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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13803 OF 2016
WITH
CIVIL APPLICATION NO. 1542 OF 2017**

Shri Vivek Vasant Ambre & ors. ...Petitioners

Vs.

Union of India & ors. ...Respondents

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Mr. Ram Apte, Senior Advocate a/w. Mr. Saurabh Oka, Ms. Leena Shinde i/by Mr. Parth P. Shah, Advocate for the applicants in Civil Application No.1542/2017.

Mr. Rui Rodrigues a/w. Mrs. Neeta V. Masurkar and Mr. S.G. Thakur, Advocate for the respondents/UOI.

Mr. A.V. Anturkar, Senior Advocate i/by Mr. Rahul Walia, Advocate for the petitioners.

Mrs. Neeta V. Masurkar a/w. Mr. A.R. Gole, Advocate for the respondents in Civil Application No.1542/2017.

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CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.

AND M.S.KARNIK, J.

RESERVED ON : 22nd FEBRUARY, 2018

PRONOUNCED ON : 30th JULY, 2018

JUDGEMENT (PER M.S.KARNIK, J.) :-

The petitioners by this petition challenge common judgment and order dated 11th November, 2016 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No.210 of 2015, 343 of 2013, 475 of 2013 and 517 of 2013. The petitioners are aggrieved by that part of the order by which the Tribunal has directed the respondents to prepare and publish the final seniority list for 325 posts when according to the petitioners the Tribunal should have restricted the benefit of the judgment only to 72 candidates as per the orders of the High Court.

2. Union of India has challenged the common judgment and order passed by the Tribunal by filing W.P.No. 7632 of 2017 and has further prayed that entire selection process started for 325 posts by advertisement dated 7/3/2012 issued by the Naval Dockyard, Mumbai, be quashed. W.P. No. 7632 of 2017 is decided by us by passing a separate order.

3. Civil Application No. 1542 of 2017 is filed by the interveners who claim to be selected candidates in the merit list prepared by the appointing authority for 325 posts in question. According to the interveners as the Tribunal has directed that the selection process should be completed for the 325 posts, they would be adversely affected if W.P.No. 13803 of 2016 is allowed and therefore, they should be heard.

4. The facts in a nutshell are thus :-

The petitioners had applied for unskilled labour, Group 'C', Non-gazetted post in response to the advertisement issued by the Naval Dockyard on 7th-13th April, 2012. In accordance with the said advertisement 325 posts of unskilled labourers were notified. The advertisement provided that the vacancy position may be altered as per the discretion of the competent authority. On 6/12/2012, the respondents conducted the physical test and interview. Though the entire selection process was completed no appointments were made till 1/5/2013. On 1/5/2013 a complaint was made in respect of the selection alleging malpractices. In a detailed inquiry that was

conducted by the head of the Naval Dockyard, report was submitted on 24/5/2013. The report did not reveal any malpractice.

5. The Headquarters Western Naval Command, Mumbai, vide letter dated 31/5/2013 directed Naval Dockyard, Mumbai to convene fresh Board for selecting the required number of candidates from among the 1693 candidates who have qualified in the physical test. Therefore, in accordance with the directives of higher Competent Authority and O.M. No. AB-14017/6/2009 dated 19/8/2011 of the DoP & T, a considered decision was taken to conduct the written test of successful candidates in physical test in order to maintain transparency and fairness in the process. The written test was conducted on 7/7/2013 at Naval Civilian Housing Colony, Kanjurmarg, Mumbai by sending call letter dated 6/6/2013 to the eligible candidates. A total of 1485 candidates reported for this written test. The marks obtained by the candidates in the written test were published on the same day.

6. Being aggrieved by the action of the respondents introducing written test mid-stream the selection process, the petitioners were constrained to approach the Tribunal by filing O.A.No. 343, 475, 517 of 2013 and 210 of 2015. Challenging the introduction of the written test before the Tribunal, the petitioners contended that this amounted to a new selection process. According to the petitioners the rules of the selection cannot be altered once selection process has started. By the judgment and order dated 19th August, 2015 the Tribunal was pleased to set aside the entire selection process and thereby directed the respondents to conduct a new selection process. As a result of the order dated 19th August, 2015 passed by the Tribunal the respondents issued fresh advertisement on 21-27 November, 2015 for the very same number of vacancies for the post of unskilled labourer. 48000 applications were received in response to the said advertisement.

