

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.24318 of 2017

ORDER:

Heard Sri T.Vijay Hanuman Singh for petitioner, learned Assistant Government Pleader for GAD, Sri D.Balakishan Rao for 2nd respondent, Sri C.Srinivasa Baba for 3rd respondent and Sri Gangaiah Naidu for respondents 4 to 13.

The petitioner prays for Mandamus declaring the action of respondents in issuing proceedings dated 19.07.2017 i.e., particularly excluding from consideration petitioner's candidature, as illegal, arbitrary and unjust.

The circumstances relevant for disposing of the writ petition are stated thus:-

On 28.11.2011 A.P.Public Service Commission, Hyderabad/3rd respondent issued Notification No.18/2011 calling for application for various posts in Group-I Services. The 3rd respondent conducted preliminary examination and a few of the questions/answers given in the preliminary examination were the subject matter of challenge before the A.P. Administrative Tribunal and the Apex Court. Finally, the Hon'ble Supreme Court through order dated 07.10.2013 disposed of Civil Appeal No.9140

of 2013. The operative portion of the order dated 07.10.2013 reads thus:-

“Being aggrieved, the Andhra Pradesh Public Service Commission filed this appeal. Even after whatever screening has been done earlier, we find the following six questions and there answers to be problematic. It is the specific case of the original petitioners that the key answers given by APPSC for six questions at Serial Nos.4, 43, 61, 62, 107 and 130 in “D” series are confusing. These questions did not have one clear answer and that being so it will be unfair to the candidates that the preliminary examination should be decided by including these six questions. By our order passed on the last date we asked Mr.Diwan to take instructions as to whether these problematic questions could be deleted.

Having heard learned counsel for the parties, we are of the view that these questions cannot be retained. That being so, the marks secured have to be recounted from the answer books written by all the candidates on the basis of 144 questions after deleting these six questions and their answers. Those who succeed after revaluation will be eligible for the main examination and the Andhra Pradesh Public Service Commission will hold the main examination de novo thereafter. On the basis of these 144 questions some new candidates may succeed or some candidates may fail. It will be the new list of candidates passing the examination of 144 marks who will take second main examination.

The appeals are allowed accordingly”

Respondent Nos.2 and 3 encountered new problems in implementing the order dated 07.10.2013 and were constrained to file I.A.No.4 in Civil Appeal No.9140 of 2013 seeking modification of the order of Apex Court, dated 07.10.2013. On 20.01.2014, the application filed for modification was disposed of

and the operative portion of the order is excerpted both for immediate reference and to appreciate the contentions urged by the learned counsel appearing for parties.

“As far as this submission is concerned it is not possible to accept this for the reason that accepting the submissions of Mr. Salve and Ms. Mahalakshmi Pavani to restrict the fresh examination to 209 candidates only, will mean that 209 candidates will answer one set of question papers whereas those who had passed the main examination on the earlier occasion, had answered another set of question papers. This will not withstand scrutiny of Article 14 of the Constitution of India, since two sets of candidates will be tested on the basis of two different sets of examination papers. It is ultimately their ranking in the main examination which is going to be relevant. Therefore, the main examination has to be a common examination for all those who are now held to be eligible on the basis of their passing the preliminary examination. This being so, the submission cannot be accepted.

The alternative submission of Mr. Salve is that out of the candidates who had succeeded in the preliminary examination on earlier occasion, 7711 had chosen not to appear in the main examination even though they had qualified in the first round. His submission is that at least those candidates who had chosen not to appear in the main examination earlier, should not be permitted to take the main examination now.

We note that these 7711 candidates had given up on their own their right to participate in the main examination on the earlier occasion. They had no grievance with the result of the preliminary examination held at that time. If the selections were to go ahead on the basis of the preliminary and the main examination held earlier, they did not want to compete therein. The preliminary examination has been directed to be held

afresh by this Court in view of the objections raised with respect to six questions and answers by the candidates who were keen in passing the preliminary as well as the main examination and getting selected, which is not the case with the 7711 candidates. We therefore, find merit in this submission for the reason that having succeeded in the preliminary examination these 7711 candidates had chosen not to give the main examination on the earlier occasion. Therefore, these 7711 candidates shall be deemed to have given up their claim to participate in the main examination to be held de-novo.

