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

+ W.P.(C) 4091/2014

% *Judgment dated 7th January, 2016*

UNION PUBLIC SERVICE COMMISSION Petitioner

Through : Mr.Naresh Kaushik and Ms.Megha Singh,
Adv.

versus

AMITESH MISHRA AND ORS Respondents

Through : Mr.R.K. Saini, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL. 8204/2014

1. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
2. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking a direction to set aside and quash the order dated 21.1.2014 passed in O.A.No.2854/2013 and the order dated 24.3.2014 passed in Review Petition No.40/2014 by the Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*').
3. This is a rather unfortunate case where the application form of respondent no.1 has been rejected by the UPSC on the ground that a meagre amount of Rs.25/- towards examination fee, which was to be deposited along with the application form, has not been received by the UPSC.

4. The necessary facts to be noticed for disposal of this writ petition is that pursuant to an advertisement bearing no.SPL/51/2012 published by the petitioner on 14.4.2012 for the appointment to the post of Assistant Provident Commissioner in EPFO respondent no.1 made an application. Besides other candidates, respondent no.1 was issued an E-admit card to appear in the written test to be conducted by the petitioner on 23.9.2012. As per the petitioner, in the general instructions of the E-admit card issued to the candidates, it was specifically mentioned that the admission is provisional and the mere fact that an E-admit card has been issued to them would not imply that their candidature has been finally cleared by the petitioner. Subsequently, the petitioner shortlisted 895 candidates for the interview provisionally on the basis of recruitment test conducted. All the successful candidates including the respondent no.1 herein were directed to send the print out of their on-line recruitment application along with requisite documents/certificates. It was also informed that their candidature would be purely provisional, subject to their satisfying the prescribed eligibility criteria. Thereafter, a list of 6395 candidates, including the name of respondent no.1, was received in the On-line Recruitment Cell of the petitioner with respect to non-payment of Rs.25/- towards examination fee from the banking authorities. Being amongst one such candidate, respondent no.1 was informed by a letter dated 21.2.2013 that in the absence of a confirmation from the bank with regard to non-payment of examination fee of Rs.25/-, his form stood rejected. Ten days' time was granted to respondent no.1 herein to file an appeal. Aggrieved by the order of rejection, respondent no.1 preferred an appeal on 28.2.2013.
5. Learned counsel for the petitioner has placed reliance on paras 4 and 5 of the appeal to show that he had stated in the appeal that it is only on

21.2.2013 that he learnt that the transaction of online deposit of Rs.25/- was not successful on account of a technical snag in the server and error in the network, which was an inadvertent mistake on the part of SBI online payment system and he was not responsible for the same. It is pointed out by counsel for the petitioner that the respondents had not blamed the petitioner for the lapse. Petitioner by a communication dated 10.5.2013 again asked respondent no.1 to furnish documents regarding proof of having deposited the fee. Respondent no.1 was also informed that he has provisionally qualified for the interview, however, subject to his furnishing proof of payment of examination fee. Petitioner again informed respondent no.1 by a communication dated 16.5.2013 calling him to the interview provisionally and directing him to send the print out of his Online Recruitment Application with the requisite documents/certificates, subject to his furnishing the requisite documents. In the interview held on 17.6.2013 respondent no.1 was unable to furnish proof of payment although respondent no.1 furnished a letter received by him from the Branch Manager, PNB, Boring Road, Patna, informing him regarding unsuccessful transaction through PNB Debit Card and the reason, which was informed by the PNB, was that the transaction failed due to technical reasons, etc. Since respondent no.1 was unable to furnish proof of payment of examination fee, the result of respondent no.1 was not declared, which led to the filing of O.A. before the Tribunal, which was allowed vide Order dated 21.1.2014. A review petition filed by the petitioner herein was also dismissed on 24.3.2014, which led to the filing of the present writ petition.

