

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment Reserved on : March 07, 2018

% *Judgment Delivered on : March 16, 2018*

+ **W.P.(C) 7708/2017**

ANJU RANI Petitioner

Through: Ms.Sriparna Chatterjee and
Mr.Ajesh Luthra. Advocates.

versus

GNCT OF DELHI & ORS. Respondents

Through: Mr.Devesh Singh, ASC for
GNCTD.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner has invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India impugning the order dated 21.03.2017 whereby the Original Application No.353/2016 filed by her has been dismissed by the Principal Bench, Central Administrative Tribunal.

2. The factual backdrop in which we are required to decide this writ petition is that in the year 2012, the respondent No.2/Delhi Subordinate Services Selection Board (DSSSB) issued Advertisement No.2/2012 (Post Code 109/12,) inviting applications for recruitment of 69 posts of TGT (Hindi) (Female) (UR-40, SC-11, OBC-18 including OH-1, VH-02) in the Directorate of Education, Government of NCT of Delhi. In the year 2013, another Advertisement No.1/2013 (Post Code 7/13) was issued by the respondent No.2/DSSSB for inviting

applications for recruitment of 30 posts of TGT (Hindi) (Female) (Gen.-14, SC-5, OBC-8 including VH-01) in the Directorate of Education, Government of NCT of Delhi.

3. A common recruitment examination for the Post Code 109/12 and Post Code 7/13 was held. The petitioner herein participated for the common recruitment examination for the Post Code 109/12 only as her eligibility for the Post Code 7/13 was rejected. Those candidates whose applications for the Post Code 7/13 were rejected, were duly notified by the respondents by issuing a notice dated 10.09.2013, which was duly uploaded on the DSSSB website inviting objections from those candidates, who had applied for Post Code 7/13, about their eligibility/ineligibility, requiring them to submit the representation with documentary evidence addressed to the Controller of Examination by speed post/registered post/normal post or to deposit in the designated drop box at the DSSSB reception counter, latest by 20.09.2013. The petitioner herein failed to avail of the said opportunity by sending any representation by the due date i.e. by 20.09.2013, in respect of rejection of her candidature for Post Code 7/13. However, she sent a representation dated 23.12.2014 belatedly and thereafter did not take any further action to assert her eligibility for Post Code 7/13 or avail of her legal remedy by seeking permission to sit in the examination for both the Post Codes.

4. The e-admit card of the petitioner which was uploaded by the respondent/DSSSB had clearly mentioned that it was issued in respect of a common examination held on 28.08.2015 for Post Code 109/2012. She had therefore competed only in the recruitment process

pertaining to Post Code 109/12. The result of the common examination was declared in November, 2015. The petitioner secured 101.75 marks for Post Code 109/12. The petitioner's name was not included in the merit list. On finding that the cut off marks for the recruitment process for Post Code 7/13 was lower than the marks secured by her, i.e. 92.50 marks, the petitioner raised an issue that she ought to have been declared eligible for the recruitment process for Post Code 7/13 as well. She claimed to meet the eligibility requirement for both, Post Codes 109/12 and 7/13, claiming that it was the same for both the Post Codes. On not getting any response to her representation, the petitioner filed O.A. No.353/2016 on 25.01.2016, praying that it be declared that she had wrongly been excluded from consideration for appointment to the post of TGT (Hindi (Female) in the Directorate of Education, GNCT of Delhi (Post Code 7/13); for directing the respondents to consider her candidature for Post Code 7/13 as well and on processing her results, appoint her to the post of TGT (Hindi) (Female) in accordance with her merit position with all consequential benefits including monetary and seniority benefits.

5. Ms.Sriparna Chatterjee, learned counsel for the petitioner has drawn the attention of this court to two advertisements issued for recruitment of TGTs (Hindi) (Female) for Post Code 109/12 and Post Code 7/13, to urge that the eligibility criteria for both is identical and if the petitioner was eligible to appear for the recruitment process for Post Code 109.2012, then she could not have been held ineligible for the recruitment process for Post Code 7/13. Learned counsel vehemently urged that despite her representation dated 23.12.2014,

which was made when the process of recruitment was still on, the respondents failed to rectify their mistake and consider the petitioner for appointment as TGT (Hindi) whereas persons who had secured lower marks have been recommended for appointment to the posts advertised through Post Code 7/13. She contended that since it was a common examination for Post Codes 109/12 and 7/13, the petitioner having fulfilled the common eligibility criteria, could not have been denied an admit card for Post Code 7/13, especially when a common examination was conducted pursuant to the two recruitment advertisements.