In the circumstances, we modify our order dated 7.10.2013 to this extent that it will be permissible to the A.P. Public Service Commission to restrict the participation in the main examination to be held now to the approximately 16,000 candidates who have passed the fresh preliminary examination after excluding the above referred 7711 candidates. We further add that there will be age relaxation in favour of the candidates if any, who have crossed the age bar, because of the litigation. All the I.As., stand disposed of accordingly.”

Now advertent to the case on hand, it is noted that Respondent No.2 issued hall ticket No.2011210983 to petitioner herein and to take up the main examination along with candidates approximately numbering 16000 referred to in the order extracted above. The petitioner avers that he has attended the main examination and exclusion petitioner's candidature from the proceeding impugned in the writ petition is illegal, arbitrary and contrary to the modified order issued by the Hon'ble Supreme Court. To be fair to petitioner, it is stated that the petitioner has adverted to the circumstances which would

have probably influenced the respondents to exclude petitioner from consideration at this stage of selection. By disclosing all the details, the petitioner presses for his right for consideration and challenges the proceedings of respondent No.2.

According to petitioner, in the main examination held between 18.09.2012 and 28.09.2012, the petitioner has attended only one examination as against six examinations. The interpretation the petitioner places on the order of the Apex Court is that the modification order dated 20.01.2014 has quantified the eligible as well as ineligible candidates and by slotting the petitioner as eligible candidate, respondent No.2 issued hall ticket and allowed petitioner to write examination. The modification order does not refer to the cases where a candidate takes up one or a few examinations but intends to exclude the candidates, who have not taken up any examination at all. Even assuming that the mistake of fact resulted in sending hall ticket, once the petitioner is allowed to take up the main examination, at this stage of the selection, excluding him from consideration is impermissible and illegal. Therefore, either independently or by referring to the order of the Apex Court, he challenges the proceeding and prays for suitable directions to include his candidature as well in the selection.

On 25.07.2017, this Court granted interim direction to 2nd respondent to allow the petitioner to appear for the Personality Assessment Test (Interview) for Group-I Services (Limited & General Recruitment) in Notification Nos.15/2011 & 18/2011, scheduled to be held from 24.07.2017 to 10.08.2017 and also to reserve one post for the petitioner.

Telangana State Public Service Commissioner filed W.P.M.P.No.3544 of 2017 seeking vacation of the interim order.

The case of 2nd respondent is that the issue of hall ticket for writing main examination cannot and could not be treated as the petitioner complying with criteria for including him in the candidates eligible for writing the examination.

Condition No.20 of Hall Ticket No.2011210983 issued to petitioner reads as follows :-

“The candidate’s admission to the Examination is provisional subject to the confirmation/satisfaction of conditions of Notification Nos.15/2011 & 18/2011 in accordance to the orders of Hon’ble Supreme Court. (emphasis added)”

As matter of fact, it is stated that the petitioner did not take all the examinations held between 18.09.2012 till 28.09.2012 and therefore he has to be treated as an ineligible candidate. The hall ticket to petitioner was sent due to mistake. The interim direction has two facets firstly to permit the petitioner to take up

Personality Assessment Test and secondly reserve one seat for petitioner.

Learned Standing Counsel contends that even if the petitioner is permitted to take up the interview, reserving one seat leads to series and phased problems to 2nd respondent if results are declared. The very eligibility of petitioner is satisfactorily explained hence, a final decision in this behalf is taken to give quietus to the controversy.

According to 2nd respondent, the petitioner even if included in the list of eligible candidates for writing the main examination, the same is conditional and if the petitioner is allowed to write examination, the same amounts to deviating from the clarification granted by the Apex Court. Therefore, he prays for dismissing the writ petition.

Mr. Gangaiah Naidu appearing for respondents 4 to 13 in reply to the contention of T. Vijay Hanuman Singh submits that the order of Apex Court is clear i.e., in respect of candidates, who have not appeared for the examination at all or candidates, who have taken up one examination or two examinations. He contends that this contention of the 2nd respondent is contrary to very notification under which the process of selection is taken up by respondents. He places reliance on Condition No.3 to

Notification No.18/2011 dated 28.11.2011, which reads as follows :-

“Candidates must appear for all the papers in Main examination and Oral test, who qualified for the same. Absent in any of the above will be liable for disqualification.”

