

*Before Tejinder Singh Dhindsa, J.*

**NAVJOT DHILLON AND OTHERS—Petitioners**

*versus*

**THE STATE OF PUNJAB AND ANOTHER—Respondents**

**CWP No. 16584 of 2013**

December 3, 2013

*Constitution of India, 1950 - Art. 226 - Punjab Lokpal Act, 1966 - Ss. 9, 10 and 16 - Lokpal - Jurisdiction - Petitioners applied for posts of Art and Craft Teachers - Did not make it to selection list - Extraneous considerations alleged - Complaints filed - Lokpal's report recommended fresh interview of rejected candidates and to offer appointments in order of merit - Recommendations accepted by Competent Authority - Writ of mandamus sought for directions to appoint petitioners in light of recommendations in Lokpal's report - Held, Lokpal is an enquiring authority to go into allegations of misconduct at the hands of a public man - There is no provision under the 1996 Act wherefrom the Lokpal can draw power to make recommendations with regard to course of action to be adopted as regards selection process for appointment to a post - Mere acceptance of recommendations cannot enlarge jurisdiction vested with the Lokpal, which otherwise stands delineated under the Act.*

*Held*, that the recommendations made by the Lok Pal for constitution of fresh Selection Committees and for candidates i.e. the complainants including the petitioners to be offered appointments after holding fresh interview against existing vacancies and thereafter if there be no vacancy, to be given appointment against future vacancies are wholly without jurisdiction. Under the 1996 Act, the Lok Pal is in the nature of an Enquiring Authority to go into allegations of mis-conduct at the hands of a public man and thereafter to furnish a report and make recommendations against the concerned public man/public men. There is no provision under the 1996 Act wherefrom the Lok Pal can draw power to make recommendations with regard to the course of action to be adopted by the State Government as regards selection process for appointment to a post is concerned. Mere acceptance of the

recommendations by the ‘Competent Authority’ cannot enlarge the jurisdiction vested with the Lok Pal which otherwise stands delineated under the Act.

(Para 10)

R.K. Chopra, Senior Advocate with Ms. Maninder, Advocate,  
*for the petitioners.*

**TEJINDER SINGH DHINDSA, J.**

(1) The petitioners have challenged the order dated 16.3.2013, Annexure P10, whereby their claim for appointment to the post of Art and Craft Teachers has been rejected. Prayer is for the issuance of a writ of mandamus for directing the respondents to appoint the petitioners as Art and Craft Teachers in the light of recommendations made by Lok Pal, Punjab contained in the report dated 3.6.2008 at Annexure P1.

(2) The pleaded case of the petitioners is that in the year 2001, the Department of Education, State of Punjab issued an advertisement to fill up the vacancies of teachers of various categories including that of Art and Craft Teachers. As per advertisement, Matric with two years diploma in Art and Craft was prescribed as the essential educational and professional qualification for the post of Art and Craft Teacher. It has been asserted that all the petitioners were eligible and, accordingly, had applied for the post in question. The result of the selected candidates was published, but the names of the petitioners did not figure in the select list. At that stage, the petitioners along with certain other candidates filed complaints before the Lok Pal, Punjab against the members of the Selection Committee as also the then Education Minister, Punjab raising an issue that meritorious and deserving candidates have not been selected for extraneous considerations. It is submitted that upon enquiry having been conducted, the Lok Pal, Punjab furnished report dated 3.6.2008 recommending that the complainant-candidates be offered appointment in order of merit against the existing vacancies and if there be no such vacancies, then they be given appointments as and when vacancies arise in future by granting concession of age. It is further pleaded that the recommendations of the Lok Pal, Punjab were even accepted by His Excellency, the Governor of Punjab, vide order dated 26.6.2008, Annexure P2.

(3) Learned Senior counsel appearing for the petitioners has argued that the petitioners have been denied the benefit of the recommendations made by the Lok Pal as contained in the report dated 3.6.2008. It has been argued that such action is arbitrary and illegal. Under the Punjab Lok Pal Act, 1996 (for short “1996 Act”), the Competent Authority to accept the recommendations is the Governor of Punjab and such recommendations having been accepted in entirety, it was not open for the respondent-Authorities to deny implementation thereof and, consequently, not to appoint the petitioners on the post of Art and Craft Teachers.

