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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 3rd October, 2018

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W.P.(C) 10518/2018

AMIT CHHIKARA

..... Petitioner

Through: Mr. Nitin K. Gupta and
Mr. Rahul Sinha, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC for
R-1 & 2 with Mr. Nikhil
Bhardaj, Ms. Gauraan and
Mr. Shashwat Sharma, Advs.
Mr. Manoj, SC-FCI with
Ms. Aparna Sinha, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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J U D G M E N T (O R A L)

1. With the consent of learned counsel for the parties, this writ petition is being taken up and disposed of at the admission stage itself, as it involves a very short issue.

2. On 29th October, 2011, the Staff Selection Commission (hereinafter referred to as 'the SSC') issued an advertisement, for

recruitment of Assistant Grade III in the Food Corporation of India (FCI) to be filled by examination.

3. The petitioner appeared in the said examination, and was declared qualified on 18th August, 2012.

4. On 14th June, 2013, a Show Cause Notice was issued to the petitioner, alleging that he had been *prima facie* found guilty of malpractices in Papers I and II in the examination. However, the Show Cause Notice (which is annexed as Annexure P-2) contained no details, or evidence, in respect of the said allegation.

5. The petitioner responded, on 17th June, 2013, categorically denying the said allegation.

6. It appears that several similar Show Cause Notices were issued by the SSC, which form subject matter of various judicial proceedings. On 17th November, 2014, a similar Show Cause Notice, issued to three candidates, namely Hitender, Ajay Kumar and Vikrant, were quashed by a Single Bench of this Court. Paras 13 to 16 of the said judgment merit reproduction, as under :

“13. A perusal of the impugned notice to show cause dated 10.06.2013 bears out the submission made by learned counsel for the petitioner that the same does not disclose the manner in which the petitioner had allegedly resorted to unfair means when sitting in the subject examination. On account of failure on the part of the respondents No.1 and 2/SSC to specify the material available with it, the petitioner would not have been in a position to give a reply in a proper manner and defend

himself effectively and respondent No.1 and 2, proceeded to pass the impugned order dated 27.01.2014, cancelling the petitioner's candidature in the subject examination, 2012 and debarring him for a period of three years from participating in the Commission's examinations.

14. Learned counsel for the petitioner is justified in submitting that when the petitioner was never confronted with the relevant material available with the respondents No.1 and 2/SSC to substantiate its stand that it had "incontrovertible and reliable evidence" against him in its possession, which it had gathered on the basis of the analysis and scrutiny of the written examination purportedly conducted with the help of experts, how could the respondents expect the petitioner to have furnished a satisfactory reply to the notice to show cause issued by the Commission. It was incumbent for the respondent No.2/Commission to have first disclosed the material available with it to substantiate the charges leveled against the petitioner and only thereafter, could the petitioner have been in a position to submit a reply to the show cause notice by taking all the defences that may have been available to him.

15. A perusal of the impugned notice to show cause reveals that no mention has been made therein as to the nature and details of the material that the SSC had come upon for initiating any action against the petitioner for allegedly resorting to malpractices during the examination. When the petitioner was not even confronted with the details of the case made out against him, how could he be expected to respond effectively? Having failed to furnish the explicit material in the power and possession of the respondents for arriving at a conclusion that there was sufficient evidence to indict the petitioner, it has to be held that the principles of natural justice have been grossly violated by them and the entire procedure of affording an adequate opportunity of hearing to him, was reduced to an empty formality.

16. In view of the aforesaid facts and circumstances, this Court is of the opinion that the impugned notice to show cause dated 10.06.2013 and the order dated 27.01.2014 passed by the respondent No.1 and 2/SSC are not sustainable in the eyes of law and resultantly, the same are quashed and set aside. However, if the respondents do have sufficient material

available with them to establish that the petitioner had resorted to unfair means in the examination in question, then they shall be at liberty to issue a fresh notice to him along with all the relevant information available with them, to substantiate their allegations and the petitioner shall be entitled to file a reply thereto. The said reply shall be considered and decided by the respondents in accordance with law, under written intimation to the petitioner.”

7. Consequent on the said judgment, the petitioner represented for being appointed, as he had been declared qualified, but the SSC only responded by stating that similar matters were pending in the Supreme Court.

8. It appears that, thereafter, on 20th November, 2013, and 30th July, 2014, similar Show Cause Notices, issued to two other candidates, namely Ashok Kumar and Sudesh, were set aside by the Central Administrative Tribunal, on the ground that there was no evidence to support the allegations in the Show Cause Notices. The Tribunal went to the extent of directing that the said candidates be appointed as Assistants within three months.