6. Mr.Kaushik, learned counsel for the petitioner/UPSC, submits that the petitioner follows a uniform rule, as was followed in the case of respondent no.1, that if the prescribed examination fee was not received

by the petitioner along with the Online Recruitment Application, the form of respondent no.1 would stand rejected, as has been uniformly rejected in a large number of cases. Counsel further submits that respondent no.1 was given ample opportunity to furnish the proof of payment of Rs.25/- towards examination fees. The respondent no.1 was requested to furnish such proof along with the appeal, which he did not do so. He was allowed to appear in the interview provisionally and subject to his furnishing proof of payment of Rs.25/- but the proof of payment was not furnished by him, resultantly, his result was not declared. Counsel also contends that the learned Tribunal has erred by observing that respondent no.1 had furnished evidence to show that he had sufficient amount in the account and, thus, he was not responsible for the technical snag on the part of the bank as he had in all earnestness attempted to make the payment of Rs.25/-. Mr.Kaushik has also contended that the Tribunal has wrongly taken into account that the on-line system of petitioner herein did not generate any SMS or any error message/warning that the transaction was not successful and, thus, in all fairness the candidate would presume that the payment was successful. It is further contended that the Tribunal has also taken into account that had there been any message of error, respondent no.1 could have tried again to make the payment as there was plenty of time between the date of payment i.e. from 19.4.2012 and 20.4.2012 till the last date, which was 3.5.2012. Counsel for the petitioner submits that on the contrary it was the duty and responsibility of respondent no.1 to check up from his bank that the amount was debited from his account or not.

7. Learned counsel for the petitioner submits that the Tribunal has also taken into account that the petitioner herein had washed its hands of the responsibility with regard to the technical snag or the system failure

online system. According to the stand taken by the petitioner before the Tribunal, it was the duty of the applicant to ensure that examination fees is paid in the prescribed mode, which submission did not find favour with the Tribunal.

8. Mr.Kaushik, counsel for the petitioner, has placed strong reliance on a decision rendered by the Apex court in the case of **UPSC & Anr. v. Krishna Chaitanya**, reported at 2011 (14) SCC 227 and also the decision rendered in the case of **UPSC Vs. UOI GNCT**, W.P.(C) 10058/2009 in support of his submission that the burden was on the applicant to prove that the on-line transaction was successful and the examination fee was credited in the account of the petitioner. Counsel also submits that in case result of respondent no.1 is declared serious prejudice would be caused to about 6000 similarly situated persons, whose forms stand rejected on account of non-receipt of examination fee. Additionally, the entire procedure and the terms of the advertisement cannot be given a go-by for individual cases.
9. Reliance is also placed by counsel for the petitioner on a decision rendered by the Supreme Court of India in the case of **T. Jayakumar v. A. Gopu & Anr.**, reported at (2008) 9 SCC 403, more particularly para 10, in support of his submission that merely because an admit card was issued or the applicant was allowed to appear in the written examination and the interview, would not create a vested right in his favour.

“10. We are not aware any principle of law under which once a candidate is allowed participation in the selection process the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a

chance to take part in selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate ineligible for selection was valid or unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary the Tribunal may certainly intervene but if the reason itself is valid the tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case.”

10. Mr.Saini, learned counsel for respondent no.1, submits that respondent no.1 is a bright candidate, he has met all the eligibility criteria and made every sincere attempt to make the payment of the examination fee, which is evident from the fact that a transaction ID was generated, which according to him is proof of payment. Counsel further submits that once the respondent no.1 has entered into the transaction for payment of examination fees, his responsibility was over, coupled with the fact that the petitioner accepted his form, issued an admit card and also allowed him to appear in the examination as also for the interview. Thus, a vested right has accrued in favour of respondent no.1. Counsel also submits that deposit of Rs.25/-, which is a meagre amount, is not one of the basic eligibility criteria and even if the UPSC has not received the examination fee of Rs.25/- this by itself cannot be a ground to reject his form and not declare the result, even if he is successful. Counsel also submits that it is the petitioner who is to blame and in the past as well, wherever there has been a technical snag, the last dates have been extended. Counsel contends that in the present case also in case the transaction did not go through, respondent no.1 should have been informed, the last date should

have been extended and the form, if at all was to be rejected, it should have been rejected at the earliest and before the last date.

11. We have heard learned counsel for the parties, considered their rival submissions and also examined various annexures, which have been filed along with the writ petition, which also form part of the record of the Tribunal. It is not in dispute that respondent no.1 had made an application in the prescribed form to the petitioner in terms of the advertisement published by the petitioner on 14.4.2012. It is also not in the dispute that as per the advertisement a candidate was to submit Rs.25/- towards the examination fee. It is also not in dispute that two modes were provided to the candidates to deposit examination fee i.e. either through the bank portal or in cash. Record also reveals that respondent no.1 had chosen the mode of deposit of examination fees through banking portal and made two attempts to deposit the examination fee on 19.4.2012 and 20.4.2012 as claimed by the respondent. However, the document obtained by respondent no.1 from the bank, which has been placed on record, would show that respondent no.1 had attempted to make the payment twice on 19.4.2012. The log obtained by respondent no.1 from the Bank reads as under:

DATE	CARD NO	RESP-CODE	SEQ-NO	TIME	Amount	Txn Status
19-04-2012	5126520133257951	064	664802	18:19:51	25	Unsuccessful
19-04-2012	5126520133257951	064	665120	18:24:33	25	Unsuccessful

12. The aforesaid document would reveal that respondent no.1 had attempted to make the payment on 19.4.2012 twice i.e. at 18.19.51 hours and at 19.24.33 hours but both the transaction remained unsuccessful. The

documents placed on record by respondent no.1 would also show that on 26.6.2013, a complaint was made by him to SBI, which reads as under:

“Sent : 26 June 2013 18.37
To : Vijay.belwal@abi.xo.in
For: Soumya chakraborty.sbi.co.in

Subject : PROOF OF FAILED TRANSACTION TO UPSC ON 19.04.2012

Amitesh Mishra
6A, Gandhi Path
PATNA-800013
Mob No.7352732007
Mail add. Amitesh25@yahoo.com

I want to register complaint regarding NON PAYMENT OF FEES TO UPSC on date 19.04.2012. My registration ID is 119002851505

Inspite of repeated trails on 19.04.2012, the transaction through debit card for fee payment of Rs. 25/- was not successful because of some connectivity issue

I have cleared the phase of written examination and has already appeared for interview phase.

U.P.S.C. has instructed me to bring the proof of online fee payment within 15 days.

Due to non payment of fee, my candidature is being on the verge of rejection and my career is at stakes.(sic)

U.P.S.C. has given me two week time for producing the proof of payment or at least the proof of attempts made towards fee payment.

For the sake of my career and my employment this is my earnest request to you to please look into this matter and convey me the information urgently.

Disclaimer : The information in this mail is confidential and is intended solely for addressee. Access to this mail by anyone else is

authorized.(sic) Copying or further distributing beyond the original recipient may be unlawful. Any opinion expressed in this mail is that of sender and does not necessarily reflect that of State Bank group.

It appears that the transaction was not successful because of technical reasons etc.

*Sd/- Chief Manager
Punjab National Bank.*

13. The Tribunal has allowed the O.A. filed by respondent no.1 herein primarily on the ground that once respondent no.1 was able to show that he had attempted to make the payment of Rs.25/- towards examination fee and no error message was received by him and further no provision was made by the petitioner herein for devising a method to inform the applicant that the transaction was not successful, a candidate in all fairness would presume that the transaction was successful and the payment was made.
14. The Tribunal was also not impressed by the submission made on behalf of the petitioner that it had failed to accept the responsibility for the maintenance of an error free operation of the system. The Tribunal also observed that in case On-line Recruitment Application system would breakdown on certain dates and the UPSC does not receive the application due to error in the network by the logic of UPSC, the candidate would be held responsible. The documents, extracted hereinabove, would show that the transaction conducted by respondent no.1, was admittedly unsuccessful, thus, it is not in dispute that the UPSC did not receive the examination fee.

15. As per learned counsel for respondent no.1 the candidate cannot be blamed for the technical snag, as the candidate had made every attempt possible to ensure that Rs.25/- was paid towards examination fee and once he had carried out the transaction, his responsibility would come to an end and the transaction ID was generated and thereafter there was no responsibility of the candidate to check through any means as to whether the payments had been received or not.
16. Learned counsel for the petitioner on the other hand has submitted that as far as the UPSC is concerned they had authorised two modes of making payment i.e. one was to deposit in the bank and the other was through on-line transaction. Counsel further submits that the candidate had enough time between 19.4.2012 to 3.5.2012 to ascertain from his bank that this payment was debited from his account.
17. Respondent no.1 has also placed on record a copy of his pass book, which shows that respondent no.1 had conducted eleven transactions through ATM withdrawal and one transaction of deposit between 19.4.2012 to 3.5.2012. This Court cannot lose track of the fact that respondent no.1 was aspiring for an appointment to the post of Assistant Provident Fund Commissioner in EPFO and his conduct would show that he has been highly negligent as despite having conducted many transaction has not checked as to whether Rs.25/- stood debited from his account or not.
18. In our view, the Tribunal has erred in fixing the responsibility on the petitioner to ensure that the payment was cleared through the bank of respondent no.1 and the bank appointed by the petitioner for the purpose of deposit of Rs.25/-. The onus, in our view, was only on the candidate, who was to ensure that Rs.25/- stood credited into the account of the UPSC. The candidate had almost two weeks from 19.4.2012 to 3.5.2012 to ascertain from his bank that the transaction had actually been

successful or not.