7. The petitioners filed Writ Petition No. 920 of 2016 in this Court challenging the order dated 19th August, 2015 passed

by the Tribunal. The issuance of the fresh advertisement also came to be challenged. During the pendency of the petition this Court was pleased to pass an interim order directing the respondents to keep 72 posts vacant. By order dated 21st July, 2016 this Court disposed of the petition and continued the interim order already granted till the pendency of the O.A. before the Tribunal. This Court was pleased to remand the matter back to the Tribunal. It would be material to quote the order dated 21st July, 2016 passed by this Court :-

“P.C. :

1] Though we had directed the respondents to file affidavit in reply pointing out whether any final decision has been taken by the respondents to scrap the selection process. The affidavit in reply does not make any assertive statement that the respondents had taken a final decision to scrap the selection process.

2] It is apparent therefore that despite an opportunity being given to the respondents to take a final decision, no such decision has been taken.

3] We are of the view that there is much substance in the submissions made by the learned counsel appearing on behalf of the petitioners that the Tribunal could not have set aside the selection process on the basis of a tentative decision taken by the respondent no.1. Moreover, the respondents had not made any such prayer nor had filed any substantive reply seeking such relief and such relief could not have been granted in OA filed by the petitioners.

4] The impugned order therefore is set aside on this ground alone. The matter is remanded back to CAT. CAT shall consider

the case of the petitioners and the respondents afresh on merits and in accordance with law as expeditiously as possible and in any case within a period of twelve weeks from today.

5] Interim order to continue till the pendency of the OA before the CAT.

6] The petition is disposed of accordingly.”

8. Upon remand, the Tribunal by the impugned judgment and order dated 11th November, 2016 was pleased to partly allowed the OAs thereby directing the respondents to finalize the selection process for the post of unskilled labour in response to advertisement dated 7th -13th April, 2012 by preparing and publishing the final merit list for 325 posts based on a combined merit list on the basis of physical test and interview conducted by them.

9. The Tribunal was of the view that the selection process completed after the physical test and interview in response to the advertisement dated 7th - 13th April, 2012 is legally valid and liable to stand the scrutiny of law. Any further deviation of the selection process through introduction of a written test will be illegal and cannot be upheld. The Tribunal

thus held that the attempt by the respondents to subsequently introduce the written test into the selection process is illegal and invalid.

10. Learned Senior Counsel Shri Anturkar for the petitioners contended that benefit of the original application which was filed by the petitioners herein before the Tribunal should have been restricted to only those applicants who had approached the Tribunal. In his submission, once this Court had directed by way of interim order to keep 72 posts vacant, the Tribunal has committed an error in granting the benefit also to those candidates who had not approached the Tribunal. Learned Senior Counsel Shri Anturkar submits that benefit of the litigation in the Tribunal and this Court should go only to the applicants who are parties to the O.As. before the Tribunal. Learned Senior Counsel relied upon the decision of the Apex Court in the case of **State of Uttar Pradesh & others vs. Arvind Kumar Srivastava and others reported in (2015) 1 SCC 347**. He contends that the interveners did not challenge the wrongful

action of the respondents before the Tribunal. It is only the petitioners who approached the Tribunal to challenge the wrongful action of the respondents. According to learned Senior Counsel, the interveners who did not challenge the wrongful action in their cases and acquiesced the same, having woken 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. The benefit of the judgment surely cannot be extended to them. Learned Senior Counsel submits that the interveners should be treated as fence-sitters. Delay and laches or the acquiescence would be a valid ground to dismiss their claim. Learned Senior Counsel therefore submits that the interveners are to be treated as fence-sitters and the Tribunal was therefore not justified in extending the benefit of the judgment to those who did not approach the Tribunal challenging the wrongful action of the respondents.

11. Learned Counsel for the interveners submitted that the law is well settled in as much as 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. In the submission of the learned Senior Counsel Shri Apte, not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. In his submission, therefore, the normal rule would accrue in as much as merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

12. Learned Counsel Shri Rui Rodrigues for the respondents – Union of India submits that they have challenged the impugned order passed by the Tribunal by way of filing Writ Petition No. 7632 of 2017. Shri Rui Rodrigues submits that the entire selection process is tainted. The respondents – Union of India have already taken a decision to scrap the entire selection process. Learned Counsel Shri Rui Rodrigues submits that the order passed by the Tribunal is not sustainable in the teeth of

the OM which provides that it is mandatory for the respondents – Union of India to conduct the written test, having not done so, the selection only on the basis of physical test and interview has to be scrapped.

13. Heard learned Counsel.

14. In this petition the limited issue that arises for consideration is whether the benefit of the decision of the Tribunal should be extended to all those candidates also who did not challenge wrongful action of the respondents or it should be extended only to the petitioners who succeeded in their efforts in challenging the wrongful action of the respondents.

