

NARENDER SINGH

v.

THE STATE OF HARYANA & ORS.

(Civil Appeal No. 321 of 2022)

JANUARY 18, 2022

[M. R. SHAH AND SANJIV KHANNA, JJ.]

Service Law: Selection – Haryana Public Service Commission (PSC) advertised for post of Assistant Professor – Appellant who was JBT Teacher in Education Department applied for the said post – As per advertisement, candidate was required to submit NOC from its appointing authority, at the time of interview – He applied for issuance of NOC from the authority – He successfully appeared in written examination – At the time of interview, he had to submit the NOC – Appellant sent reminders to the authority but he was not issued NOC – He filed writ petition – By way of interim order, High Court directed to allow him to appear in interview – He was provisionally interviewed and his result was kept in sealed cover – Meanwhile, when matter came up for hearing in High Court, the sealed cover was opened and it was found that appellant had obtained marks higher than the last candidate selected – Thereafter, result of final selection was declared – PSC did not appoint him in absence of NOC – Prior to the appointment orders, appellant received NOC from the authority and submitted with the PSC – Despite that he was not appointed – High Court dismissed writ petition filed by him – On appeal, held: Once it is found that there was no lapse and/or delay on the part of the appellant and/or there was no fault of the appellant in not producing the NOC at the relevant time and when it was produced immediately on receipt of the same and that too before the appointments were made and when it was found that the appellant was a more meritorious candidate than the last candidate appointed, to deny appellant the appointment was not justifiable at all – He cannot be punished for no fault of him – As regards respondent no.4, he was appointed after following due procedure of selection – There was no fault on part of respondent no.4 when he was appointed and thereafter, he continued in service for three years – Therefore, it would not be justifiable, to disturb

- A *him at this stage – In the peculiar facts and circumstances of the case, in exercise of the powers under Art.142 of the Constitution of India, to do substantial justice, it is directed that while appointing the appellant on the post of Assistant Professor, respondent No.4 may not be disturbed – The State Government is directed to continue respondent No.4 and he be accommodated on any other vacant post of Assistant Professor – Constitution of India – Art.142.*
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Allowing the appeal, the Court

- HELD:** 1.1 It is not in dispute that pursuant to the interim order dated 07.12.2017, the appellant was interviewed provisionally. However, his result was kept in a sealed cover. Thus, during pendency of the aforesaid writ petition and despite the fact that pursuant to the interim order dated 07.12.2017, the appellant was provisionally interviewed, the Public Service Commission declared the result of final selection in respect of the interviews conducted from 12th to 14th December, 2017 on 15.12.2017 and the actual appointments were made on 12.07.2018. In the meantime, the appellant received the NOC on 06.06.2018 from his employer and immediately on receipt of the same, the same was produced by him before the Public Service Commission on 08.06.2018, i.e., even before the actual appointments were made by the Public Service Commission, which were made on 12.07.2018. Thus, from the aforesaid, it can be seen that there was no delay and/or any fault on the part of the appellant. Whatever was the lapse and/or the delay was, it was on the part of the employer of the appellant, who did not issue the NOC though applied on 22.03.2016 and which was issued only on 06.06.2018 and that too after the intervention of the High Court. Even the Single Judge also noted that there was a delay and/or lapse on the part of the District Elementary Education Officer, and therefore, even the Single Judge also imposed the cost of Rs.50,000/- on the employer of the appellant. [Para 7.2]
- G [319-B-F]

- 1.2 Once it is found that there was no lapse and/or delay on the part of the appellant and /or there was no fault of the appellant in not producing the NOC at the relevant time and when it was produced immediately on receipt of the same and that too before the appointments were made and when it is found that the last
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candidate, who is appointed, i.e., respondent No.4 is having less marks than the appellant and thus the appellant is a more meritorious candidate than the last candidate appointed, i.e., respondent No.4, to deny him the appointment is not justifiable at all. He cannot be punished for no fault of him. Both, the Single Judge as well as the Division Bench of the High Court committed grave error in not exercising the jurisdiction vested in it and in not directing the respondents to appoint the appellant though he is found to be more meritorious candidate than the last candidate appointed, i.e., respondent No.4. [Para 7.3][319-F-H; 320-A-B]