(4) Learned Senior counsel has been heard at length.

(5) At the very outset, it would be useful to advert to the relevant provisions of the 1996 Act:

*“2. Definitions. - In this Act, unless the context otherwise requires -*

*(a) “competent authority” in relation to a complaint against a public man means the Governor;*

*(b) “complaint” means a complaint alleging that a public man has, while holding any of the offices referred to in clause (k) committed misconduct;*

*(c) and (d) \*\* \*\* \**

*(e) “Governor” means the Governor of the State of Punjab;*

*(f) to (j) \*\* \*\* \**

*(k) “Public man” means a person who holds or has held the office of:-*

*(i) a Minister;*

*(ii) a Member of the Legislative Assembly of the State;*

*(iii) the Chairman and a Member of a Board constituted by or under the State or Central Act or otherwise;*

- (iv) *the Chairman of any Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty one per cent of the paid-up share capital is held by the State Government or any company which is subsidiary of a company in which not less than fifty one per cent of the paid-up share capital is held by the State Government;*
- (v) *the Chairman and a Member of any non-statutory Committee nominated by the State Government.*

**9. Jurisdiction of Lokpal.** - (1) *Subject to the other provisions of this Act, the Lokpal may inquire into any matter involved in, or arising from, or connected with any allegation of misconduct against public man made in a complaint under this Act.*

(2) *The onus to prove the allegation shall be on the complainant but the Lokpal may collect evidence and may call upon the person against whom a complaint is made to produce evidence.*

**10. Jurisdiction.** - (1) *The Lokpal shall enquire into an allegation of misconduct against a public man within five years from the date of occurrence of that misconduct.*

(2) *Notwithstanding anything contained in sub-section (3), the complaints filed under the provisions of the Punjab Lokpal Act, 1995 (Punjab Act No.9 of 1995) shall also be enquired into by the Lokpal.*

(3) *The Lokpal shall not enquire into any matter which has been referred for enquiry under the Commission of Inquiry Act, 1952 on his recommendations or with his prior concurrence.*

(4) *The Lokpal shall not enquire into any complaint suo moto.*

**16. Reports.** - (1) *If, after inquiry in respect of a complaint, the Lokpal is satisfied, -*

- (a) *that no allegation made in the complaint has been substantiated either wholly or partly, he shall close the*

*case and intimate the complainant, the public man and the competent authority accordingly; or*

*(b) that all or any of the allegations made in the complaint have or has been substantiated either wholly or partly he shall by report in writing communicate his findings and recommendations to the competent authority and intimate the complainant and the public man concerned about his having made the report.*

*(2) The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months, of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.*

*(3) If, the Lokpal is satisfied with the action taken or proposed to be taken on the basis of his report under clause (b) of sub-section (1), he shall close the case and intimate the complainant, the public man and the competent authority accordingly, but where he is not so satisfied and if, he considers that the case so deserves he may make a special report for reviewing decision to the Governor.*

*(4) The Lokpal shall present annually to the Governor a consolidated report on the administration of this Act.*

*(5) As soon as may be, after and in any case not later than ninety days from the receipt of a special report under sub-section (3), or the annual report under sub-section (4), the Governor shall cause the same together with an extraordinary memorandum to be laid before, the State Legislature.”*

(6) The object of the 1996 Act was to ensure proper investigation of an enquiry against public men and thereby to ensure eradication of corruption and adherence to the rule of law. A ‘complaint’ has been defined under the 1996 Act wherein allegations are made against a public man having committed mis-conduct while holding any of the Offices referred to in Section 2 (k). The ‘Competent Authority’ in relation to a complaint against a public man means the Governor of the State of

Punjab. Sections 9 and 10 of the 1996 Act govern the jurisdiction of the Lok Pal. The Lok Pal has been vested with a right under the Act to enquire into any matter involving, arising or connected with any allegation of mis-conduct against a public man. Under Section 16(2), it is the Competent Authority i.e. the Governor of Punjab which is to examine the report forwarded by the Lok Pal.

