

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

**LPA No. 295 of 2011 a/w LPAs No. 180, 212, 250 and 591
of 2011, LPA No. 121 of 2012 and LPA No. 54 of 2015.**

Judgment reserved on 24th May, 2016.

Date of decision: 2nd June, 2016.

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| 1. | <u>LPA No. 295/2011.</u>
Sudesh Kumari |Appellant |
| | Versus | |
| | The State of H.P. and others | ...Respondents. |
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| 2. | <u>LPA No. 180/2011.</u>
Yogeshwar |Appellant |
| | Versus | |
| | The State of H.P. and others | ...Respondents. |
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| 3. | <u>LPA No. 212/2011.</u>
Surjit Kumar |Appellant |
| | Versus | |
| | The State of H.P. and others | ...Respondents. |
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| 4. | <u>LPA No. 250/2011.</u>
Pankeshwar |Appellant |
| | Versus | |
| | The State of H.P. and others | ...Respondents. |
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| 5. | <u>LPA No. 591/2011.</u>
Kuldeep Singh |Appellant |
| | Versus | |
| | The State of H.P. and others | ...Respondents. |
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| 6. | <u>LPA No. 121/2012.</u>
The State of H.P. and others |Appellants |
| | Versus | |
| | Manu Mahajan | ...Respondent. |
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| 7. | <u>LPA No. 54/2015.</u>
The State of H.P. and others |Appellants |
| | Versus | |
| | Prithi Singh | ...Respondent. |
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Coram:

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.
The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting ?¹ Yes.

For the appellant(s):

Mr. R.K. Gautam, Sr. Advocate with Ms. Archana Dutt, and Ms. Megha Kapur Gautam, Advocates for the appellants in LPA No. 295, 180 and 250 of 2011.

Mr. Dushyant Dadhwal, Advocate, for the appellant in LPA No. 591 of 2011.

Onkar Jairath, Advocate, for the appellant in LPA No.212/2011.

Mr.Shrawan Dogra, Advocate General with Mr. M.A. Khan, Mr. Anup Rattan and Additional Advocate Generals with Mr. Kush Sharma, Deputy Advocate General for the appellants in LPA No. 121 of 2012 and 54 of 2015.

For the respondent(s):

Mr.Shrawan Dogra, Advocate General with Mr. M.A. Khan, Mr. Anup Rattan and Additional Advocate Generals with Mr. Kush Sharma, Deputy Advocate General for the respondents in LPA No.295, 180, 212, 250 and 591 of 2011.

Mr. Dushyant Dadhwal, Advocate, for respondents in LPA No. 121 of 2012 and LPA No.54 of 2015.

Mansoor Ahmad Mir, Chief Justice.

Five appeals have been preferred by the private petitioners, whose writ petitions have been dismissed vide judgment made in CWP(T) No. 9718 of 2008 dated 5.5.2011, CWP(T) No. 9717 of 2008, dated 20.4.2011, CWP(T) No. 9707 of 2008, dated 5.5.2011, CWP(T) No. 9716 of 2008 dated 26.4.2011 and in

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

CWP(T) No. 9725 of 2008, dated 19.8.2011 and two appeals have been preferred by the State against the private petitioners, whose writ petitions came to be allowed, vide judgment dated 28.9.2011 in CWP(T) No. 9723 of 2008 and CWP(T) No. 9724 of 2008 dated 16.10.2012, by the Writ Courts, on the foundation of same set of facts, hereinafter referred to as “the impugned judgments” for short, on the grounds taken in the memo of the appeals.

2. The common questions of law and facts are involved in all these appeals hence; we deem it proper to dispose of all these appeals by this common judgment.

3. In order to clinch the issue, it is necessary to give a brief resume of the relevant facts, which has given origin to the appeals in hand.

4. It appears that writ petitioners alongwith other similarly situated persons were interviewed by a Selection Committee for the posts of Laboratory Attendants/Assistants on 20.2.2000. They were offered appointment letter on 8th March, 2000, and joined as such. It is averred that vide order dated 7.1.2002, the

services of the petitioners were terminated as it was pointed out that their interviews were not held in accordance with the established procedure and certain irregularities had been committed and that the entire selection process was not fair. It was further stated that the record was tampered with.

5. Feeling aggrieved, the writ petitioners approached the HP State Administrative Tribunal, hereinafter referred to as "the Tribunal" for short, by filing Original Applications for quashing their termination orders. The Tribunal granted the Original Applications filed by the petitioners and disposed of the same by a common order alongwith other similarly situate persons on 1.3.2002. However, respondents-State was left with the liberty to hold proper enquiry and take action in accordance with rule. It is apt to reproduce para 16 of the judgment made by the Tribunal dated 1.3.2002 herein.

