

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos.22160, 25736 & 26250 of 2012

W.P.No.22160/ 2012

Between:

Lanka Hari Kumar

PETITIONER

And

1. High Court of Andhra Pradesh, Hyderabad, Rep. by Registrar (Recruitment), and another.

RESPONSENTS



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos.22160, 25736 & 26250 of 2012

COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

By a notification issued on 10.02.2011, the 2nd respondent, viz., the District Judge, Visakhapatnam, invited applications from eligible candidates for appointment of 54 Junior Assistants within the District Unit. Some more vacancies were notified by a further notification dated 05.08.2011. The candidates, who applied, were subjected to a written test on two dates, viz., 22.10.2011 and 23.10.2011. Candidates, who were short listed in the written examination, were invited for interview on two dates, viz., 07.01.2012 and 10.01.2012.

2. After the conclusion of the interviews, it appears that the then Principal District Judge, Visakhapatnam wrote a confidential letter dated 30.03.2012 to the Registrar (Recruitment) of the High Court, stating that he strongly suspected some malpractices. On the basis of the said letter, dated 30.03.2012, the Registrar (Recruitment) issued a proceeding dated 19.06.2012 directing the District Judge to cancel the examination conducted on 22.10.2011 and 23.10.2011 for the posts of Personal Assistants, Typists and Copyists, Field Assistants and Junior Assistants and to conduct examinations afresh.

3. Aggrieved by the said communication dated 19.06.2012 issued by the Registrar (Recruitment) to the District Judge Visakhapatnam, some of the candidates, who were short listed, have come up with the present writ petitions, either challenging the order dated 19.06.2012 or seeking a Mandamus to direct the respondents to proceed with the process of recruitment further, declare the results and make appointments.

4. Heard Mr. C. Ramachandra Raju, learned counsel appearing for the petitioners in one writ petition, Mr. Vedula Venkataramana, learned Senior Counsel appearing for the petitioner in one writ petition, Mr. N. Ravi Prasad, learned counsel appearing for the petitioner in another writ petition and Mr. J. Anil Kumar, learned counsel appearing for the Registry of this Court and the other respondents.

5. The facts that we have narrated above are not in dispute. The dispute in this case starts from 30.03.2012, the date on which the District and Sessions Judge, Visakhapatnam sent a letter to the Registrar (Recruitment). In sum and substance, the letter of the District Judge, Visakhapatnam, dated 30.03.2012 stated that the process of recruitment was initiated by his predecessor and that he himself was posted to Visakhapatnam and assumed charge on 29.09.2011; that the written examinations were scheduled to take place on 22.10.2011 and 23.11.2011; that he prepared the question papers for the written examination and was in the process of getting them printed; that at that juncture he received a phone call on 20.10.2011 from the Portfolio Judge, stating that the question papers had been sent by him through his personal secretary; that the personal secretary of the Portfolio Judge met him on 21.10.2011 and handed over a pen drive said to contain the question papers; that he received information from various sources about the antecedents of the personal secretary, in relation to an examination conducted earlier in some other District; that the personal secretary also kept on talking to him over phone; that when he got a strong doubt about his conduct in contacting the staff of the Judiciary, he asked the computer in-charge in the District Court to open the key from the pen drive for the purpose of evaluating the question papers, but the file could not be

opened and hence he had to summon the personal secretary; that the personal secretary, who was staying in Visakhapatnam at that time came to the chamber along with his laptop and opened the key by using the same pen drive; that the District Judge received information from reliable sources that many petitions had been sent to the High Court complaining that the question papers had been sold; that upon his own preliminary investigation, he came to know that under suspicious circumstances, candidates in a particular block fared well and that he suspected the connivance of one Siva Ramakrishna, Record Assistant in the Principal Junior Civil Judge's Court, Gajuwaka, as well as the role of one Mr. Faizal, employee working in Guntur District; that even the nephew of the personal secretary appeared for the selection and also secured 71 marks; that the candidates, who secured very high marks in the written examination, when confronted in the interview with the answers given by them, were not able to answer those very questions and that therefore he suspected a huge scam in the matter.

