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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 22.05.2013

Decided on : 30.05.2013

+ **W.P.(C)3156/2013**

DILEEP KUMAR SINGH BISHT Petitioner

Through: **Mr.Anil Mittal, Advocate**

VERSUS

UNION OF INDIA AND ORS.

..... Respondents

Through: **Mr.Rajeeve Mehra, ASG with
Mr.Himanshu Bajaj and Mr.Aditya
Malhotra, Advocates for UOI/R-1,
R-4 and R-5
Mr.Narendra Mann, Advocate for R-
2/CBI**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present public interest litigation, the petitioner seeks a writ of mandamus for directions to respondent No.2 CBI to hold time-bound inquiry against respondent No.3 Sh. Subhash Kumar under the direct supervision of this Court and to investigate the allegations against him.

2. The petitioner claims to be a citizen of India and a domicile of Uttarakhand. He is also an Ex-Corporator of the Lucknow Nagar Nigam. He states that the present writ has been filed on the basis of information received by him from various documents and press cuttings from which it is prima facie established that Sh. Subhash Kumar/respondent No.3 is a

Tibetan refugee who had migrated into India and hence is not a citizen of India and was barred from being appointed to Indian Administrative Service. It is stated that the appointment of Sh. Subhash Kumar in July 1977 in the Indian Administrative Service is illegal.

3. The petitioner earlier also filed a writ petition being WP(C) 3132/2012 seeking several somewhat similar reliefs. The writ petition was disposed of on 23.05.2012. On the submission of Union of India that the matter is being looked into, a direction was issued to the Central Government to complete the process of investigation within a time-bound period of three months. Subsequently, vide order dated 02.11.2012, the period was extended till the end of December, 2012 for completion of the inquiry.

4. The present matter came up for hearing on 15.05.2013 when notice was issued to the respondent as a submission was made that the earlier order of this Court had not been complied with.

5. The learned counsel for the petitioner submits that the appointment of respondent No.3 is in violation of the Rule 6(1) of the Relevant Rules regarding the recruitment to the Indian Administrative Service and Indian Foreign Service. It is stated that the said Rule stipulates that for the selection to the Indian Administrative Service and Indian Police Service, the candidate must be a citizen of India. For selection to other services, a person may be a subject of Nepal or a subject of Bhutan or a Tibetan refugee who came into India before 01.07.1962 and other persons as specified. It is claimed that the respondent No.3 being a Tibetan refugee, is ineligible for selection to India Administrative Service.

6. It is further contended that while applying for Indian Administrative

service in the form that is to be filled in the relevant column indicated that the applicant has to indicate whether he had added or dropped at any stage any part of his name or surname. It is stated that Sh. Subhash Kumar/respondent No.3, in reply, denied having changed any part of his name. However, in a Press statement issued by Sh. Subhash Kumar, he stated that his original name was Tashi Funchog, and that while studying in school in Spiti area in Himachal Pradesh, the Panjabi teachers had difficulty in pronouncing and remembering the name of Buddhist children and hence in the statement, respondent No.3 stated that he changed his name from Tashi Funchog to Subhash Kumar. Based on this statement, it is contended by learned counsel appearing for the appellant that the respondent No.3 gave wrong information in this form filed before the UPSC when he applied for the I.A.S. Examinations in 1976. He further relies upon the statement in the form which states that in case any false fact or false information is given in the form, the services of the applicant are liable to be terminated.

7. The learned counsel for the petitioner also points out that in the medical report that took place for the I.A.S. Examinations the said Sh. Subhash Kumar mentioned that he had only one brother living. On the other hand, learned counsel refers to the report from Tehsildar Lahaul Spiti which notes that the father of respondent No.3 had three sons including Sh. Subhash Kumar. On the basis of this, it is claimed that wrong information has been given by the said Sh. Subhash Kumar and he has suppressed the fact that he is not a citizen of India, but a Tibetan refugee. Hence the present writ petition has been filed.

8. Learned Additional Solicitor General appearing for respondents No. 1, 4 and 5 stated that the Union of India has completed the inquiry in terms

of order dated 23.05.2012 where it is found that the respondent No.3 is an Indian citizen. He has placed on record the original records to show the conduct of the inquiry and its findings.

9. In view of the directions made by this Court on 23.05.2012, it was for the Union of India to complete the necessary process of investigation. Though the Union of India appears to have taken extra time, process of investigation has been completed and findings have been recorded that respondent No.3 is an Indian citizen.

10. We are not inclined to interfere in the findings of fact recorded by respondent No.1. Nothing has been placed on record to show that the said findings recorded by the Union of India are erroneous on the face of it. The conclusion drawn appears to be tenable. We do not propose to exercise any appellate power to interfere with the recording of the facts and findings.

11. Further, the present matter is akin to a service matter though the petitioner has not sought a writ of quo warranto. Other than for a writ of quo warranto, a PIL is normally not maintainable in service matters. Hence the present writ even otherwise would not be maintainable.

12. Even otherwise, the relief sought here is a writ in the nature of mandamus to direct the CBI to hold an inquiry. The Hon'ble Supreme Court in the case of State of West Bengal and Ors v. Committee for Protection of Democratic Rights, West Bengal and Ors. (AIR 2010 SC 1476) held that on the question of issuing directions to the CBI to conduct investigation although no inflexible guidelines can be laid down, but the order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional circumstances. There are

no plausible reason here for directions being issued to the CBI as sought for by the petitioner.

13. We also cannot help noticing that the said respondent No.3 joined Indian Administrative Service in 1977. We are informed that on or around 2011 he was appointed as Chief Secretary of Uttarakhand. It was pointed out to the learned counsel for the petitioner that the present writ petition appears to have been filed only after respondent No.3 took over as Chief Secretary, Uttarakhand on acts pertaining to 1977 i.e., about 35 years old. In response to this query, learned counsel submitted that being a public spirited citizen he could approach this Court only after he obtained necessary information. We are not convinced by this explanation.

14. In view of the above, the present writ petition is dismissed.

JAYANT NATH, J.

CHIEF JUSTICE

MAY 30, 2013
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