Court cannot non-suit the present Appellant on the ground of locus standi. Indeed, the Appellant has a genuine cause of action and has rightly approached the Court by way of appeal. The Appellant has had to suffer an adverse consequence as a result of the impugned order. Accordingly, the preliminary objection raised by Respondent No. 4 is rejected.

(19) As far as the merits of the appeal are concerned, having heard the submissions of learned Counsel for the Appellant and Respondent No. 4, who has appeared in person, it is evident that the mere fact that Respondent No. 4 was permitted to sit for the written test on the strength of interim order of the learned Single Judge, was not meant to create any equities in his favour.

(20) In a matter of this nature, when there are several other competing interests involved and when admittedly there are 52 candidates, whose candidatures have been rejected, like that of Respondent No. 4, for uploading incomplete application forms, the learned Single Judge, ought to have taken into account what the purport of an order granting relief to only one of the those rejected candidates might be. Merely because one of those candidates had approached the Court, whereas the other 52 had not, would *ipso facto* not place Respondent No. 4 on a better footing as far as 'equity' was concerned. This was a process of appointment to a post in a public sector organization through an open selection process involving a large number of candidates.

(21) The second fact to be noticed is that reasonable opportunities to all those similarly placed as Respondent No. 4 to rectify the defects in uploading their respective application forms were provided. It is seen that there were two opportunities granted i.e. one 7<sup>th</sup> August, 2018 and a second one on 24<sup>th</sup> August, 2018, to enable the candidates whose applications were announced as being incomplete and were liable to be rejected, to rectify defects. Respondent No. 4 has no valid explanation for missing both these opportunities except to state, rather weakly, that there were some 'technical glitches'. It is not possible to accept the plea that on both occasions, when an opportunity

was granted, there were technical glitches which prevented Respondent No. 4 from uploading the form.

(22) In any event, merely because Respondent No. 4 approached this Court, would not be reason enough to consider him to be placed on a better footing than 52 candidates whose applications were also rejected on similar grounds. This would distort the entire appointment process by way of an open selection. In fact in the instant case, the candidate who satisfied all the requirements, i.e. the Appellant, found himself worse off than Respondent No.4 who did not care to complete all the requirements despite more than one opportunity being granted for that purpose. Resultantly, the relief granted to Respondent No. 4 has proved to be adverse to the Appellant, a person otherwise fully eligible to be appointed to the very post to which Respondent No. 4 has been directed to be offered appointment to by the impugned order of the learned Single Judge. It is therefore plain that the result brought about by the impugned order is inequitable.

(23) The impugned order dated 2<sup>nd</sup> November, 2018 of the learned Single Judge is thus unsustainable in law and is accordingly, set aside. The appeal is allowed. No order as to costs.

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*Dr. Payel Mehta*