6. The penultimate paragraph of the letter dated 30.03.2012 sent by the District Judge through Registrar (Recruitment) may be extracted usefully as follows:

“The said Sivaramakrishna is notorious in manipulating the things in recruitment process. Recently, I have also received one complaint that he has collected a sum of Rs.1,50,000/- from one candidate promising him to secure the job as an Attender as per the notification 7/2008. Immediately, I have also transferred him from the present place and I am also enquiring about the allegations made against him in the said complaint. As per the information received by me from the staff members, the said Sivaramakrishna was also previously transferred to various remote places by the previous officers as serious allegations were made against him regarding collection of money from various candidates during the recruitment process. Even the nephew of the said Suryanarayan Personal Secretary also appeared for the Junior Assistants examination and he secured 71 marks and in the interview, he could not even answer even one question from the question paper which he has answered. After

completion of the examinations, the said Suryanaryana, Personal Secretary has also repeatedly contacted me over phone and persistently requested me to give away the pen drive to him. I have refused to hand over the same to him and informed him that I will hand over the same to Hon'ble High Court after the process is completed. I have also asked him not to contact me regarding the examination process. Thereafter, he has stopped talking to me over phone. Therefore, I am of the considered view that fairness is completely lacking in the conduct of examination as there are strong grounds to believe that the said Suryanarayana, Personal Secretary has taken advantage of the fact that the question paper was sent through him by the Hon'ble Portfolio Judge and he has very intelligently copied the contents of pen drive into his laptop and that he has played a deliberate fraud in collusion with Siva Ramakrishna who is an employee of Judicial Department and also with Faizal of Guntur and to divulge the question papers to various candidates which has ultimately vitiated the entire process of examination."

7. It is in the context of the aforesaid letter that the order impugned in these writ petitions, viz., the letter dated 19.06.2012 was issued. Keeping this document in mind, let us now take up for consideration the contentions raised by the learned counsel appearing for the petitioners.

8. The first contention of Mr. C. Ramachandra Raju, learned counsel appearing for the petitioners, in one writ petition, is that the cancellation of selection has been made in an arbitrary and whimsical manner because the persons at the realm of affairs could not get their own candidates selected. It is his contention that the entire exercise has been undertaken without even an enquiry, as recommended by the District Judge. Drawing our attention to the last paragraph of the letter dated 30.03.2012 written by the District Judge, it was contended by him that there was no reason why the High Court did not conduct an elaborate and full-fledged enquiry and there was no reason why the High Court transferred the District Judge avoiding the process of enquiry.

9. But all the above questions will not purify the process of conduct of examination, if it was already polluted. As a matter of fact, disciplinary

action was taken against the personal secretary and he has been dismissed from service.

10. When Courts often pull up recruiting agencies about the irregularities committed by them and when the very process of selection conducted by courts is alleged to be vitiated by malpractices, it is incumbent upon the Court to come out clean. Therefore, the contention that without ordering an enquiry, the examination has been cancelled, does not stand to reason, when tested on the requirement on the part of courts to maintain the purity of its own process.

11. As a matter of fact, this is a case where a District Judge was courageous enough to raise against the Personal Secretary to a learned Judge of the High court who also happened to be the Portfolio Judge of the particular district. Normally, officers belonging to the Subordinate Judiciary, may hesitate, without winking their eyes, to point out an accusing finger against the personal secretary to a sitting Judge of this Court. If an officer has been emboldened to do that, the High Court should, in such circumstances, come out clean in the test of fire. That is what the High Court has done by setting aside the selection.

12. Coming to the contentions of Mr. Vedula Venkataramana, learned Senior Counsel for the petitioner in one writ petition, his first contention is that under the A.P. Judicial Ministerial Services Rules, 2003, the District Judge is the appointing authority for the post of Junior Assistants. Therefore, his contention is that the power of the appointing authority cannot be simply surrendered to the dictates of the Registrar (Recruitment) of this Court as the same would tantamount to abdication of his authority.

13. But we do not accept the said contention. As a matter of fact, this is not a case where the High court dictated the District Judge to cancel the selection. It is a case where the District Judge made a request to cancel the selection. We have already extracted the penultimate paragraph of the letter dated 30.03.2012. In the last line, the District Judge has stated that when fairness was lacking in the examination process and when there are strong grounds to believe that the question papers were sold, the examinations were to be cancelled. Therefore it was the High Court which acceded to the request of the District Judge and not the other way about.

14. The second contention of the learned Senior Counsel for the petitioner is that however strong a suspicion may be, suspicion cannot take the place of proof. As a proposition of law, we have no quarrel with the same. But whether such a proposition applies to our case or not is the question to be pondered. The general proposition that suspicion cannot take the place of proof applies when persons are punished. By cancelling the entire selection before appointment orders could be issued to anyone, nobody stands penalized, to invoke the principle that suspicion cannot take the place of proof. Therefore, the second contention does not also hold good.

15. The third contention of the learned counsel for the petitioner is that the impugned order dated 19.06.2012 is bereft of any reasons. Reasons should form the core of any decision making process and that therefore an order, especially, the one passed by the High Court, cannot be bereft of reasons. But the above contention overlooks one important aspect. The order dated 19.06.2012 is not a communication to the candidates. It is an indication to the District Judge to cancel the entire

selection. The communication to the District Judge was on the very basis of the reasons stated by the District Judge, who invited this letter. Therefore, the third contention also does not hold good.

