

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.2 of 2018

E.Kamal Raj

... Appellant

versus

1.The Secretary,
Staff Selection Commission,
Block No.12, 5th Floor, GO Complex,
Lodi Road, New Delhi

2.The Regional Director,
Staff Selection Commission (Southern Region)
II Floor, E.V.K.Sampath Building,
College Road, DPI Campus,
Chennai - 600 006.

.... Respondents

Appeal filed against the order passed by this Court dated
08.09.2017 passed in W.P.No.6922/2015.

W.P.No.6922/2015:-

Petition filed under Article 226 of the Constitution of India, praying for the records of the 2nd Respondent of the impugned order dated on 07.01.2015 for the remarks and quash the same and further direct the Respondents to include the petitioner in the selected candidate for the interview as fully qualified in the Combined Graduate Level Examination 2013 and 2014 for the Post of Assistant Inspector of Assistant Inspector of Central Excise.

For Appellant : Mr.K.M.Vijayan, Senior Counsel
for M/s.Swarnam Rajagopalan

For Respondents : Mr.G.Karthikeyan
Assistant Solicitor General of India

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN, J.)

Challenge in this intra-Court appeal is to the order of the learned Single Judge dated 08.09.2017 made in W.P.No.6922 of 2015 in and by which the writ petition filed by the appellant seeking a Writ of Certiorari Mandamus to quash the order dated 07.01.2015 and to include the petitioner in the selection list of candidates for the interview as a fully qualified candidate in the Combined Graduate Level Examinations - 2013 and 2014 for the post of Assistant in the Central Excise Department.

The facts leading to the filing of the Writ Petition are as follows:-

2. The petitioner/ appellant applied for the Combined Graduate Level Examinations - 2013, pursuant to the notification issued by the Staff Selection Commission on 19.01.2013. The petitioner/ appellant was issued a call letter and accordingly he took the examination on 14.04.2013. Some of the candidates who took the examination along with the petitioner/ appellant moved Central Administrative Tribunal, New Delhi alleging certain irregularities in the conduct of the examination. The Central Administrative Tribunal, New Delhi by its order dated 23.04.2014 scraped the examination and directed re-examination to be conducted. Pursuant to the said order of the Central Administrative Tribunal, New Delhi re-examination was conducted on 27.04.2014. The petitioner/ appellant also appeared and took the said examination. However during verification of certificates that took place on 07.01.2015, the Staff Selection Commission made a remark in respect of the petitioner/ appellant which reads as follows: "Candidate does not possess EQ [Educational Qualification] as on crucial cutoff date, hence rejected."

3. Thereafter, the petitioner/ appellant had made several representations to the Authorities claiming that he was qualified as on 01.01.2014 which is the cutoff date for educational qualification for the Combined Graduate Level Examination for the year 2014. Pointing out that the marks obtained by him are above the cutoff marks prescribed for the Combined Graduate Level Examination for the year 2014, the petitioner/ appellant required the Authorities to consider him as a candidate for the Combined Graduate Level Examination conducted for the year 2014 and sought for an appointment. This request of the petitioner/ appellant was however not considered which resulted in the petitioner/ appellant approaching this Court by way of WP.No.6922 of 2015 seeking aforesaid relief. Originally the Writ Petition was filed seeking a writ of Mandamus directing the respondents to include him as a selected

candidate for the interview to be held for the candidates who took the Combined Graduate Level Examination - 2014. Subsequently, the prayer in the Writ Petition was amended as above.

4. The Writ Petition was resisted by the respondents contending that the petitioner was aware that he was not qualified to take the Combined Graduate Level Examination for the year - 2013, since the cutoff date for the essential qualification for the Combined Graduate Level Examination for the year 2013 is 01.01.2013. Knowing fully well that the petitioner is not qualified, he had applied for the examination and the fact that the petitioner was not qualified came to light only during the certificate verification which was done in January 2015. In view of the same the respondents had no other option but to reject the candidature of the petitioner. Though the petitioner was qualified for the Combined Graduate Level Examination - 2014 and the publication calling for applications for Combined Graduate Level Examination - 2014 was made on 18.01.2014 with a closing date on 14.02.2014. The petitioner did not apply for the said examination for the year 2014.

5. The learned Single Judge who heard the Writ Petition dismissed the Writ Petition holding that there is no infirmity in the order of rejection as the writ petitioner did not possess the required Educational Qualification as on the cutoff dated viz., 01.01.2013. Aggrieved the petitioner has come forward with the above appeal.

6. We have heard Mr.K.M.Vijayan, learned Senior counsel for the appellant and Mr.G.Karthikeyan, Assistant Solicitor General for the respondents.

7. Mr.K.M.Vijayan, learned Senior Counsel appearing for the appellant would submit that though technically the respondents are right in rejecting the candidature of the petitioner inasmuch as he was not qualified on the cutoff date, however, the learned Senior Counsel would submit that this is a fit case where taking note of the peculiar circumstances, this Court can exercise its power under Clause 20 of the Letters Patent and direct the respondents to consider the petitioner as a qualified candidate for the Combined Graduate Level Examination for the year 2014. Drawing our attention to the facts stated supra Mr.K.M.Vijayan would submit that it was not the fault of the petitioner that the examination conducted in 2013 was set aside and a re-examination was ordered. The petitioner could not apply for the examination in the year 2014 because of the fact that on the date when the applications were called for i.e., 18.01.2014 the challenge to the examination conducted in the year 2013 was pending before the Central Administrative Tribunal, New Delhi.