2. It cannot be disputed that respondent no. 4 was working as the Assistant Professor (History) for more than three years. It is nobody's case that he got the appointment in connivance with the authority. At the relevant time, he was appointed as per merits. Thus, he was appointed after following due procedure of selection. He is a Ph.D. and is around 40 years of age. After the impugned selection, there was a fresh selection, however, the respondent No.4 did not apply as he was already selected and appointed on 15.12.2017. If the appointment of respondent No.4 is cancelled and he is disturbed, his entire family would have to suffer. It is reported that respondent No.4 has two daughters one aged three years and other one and a half years and wife and an old mother and that he is the sole bread earner in the family. It is also reported that there are in all around 244 sanctioned posts for Assistant Professor (History) and there is still requirement of 93. Considering the peculiar facts and circumstances of the case to disturb respondent No.4 at this stage, would not be justifiable. Therefore, in exercise of the powers under Article 142 of the Constitution of India, to do the substantial justice, it is directed that while appointing the appellant on the post of Assistant Professor (History), respondent No.4 may not be disturbed and the State Government is directed to continue respondent No.4 and he be accommodated on any other vacant post of Assistant Professor (History). The impugned judgment and order passed by the Division Bench of the High Court as well as the judgment and order passed by the Single Judge dated except the costs imposed by the Single Judge are hereby quashed and set aside. [Paras 7.4, 8][320-B-H; 321-A-C]

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 321 of 2022.

From the Judgment and Order dated 28.09.2021 of the High Court of Punjab and Haryana at Chandigarh in LPA No.902 of 2021.

B Narender Hooda, Sr. Adv., Paulami Sen, Dr. Surender Singh Hooda, Advs. for the Appellant.

Ms. Alka Agarwal, AAG, Dr. Monika Gusain, D. S. Chauhan, Ms. Ruchi Singh, Prashant Kumar, Rahul Kaushik, Ms. Bhuvneshwari Pathak, Advs. for the Respondents.

C The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh dated 28.09.2021 in LPA No.902 of 2021 by

D which the High Court has dismissed the said appeal, the appellant herein – the original writ petitioner has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:-

E 2.1 That the appellant was appointed as a JBT Teacher by the Education Department, Haryana in the year 2000 and since then he is working as a JBT Teacher at Government Primary School, Chhapar, Haryana. That the Haryana Public Service Commission advertised 1647 posts of Assistant Professor (College Cadre) in the State of Haryana on 16.02.2016. Last date to submit the form online was 15.03.2016, which was extended upto 10.05.2016. The appellant herein applied timely for

F the post of Assistant Professor (History). As per the advertisement dated 16.02.2016, the candidate was required to submit a No Objection Certificate (NOC) from its appointing authority in case he is serving in a Government/Semi Government organization under any State Government or Government of India, at the time of interview.

G 2.2 To comply with the same, the appellant applied for issuance of NOC on 22.03.2016 through the Principal, Government Senior Secondary School, Jhanswa, District Jhajjar to the District Elementary Education Officer, Jhajjar, the competent authority to issue the NOC. That the said application was received by the office of District Elementary Education Officer, Jhajjar on 04.04.2016. The appellant appeared for

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the written examination for the aforesaid post on 05.03.2017. The result of the written examination was also declared on 06.11.2017 and the appellant cleared the written examination. That after clearing the written examination, the appellant was to submit the NOC at the time of interview. The appellant sent a reminder to the Director, Elementary Education for issuance of the NOC vide his letter dated 09.11.2017, which was received on 09.11.2017 but no action was taken by the concerned branch on his reminder. Therefore, the appellant filed a Civil Writ Petition No.27864 of 2017 before the High Court for an appropriate order directing the appropriate authority to issue NOC. It was the specific case on behalf of the appellant that though he had made an application for NOC as far as back in the month of March, 2016, the NOC has not been issued. It was also submitted that despite the fact that he has passed the written examination and interviews are to be held on 13.12.2017, the Department of Elementary Education is not issuing him NOC. By order dated 07.12.2017, the High Court issued the notice in the aforesaid writ petition and passed the interim order that the petitioner, if he falls within the zone of consideration for being called for an interview for the post in question, shall be provisionally interviewed, regardless of the fact that an NOC hasnot been issued so far by the Department of Elementary Education.