15. The Tribunal dealt with this contention raised by the petitioners in paragraph 17 of its order which is reproduced thus:

“17. We do not accept the contention of the applicants that the list of selected candidates should be restricted to the applicants only who should be given the benefit of litigation started by them. In the peculiar facts and circumstances of the case this

will create a dichotomous situation where the selection process based on physical test and interview will be deemed right for the applicants and will leave the others in doubt about the integrity of the selection process. This situation is un-called for. The ratio of the judgments in **Union of India & Ors. Vs. Durga Das & Ors., (supra)** and **Miss Neelima Shangla, Ph.D. Candidate Vs. State of Haryana (supra)** cited by the applicants will not be applicable in the present case for this reason. The only selection process which can be upheld in response to the Advertisement dated 07-13.04.2012 is the one where the respondents have conducted a physical test and interview. The attempt by the respondents to subsequently introduce the written test into the selection process is illegal and invalid. Consequently any selection based on this altered and expanded recruitment method will also be illegal and invalid.”

16. We do not find any error in the view taken by the Tribunal. In the submission of the learned Senior Counsel for the petitioners, the Apex Court in the case of **State of Uttar Pradesh & ors. Vs. Arvind Kumar Srivastava & ors. (supra)** has summed up the legal principles which emerge as regards extending relief given by the Court to similar situated employees who have not approached the Court. A profitable reference could be made to the relevant portion of the decision of the Hon'ble Supreme Court which reads thus :-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

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-recognised 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.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India*). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

17. Coming to the facts of the present case, no doubt the petitioners had approached the Tribunal challenging the wrongful action on the part of the respondent in introducing written test in the selection process. Prior to remand by this Court the Tribunal was of the opinion that the action on the part of the respondents in introducing written test in the selection process cannot be said to be arbitrary or illegal. In the challenge to the order passed by the Tribunal by the petitioners, this Court by an interim order directed that 72 posts should be kept vacant. In the meantime, the respondents had issued another advertisement which was also challenged in the Writ Petition filed by the petitioners. This Court by the order dated 21st July, 2016 in W.P.No. 920 of 2016 was pleased to set aside the order of the Tribunal and remanded the matter back to the Tribunal for a fresh decision. This Court was further pleased to continue the interim order for keeping 72 posts vacant till the decision of the O.A. The Tribunal after considering the submissions made by the petitioners clearly held that the benefit of the judgment will apply to all similar situated candidates who had participated in

the selection process. The Tribunal specifically rejected the contention of the petitioners that the benefit of the judgment be extended only to those petitioners who had approached the Tribunal challenging the wrongful action. In our opinion, the view taken by the Tribunal cannot be said to be perverse or unreasonable. The Apex Court has clearly held that 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. The Apex Court further goes on to hold that this principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Supreme 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. We find force in the submission of the learned Senior Counsel Shri Apte for the interveners that the

interveners cannot be regarded as fence-sitters. Moreover, we find that the Tribunal in express terms has granted the benefit to all similarly situated candidates and the judgment of the Tribunal was not in personam.

18. The argument of learned Senior Counsel for the petitioners that this Court by an interim order having kept 72 posts vacant, amounts to denying the benefit of the judgment of the Tribunal to those who did not approach the Tribunal, can only be stated to be rejected. It is not the case of the petitioners or respondent - Union of India that pursuant to the order of this Court, by keeping 72 posts vacant, the selection process was completed. As a matter of fact respondent did not proceed with the selection. On the contrary the Union of India by challenging the order of the Tribunal took a stand that the selection process itself should be scrapped. We therefore do not find any merit in the submission of learned Senior Counsel that the interveners and other similarly situated cannot claim the benefit of the Tribunal's order.

19. In any case, the petitioners specific challenge before the Tribunal was as regards the introduction of the written test midstream of the selection process being illegal. Once the Tribunal recorded the finding that the introduction of the written test in the middle of the selection process is arbitrary and illegal, it is for the respondents then to complete the selection process which was initiated and publish the select list based on physical test and interview. It is a settled principle of law that the petitioners have a right to be considered in the selection process and there exists no indefeasible right to be appointed only because they have participated in the selection process. The challenge before the Tribunal was to the legality of the selection process upon introduction of the written test mid-stream.

20. In this view of the matter, we do not find any merit in this petition. The petition is therefore devoid of any merits.

21. The Writ Petition is dismissed with no order as to costs.

22. Civil Application is disposed of.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)