9. WP(C) 9055/2014, filed by the SSC before this Court against the judgment of the Tribunal qua Sudesh, was also dismissed, by a Division Bench of this Court *vide* judgment dated 19th December, 2014.

10. Special Leave Petition, preferred thereagainst by the SSC, was also dismissed, by the Supreme Court, *vide* order dated 19th July, 2017, holding that there was no merit in the appeals.

11. With all these developments, it would have been expected that the SSC would have gracefully accepted its error, withdrawn the Show Cause Notice dated 14th June, 2013, and appointed the petitioner as Assistant. However, it was not to be. Instead, the petitioner was driven to file yet another writ petition, i.e. WP(C) 10824/2017. *Vide* order dated 6th December, 2017, the said writ petition was disposed of, in the following terms:

“1. In this petition, quashing of Show-cause Notice of 14th June, 2013 (*Annexure P-1*) is sought and non-consideration of petitioner for appointment on the post of AG-III (General) is also under challenge.

2. Learned counsel for petitioner submits that impugned Show-cause Notice of 14th June, 2013 (*Annexure P-1*) has been duly replied vide Reply (*Annexure P-2*). Learned counsel for petitioner submits that similar Show-cause Notices were subject matter before this Court’s Division Bench decision in ***Staff Selection Commissioner & Anr. v. Sudesh 2014 SCC OnLine Del 7534*** wherein the Division Bench has quashed the said Show-cause Notices and the said decision has been affirmed by Supreme Court vide its order of 19th July, 2017 in ***Civil Appeal No(s). 2836- 2838/2017*** titled ***Staff Selection Commission, Thr. its Chairman & Anr. v. Sudesh***. According to petitioner’s counsel, respondent-Staff Selection Commission has been directed to appoint similarly placed persons like petitioner, therefore, petitioner was waiting the outcome of the decision in ***Sudesh (supra)*** and now, in view of Supreme Court’s decision in ***Sudesh (supra)***, respondent-Staff Selection Commission ought to withdraw impugned Show-cause Notice (*Annexure P-1*).

3. Learned counsel for respondent-Staff Selection Commission submits that if the Reply to Show-cause Notice of 14th June, 2013 (*Annexure P-1*) has been received, then a decision thereon would be taken in light of this Court’s Division Bench decision in ***Sudesh (supra)***, which has been affirmed by Supreme Court vide its order of 19th July, 2017,

within a period of six weeks and its fate would be conveyed to petitioner within two weeks thereafter.

4. Let it be so done to enable petitioner to avail of remedies as available in law, if need be. It is clarified that respondent-Staff Selection Commission would be at liberty to issue another Show-cause Notice, if the facts and circumstances of this case so warrant.

5. With aforesaid directions, this petition is disposed of.

6. Copy of this order be given dasti to counsel for both the sides to ensure its compliance.”

12. There is some dispute as to whether the petitioner responded to the Show Cause Notice or not. Be that as it may, on 13th August, 2018, the impugned order was passed by the SSC, which reads as under :

“ORDER

1. Whereas the Hon’ble High Court of Delhi vide its order dated 06.12.2017 in WP No.10824/2017 passed the following directions:-

“3. Learned counsel for respondent-Staff Selection Commission submits that if the Reply to show-cause Notice of 14th June, 2013 (Annexure P-1) has been received, then a decision thereon would be taken in light of this Court’s Division Bench decision in **Sudesh (supra)**, which has been affirmed by Supreme Court vide its order of 19th July, 2017, within a period of six weeks and its fate would be conveyed to petitioner within two weeks thereafter.

4. Let it be so done to enable petitioner to avail of remedies as available in law, if need be. It is clarified that respondent-Staff Selection Commission would be at liberty to issue another Show-cause Notice, if the facts and circumstances of this case so warrant.

5. With aforesaid directions, the petition is disposed of.”

2. Whereas the petitioner, namely Shri Amit Chhikara had appeared in FCI Exam, 2012.

3. Whereas the Commission had undertook post examination analysis for FCI Examination, 2012 with the help of experts and on the basis of such analysis and security, incontrovertible and reliable evidence had emerged during such scrutiny and analysis that the Petitioner had resorted to copying in the Examination in association with other candidates who also took the same Examination. Hence he was issued a Show Cause Notice as to why his candidature should not be cancelled and why he may not be debarred from appearing in Commission’s Examination due to his indulgence in unfair means in the Examination. Aggrieved, he filed WP No.10824/2017 in the Hon’ble High Court of Delhi which was disposed of by the Hon’ble High Court with the above noted directions.