2.3 It appears that pursuant to the interim order dated 07.12.2017, the appellant was interviewed provisionally and his result was kept in a sealed cover. However, the Public Service Commission did not appoint him in absence of any NOC issued by the Department of Elementary Education. Result of the final selection in respect of the interviews got conducted was declared on 15.12.2017 and the appointments were made on 12.07.2018. In between, a Writ Petition No.27864 of 2017 came up before the High Court on 30.04.2018. Learned counsel appearing on behalf of the Public Service Commission produced the result of the appellant in a sealedcover, which was opened and it was revealed that the last candidate in the category of the appellant, i.e., BCA has obtained 62.64 marks whereas the writ petitioner had scored 64.89 marks, therefore, the High Court observed that the appellant – original petitioner is qualified for selection, subject to, however, the dispute involved in the lis. However, the High Court adjourned the matter to 21.05.2018 and thereafter adjourned to 04.10.2018. In the meantime, the competent authority issued NOC in favour of the petitioner – appellant herein on 06.06.2018. The appellant also submitted the NOC with the Haryana Public Service Commission on 08.06.2018 and requested to consider his case for

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- A appointment. The petitioner also filed one CM No.9680 of 2018 in CWP No.27864 of 2017 on 10.07.2018 mentioning that now the NOC has been received on 06.06.2018, and has also been submitted with the Public Service Commission on 08.06.2018, therefore, it was requested for early hearing of the writ petition. It appears that thereafter and despite the fact that before the actual appointments were made by the Public Service Commission on 12.07.2018, NOC was submitted on 08.06.2018, but the appellant was not appointed, therefore, immediately on the very next date, i.e., 16.07.2018, the appellant herein filed a fresh Writ Petition No.17255 of 2018 for a direction to the Public Service Commission to appoint him on the post of Assistant Professor (History) contending inter alia that he has already now produced the NOC and that on merits, he is entitled to appointment as the person last selected is having lesser marks than him as observed in the earlier order dated 30.04.2018. However, despite the aforesaid facts and circumstances, by judgment and order dated 06.11.2019, the High Court dismissed both the writ petitions, i.e., CWP No.27864 of 2017 and CWP No.17255 of 2018 by observing that if the petitioner had applied for NOC in the year 2016, he had ample time from the date of advertisement and date of submission of the online form to pursue his claim for issuance of NOC with his employer, but chose to invoke the jurisdiction of the Court only after the declaration of the result of the written test on 09.11.2017 and thereafter also waited till 05.12.2017 on which date he filed a writ petition for issuance of directions to the employer to release the NOC and in the meantime, the appointments were already made and therefore, the petitioner is not entitled to any relief. However, it is required to be noted that the learned Single Judge of the High Court also observed that for the delay, the grievance, if any, of the petitioner can be against the employer in not issuing NOC before the date fixed for interview to enable him to comply with the conditions stipulated in the application form for which the petitioner, if so, advised may seek appropriate remedy against the employer in accordance with law. With above observations the High Court dismissed the aforesaid two writ petitions. However, the High Court also imposed a cost of Rs.50,000/- against the employer for not issuing the NOC and the failure on the part of the employer to process the application for issuance of NOC within a reasonable period of time. However, the learned Single Judge refused to pass any order of appointment in favour of the original writ petitioner.
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2.4 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge dismissing the writ petitions, more particularly, CWP No.17255 of 2018, the appellant preferred Letter Patent Appeal before the High Court and by the impugned judgment and order, the High Court has dismissed the said appeal.

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2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court in dismissing the LPA and not interfering with the judgment and order passed by the learned Single Judge dismissing the writ petition and refusing to grant any relief directing the respondents to appoint the appellant – the original writ petitioner has preferred the present appeal.

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3. Learned counsel appearing for the appellant has vehemently submitted that as such there was no delay and/or any fault on the part of the appellant. It is submitted that the appellant applied for NOC well within time and before the last date of the submission of the online application form. It is submitted that even thereafter a reminder was sent, but despite the reminder the NOC was not issued and the selection process was proceeding further by the Public Service Commission and, therefore, the appellant was constrained to file the writ petition before the High Court directing the appropriate authority to issue the NOC and only thereafter the NOC was issued on 06.06.2018, which was produced before the Public Service Commission on 08.06.2018, i.e., much before the final result/appointments were made. It is submitted that even the learned Single Judge also imposed the cost on the employer for delay in processing the application for NOC, however, refused to pass an order of appointment in favour of the appellant.