"16. Admittedly, no opportunity was given to the applicants before terminating their services. Not all the applicants are related to the DEO and to the then office Superintendent. The interest of justice, fair play and equity demands that opportunity should have been given to the applicants before terminating their

services. The impugned termination is not simpliciter and it casts stigma. In view of the above discussions, the present Original Applications are allowed and the impugned order of termination is quashed. Applicants will be adjusted against their salary. However, the respondent department is at liberty to hold proper enquiry and take action in accordance with rule. With these observations, the Original Applications are disposed. Copy of this order be place in every Original application which has been tagged with this Original Application. No order as to costs."

[emphasis supplied]

6. The Respondent-State, feeling aggrieved by the said judgment made by the Tribunal, filed Civil Writ Petitions Nos. 1035, 1036, 1037, 1066, 1076, 1077, 521 and 678 of 2002, before this Court. This Court, vide common judgment dated 13.5.2003, upheld the judgment made by the Tribunal, with the following observations:

"Because we do not feel that any interference is warranted in the judgment of the Tribunal, by upholding the Tribunal's judgment, we dismiss these petitions but, to ensure proper safeguards with respect to the interests of the respondents as also of the petitioner-State, we issue the following directions:

- 1. The petitioner-State shall issue show cause notices individually to all the respondents, detailing therein the reasons, factors, grounds and circumstances etc. etc. which the petitioner-State thinks are such which warrant the termination of the services of the individual respondents. The respondents individually through the medium of show cause notices would be called upon to submit*

their replies within a specified period, which shall not be less than two weeks.

2. In the show cause notices, the respondents should also be asked as to whether they would like to be heard in person.

3. If the respondents or any one of them opt to be heard in person, the petitioner-State shall after hearing the respondents or such respondents, who opt for personal hearing and after considering the replies submitted by them to the show cause notices, on proper application of mind, pass appropriate final orders, which shall be both reasoned as well as speaking. In the final order, the petitioner-State shall clearly spell out the reasons or grounds (if any) upon which it considers the termination of services of the respondents, or any one of them (if so decided).

4. The termination orders if issued in accordance with the aforesaid procedure would be liable to be implemented in accordance with law.”

[Emphasis supplied]

7. Respondent-State, in compliance to the judgment dated 13.5.2003, issued show-cause notices to the writ petitioners on 25.8.2003. The writ petitioners also filed reply to the said show cause notices. However, without considering the reply submitted by the petitioners and without giving any opportunity of being heard, the services of the petitioners came to be terminated by the respondents vide orders dated 29th September, 2003.

8. Feeling aggrieved, the petitioners challenged the same before the Tribunal, by the

medium of the Original Applications. The said Original Applications, on abolition of the Tribunal, in the year 2008, came to be transferred to this Court and diarized as CWP(T)s, mentioned hereinafter.

9. The Original Application filed by **Sudesh Kumari** applicant before the Tribunal, came to be registered as **CWP(T) No. 9718 of 2008** titled **Sudesh Kumari versus State of HP and others**, which was dismissed by the learned Single Judge of this Court vide judgment dated 5.5.2011, subject matter of **LPA No. 295 of 2011**. The Original Application filed by **Yogeshwar** applicant came to be registered as **CWP(T) No.9717/2008** titled **Yogeshwar versus State of HP and others**, which was dismissed by the learned Single Judge of this Court vide judgment dated 20.4.2011, subject matter of **LPA No. 180/2011**. The Original Application filed by applicant **Surjit** came to be registered as **CWP(T) No. 9707 of 2008**, titled **Surjit versus State of HP and others**, which was dismissed by the learned Single Judge of this Court vide judgment dated 5.5.2011, subject matter of **LPA No. 212 of 2011**. The Original Application filed by applicant

Pankeshwar came to be registered as **CWP(T) No.9716 of 2008**, titled **Pankeshwar versus State of HP and others**, which was dismissed by the learned Single Judge of this Court vide judgment dated 26.4.2011, subject matter of **LPA No. 250 of 2011**. The Original Application filed by applicant **Kuldeep Singh** before the Tribunal, came to be registered as **CWP(T) No.9725 of 2008**, titled **Kuldeep Singh versus State of HP and others**, which was dismissed by the learned Single Judge of this Court vide judgment dated 19.8.2011, subject matter of **LPA No. 591 of 2011**.

10. It is worthwhile to mention here that the Original Application filed by applicant **Manu Mahajan** which came to be registered as **CWP(T) No.9723 of 2008**, titled **Manu Mahajan versus State of HP and others**, and which is also based on the same facts, as that of above five Original Applications, came to be **allowed** by the learned Single Judge of this Court vide judgment dated 28.9.2011, subject matter of **LPA No. 121 of 2012** and the Original application filed by applicant **Prithi Singh** which came to be registered as

CWP(T) No.9724 of 2008, titled **Prithi Singh versus State of HP and others**, was also allowed by the learned Single Judge of this Court vide judgment dated 16.10.2012, on the basis of judgment rendered by this Court in **CWP(T) No. 9723 of 2008**, decided on 28.9.2011 titled **Manu Mahajan versus State of HP and others**, supra, subject matter of **LPA No. 54 of 2015**.

