

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.45934 of 2018

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

The Comptroller and Auditor General of India and the Principal Accountant General (Audit), State of Telangana, are the petitioners. They are aggrieved by the order dated 14.12.2018 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, in M.A.No.21/834/2018 in O.A.No.21/97/2018. The said M.A. was filed by the respondent herein, the applicant in the O.A., with the following prayer:

“For the reasons stated in the accompanying affidavit, the applicant herein prays that this Hon'ble Tribunal may be pleased to direct the respondents to consider the application of the applicant and permit the applicant to Examination going to be held from 14.12.2018 to 21.12.2018 or any further date in pursuance of the Examination Section Circle No.19 of 2018 in Lr.No.1312/4-Exam/Prog./SAS/RA/I/CPO-I&II/MainExam.2018 dated 05.12.2018 pending finalization of the original application in the interest of justice, and be pleased to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

The order dated 14.12.2018 passed by the Tribunal, presently under challenge, reads as under:

“Heard both the counsel.

The applicant is working as Data Entry Operator in the Respondents Organisation. He has appeared for the SAS main exam for promotion to the post of Sr. Auditor. The exam contains 14 papers and originally the respondents have given six chances for writing the exam. However from 2011 onwards computer based exam was introduced. Hence many of the employees could not pass and therefore, 4 more chances were allowed by the respondents organisation. Thus, for appearing in the exam, 10 chances were

allowed both for the Accounts and A&E Wing. The applicant appeared 10 times but could not succeed. Recently, the respondents have permitted the A&E Wing employees additional 2 chances to appear in the exam but not to those in the Accounts Wing. The applicant pleaded that the additional chances be given to him too. In fact, the applicant approached this Tribunal in O.A.767/2017 requesting to provide 2 additional chances but the respondents rejected the same on the ground that it is not a legal right and that it will open flood gates for others to make similar claim.

The learned counsel for the applicant states that not giving 2 opportunities for the Accounts wing is discriminatory. Learned counsel for the respondents pointed out that the extension of 2 chances were given only to A&E for 2 specific papers hence giving additional chances to the Accounts Wing is not feasible. The applicant passed 8 out of 9 papers and for one paper, exam is going to be held on 19.12.2018. The applicant is praying that he may be allowed to appear for the exam and his results may be withheld subject to the result of the OA.

It is evident that the respondents have granted additional 2 chances to the A&E Wing of their organisation. By doing so prima facie it gives an impression that one group of employees are favoured over the other. The right of equity of every employee comes into play. The respondents have also stated that by allowing the applicant to appear, it will open flood gates to others. In fact competition helps in selecting the best of the employees to higher position. The applicant has made a prima facie case and accordingly interim direction is given to permit the applicant to appear for the exam to be held on 19.12.2018 and result be withheld till the OA is disposed of.

Accordingly, MA.834/2018 is allowed.

Case may be listed on 28.12.2018 before Division Bench.”

Sri B.Narasimha Sarma, learned counsel for the petitioners, would contend that as 28.11.2018 was the last date for registration and the examinations themselves commenced on 14.12.2018, the Tribunal ought not to have allowed the respondent-applicant to sit for the examination. He however does not dispute the fact that the respondent-applicant has

to appear only for one examination which is scheduled to be held on 19.12.2018., viz, tomorrow.

The order under challenge, *prima facie*, reflects the arbitrary exercise of discretion by the authorities in allowing extra chances to appear for the examinations to one set of employees over the other set.

Though it is stated by Sri B.Narasimha Sarma, learned counsel, that the examinations in two papers of SAS (Civil Accounts), i.e., PC-13 and PC-21, were not held in the year 2016 and that is the reason why two extra opportunities are being given to those in the A&E Wing, he does not dispute the fact that those who are now being given such an opportunity have already exhausted the ten chances that were given to them and are being permitted two additional chances. He also does not dispute the fact that two such additional chances were not given to those in the Accounts Wing. *Prima facie*, the arbitrariness in this exercise is clearly made out.

However, as the petitioners-authorities are yet to file their counter in the pending O.A. and make known their stand to the Tribunal, we do not wish to make any further observations. It is for the Tribunal to consider the matter, after completion of pleadings, on its own merits and in accordance with law.

As the Tribunal has already directed that the result of the respondent-applicant should be withheld till the disposal of the O.A., we find no irreparable prejudice or harm caused to the petitioners-authorities warranting interference by this Court at this stage of the matter. It is for the petitioners-authorities to work out the modalities as to how the respondent-applicant should be permitted to appear for the examination scheduled to be held on 19.12.2018. Mere procedural difficulties in this regard would not be reason enough to set at naught the order passed by

the Tribunal. Be it viewed from any angle, we find no grounds to interfere with the order under challenge.

The writ petition is devoid of merit and is accordingly dismissed. We make it clear that the *prima facie* observations made by this Court shall not influence the Tribunal while deciding the main O.A. on merits and in accordance with law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

M. GANGA RAO, J

Date: 18.12.2018
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