CASE NO.:
Appeal (civil) 6046-58 of 2003

PETITIONER:
State of Punjab & Ors.

RESPONDENT:
Satnam Kaur & Ors.

DATE OF JUDGMENT: 16/12/2005

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The State of Punjab is in appeal before us being aggrieved by and dissatisfied with a judgment and order dated 10.01.2002 passed by a Division Bench of the Punjab & Haryana High Court allowing the writ petitions filed by the Respondents herein.

On or about 07.05.1997, the Civil Surgeon, Nawanshahr issued an advertisement in 'New Zamana', Jalandhar, inviting applications for the following 31 posts :

(1)	Ward Servant	15	
(2)	Sweeper	08	
(3)	Mali		02
(4)	Cook		04
(5)	Aaya		01
(6)	Dental Attendant		01

A large number of candidates being more than 9000 applied for appointments in the said posts pursuant to or in furtherance of the said advertisement. Interviews of about 1000 persons were conducted on 12/13.05.1997. Appointment letters to the so-called candidates were despatched on 05.06.1997 and they were allowed to join on 06.06.1997.

A writ petition was filed by some unsuccessful candidates, which was marked as Civil Writ Petition No.11116 of 1997, wherein 18 of the selected candidates were made parties. The entire selection process as well as the selection of the said respondents were questioned, inter alia, on the ground that their names were recommended by one or the other influential persons or they had otherwise access to the Civil Surgeon concerned. In the said writ petition, it was, inter alia, prayed :

"i) to issue a writ in the nature of certiorari for quashing the selection of Class IV employee in the civil hospital Nawanshahr vide selection list Annexure P/3 and further to order quashing the appointment of respondent No.4 to 21 against the post (in class IV) and to issue writ of mandamus directing the respondents No. 1 to 3 to appoint the petitioner as Class IV employees in the civil hospital, Nawanshahr."

A Division Bench of the High Court by a judgment and order dated 10.11.2000 perused the records pertaining to the process of selection and the results thereof and was of the opinion that although no criteria whatsoever was fixed for evaluating the marks which were to be given to each individual

candidate but despite the same 5 marks had been awarded for the purported qualification and experience to each candidate while 20 marks had been fixed for interview. It was noticed :

"\005It may also be mentioned here that according to the notification which was issued on 7th May, 1997, it was indicated that (i) the candidate should be able to read write, Punjabi and (ii) the experience shall be given preference. In view of this it is apparent that the committee which was conducting the interview was given no guidelines which were to be followed by them by evaluating the worth of any candidate it had an absolute and arbitrary discretion regarding how they were to access and award marks during the time of interview Further more it is also evident that out of a total of 30 marks that were to be awarded, 20 marks have been earmarked for the interview which shows that more than 66% marks were to be given by the member of the board without any parameter having been fixed awarding thereof. No material has been placed before us to show that how 20 marks were to be awarded by the five members of the Board nor it is clear that how the marks have actually been awarded\005"

The High Court further noticed the manner in which discriminatory treatment had been made in awarding the marks to the persons similarly situated. It was also not clear to the High Court as to how the merit list was prepared. It was observed :

"\005One fails to see how a person been the basic qualifications, above to read and write Punjabi could have been awarded 1 marks not here is anything to indicate that on what basis various candidates have been awarded more marks once the advertisement did not provide for preference being given to candidates having higher qualifications."

It was noticed that even while awarding marks for experience candidates were awarded marks from 0 to 15. It was further held :

"\005It is also not clear from the lists, as already indicated above by us, as to how the member of the Board had awarded marks and the participations made by each of those members during the interview as would have been the case if each of them had been required to give their assessment out of 4 marks or each of them had been required to evaluate each candidate after giving him marks of 20 and then an average had been drawn up\005"

The High Court wondered that even if one minute was spent on one candidate and if one more minute was required for another candidate to come in and go out, at least 2000 minutes would be required for interviewing 1000 candidates and, thus, there was no reason as to why only 2 dates had been fixed for interview; and even if the members of the Selection Board sat for 5 to 6 hours a day, they would not have been able to finish the interview of so many candidates, observing :

"\005.This would bring the projected time which the Board wanted to spend on interview of one candidate to less than 30 seconds, which would include the time for calling in of a candidate, making him sit down, ask him questions and then requesting him to leave."

The High Court, therefore, set aside the selection made by the Board. The State did not prefer any appeal thereagainst. One Jaswinder Lal preferred a special leave petition thereagainst and this Court by an order dated 12.02.2001 passed in Special Leave Petition (Civil) No. 2115 of 2001, dismissed the said petition, opining :

"We have not got the slightest doubt in the greatest abuse of power by the officer concerned. The High Court is entirely correct in taking the decision which it did. The Special Leave Petition dismissed."

The State of Punjab thereafter by an order dated 23.04.2001 cancelled the appointments of all the 31 candidates.

The respondents herein questioned the said order by filing writ petitions before the Punjab & Haryana High Court, inter alia, contending that as they had been appointed on an ad hoc basis long back, they were asked to appear before the Interview Board only for the purpose of regularization of their services. It was further contended that as they were not parties in the earlier writ petition, they were not bound by the said decision and in that view of the matter the State could not have cancelled their appointments.

A Division Bench of the High Court allowed the said writ petitions holding that the services of the respondents herein should have been regularized purported to be under the Government instructions dated 18.01.1995, whereby and whereunder the services of ad hoc Class IV employees were to be regularized if they had completed the period of 240 days on 31.12.1994.

