

Court No. - 34

Case :- WRIT - A No. - 15416 of 2023

Petitioner :- Nitish Kumar

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Laloo Yadav, Kiran Rani

Counsel for Respondent :- A.S.G.I., Gambhir Tripathi

Hon'ble Ajit Kumar, J.

1. Heard Sri Laloo Yadav, learned counsel for the petitioner, Sri Gambhir Tripathi, learned counsel for the respondent and learned Standing Counsel for the State-respondents.

2. Learned counsel for the petitioner has argued that petitioner, who had successfully cleared all stages of examination, had not been issued with joining letter, nor had been offered any opportunity to contest the CFSL report which was based upon the handwriting expert's opinion, and therefore, matter needs to be decided afresh by the authority. He has placed reliance upon judgment of coordinate bench of this Court in the case of ***Ran Vijay Singh and 34 Others v. Union of India and 6 Others passed in Writ A No. 2813 of 2017***, in which in a similar facts and circumstances, were the findings based upon the handwriting expert's opinion, and consequential CFSL report, the candidature of the candidate was rejected in that selection. Vide paragraphs 25 to 30 the Court in the said judgment has observed thus:

"25. The report of CFSL based upon handwriting expert's opinion, moreover, has not been furnished to the petitioners. Petitioners consequently had no opportunity to controvert it. Attention of the Court has been invited to pages 252, 253, 273, 274, 333 and 334, which contain identical expressions. Report at pages 513, 594 and 554 also contain identical language. In case an opportunity was afforded to the petitioners then all such materials could have been highlighted.

26. The respondents were expected to confront the petitioners with material relied upon against them. A show cause containing such materials was required to have been issued, particularly when petitioners were being debarred from appearing in any other exam conducted by Commission for three years. The notice dated 5.8.2015 cannot be construed as a show cause notice. It only called upon the petitioners to give their specimen signatures, handwriting and thumb impression in view of Commission's opinion that they do not match. After the CFSL report was received neither the petitioners were put to any notice, nor the content of report was made known to them.

27. The opinion of handwriting expert was required to have been viewed with other materials available on record. Admittedly the petitioners had carried their identity cards, which had been verified at all stages of examination by the Commission and their officers. There cannot be a presumption that all the staffs/employees of Commission had failed to correctly identified the petitioner despite existence of identity card. The presumption that petitioners had identified themselves with reference to specified identity cards could not be lightly brushed aside. The fact that respondents had admitted thumb impressions and specimen thumb impressions with them, which have not been tallied also, is a factor to be kept in mind. There apparently was no reason for the respondents not to have verified the identity of petitioners with reference to their thumb impression, which is an evidence superior to the report of handwriting expert. The nature of expert's opinion otherwise not being conclusive, could not solely be relied upon to cancel petitioners' provisional selection, ignoring other materials, particularly when the order itself was stigmatic.

28. Respondents cannot find support for their action on the basis of judgment of the Apex Court in Dhirjo Kumar Sengar (supra), inasmuch as compassionate appointment was claimed by the respondent Dhirjo Kumar Sengar on the basis of his adoption. The adoption itself was not established. In such circumstances, it was observed that facts of the case clearly fell in the well recognized exceptions to the rule of audi alteram partem. The present case also does not fall in category of cases of mass-copying, where exclusion of principles of natural justice stands judicially recognized. As a matter of fact, no adverse report was ever received at the time of examination and it is at a subsequent point of time that allegation of impersonation is made and held to be proved only upon opinion of handwriting expert. The judgment of Central Administrative Tribunal relied upon by the respondents places reliance upon the judgment of Apex Court in AIR 1996 SC 2052. This judgment relates to land acquisition proceedings and has no relevance for present purposes.

29. Although the report of Government Laboratory and opinion of its experts would be entitled to weight, particularly when no bias or mala fide is alleged, yet, being in the nature of opinion, it cannot conclusively establish impersonation on part of the petitioners. The respondents' action is otherwise not in conformity with the principles of natural justice. In such circumstances, I am of the considered view that action of respondents in cancelling petitioners' provisional selection, and debarring them from appearing in any exam conducted by the Commission for three years, is violative of Article 14 of the Constitution of India. Orders impugned dated 27.10.2016 and 14.12.2016, accordingly, stands quashed.

30. It shall, however, be open for the respondents to verify identity of petitioners upon material and evidence admissible in law by following the principles of natural justice. The required exercise be undertaken preferably within a period of four months from the date of presentation of certified copy of this order, as petitioners have already lost sufficient time. Based upon such consideration, the respondents shall take a fresh decision in the matter relating to grant of appointment to the petitioners. "

3. Learned counsel appearing for the respondent could not dispute the legal proposition discussed in the judgment of the coordinate bench of this Court in identical facts and circumstances.

4. In view of above, this petition succeeds and is allowed in the light of the judgment discussed above. The impugned order dated 22nd June, 2022 is hereby quashed. However, it shall remain open for the respondent to verify identity of petitioner upon material and evidence in law by following principles of natural justice. The requisite exercise be carried out within a period of four months from the date of presentation of certified copy of this order and candidature of the petitioner shall now depend upon final outcome of the decision to be taken by the authority concerned as directed hereinabove.

Order Date :- 3.11.2023

P Kesari