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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7823/2017 and CM APPL. 32245/2017**

LALIT KUMAR YADAV

..... Petitioner

Through: Mr. Pallav Kumar with Mr. Gautam Mann,
Advocates

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Anil Panwar, CGSC with
Ms. Anoosha Panwar and Mr. Pulkit Bajaj,
Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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13.03.2018

1. This order is in continuation of the order dated 06.03.2018, on which date, a batch of connected matters was listed before this Court, raising the same grievance as has been raised in the present petition, i.e., for declaring the results of the petitioner in respect of the written examination conducted by the respondents for recruitment to the post of Head Constable (Ministerial) in BSF, 2016-17, if found to have attained the cut off marks. On the said date, a common judgment was passed in 12 connected cases, lead matter registered as **W.P.(C) 8318/2017** entitled Sandeep Kumar Yadav vs. UOI and Ors. However, this petition was kept aside for the reason that unlike the aforesaid connected matters, in the present case, the petitioner had approached the Court

for relief before the second phase of the examination had commenced, i.e., before 11th September, 2017. By an interim order dated 05.09.2017, the petitioner was permitted to appear in the second phase of the examination, but it was made clear that no special equity would be claimed by him in view of the relaxation granted to him. Further, the respondents were directed to mark the OMR sheet of the petitioner and produce the same in a sealed cover on the next date. The respondents, however, failed to produce the OMR sheet of the petitioner alongwith the results in a sealed cover on 06.03.2018, the date when the other connected petitions were listed. As a result, orders on this case were deferred to await the results of the petitioner.

2. Today, counsel for the respondents has produced the results of the petitioner in a sealed cover alongwith the final merit list of the direct entry candidates, who have qualified for selection to the post of Head Constable (Ministerial) BSF, 2016-17. The photocopy of the original documents handed over by counsel for the respondents in a sealed cover, are taken on record. Counsel for the respondents submits that the petitioner has secured 89.89% in the first phase and the second phase, but the objection to his candidature is that he had marked 'OBC' circle instead of 'General' in the OMR sheet, when there was no reservation for the OBC category in the selection process for the subject post.

3. It is the contention of the counsel for the petitioner that that merely because the petitioner had committed a technical error cannot be a ground to non-suit him particularly when he had approached the Court well in time.

4. The only distinction between the present case and the connected matters in respect of the same recruitment process that were decided by us on 06.03.2018, is that the petitioner herein has approached the Court before the second phase of the examination was to be conducted between 11th to 16th September, 2017, whereas the others had filed the petitions much after the second phase was over. However, when the interim order was passed in this petition on 05.09.2017, it was made clear that no special equity could be claimed by the petitioner merely because he was being permitted to sit in the second phase of the examination. Thus, even if this petition is not hit by delay and laches, there are other valid reasons for declining relief to the petitioner herein.

5. The considerations that had weighed with us for rejecting similar petitions filed by other petitioners, whose applications were rejected by the respondents due to wrong filling/non-filling/shading mandatory fields in the OMR sheets, would be no different for this case as the facts are not distinguishable. We can do no better than to reproduce below the view expressed in the judgment dated 06.03.2018:-

“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]

12. As noted above, in the present case, over 74,000 applicants had submitted applications for participating in the examination process and about 54,000 candidates had appeared in the first phase of the examination. The respondents have rejected 9746 candidates due to wrong filling/non-filling/shading mandatory fields in their OMR sheets. The rejected lot includes the petitioners herein as in some cases, they had submitted application forms with OBC certificates but had shaded the oval of 'General' category, whereas in other cases they had shaded both 'General' and 'OBC' categories in their OMR sheets and so on and so forth.