4. Whereas subsequent to the verdict of Hon’ble Supreme Court in the matter of Ms. Sudesh Kumari, the Commission decided to declare the withheld result of such candidates affected by Post Examination Analysis in FCI Examination, 2012 and other examinations conducted by the Commission:-

(a) Who had filed Court case before the date of dismissal of SLP in the Apex Court in the matter of Ms. Sudesh Kumari i.e. 19.07.2017 and the same was disposed of in their favour;

(b) Who had filed Court cases and had judgments in their favour before 19.07.2017 (which was not implemented by the Commission at that time) and are filing fresh OAs/MA after 19.07.2017 for revival of their cases;

(c) Cases which have been adjourned by Courts in view of pendency of SLP in Apex Court; and

(d) Cases in which the Commission has filed averments in the Court that action will be taken as per verdict in Ms. Sudesh Kumari case.

Whereas the Petitioner did not fall under any of the aforesaid four categories.

5. Whereas, it has also been decided by the Commission that the candidates who did not approach any legal forum for such relief prior to 19.07.2017, their cases will not be considered for giving benefit of verdict of Hon'ble Apex Court in the case of Ms. Sudesh Kumari on the grounds of delay and laches.

6. Whereas, the Hon'ble Courts have viewed the inordinate delay in presenting the petitioner very seriously in their following Judgments in similar matters.

(i) **In CWP No.21993 of 2015 titled Narinder Kumar and others Vs Union of India ; CWP No.1436 of 2016 titled Sanjeev Kumar v. Union of India & Others : The Hon'ble High Court of Punjab and Haryana, Chandigarh vide Order dated 16.01.2018 held-**

“Petitioners are candidates for the Recruitment to the Post of CT (GD) & Rifleman with reference to the Advertisement issued in the year 2012. Process of selection and appointment were completed in the month of August 2012 whereas Petitioners have presented this Petition in the month of October, 2015 thus, there is inordinate delay in presenting this Petition. Supreme Court in the case of *P.S. Sadasivaswamy v. The State of Tamil Nadu 1975 SCC (1) 152*, time and again held that in respect of selection, appointment, promotion and seniority, one must approach within a reasonable period. In the present Petition there is delay of nearly 03 years after completion of process of selection to the extent of issuance of Order of appointment to the selected candidate. Delay has not been explained with any appropriate reason so as to condone the same. That apart in an identical matter i.e. CWP No.18360 of 2016; decided on 28.02.2017, on the ground of delay, this Court has refused to exercise extraordinary writ

jurisdiction. Thus, Petitioners have not made out a case so as to issue writ of mandamus. Accordingly, Petition stands dismissed.”

(ii) In CWP No. 12032 of 2016 titled Raman Ahlawat Vs Union of India & Others: The Hon’ble High Court of Punjab and Haryana, Chandigarh vide Order dated 04.12.2017 held –

“Since there is a delay and laches on the part of petitioner in seeking relief in respect of selection and appointment question of entertaining the present petition do not arise. Supreme Court in the case of *P.S. Sadasivaswamy v. The State of Tamil Nadu 1975 SCC (1) 152* has held that in case of selection, appointment, seniority and promotion, one must approach at the earliest within a reasonable period of six months to 1 year. Whereas in the present case 4 years of laches on the part of petitioner. In view of these facts and circumstances petitioner has not made out a case so as to interfere with Annexure P-10 dated 06.05.2016. Petition stands dismissed.”

(iii) In W.P.(C) No. 2629/2018 titled Bijender Kumar and Ors. Vs SSC, the Hon’ble High Court of Delhi vide Order dated 14.05.2018 held –

“We are of the opinion that the petitioners are typical piggyback riders who elected to sit back and remained fence sitters. They waited for other candidates to approach the court and once they got relief, the petitioners proceeded to file the present petition expecting to gain advantage from the favourable orders passed by Court in respect of other candidates, which is impermissible.

7. Merely because some of the candidates had approached the court for relief cannot enure to the benefit of the petitioners herein who did not take any step from November, 2011 till March, 2018 to seek legal recourse and that too in respect of a matter relating to appointment. Resultantly, the present petition is dismissed as hopelessly belated.”