Mr. Sarup Singh, the learned Senior Additional Advocate General, appearing for the State of Punjab, in assailing the judgment, would contend that the High Court committed a serious error in passing the impugned judgment relying on or on the basis of a judgment of this Court in T. Devadasan v. Union of India and Anr. [AIR 1964 SC 179], which has no application in the instant case.

It was furthermore submitted that in view of the fact that High Court in the writ petition quashed the entire selection process, the State had no other option but to terminate the services of all the selected candidates, although the respondents herein were not parties thereto.

Mr. Gurnam Singh, the learned counsel appearing on behalf of the respondents herein, on the other hand, would support the judgment of the High Court, contending that the respondents herein had continued in service for a number of years after their appointment. It was urged that the respondents herein were appointed long back and, thus, in terms of the policy decision of the State their services were to be regularized. It was further submitted that as the respondents herein were not parties in the earlier writ petition, the said judgment was not binding on them. Reliance in this behalf, has been placed on Prabodh Verma & Ors. v. State of Uttar Pradesh & Ors. [(1985) 2 SLR 714 : AIR 1985 SC 167].

The learned counsel relying on or on the basis of a judgment of this Court in Arun Tewari and Others v. Zila Mansavi Shikshak Sangh and Others [(1998) 2 SCC 332] would contend that in all cases, it is not necessary to follow all the procedures laid down in the rules.

It was not a case where the High Court, in our opinion, could have interfered with the order dated 23.04.2001 passed by the appellant herein. We have noticed hereinbefore the findings of the High Court arrived in Writ Petition No.11116 of 1997 for the purpose of setting aside the entire

selection process. It is true that in the said writ petition only 18 out of 31 selected candidates were made parties, but they were made parties because an additional ground was taken by the writ petitioners therein that their cases were recommended by some influential persons or they were otherwise known to the Civil Surgeon, Nawanshahr. The main prayer in the said writ petition, however, was that the entire selection process was bad in law. Once the High Court was of the opinion that the entire selection process was bad in law and the said order having been upheld by this Court, in our opinion, it was impermissible to bye-pass the same. The contention of the respondents herein that they were entitled to be regularized in services was not a matter which had a direct nexus with the order of termination of their services passed by the State. Indisputably, they took part in the selection process. Indisputably again such selection process was initiated pursuant to the advertisement issued by the Civil Surgeon, Nawanshahr. Once the respondents herein had participated in the selection process and became selected, they could not have filed a writ petition on a different premise, namely, they having been appointed on ad hoc basis long time back, their services should have been regularized pursuant to or in furtherance of a purported policy decision dated 18.01.1995.

The High Court in its judgment and order dated 10.11.2000 clearly noted that an advertisement was issued in a local newspaper and pursuant thereto about 9000 candidates filed their applications. Out of the said 9000 candidates, 1000 candidates were interviewed. The respondents herein do not say that they were not amongst the said 1000 candidates. It is not their contentions that they were not interviewed on 12/13.05. 1997. It was further not disputed that appointment letters in their favour were issued on 05.06.1997 and they joined their respective posts on 06.06.1997. In the aforementioned premise, it was impermissible for the respondents herein to file the writ petition contending that they appeared before the Selection Board in connection with regularization of their services.

The High Court for all intent and purport, thus, sought to bye-pass its own binding judgment as also the order of this Court. Moreover, the effect of such judgments did not fall for discussion by the High Court. The effect of non-joinder of the respondents would not be such which would confer a legal right upon them to file another writ petition whereby and whereunder the effect of the earlier judgment would be completely wiped out.

In Prabodh Verma (supra),this Court in the factual matrix obtaining therein was of the view that the High Court ought not to have heard or disposed of the writ petition under Article 226 of the Constitution of India. In the instant case, 18 persons were impleaded as respondents in their individual as also representative capacity. Even if the respondents were aggrieved, they could have come before this Court under Article 136 of the Constitution of India. Even a review petition at their instance was maintainable. Prior to issuance of letter of termination dated 23.04.2001, they questioned the order of termination only. Such order of termination cannot be said to be in any manner vitiated in law as the same had been issued pursuant to or in furtherance of a lawful judgment passed by the High Court and affirmed by this Court. It was a duty of the High Court to follow the decision of this Court.

In Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. And Another [(1997) 6 SCC 450], it was held :

"When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical

orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

[See also Ajay Kumar Bhuyan and Ors. etc. v. State of Orissa and Ors. etc. (2003) 1 SCC 707].

Yet again in M/s D. Navinchandra and Co., Bombay v. Union of India and Ors. [(1987) 3 SCC 66], Mukharji, J (as His Lordship then was) speaking for a three-Judge Bench of this Court stated the law in the following terms :

"\005Generally legal positions laid down by the court would be binding on all concerned even though some of them have not been made parties nor were served nor any notice of such proceedings given."

The decision of this Court in Arun Tewari (supra) relied upon by the learned counsel appearing on behalf of the respondents herein, has no application in the instant case. The question which was raised therein was absolutely different and distinct. Therein the selection process was held to be valid having regard to the fact that 7000 posts of Assistant Teachers under a time-bound scheme were to be filled up wherein the rules were amended. This Court in that situation observed :

"There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case cannot be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue."

In the instant case, what was commended by the High Court and this Court was not the validity or otherwise of the advertisement issued in the press but the mode and manner in which the selection of the candidates was held.

For the aforementioned reasons, we are of the opinion that the impugned judgment is unsustainable in law, which is set aside accordingly. The appeal is allowed. No costs.