19. The judgments, sought to be relied upon by counsel for the petitioner in the case of *UPSC v. S. Krishna Chaitanya* (supra) in our view is fully applicable to the facts of the present case. In the aforesaid matter, the candidate had submitted his application in the Civil Services examination in the year 2010 through DTDC Courier and Cargo Limited. Despite having produced a receipt received from the courier company, there was no proof that the form actually was received by the UPSC. In these circumstances, the Supreme Court held that it was the sole responsibility of the candidate to ensure that the UPSC had received the form and the candidate had been negligent by not taking into account that acknowledgment had not been received by him as in the present case where respondent no.1 did not bother to check up whether the amount stood debited from his account or not. Although as rightly submitted by Mr.Saini that the amount is a very meagre amount and is not one of the main eligibility criteria and also having regard to the fact that respondent no.1 has been successful, the non-payment should be condoned, we find ourselves unable to accede to such a request as it has been repeatedly held by the Apex Court that the Courts are not empowered to change the terms of the advertisement, neither the advertisement has been challenged. In the absence of examination fee, having been received by the UPSC, we cannot find fault with the UPSC in not declaring the result of the petitioner,
20. Paras 25 to 28 of *UPSC Vs. UOI GNCT* (supra) reads as under:

“25. With such a large number of DAFs having been received by the UPSC, it is impracticable to expect the UPSC to give a go by to the instructions that have categorically and specifically been mentioned in the advertisements issued by it. It is one thing to say

that procedure is a handmaid of justice but it is another thing, in practical life, to give procedure a complete go by for the sake of accommodating a few people. If this is done, then there would be no obligation on anybody to follow any procedure resulting in a completely unmanageable situation.

26. If the submission made by learned counsel for the Respondents is placed on a larger canvas (since the UPSC conducts dozens of such examinations annually), one can well imagine the resultant chaos. For example, it is well known that the UPSC receives lakhs of applications for the Central Civil Services Examination. If every such applicant submits an incomplete application, that is to say that the relevant information is not submitted along with the application, the processing time for the UPSC would take several months and would, in the long run, be completely counterproductive. Consequently, in our opinion while it is true that procedure is the handmaid of justice, it is not possible to ignore practical difficulties that may arise in a given case.

27. The present case is such a case where, because of a very large number of applications received by the UPSC, if it is compelled to accept procedurally incomplete applications, there would be serious practical difficulties that it would have to encounter and this may very well lead to a break down in the system. We also cannot overlook the fact that the applicants/Respondents are all highly educated persons claiming to have an LLB degree and three years experience at the Bar. Therefore, it must be assumed that they fully understood the contents of the advertisements and the DAF. There was a duty cast on them to correctly fill up the DAF and they cannot be allowed to contend that despite this, their application should be accepted even if it is incomplete only because procedure is the handmaid of justice.

28. The matter may be looked at from another point of view. The UPSC has rejected the candidature of 45 persons due to non-submission of the required documents and/or submission of documents in the wrong format. If any relief is granted to the

Respondents before us, surely it would be appropriate to grant a similar relief to other similarly placed candidates, some of whom may not have approached the Tribunal for relief. If this exercise were to be undertaken, perhaps the entire examination would require to be cancelled. In our opinion this is neither in the interest of the candidates who have qualified nor is it in the public interest to cancel the entire examination for the sake of accommodating a few persons, such as the Respondents.”

21. Mr.Saini has also urged before us that once the examination fee was not received, there was no reason for the UPSC to allow respondent no.1 to appear either in the written examination or in the interview or issue an admit card to respondent no.1.
22. We agree with the submission made by Mr.Kaushik that keeping in view the large number of applications, the scrutiny is carried out subsequently. Additionally, we also agree with the submission that repeated opportunities were granted to respondent no.1 in all fairness to enable him to provide proof of payments of Rs.25/-.
23. In view of above, the present writ petition is allowed. The impugned orders dated 21.1.2014 and 24.3.2014 are set aside.
24. Writ petition stands disposed of. No order as to costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 07, 2016

msr