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3.1 It is submitted that therefore when there was no delay and/or fault on the part of the appellant and there was a delay on the part of the employer, which is a Government authority, in not issuing the NOC and that the delay and/or fault is on the part of the employer, the appellant should not be made to suffer.

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3.2 It is submitted that as such and even as observed by the learned Single Judge in his order dated 30.04.2018 in CWP No.27864 of 2017 the last candidate, who has been appointed is having less marks than the appellant. It is submitted that therefore the appellant ought to have been appointed on the post, on which the respondent No.4 is appointed.

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3.3 Making above submissions, it is prayed to allow the present appeal.

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- A 4. Learned counsel appearing on behalf of the Public Service Commission has submitted that so far as the Public Service Commission is concerned, it has nothing to do with the controversy as Public Service Commission is not the competent authority.
- B 5. A detailed counter affidavit has been filed on behalf of the respondent No.1 – State of Haryana. It is submitted that an inquiry has been directed to be initiated for not processing and issuing the NOC at the earliest and the delay on the part of the District Elementary Education Officer, Jhajjar in not issuing the NOC though applied in the year 2016 and issued only on 06.06.2018. However, it is not disputed by any of the counsel on behalf of the respondents that on merits, the appellant has scored more marks than respondent No.4, who is appointed.
- C 6. While opposing the present appeal, learned counsel appearing on behalf of the respondent No.4 has submitted that irrespective of the outcome of the present appeal, the service of the respondent No.4 be protected as he is serving on the post since 2018 and that as on today there are number of posts vacant. Therefore, he has requested this Court to exercise the power under Article 142 of the Constitution of India.
- D 7. We have heard the learned counsel appearing on behalf of the respective parties at length.
- E 7.1 From the chronological dates and events reproduced herein above by no stretch of imagination, it can be said that there was any delay and/or lapse or fault on the part of the appellant. The advertisement for 1647 posts was issued by the Haryana Public Service Commission on 16.02.2016. The last date to submit the form online was 15.03.2016. As per the advertisement, the appellant was required to submit the NOC from his employer, which in the present case is District Elementary Education Officer, at the time of interview. The appellant applied for issuance of NOC on 22.03.2016 well in advance. The said application was received vide Receipt No. 4223 dated 04.04.2016 in the office of District Elementary Education Officer, Jhajjar. The appellant appeared for the written examination for the post in question on 05.03.2017. The result of the written examination was declared on 06.11.2017 and the appellant also cleared the written examination. As observed hereinabove, the appellant was to produce an NOC at the time of interview. Therefore, in anticipation that non-receipt of the NOC may come in his way in getting the appointment therefore, the appellant filed the writ petition
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before the High Court being CWP No.27864 of 2017 on 05.12.2017 for issuance of the direction to the employer to release the NOC. The learned Single Judge passed the interim order in favour of the appellant in the aforesaid CWP No.27864 of 2017 vide order dated 07.12.2017 directing that if he falls within the zone of consideration for being called for an interview for the post in question, shall be provisionally interviewed, regardless of the fact that an NOC has not been issued so far by the Department of Elementary Education.

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7.2 It is not in dispute that pursuant to the interim order dated 07.12.2017, the appellant was interviewed provisionally. However, his result was kept in a sealed cover. Thus, during pendency of the aforesaid writ petition and despite the fact that pursuant to the interim order dated 07.12.2017, the appellant was provisionally interviewed, the Public Service Commission declared the result of final selection in respect of the interviews conducted from 12th to 14th December, 2017 on 15.12.2017 and the actual appointments were made on 12.07.2018. In the meantime, the appellant received the NOC on 06.06.2018 from his employer – District Elementary Education Officer and immediately on receipt of the same, the same was produced by him before the Public Service Commission on 08.06.2018, i.e., even before the actual appointments were made by the Public Service Commission, which were made on 12.07.2018. Thus, from the aforesaid, it can be seen that there was no delay and/or any fault on the part of the appellant. Whatever was the lapse and/or the delay was, it was on the part of the employer of the appellant, who did not issue the NOC though applied on 22.03.2016 and which was issued only on 06.06.2018 and that too after the intervention of the High Court. Even the learned Single Judge also noted that there was a delay and/or lapse on the part of the District Elementary Education Officer, and therefore, even the learned Single Judge also imposed the cost of Rs.50,000/- on the employer of the appellant.