16. Arguments were advanced also on the scope of the administrative control of the High Court over the Subordinate courts, revolving around Articles 227 and 235 of the Constitution. According to the learned Senior Counsel for the petitioner, the supervisory jurisdiction conferred by Article 227, does not extend to the cancellation of appointments. The power under Article 235 of the Constitution comes into play only after the appointment of persons and not before the appointment. Therefore, it is contended by the learned Senior Counsel for the petitioner that both these articles have no application.

17. But we do not agree. The control of the High Court over the Subordinate Courts is both administrative as well as judicial. That it is so is well settled. Therefore, if something goes wrong in the matter of appointment of Ministerial Employees to the Subordinate Judiciary, it is the responsibility of the High Court to set it right.

18. In any case, as we have indicated earlier, this is not a case where the High Court received some letter from someone and cancelled the selection, thereby interfering with the power of the District Judge. It is a case where the request for cancellation emanated from the District Judge himself. Therefore, this contention is unfounded.

19. One argument advanced by Mr. C. Ramachandra Raju, learned counsel for the petitioner is that the letter dated 30.03.2012 cannot form basis of any action, as it is not worth even the paper on which it is written. But we have to state that argument only to reject it. When the facts disclosed in the letter dated 30.03.2012 are so shocking to the

conscience of any normal person (except perhaps to the petitioners), and the action taken is well justified, then we cannot interfere with the same.

20. A contention regarding principles of natural justice was also raised in the course of the arguments. But this issue has already been settled by the Supreme Court in *Bihar School Examination Board v. Subhas Chandra Sinha*¹. When on the basis of serious allegations, the entire examination was sought to be cancelled, genuine candidates raised a contention that for the mistake committed by a few, the others should not suffer even without an opportunity. But the Supreme Court rejected the said contention in paragraph No.13. This decision in *Bihar School Examination Board v. Subhas Chandra Sinha* was also quoted with approval by the Supreme Court in *Chairman, All India Railway Recruitment Board v. K. Shyam Kumar*².

21. Interestingly, the decision in *All India Railway Recruitment Board* arose out of the order passed by the Railway Recruitment Board in relation to a selection to Group-D posts held in 2003. The Railway Recruitment Board instead of cancelling the entire process of selection, resolved to subject only those who secured minimum marks, for a retest. When this was put to test, the High Court set aside the decision. But the Supreme Court reversed the same. While doing so, the Supreme Court pointed out that whenever allegations of malpractices are made (allegations and not proof) there are three alternatives available to an employer. The first alternative is to cancel the entire process of selection. The second alternative is to subject the candidates who secured minimum marks to a fresh process. The third alternative was to cancel only the selection of candidates, who were the beneficiaries of such a fraudulent

¹ (1970) 1 SCC 648

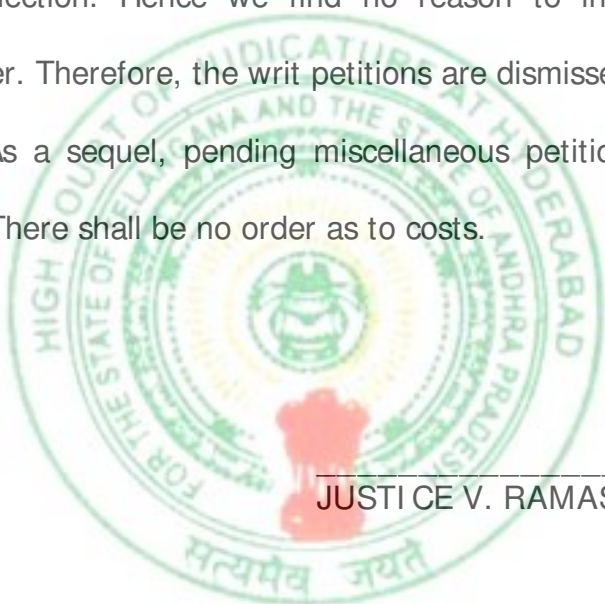
² (2010) 6 SCC 614

process. Since the Railway Administration adopted one of the three alternatives, the Supreme Court affixed its seal of approval on the said alternative.

22. But even while doing so, the Supreme Court pointed out that when a process of recruitment is vitiated, the adoption of even the alternative of canceling the entire examination cannot be found fault with.

23. In view of the above, we are of the considered view that in order to save its own reputation and in order to save the purity of the process of recruitment, the High Court rightly resolved to cancel the entire process of selection. Hence we find no reason to interfere with the impugned order. Therefore, the writ petitions are dismissed.

23. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

14th December, 2016
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT PETITION Nos.22160, 25736 & 26250 of 2012



Date: 14-12-2016

Js.