(7) In the present case, the relevant recommendations made by Lok Pal, Punjab in the report dated 3.6.2008 are to the following effect:

*“Considering the mode and manner of selection discussed above, these can easily be struck down as cancelled particularly on account of the illegal constitution of the Selection Committees and the said Committees having created a niche for the sacred cows of the two Chairpersons. The selection, however, being a mix of the meritorious and not so meritorious, it may not be desirable to upset the apple cart. One is a class in office on the basis of selection and the other (the complainants) out of office having been rejected. The appointment of persons in office took place more than 5 to 6 years back and by this time all of them must have completed their period of probation and may be rearing their children. The out of office persons may also be doing some job here and there may be in private services. In this scenario, I feel that those on service, even though not by merit, but by act of grace, need not be uprooted at this late stage. On the other hand, relief has to be provided to deserving complainants who were wrongly rejected despite being meritorious. In this situation, it is recommended that the State Govt./DPI (Schools) shall constitute fresh Selection Committee/s in line with the decisions of the High Court and Supreme Court quoted supra and put them to fresh interview test taking into consideration the criteria mentioned above and the initial merit and if found suitable for the job, be offered appointments in order of merit against the existing vacancies and if there is no such vacancy, they be given appointment as and when any vacancy arises in future allowing them the concession of age.*

*As for the punishment to the publicmen-respondents other than the Chairpersons, they being still in the employment of the Punjab State, I leave it to the State Govt. to take appropriate action against them. Stern action however is recommended to be taken against the two Chairpersons Dr.Ajmer Singh and Smt.Harjit Kaur Gill for their malfeasance and malevolence. Needless to say that the publicmen- respondents have not to be taken as members of any selection committee in future.”*

(8) Apparently, stern action has been recommended to be taken against two Chairpersons of the Selection Committee i.e. Dr.Ajmer Singh and Smt.Harjit Kaur Gill to the effect that they are not to be taken as the members of any Selection Committee in future and with regard to the publicmen/respondents other than Chairpersons, decision has been left at the discretion of the State Government to take appropriate action against them as they are still in employment. The Lok Pal in the report dated 3.6.2008 has gone a step further and has recommended that the State Government/DPI (Schools) shall constitute fresh Selection Committee/s and the candidates, who were rejected, were to be subjected to a fresh interview, and if found suitable for the job, to offer appointments in order of merit against the existing vacancies and if there is no such vacancy, then they are to be given appointment as and when any vacancy arises in future allowing them concession of age.

(9) Insofar as the recommendations made against the Chairpersons and members of the Selection Committee are concerned, it would not be appropriate to make any observation as no such issue has been raised in the present petition.

(10) However, I am of the considered view that the recommendations made by the Lok Pal for constitution of fresh Selection Committees and for candidates i.e. the complainants including the petitioners to be offered appointments after holding fresh interview against existing vacancies and thereafter if there be no vacancy, to be given appointment against future vacancies are wholly without jurisdiction. Under the 1996 Act, the Lok Pal is in the nature of an Enquiring Authority to go into allegations of mis-conduct at the hands of a publicman and thereafter to furnish a report and make

recommendations against the concerned publicman/publicmen. There is no provision under the 1996 Act wherefrom the Lok Pal can draw power to make recommendations with regard to the course of action to be adopted by the State Government as regards selection process for appointment to a post is concerned. Mere acceptance of the recommendations by the 'Competent Authority' cannot enlarge the jurisdiction vested with the Lok Pal which otherwise stands delineated under the Act.

(11) For the reasons recorded above, I find no infirmity in the impugned order dated 16.3.2013, Annexure P10, in the light of which the claim of the petitioners seeking appointment to the post of Art and Craft Teachers based upon the recommendations of the Lok Pal, Punjab has been rejected.

(12) Writ petition is, accordingly, dismissed.

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**A. Aggr.**

***Before Ajay Tewari, J.***

**ROOP CHAND—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 18203 of 2011**

October 1, 2013

***Constitution of India 1950 - Art. 226 - Medical reimbursement - Haryana Government Policy dated 6.5.2005 - Emergency certificate - Objections raised - Medical reimbursement only for treatment taken from approved hospitals - Policy of 6.5.2005 also provides for reimbursement of treatment taken from un-approved hospitals at PGI rates with the condition that it is certified to be an emergency treatment - Time bound directions issued to State to get medical opinion from Civil Surgeon whether surgery undergone was medically necessary or not - If medically necessary - Reimbursement at government rates be made even though the surgery undergone was not an emergency surgery.***