7.3 Once it is found that there was no lapse and/or delay on the part of the appellant and /or there was no fault of the appellant in not producing the NOC at the relevant time and when it was produced immediately on receipt of the same and that too before the appointments were made and when it is found that the last candidate, who is appointed, i.e., respondent No.4 herein is having less marks than the appellant and thus the appellant is a more meritorious candidate than the last candidate appointed, i.e., respondent No.4, to deny him the appointment is not

- A justifiable at all. He cannot be punished for no fault of him. Both, the learned Single Judge as well as the Division Bench of the High Court have committed grave error in not exercising the jurisdiction vested in it and in not directing the respondents to appoint the appellant though he is found to be more meritorious candidate than the last candidate appointed, i.e., respondent No.4.
- B 7.4 Now, so far as the submission on behalf of the respondent No.4, not to disturb and/or cancel the appointment of respondent No.4 and to continue him in service is concerned, it cannot be disputed that he has been working as the Assistant Professor (History) since 12.07.2018, i.e., for more than three years. It is nobody's case that he got the appointment in connivance with the authority. At the relevant time, he was appointed as per merits. Thus, he has been appointed after following due procedure of selection. It is also reported that the respondent No.4 is a Ph.D. and is around 40 years of age. It is also reported that after the impugned selection, there was a fresh selection, however, the respondent
- C No.4 did not apply as he was already selected and appointed on 15.12.2017. Had the respondent No.4 not been selected on 15.12.2017, in that case, he would have applied in the forms, which were issued for Assistant Professor by Haryana Public Service Commission by advertisement No.R.G17/2017 and the last date for submitting the application was 15.03.2019. It is also reported that by now he has also
- E become age bar. It is also reported that if the appointment of the respondent No.4 is cancelled and the respondent No.4 is disturbed, his entire family would have to suffer. It is reported that respondent No.4 has two daughters one aged three years and other one and a half years and wife and an old mother and that he is the sole bread earner in the
- F family. It is also reported that there are in all around 244 sanctioned posts for Assistant Professor (History) and there is still requirement of 93. Therefore, it is prayed to not to disturb the respondent No.4 and to direct the State to accommodate him on another vacant post of Assistant Professor (History).
- G Considering the aforesaid peculiar facts and circumstances of the case and when it is found that there was no fault on the part of the respondent No.4 when he was appointed in the year 2018 and thereafter, he has been continued in service since last three years, to disturb him at this stage, would not be justifiable. Therefore, in the peculiar facts and circumstances of the case, in exercise of the powers under Article 142
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of the Constitution of India, to do the substantial justice, we direct that while appointing the appellant as per the present order on the post of Assistant Professor (History), the respondent No.4 may not be disturbed and we direct the State Government to continue the respondent No.4 and he be accommodated on any other vacant post of Assistant Professor (History). A

8. In view of the above and for the reasons stated above, present appeal is allowed. The impugned judgment and order passed by the Division Bench of the High Court dated 28.09.2021 passed in LPA No.902 of 2021 as well as the judgment and order passed by the learned Single Judge dated 06.11.2019 passed in CWP No.27864 of 2017 and CWP No.17255 of 2018 except the costs imposed by the learned Single Judge are hereby quashed and set aside. However, the costs imposed by the learned Single Judge is hereby maintained. The State Government and the Haryana Public Service Commission are hereby directed to issue appointment order to the appellant on the post of Assistant Professor (History) for which he is found to be eligible and meritorious. The said exercise be completed within a period of two weeks from today. However, it is observed that on the principle of 'No Work No Pay', the appellant shall not be entitled to any back wages but shall be entitled to continuity in service for the purpose of seniority, pay fixation etc. B

It is further observed and directed that as observed hereinabove while appointing the appellant pursuant to the present order, the respondent No.4 be not disturbed and he be continued in service and he be accommodated on any other post of Assistant Professor (History), which is reported to be vacant. C

Present appeal is accordingly allowed. Pending application(s), if any, also stand disposed of. No costs. D

Devika Gujral

Appeal allowed.