6. Per contra, learned counsel for the respondents submitted that for those candidates whose applications were rejected for Post Code 7/13, a notice dated 10.09.2013 was uploaded on the DSSSB website inviting objections and requiring them to submit their representation by 20.09.2013. Admittedly, the petitioner had not made any representation within the stipulated time. The petitioner knew all along that she had been issued an admit card only in respect of Post Code 109/12 and she had appeared in the recruitment examination for the said Post Code but could not secure adequate marks. Thus, merely because the cut off marks for Post Code 7/13 had gone down, would in itself not be sufficient to confer any right on her to raise this issue at such a belated stage when she had failed to avail her remedy either during the window period (10.09.2013 to 20.09.2013) given by DSSSB vide notice dated 10.09.2013, or before appearing in the common recruitment examination. Learned counsel for the respondents submitted that the recruitment process is already complete

and petitioner cannot stake her eligibility claim in respect of Post Code 7/13 when she elected not to raise this issue at an appropriate stage and participated in the recruitment process knowing fully well that her admit card was issued only in respect of Post Code 109/12.

7. Before the learned Tribunal too, identical submissions were made on behalf of the petitioner and have been rejected by the impugned order, for the following reasons:-

(i) In response to the notice dated 10.09.2013, published by the DSSSB calling for objections/representation to the list of ineligible candidates in respect of Post Code 7/13, the petitioner did not make any representation/objection within the stipulated period, raising the issue of eligibility for selection and recruitment in respect of Post Code 7/13.

(ii) An additional list of eligible candidates for Post Code 7/13 was published by the DSSSB alongwith a final rejection list of the candidates for the said Post Code 7/13, prior to the dates of issuance of e-admit cards to the candidates and holding of a common recruitment examination for the two Post Codes 109/12 and 7/13.

(iii) The e-admit card issued to the petitioner was only for Post Code 109/12 and she had appeared in the common examination held only for Post Code 109/12.

(iv) Separate merit lists were prepared by the DSSSB in respect of Post Codes 109/12 and 7/13.

(v) After the time prescribed to make a representation had lapsed on 20.09.2013, DSSSB was under no obligation to entertain any representation/objection.

(vi) The result of the candidates whose candidature for Post Code 7/13 had already been prepared and the merit list had also been prepared by that time.

(vii) The petitioner cannot be allowed to claim consideration of her candidature for Post Code 7/13 on the basis of marks obtained by her for Post Code 109/12 and her selection for Post Code 109/12 has to be determined on the basis of her merit position vis-à-vis other candidates for the said Post Code.

(viii) Acceptance by the DSSSB of the representation dated 23.12.2014 submitted by the petitioner after the expiry of the period prescribed to make such a representation, would have been in violation of Articles 14 and 16 of the Constitution of India and would have been discriminatory.

(ix) The selection process for appointment to a public office has to be absolutely transparent and any deviation from the terms and conditions stipulated by the recruiting agency during the recruitment process amounts to gross injustice to other candidates, not knowing the fact of deviation benefiting only a few.

8. During the course of hearing, learned counsel for the petitioner had fairly conceded that neither did the petitioner respond to the notice dated 10.09.2013, uploaded on the website of the DSSSB questioning rejection of her candidature, nor did she avail of any legal remedy for Post Code 7/13, despite having knowledge that the e-admit card issued to her pertained to Post Code 109/12 alone. The submission made on behalf of the petitioner that the eligibility criteria being the same for Post Code 109/12 and 7/13 and there being a common recruitment

examination for both the said Post Codes, her candidature could not have been rejected for Post Code 7/13, is a patently stale claim in view of the fact that the selection process is already complete.

9. The petitioner was aware from day one that her application for Post Code 7/13 had been rejected, and despite being given an opportunity to challenge the said rejection by filing objection/representation by 20.09.2013, she remained silent and participated only in the recruitment process for Post Code 109/12 for which an e-admit card had been issued. The petitioner had filed the O.A. too at a belated stage, in the year 2016 and in this background, the learned Tribunal rightly came to the conclusion that she had failed to avail of the opportunity given by the DSSSB to represent against rejection of her candidature for Post Code 7/13.

10. In the recruitment process for public appointments where lakhs of candidates appear, the selection process cannot be an unending one, thereby giving a long rope to the unsuccessful candidates to raise disputes about their candidature at any stage. In a recent decision in W.P.(C) 8313/2017 entitled **Sandeep Kumar Yadav vs. Union of India & Ors.** and connected matters, decided by this Bench on 06.03.2018, the effect of delay in taking legal recourse against such a grievance, has been examined as under:-

“8. The main objection taken by learned counsel for the respondents to oppose the present petitions is the unexplained delay and laches on the part of the petitioners in approaching the court for relief and that too, in a case where all of them were aware of the fact that their names did not appear in the list of successful candidates in first phase on 23.04.2017, and declared on 03.08.2017.