Since the petitioner had also taken the examination in 2014 and he has obtained necessary cutoff marks, according to Mr.K.M.Vijayan, the petitioner is entitled to be considered as a candidate who has taken the examination in the year 2014. Therefore, according to him, the respondents were not right in rejecting his candidature on the ground that he did not possessed requisite educational qualification on the cutoff date viz., 01.01.2013.

8. The sum and substance of the contentions of the learned Senior Counsel is that inasmuch as the examination in question was held in the year 2014 and the petitioner was qualified as per the cutoff date for the year 2014 examinations viz., 01.01.2014 the respondents were not right in rejecting his candidature taking the cutoff date as 01.01.2013. In the effect, the learned Senior Counsel seeks this Court to shift the cutoff dated from 01.01.2013 to 01.01.2014.

9. This contention of the petitioner/ appellant is opposed by the learned Assistant Solicitor General contending that it is not for this Court to shift the cutoff date. He would submit that such a shifting would cause prejudice to the candidates who have taken the examinations for the year 2014 and it would also open the flood gates and several other persons who had taken examination in the year 2013 would also claim similar relief. Mr.G.Karthikeyan, learned Assistant Solicitor General would also point out that the petitioner/ appellant being an Engineering graduate cannot claim that he was ignorant of the fact that he was not qualified when he applied for the Combined Graduate Level Examination in the year 2013. Mr.G.Karthikeyan, would also contend that the petitioner/ appellant cannot be allowed to take advantage of his own mistakes.

10. We have considered the rival submissions. The Staff Selection Commission issued a notice calling for applications for the Combined Graduate Level Examination - 2013 on 19.01.2013 and the closing date for receipt of applications was 15.02.2013. The cutoff date for the essential qualification was clearly specified as 01.01.2013. Despite the fact that the petitioner did not possess such qualification as on 01.01.2013 he chose to apply for the said examination. A call letter was also issued and he took the examination. The Central Administrative Tribunal, New Delhi before which the process of the examination was challenged citing certain irregularities, chose to scrap the examination by its order dated 23.04.2014 and directed re-examination.

11. In view of the intervention of the Central Administrative Tribunal, New Delhi, the examination meant for the year 2013 was held again on 27.04.2014. Though, the

petitioner had obtained necessary cutoff marks, he could not be considered in view of the fact that he did not possess the appropriate Educational qualification as on the cutoff date viz., 01.01.2013. In the interregnum the Staff Selection Commission had issued another notification calling for applications for the examination to be held for the Combined Graduate Level Examination - 2014 on 18.01.2014. The closing date for receipt of applications was 14.02.2014. It is not in dispute that the petitioner/ appellant was qualified to take the Combined Graduate Level Examination in the year 2014. Unfortunately, for the petitioner he did not apply for the examinations to be held in the year 2014. Apparently the petitioner wants to take advantage of the fact that the examination for the year 2013 were scraped and the re-examination was held during 2014, citing that the cutoff date for the examination for the year 2014 is 01.01.2014. This plea of the petitioner in our considered opinion cannot be countenanced for more than one reason.

Firstly the petitioner/ appellant had applied for the Combined Graduate Level Examination for the year 2013 and not for 2014.

Secondly the petitioner/ appellant knew pretty well that he was not qualified on the date when he applied for the Combined Graduate Level Examination to be held in the year 2013.

Thirdly the petitioner/ appellant has not applied for taking Combined Graduate Level Examination in the year 2014.

12. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner/ appellant is alive to the fact that the petitioner does not have a vested right. That is the precise reason why the learned Senior Counsel wants to fall back upon Clause 20 of the Letters Patent which empowers this Court to apply equity and the rule of good conscience to any case coming before it in exercise of its extraordinary original civil jurisdiction and extend the benefit to the petitioner.

13. We are afraid that Clause 20 of the Letters Patent cannot be extended to the extent as suggested by the learned Senior Counsel. The power of the Examining Authority viz., Staff Selection Commission to fix the cutoff date has been recognised in several judicial pronouncements. The cutoff date so fixed cannot be altered to the advantage or to the prejudice of the candidates. The exercise of power under Clause 20 of the Letters Patent in our considered opinion cannot violate the law. We are therefore, constrained to uphold the order of the learned Single

Judge dismissing the Writ Petition.

14. However, considering the fact that the petitioner is a physically challenged person [hearing impaired], we feel that the respondents should consider his case with compassion and sympathy. From the records it is seen that not all the posts available for the physically challenged persons were filled up there were some vacancies and it is admitted at the bar that as on date there are certain vacancies in the posts to which the petitioner will be eligible. Therefore, we make it clear that if the petitioner makes a further representation, the respondent should consider the same sympathetically, in view of the fact that the petitioner had obtained required cutoff marks in the examination. With the above directions the writ appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Secretary,
Staff Selection Commission,
Block No.12, 5th Floor, GO Complex,
Lodi Road, New Delhi
2. The Regional Director,
Staff Selection Commission (Southern Region)
II Floor, E.V.K.Sampath Building,
College Road, DPI Campus,
Chennai - 600 006.

+1cc to M/s.Swarnam Rajagopalan, Advocate, S.R.No.29672

KAN(CO)
CS/07/06/18

W.A.No.2 of 2018

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