(iv) **In W.P.No. 9655/2018 titled Amarnath Kumar and Ors. Vs UOI & Ors., the Hon'ble High Court of Patna vide Order dated 18.05.2018 held –**

“9. In the present case also, the petitioner herein waited till the decision of *Pintoo Kumar Singh (supra)* case and have approached this Court after lapse of more than one year. Though, it is not disputed that the case of the petitioners herein is covered by the ratio of the said judgment rendered in the case of *Pintoo Kumar Singh (supra)* but still the petitioners cannot be granted the same relief in view of the delay and laches on their part in approaching this Court and being mere fence-sitters who had not taken up the litigation at the appropriate time when the other petitions were decided by this Court. The petitioners herein kept sleeping over their rights for long and woke up only when they had the impetus from the judgment rendered by this Court in the case of *Pintoo Kumar Singh (supra)*. It is a clearly settled law that the delay disentitles the party to discretionary relief under Article 226 and Article 32 of the Constitution of India. Thus, the litigant who was sitting on the fence and watching for the result of the litigation initiated by other litigants promptly and only after a favourable result, approaches the court to seek equality, should not be encouraged/entertained.

10. For the reasons mentioned hereinabove, the petitioners herein being the fence-sitters, cannot take the benefit of an order passed in the case of persons who were vigilant of their cause and had moved the Court within a reasonable period.

11. Thus, this court finds no merit in the present writ petition and it is, accordingly, dismissed.”

7. And whereas, in the instant case, the OA No. 2430/2013 filed by the petitioner was dismissed by the CAT, PB, New Delhi on 15.12.2014 for want of jurisdiction and the petitioner filed the Writ Petition on 04.12.2017, i.e., after a gap of 5 years from the Examination and only after the dismissal of SLP in the matter of Ms. Sudesh Kumari on 19.07.2017. Therefore, his case has not been considered by the Commission for declaration of his withheld result.

8. The directions of Hon'ble High Court of Delhi vide its judgment dated 06.12.2017 is thus, complied with accordingly.

This issues with the approval of the Commission.

Sd/-
(S.C. Kashyap)
Under Secretary (NR)”

13. To my mind, the impugned order may border on contempt, especially in view of the law laid down by the Supreme Court in *Baradakanta Mishra, Ex-Commissioner of Endowments v. Bhimsen Dixit, (1973) 1 SCC 446*. It is incomprehensible, how, in the face of so many decisions of the Tribunal, this Court and the Supreme Court, the Staff Selection Commission could arrogate, to itself, the authority to decide how to implement judicial orders passed by the Tribunal, this Court, and the Supreme Court, and limit the implementation thereof to four categories of cases to which, alone, the benefit of the said judgments would be extended by it, which have been carved out by the SSC, on no discernible basis whatsoever.

14. In view of the fact that it may not be necessary to do so, I am not making any further comments on the propriety of the impugned order dated 13th August, 2018 which, nevertheless, appears highly questionable.

15. It was admitted, by the SSC before this Court, on 6th December, 2017, that the case of the petitioner would be decided on the anvil of the decisions in the case of *Sudesh (supra)*. That being so, it is

difficult to understand how para 4 of the impugned order states “that the case of the petitioner did not deserve relief, as he did not fall in any of the four categories”. It is obvious that, irrespective of the propriety of the impugned order, the petitioner did fall under category (d), as conceptualized by the SSC in para 4 thereof.

16. For these reasons, it is obvious that the refusal to grant relief, to the petitioner, by the SSC, following earlier judicial authorities on the point, cannot sustain either on facts or in law.

17. As a result, the Show Cause Notice dated 14th June, 2013, issued to the petitioner, deserves to be set aside and is accordingly quashed. The impugned order, dated 13th August, 2018, insofar as it applies to the petitioner, is also quashed and set aside.

18. The respondents are directed to appoint the petitioner as Assistant Grade III in the FCI within a period of three months from today, as was directed in the case of *Sudesh (supra)*.

19. The petitioner shall be entitled to all consequential benefits, treating him as having been appointed as Assistant on the same date as other candidates, who were declared successful in the examination with him, were so appointed.

20. The petitioner shall be entitled to notional fixation of pay, consequent on the above directions. However he shall not be entitled to any arrears.

21. The writ petition is allowed in the above terms with no order as to costs.

C.HARI SHANKAR, J

OCTOBER 03, 2018/kr

