

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3415 of 2016

=====

Indrajeet Sachin S/o Sri Neelambar Singh R/o Near Bhagat Singh Chowk, Munger,
P.S. Kotwali, District - Munger.

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Science & Technology, Deptt. of Science & Technology, Govt. of India.
2. The Secretary, Deptt. of Science & Technology, Deptt. of Science & Technology, Govt. of India.
3. The Bihar School Examination Board (Senior Secondary) through its Chairman.
4. The Chairman, Bihar School Examination Board (Senior Secondary), Patna.
5. Secretary, Bihar School Examination Board, (Senior Secondary), Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Sinha, Mr. Arvind Kumar Sharma and Mr. Chetan Kumar, Advocates
For Union of India	:	Mr. A.K. Pandey and Mr. R.K. Sharma, Advocates
For B.S.E.B.	:	Mr. Sunil Kumar Mandal, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-01-2017

Heard learned counsel for the parties.

By order dated 06.12.2016, the Court had directed the respondent No.2 to explain as to why the amount of scholarship due to the petitioner has not been paid and the matter was directed to be listed on 16th January, 2017.

When the matter was taken up on 16.01.2017, after some arguments, on the prayer made by learned counsel for the Union of India, it was adjourned for the day, on the ground that he had received instructions.

Today, the Bihar School Examination Board (hereinafter



referred to as the 'Board') has filed a supplementary counter affidavit but there is no counter affidavit on behalf of the Union of India.

The Court cannot grant one indulgence after the other and in the present case the Court feels that the Union of India has taken the court for granted. This cannot be tolerated under any circumstances. On 06.12.2016, the matter was adjourned to 16.01.2017 in the presence of learned counsel for the Union of India, and still on that day nothing was brought on record to explain the query made by the Court in its order dated 06.12.2016 and on 16.01.2017 again indulgence was granted. In the aforesaid background, in the considered opinion of the Court, the Union of India is not entitled to any further indulgence. The request made by learned counsel on its behalf is rejected as sufficient indulgence has been given to the Union of India and thus the Court has no option but to proceed and dispose off the matter on merit, on the basis of the pleadings and materials available on record.

The writ application has been filed seeking grant of 'Inspire Scholarship' to the petitioner valued at Rs.80,000/- annually for five years, by which the one percent top scorers in the examination held by the Board is entitled to such payment. The petitioner appeared in the examination in the year 2014, but the marks initially awarded to him not being correct, he filed a petition for re-valuation and ultimately his contention has been upheld and marks in three subjects



have been increased. Thus, after the enhancement of the marks, the petitioner came within the one percent top scorers in the said examination and, accordingly, became entitled for grant of scholarship under the 'Inspire Scholarship Scheme'. When the same was not granted, he has approached the Court.

Learned counsel for the petitioner submitted that he has not been paid scholarship due to the fault on the part of the Board of wrongly having given him less marks, which upon an application filed by him, have subsequently been corrected, and thus, fulfilling the requirement of being in the one percent top scorers, he is entitled to payment of the scholarship amount.

Learned counsel for the Board submitted that due to heavy load relating to re-evaluation, the exercise took some time but upon re-evaluation the petitioner's marks have been increased and information with regard to him being in the one percent top scorers was duly intimated to the Principal Scientific Officer, Department of Science and Technology, Government of India, both through e-mail as well as under registered post on 03.11.2014 when the name of the petitioner was not there, and pursuant to the enhancement of marks of the petitioner, he having secured a place among the one percent top scorers such information was communicated to the concerned officer on 18.12.2015. He submitted that the concerned officer/Department of the Union of India has to act upon the same and the Board has



discharged its duty, as the letter dated 28.04.2014 written to it by the concerned department of the Union of India, did not specify any cut-off date for sending the required information.

Learned counsel for the Union of India submitted that as per the advertisement of the Board itself, published in the daily newspaper on 25.10.2014, it was indicated that online applications had to be submitted latest by 31.10.2014. He submitted that in view of the admitted position that on the said date the name of the petitioner was not among the one percent top scorers and as such, the list not being sent to the Central Government, the non-payment of scholarship cannot be said to be deliberate. He submitted that the last date having elapsed, now such payment cannot be made.

Having considered the rival contentions, in the considered opinion of the Court, the petitioner cannot be denied payment under the 'Inspire Scholarship Scheme'. The requirement of the scheme was that a person has to be among the one percent top scorers in the examination held by the Board. For him not being among the eligible persons, that is, one percent of the top scorers, the only reason was that he had not obtained sufficient marks. However, it is an admitted position that on re-evaluation and not re-examination the marks have been increased. Subsequently, the fact which stands established is that there was error in the marking/evaluation which has later on been corrected and for which the petitioner cannot be held



responsible. Once the marks obtained by him places him in the one percent top scorers in the examination held by the Board in the year 2014, the position would change, and even if there is delay, the same not being attributable to the petitioner; the same cannot be fatal to the cause of the petitioner and this Court would interfere under its prerogative writ jurisdiction and for the ends of justice and equity. The petitioner himself also could not have applied for such scholarship as at the relevant time he was not among the one percent top scorers in the examination and only after re-evaluation, he became entitled for such scholarship. Thus, there being no deliberate or willful delay or laches on his part, his genuine and bona fide cause cannot be made to suffer or be negated. As the Union of India may also not be responsible for this delay, the Court would not draw adverse inference or impute motive or even comment upon the conduct of the Union of India, but in view of the fact that in the same examination, based upon only re-evaluation and not re-examination, the petitioner has found a place among the one percent top scorers, the Court holds that the Union of India is required to pay the scholarship, as it was meant for a specific purpose, i.e., one percent top scorers in the said examination. Thus, though there is delay, but the same would not lead to frustrating the entitlement of the petitioner to such scholarship.

The conduct of the Board has not been fair or reasonable as it has not been diligent enough to discharge its obligation for the



reason that despite, upon re-scrutiny, the marks of the petitioner were enhanced some time in early May, 2015 but still the communication to the Principal Scientific Officer, Department of Science and Technology, New Delhi was made only on 18.12.2015, i.e., after a delay of seven months, which neither has been explained in the counter affidavit nor by learned counsel appearing on its behalf. Thus, the Court deems it appropriate to award cost to the petitioner, from the Bihar School Examination Board, which is quantified at Rs. 25,000/-, to be paid within four weeks from the date of receipt/production of a copy of this order before the respondent No.5.

The Court would like to further clarify that the order is being passed in view of the materials on the record, as despite twice giving opportunity to the Union of India, no counter affidavit has been filed on their behalf and, thus, they have made themselves disentitled for any further indulgence for filing counter affidavit.

This Court would also like to record that though there was a communication from the Board under the aforesaid advertisement dated 25.10.2014 relating to last date being 31.10.2014, but the same was only with regard to the online intimation. Thus, the contention of learned counsel for the Board that under the communication of the Union of India dated 28.04.2014, asking for sending of the list, no outer time limit was fixed, appears to be correct. However, the Court has awarded cost against the Board for



the reason that it has shown absolute casual and sluggish approach to such an important issue, by initially taking time for re-evaluation and thereafter also, after re-examination, sending the same to the Union of India after almost seven months.

In view of the discussions made hereinabove, the Court holds that the petitioner is entitled to payment of such scholarship. Accordingly, mandamus is issued to respondent no.2 to make such payment, within a period of four weeks from the date of receipt/production of a copy of this order before him.

The writ application stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

V.P.Sinha/-

AFR/NAFR	
U	

