

Court No. - 34

Case :- WRIT - A No. - 17263 of 2023

Petitioner :- Sunil Kumar And Another

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Rajesh Kumar Singh

Counsel for Respondent :- A.S.G.I.,Sunil Sharma

Hon'ble Ajit Kumar,J.

1. Heard Sri Rajesh Kumar Singh, learned counsel for the petitioners and Sri Sunil Sharma, learned counsel for the contesting respondents.

2. By means of this petition filed under Article 226 of the Constitution, the petitioners are challenging the order dated 17.8.2023 passed in their respect not only cancelling their candidatures for recruitment in the Central Reserve Police Force and rifle man in Assam Rifles pursuant to the recruitment examination 2013 for which notification was issued 15th December, 2012 but also debarred from appearing in future selection to be held by Staff Selection Commission for the next three years.

3. The argument advanced by learned counsel for the petitioners is that petitioners were called by Border Security Force to give their sample, signatures and hand writing which was sent to the Forensic and Scientific Laboratory for examination and upon the report being submitted as an opinion of the expert of the laboratory, the petitioners were found guilty of misconduct for having impersonated themselves during the written examination and consequently their candidatures were not only rejected but they were debarred for next three years in appearing in any examination to be conducted by the Staff Selection Commission.

4. Learned counsel for the petitioners further submits that the order not only debars the petitioners from appearing in future in any recruitment examination to be held by the Commission but also causes stigma upon their characters and, therefore, they needed an opportunity of hearing as the law is well settled that nobody should be condemned unheard. The emphasis of the argument has been on the principle of *audi alteram partem* so as to hold the order to be bad in law. Learned counsel for the petitioners submits that in

respect of the same examination a large of number of such candidates who were visited with similar penal order had approached this Court vide writ petition being Writ - A No.- 2813 of 2017, ***Ran Vijay Singh and 34 others v. Union of India and others*** along with other connected matters, which stood allowed by a detailed judgment of this Court on 16th April, 2018. It is submitted that against the said judgment respondents had preferred special appeal being Special Appeal No.- 1045 of 2018 which came to be dismissed on 8th May, 2018 on merits.

5. Learned counsel for the petitioners has also relied upon another judgment of this Court in the case of ***Vijay Pal and others v. Union of India and others: 2023 LawSuit (All) 762***, where the recruitment was held by the respondent-Railways and without any opportunity of hearing the candidates were held to have impersonated during the examination and, accordingly, they had been debarred from appearing in future examination for a period of five years.

6. Per contra, it is argued by learned counsel appearing for the respondents that the petitioners are guilty for delay and laches in approaching this Court. It is argued that the orders impugned herein this petition are of the year 2016/ 2017 and the petitioners should have been vigilant enough in approaching the Court to contest the matter in a reasonable period, however, they got slept over the matter and now have approached this Court in the year 2019 after rising from a long slumber. It is, therefore, argued that the Court may not grant indulgence in the matter. Learned counsel for the respondents, however, does not dispute that similar orders passed in respect of the candidates of the same recruitment examination have ultimately been quashed by this Court and also does not dispute that upon the matter being remitted to the Selection Commission those whose signatures were found to be correct and genuine upon further verification and so were recommended for appointment and appointment have been made of such candidates.

7. This specific plea has also been taken in the supplementary affidavit vide paragraph 2 while explaining away the delay and laches on the part of the petitioners. No counter affidavit has been filed to the supplementary affidavit in which explanation has been offered for the delay that has been caused in approaching the Court.