9. *The date of filing the writ petition gains significance in view of the fact that the petitioners were all along aware of the fact that the second phase of the examination was to be conducted between 11.09.2017 to 16.09.2017. Knowing very well that if they were not permitted to participate in the second phase of the examination, the petitioners would have entirely missed the bus, as the clock could not have been set back for them where thousands of candidates were to participate in the examination, they ought to have acted with alacrity. The aforesaid position was also highlighted in the order dated 15.11.2017, extracted above.*

10. *We are conscious of the fact that limitation does not strictly apply when parties invoke the extraordinary powers of the court under Article 226 of the Constitution of India. But the fact situation in each case must be examined to see as to whether the delay is so unreasonable and unjustified that it would disentitle a petitioner to relief. There are cases where the delay of several years is condoned by courts keeping in mind the circumstances brought out, as for example in service jurisprudence, matters relating to continuing wrong payment on re-fixation of pension or pay. Relief is not denied where matters related to arrears of wages, gratuity etc. are concerned and they are treated on a different footing. [Refer: **UOI & Ors. Vs. Tarsem Singh, (2008) 8SCC 648**]. However, when matters relate to participation in competitive examinations, the issue of delay and laches gains significance as each and every day's delay counts, more so when applicants participating in the examination are running into several thousands. [Refer: **Judgment dated 27.01.2010 of a Division Bench in W.P.(C) No.10058/2009 entitled UPSC & Anr. vs. Govt. of NCT of Delhi & Ors.**].*

11. *In the case of **Ran Vijay Singh & Ors. vs. State of U.P. & Ors., (2018) 2 SCC 357**, the Supreme Court held as follows:-*

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse-exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a

*lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination-whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. **This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.***”
[Emphasis Added]

xxx

xxx

16. If the aforesaid submission made by the learned counsels for the petitioners is accepted, then, in our opinion, it would open a Pandora's box more so when the candidature of almost 10,000 candidates stationed all over the country who are similarly situated, were rejected by the respondents due to wrong filling/non-filling/non-shading mandatory fields in the OMR sheets. The present case is one where thousands of applicants had applied to the respondent to participate in the first phase of the examination. If the court heeds the submission made by the petitioners herein, then it will have a serious impact on the respondents who will have to re-do the entire results by picking up the answer sheets of each candidate whose candidature has been rejected due to technical errors in filling up the OMR sheets and then arrange a second phase of examination for the subject post by incurring further expenditure and making requisite arrangements all over again not only for a handful of petitioners before us, but for almost 10,000 similarly placed candidates located all over the country. This process could take several months to

complete and shall have the effect of delaying the entire selection process of appointing Head Constables (Ministerial) in the BSF, thereby causing administrative delays and adversely affecting the efficiency of the force.

17. *Another consideration that has weighed with this court for declining the request of the petitioners is that not only had the entire process of the examination concluded by the time they had approached the court for relief, if any relief is granted to any of them at this belated stage, it would have a cascading effect as other similarly placed candidates shall start knocking at the doors of the court asking for similar relief, which is impermissible.*

18. *We are therefore of the opinion that if the respondents are called upon to accept incomplete OMR sheets of the petitioners, it shall bring the entire examination process to a grinding halt which is not in the larger public interest. More so, when other candidates who have been disqualified by the respondents for the same reason, have reconciled themselves to their fate being mindful of the "Instructions for Marking" printed in the OMR sheets, and conscious of the fact that they had committed mistakes in fulfilling the procedural formalities prescribed by the BSF at the time of filling up the OMR sheets. The petitioners herein cannot be permitted to steal a march over them merely because they have approached the court for relief and that too belatedly, whereas the others have not."*

11. Reverting to the fact situation in the instant petition, we are of the considered opinion that the respondents had exercised the power on the basis of facts which have not been refuted by the petitioner. Learned counsel for the petitioner has not been able to show any patent illegality which has the effect of vitiating the action of the respondents. The above facts have been appreciated by the learned

Tribunal in correct legal perspective.

12. For the foregoing reasons, we do not find any illegality or infirmity in the impugned order dated 21.03.2017 to warrant any interference by this court, in exercise of writ jurisdiction.

13. The writ petition is accordingly dismissed.

PRATIBHA RANI
(JUDGE)

HIMA KOHLI
(JUDGE)

MARCH 16, 2018
'st'