11. We have examined the impugned judgments made by the learned Writ Courts.

12. It is evident that two sets of contradictory judgments came to be made by the learned Writ Courts, on the foundation of same set of facts of the cases.

13. Be that as it may. Let us stop and take stock.

14. In the LPAs filed by the State, the selectees/ appointees, who were selected and appointed through the selection process initiated by the department are enjoying the status but at the same time, the appellants in other appeals, whose writ petitions came to be dismissed and who were also

selected through the same selection process, are not in position from the date of the impugned judgments. This is how, under these peculiar circumstances, one set of petitioners is suffering and one set is enjoying. However, less said is better.

15. Unfortunately, the writ petitioners, whose writ petitions came to be dismissed have been dragged from pillar to posts and post to pillar, is a clear cut example of travesty of justice for the following reasons.

16. Admittedly, the State has not questioned the order made by the Division Bench of this Court dated 13.5.2003. The fact that the termination orders were stigmatic, has attained finality, thus, in the facts and circumstances of the case, a regular inquiry was required. The State has neither conducted regular inquiry nor followed the directions contained in the judgment delivered by the Division Bench dated 13.5.2003, *supra*.

17. It appears that without hearing the petitioners, aforesaid termination orders came to be passed and one of the learned Single Judges, while

deciding CWP(T) No. 9723 of 2008, dated 28.9.2011, quashed the said termination order, subject matter of LPA No. 121 of 2012. It is apt to reproduce operative portion of the said judgment herein.

"13. The only reason or circumstance indicated against the petitioner, in the Show Cause Notice Annexure A-5, is that he had not been issued interview letter. That is demonstrated to be untrue by the earlier order of termination Annexure A-2. There is no other allegation against the petitioner in the Show Cause Notice, though in the order of termination it is stated that his name did not figure in the list of total 95 candidates sponsored by the Employment Exchanges. This reference in the order of termination is incorrect, because, as noticed above, in reply to the earlier Original Application the total number of candidates sponsored by the Employment Exchanges was stated to be 184 and not 95. Also, the Show Cause Notice and the order of termination, copies Annexures A-5 and A-7, respectively, show that lists of sponsored candidates sent by only two Employment Exchanges had been tampered with. Those were Employment Exchanges of Jawali and Baijnath and tampering with was also only to the limited extent of incorporation of the names of Pankeshwar and Yogeshwar, two sons of the Superintendent in the Office of District Education Officer.

14. In view of the above discussion, it cannot be said that there was any hanky-panky in the matter of selection and appointment of the petitioner to the post of Laboratory Attendant. Consequently, the present writ petition is allowed and the order of termination of services of the petitioner, copy Annexure A-7, is quashed."

18. The aforesaid judgment was followed by another judgment made by the learned Single Judge dated 16.10.2012 in CWP-T No. 9724 of 2008, subject

matter of LPA No. 54 of 2015. This is how the writ petitioners in the aforesaid LPAs are in position till today.

19. In second batch of writ petitions, the learned Single Judge, has fallen in an error in dismissing the writ petitions for the reasons that the State had not followed the directions contained in the judgment delivered by the Division Bench of this Court dated 13.5.2003 and even the State had not conducted regular inquiry as required, under law.

20. Having said so, the impugned judgments made by the learned Single Judge, subject matter of LPAs No. 295 of 2011, 180 of 2011, 212 of 2011, 250 of 2011 and 591 of 2011, merit to be set aside and LPAs merit to be allowed. Accordingly, the impugned judgments are set aside and the LPAs are allowed.

21. The impugned judgments, subject matter of LPAs No.121 of 2012 and LPA No. 54 of 2015 merit to be upheld and LPAs merit to be dismissed. Accordingly, the LPAs No. 121 of 2012 and LPA No. 54 of 2015 filed by the State are dismissed and impugned judgments are upheld.

22. The question is what order is to be passed in the given circumstances.

23. Admittedly, some candidates are in position till today and some of the candidates are out. Thus, it is ordered that the petitioners, who are not in position today are allowed to join forthwith. The period spent during these proceedings is to be computed for all service benefits, except monetary benefits. However, it is made clear that State/ respondents are at liberty to conduct regular inquiry, if they choose to do so. The said inquiry, if any conducted, be concluded within six months, as per the rules, occupying the field.

24. Accordingly, the appeals filed by the State are dismissed and that of the private petitioners are allowed, as indicated hereinabove, alongwith all pending applications.

**(Mansoor Ahmad Mir),
Chief Justice.**

June 02, 2016.
(cm Thakur)

**(Tarlok Singh Chauhan)
Judge.**