8. It is a matter of common knowledge that the candidates in these days of unemployment participate in competitive examination in

every possible selection as far as possible, wherever it is conducted in any of the States for the posts under the Central Government. There is every possibility that after the examination is held and the selection list is published and those who are not selected or those against whom orders have been passed, may not approach the court of law for various reasons may be financial. Those who are already faced with the trauma of unemployment for attaining the advance stage of age, may have genuine reasons for their ignorance about the other similarly placed persons approaching the law court. It is true that the Supreme Court in the case of ***State of U.P. and others v. Arvind Kumar Srivastava and others: (2015) 1 SCC 347*** has very clearly held that principles of equality may not be attracted in those cases where the petitioners may not be vigilant enough to their rights in approaching the law court and so relief granted in favour of similarly placed persons earlier approaching this Court, may not be offered by Courts to those who subsequently approach Court after a long gap of time. Vide paragraphs 22.1 and 22.2 this Court has held thus:

"22.1 The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim."

9. In order to appreciate this principle it is necessary to look into as to what amount of delay and laches have occurred in the matter.

10. I find that the judgment was passed on 16th April, 2018 in a large of number of petitions filed by those very petitioners before this Court and the petitioners approached this Court on 25th May, 2019 almost within a year. The explanation offered is, as and when the petitioners came to know that the appointments have been made of such petitioners who had approached this Court that petitioners have immediately approached this Court. It is quite possible that after the judgment was delivered it took seven or eight months' time or even a year's time for the respondents to make recommendation after making verification of the signatures of those candidates in whose favour judgment was passed by this Court. Looking to this entire circumspect of the facts and attending circumstances, I do not find petitioners to be deliberately guilty of delay and laches on their part and that too in such a magnitude that petition be thrown for laches. The argument, therefore, advanced by learned counsel for the respondents to deny relief to petitioners as granted in the matter of Ran Vijay Singh for delay and laches is rejected. \

11. It is to be noted that petitioners' candidature not only was rejected simplicitor on the ground of not being found fit but rather on the ground that they have been impersonated. This in fact is a stigmatic order in nature and, therefore, the petitioners have virtually been condemned unheard and they have been further debarred from appearing in examination for next three years. The period of three years though has elapsed by now when today this order is being passed but the action of the respondents in rejecting candidature of the petitioners on the ground of impersonation cannot be countenanced on mere opinion rendered by the expert without they being confronted with the report and without putting them to notice to defend themselves and being from far off places and helping to poor financial background and not find in a position to defend themselves.

12. This Court not only in the case of Ran Vijay Singh (supra) which relates to the candidates of the same examination but in another judgment in the case of Vijay Pal (supra) has also taken similar view, wherein action of Railway based upon a sheer opinion of laboratory or expert without the petitioners being offered opportunity to defend themselves was not approved of. Vide paragraphs 33 and 34 the Court held thus:

"33. In the circumstances, it cannot be said in absence of any other material available with the Railways, that it is a case of mismatch in handwriting/thumb impression. The inference of the Railways is based on an opinion without being supported by any other

material, i.e., the petitioners had not appeared at different stages of the selection process.

34. In service jurisprudence, though Evidence Act is not applicable, the charge is not required to be proved beyond reasonable doubt, but on the principle of preponderance of probability, based on some material evidence against the petitioners. It is not a case of disciplinary proceedings, neither, it is a case set up by the Railways, that there was large scale irregularities in the examination process, only few candidates have been picked-up and their selections cancelled merely on an opinion obtained behind the back of the petitioners without confronting the petitioners with the incriminating material."

13. In the judgment of Ran Vijay Singh (supra) which is in respect of the same selection and recruitment, this Court vide paragraphs 27, 28, 29 and 30 held thus:

"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."

14. Learned counsel for the respondents could not dispute the aforesaid legal position nor, could cite any judgment to the contrary so as to deny identical relief to the petitioners.

15. In view of the above, writ petition succeeds and is **allowed** in terms of the of the judgment and order passed on 16th April, 2018 in the case of Ran Vijay Singh (supra).

16. The impugned order dated 17.8.2023 passed by the respondent No. 2 in respect of the present petitioners stands quashed.

17. The respondents are directed to adopt the same approach and action as has been done in respect of the petitioners in the case of Ran Vijay Singh (supra) following the judgment passed in said case.

Order Date :- 12.10.2023
LN Tripathi