13. This being the position, we find merit in the stand taken by the learned counsel for the respondents that it is impracticable to expect the BSF to overlook the specific instructions issued to the candidates who had participated in the written examination. The "Instructions for Marking" states as below:-

"INSTRUCTIONS FOR MARKING"

1. Use BLUE or BLACK Ball Point Pen Only.
2. You have to fill and shade your name, Roll No., Date of Birth, Mode, Religion, Category and Question Booklet Series Code & Sex because information are essential for evaluation of the Answer Sheet. Circle as printed against each should be shaded correctly, otherwise candidate shall be declared fail for which candidate will be himself responsible for such mistakes.
3. Completely darken the ovals so that the number inside the ovals is not visible.

4. Darken only one circle for each question as shown in the example below. Marking should be dark and the circle is to be filled in completely as shown in the example below.
5. No change/cutting/overwriting is permitted. Correction fluid should not be used. hence the ovals should be filled carefully.
6. Mark your answer only in the space provided. Please do not make any stray marks on this Answer Sheet.
7. Each question carry one mark and no mark will be deducted for wrong answer.
8. Rough work must not be done on this Answer Sheet. Use Rough Sheets provided at the end of the Question Booklet for Rough Work. ”

14. A glance at the aforesaid instructions issued to the candidates for purposes of marking the OMR sheets shows that explicit directions were given to the candidates to fill and shade their names, roll numbers, date of birth, mode, religion, category, question booklet number & code and sex. All the candidates were informed that the aforesaid information would be essential to evaluate their answer sheets and if the circle as printed against each category is not shaded correctly, then a candidate shall be declared as failed and he would be responsible for such a mistake. The second page of the OMR sheet, on which “Instructions for Marking” were printed, is prefaced with a certificate required to be signed by the candidate declaring inter alia that he had read and understood the instructions set out down below the sheet.

15. In the teeth of the aforesaid clear instructions, the petitioners cannot be heard to state that their candidatures were rejected on technical grounds which could not be an impediment in qualifying them for the second phase and that the respondents ought to have condoned their inadvertent mistakes.

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.

19. Once the respondents have identified 144 candidates in the direct entry category, out of the merit list of 257 candidates for filling up the subject vacancies, vested rights have accrued in their favour and it would be highly unfair and inequitable to dislodge them at this belated stage, for no fault of theirs and behind their back. As noted above, but for the interim order dated 17.01.2018, by now the respondents would have issued the appointment letters in favour of the short-listed candidates. The respondents cannot be blamed for the necessity of sticking to the procedural formalities required to be fulfilled by the candidates.

20. In view of the aforesaid facts and circumstances, we are not inclined to entertain the present petitions by directing the respondents to arrange a second phase of the selection process for a handful of petitioners before us much after the results of the examination have been collated and only the formality of issuing letters of offer of appointment is left.”

6. Counsel for the petitioner relies on the decision of a Co-ordinate Bench in **W.P.(C) 4829/2017** “UOI and Ors. vs. Sumit Kumar” decided on 10.08.2017, to contend that in a similar fact situation, it was held that if there are minor omissions that do not come in the way of the examining body in fairly evaluating the candidature of the candidates without compromising the confidentiality required to be maintained in the examination, then such omissions should not be a ground to reject their candidature.

7. There is no comparison with the fact situation in the case of Sumit Kumar (supra) vis-a-vis the present case. In the aforesaid case, noting that the candidature of the respondent/candidate was rejected because he had not mentioned the medium in which he was taking the examination, namely, Hindi or English language, the Court had observed that on opening the answer sheet,

the medium/language used by the candidate would be immediately revealed. It was in this background that the Court had observed that not every omission committed by a candidate would have the consequence of rejection of the answer sheet. In the instant case, the examination process is entirely computerized and therefore, an incorrectly filled up OMR sheet is sifted out and rejected outright by the system.

8. We are therefore unable to persuade ourselves to take a different view in respect of the petitioner herein when all other identically situated petitioners have been declined the very same relief for the reasons elaborated above. Accordingly, the petition is dismissed. There shall be no orders as to costs.

HIMA KOHLI, J

PRATIBHA RANI, J

MARCH 13, 2018

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