By relying on this condition, he contends that according to the instructions issued by the Public Service Commission, the candidate is required to write all the examinations and failure to write one or the other examination results in disqualification of his candidature. In recruitment made through Public Service Commission, there can't be room or scope for mistake of fact and no advantage can be given to petitioner by competing with other eligible candidates, who were expressly permitted by the Apex Court. He prays for dismissing the writ petition.

I have heard the counsel and perused the material on record.

The circumstances are not in dispute. The petitioner challenges the action of respondents firstly by construing the order of Apex Court, dated 20.01.2014 and secondly that the mistake of fact is accepted and that the respondents cannot resile and exclude the application of petitioner from consideration after main examination is written. This Court finds it convenient to first test the submission of learned counsel for

petitioner by reference to the conditions imposed in Notification No.18 of 2011 and condition incorporated in hall ticket No.2011210983.

In the notification issued on 28.11.2011, Condition No.3 under the head 'other important points' mandates that candidates must appear for all papers in main examination and oral test. The consequence of abstention results in disqualification.

Hall Ticket is issued with the condition that the writing examination is subject to the conditions in Notification No.18/2011 and in accordance with the orders of the Hon'ble Supreme Court. In the case on hand, as against six examinations, the petitioner has taken only one examination held on 18.09.2012. If Condition No.3 in Notification No.18/11 is applied, this Court is of the view that the petitioner is disqualified from further process of selection. The hall ticket explicitly refers to the orders passed by the Apex Court dated 20.01.2014. Therefore a candidate who does not take up an examination held earlier is disqualified from process of selection. By his own acts, the petitioner has become disqualified and now by interpretation attempts to get over the difficulty, therefore, now let me examine the case of petitioner from the order of the Apex Court, dated 20.01.2014.

The operative portion of the order is already excerpted both for brevity and to avoid repetition, I am not proposing to excerpt the operative portion of the order once again.

To sum up the consideration of the order of Apex Court, the following aspects are noticed.

The Hon'ble Supreme Court rejected the first contention urged by the applicants in I.A.No.4 in Civil Appeal No.9140 of 2013. Thereafter, the alternative submission namely to exclude 7711 candidates who have chosen not to appear for the main examination was taken up. The finding of Apex Court to exclude is very clear and categorical.

In paragraph '6' of the order, dated 20.01.2014, the reasons that weighed with the Apex Court for restricting the number of candidates, who have taken up the examination are stated thus:-

- (a) 7711 candidates on their own have given their right to participate in the main examination on the earlier occasion.
- (b) If the selections were to go ahead on the basis of the preliminary and the main examination held earlier, they did not want to compete in the process.

(c) The preliminary examination has been directed to be held afresh by this Court in view of the objections raised with respect to six questions and answers by the candidates who were keen in passing the preliminary as well as the main examination and getting selected, which is not the case with the 7711 candidates.

From the above reasoning, it is clear that the Apex Court was accepting the prayer for modification to permit only the eligible candidates to write the main examination, to be held pursuant to the first order and not the ineligible candidates at all. To the extent of quantification, the Hon'ble Supreme Court used the words "approximately 1600 candidates". Even if an assertion was made by the Public Service Commission on the numbers of candidates, still the expression approximately has been used in the order dated 20.01.2014. Therefore, even if a candidate otherwise ineligible is included in eligible list, it cannot be said that this is firm quantification and respondent No.2 cannot change. The erroneous inclusion of petitioner in eligible candidates list is made by mistake it will not result in creating a right in favour of such candidate/petitioner.

For the above reasons, this Court is of the view that the petitioner by his own conduct has disentitled from consideration

and the hall ticket was issued subject to the orders of the Apex Court and the conditions incorporated in respective notifications. The two grounds urged by petitioner are accordingly rejected. The grievance of petitioner against the proceedings impugned in the writ petition is unsustainable and liable to be dismissed.

The writ petition fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 21.09.2017

Note:

Issue C.C. forth with.

(B/o)

Prv



S. V. BHATT, J

