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

- + W.P.(C) 8318/2017 & CM No.34197/2017 (Directions)
- + W.P.(C) 9158/2017 & CM No.37461/2017 (Stay)
- + W.P.(C) 9160/2017 & CM No.37470/2017 (Stay)
- + W.P.(C) 9162/2017 & CM No.37477/2017 (Stay)
- + W.P.(C) 9171/2017 & CM No.37494/2017 (Stay)
- + W.P.(C) 9255/2017 & CM No.37805/2017 (Stay)
- + W.P.(C) 9256/2017 & CM No.37807/2017 (Stay)
- + W.P.(C) 9288/2017 & CM No.37967/2017 (Stay)
- + W.P.(C) 9360/2017 & CM No.38191/2017 (Stay)
- + W.P.(C) 9364/2017 & CM No.38198/2017 (Stay)
- + W.P.(C) 9425/2017 & CM No.38349/2017 (Stay)
- + W.P.(C) 9427/2017 & CM No.38351/2017 (Stay)

SANDEEP KUMAR YADAV	 Petitioner
JITENDRA YADAV	 Petitioner
HITESH KUMAR YADAV	 Petitioner
SUBHASH CHAND	 Petitioner
CHARAN SINGH YADAV	 Petitioner
NAVEEN KUMAR YADAV	 Petitioner
MOHIT YADAV	 Petitioner
PARMENDAR KUMAR	 Petitioner
NITESH KUMAR	 Petitioner
DEEPAK KUMAR	 Petitioner
RINKU	 Petitioner
AMIT YADAV	 Petitioner

Through: Mr.A.K.Trivedi & Mr.Naveen
Kumar, Advocates in W.P.(C)
No. 8318/2017
Mr.Pallav Kumar & Mr.Gautam
Mann, Advocates in W.P.(C)
Nos. 9158/2017, 9160/2017,

9162/2017, 9171/2017,
9255/2017, 9256/2017,
9288/2017, 9360/2017,
9364/2017, 9425/2017,
9427/2017

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Prasant Varma, Sr. Central
Govt. Counsel for UOI with
Ms.Shalu Goswami, Advocate
in W.P.(C) 8318/2017
Mr.Gigi C.George, Advocate
with Mr.Ramesh Tiwari, Adv.
with Mr.B.S.Chauhan,
Commandant, BSF for R-1 &
R-2 in W.P.(C) Nos.9158/2017,
9160/2017, 9162/2017,
9171/2017, 9255/2017,
9256/2017, 9288/2017,
9360/2017, 9364/2017 and
9427/2017
Mr.Vijay Joshi, Advocate for
UOI in W.P.(C) No.9425/2017

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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06.03.2018

1. All the petitioners, who had participated in the recruitment process for the post of Head Constable (Ministerial), in terms of an

advertisement issued by the BSF in November, 2016, are aggrieved by the rejection of their candidature due to wrong filling/non-filling/shading mandatory fields in their respective OMR sheets.

2. Due to the aforesaid wrong filling/non-filling/shading mandatory fields in the OMR sheets in respect of the written examination conducted on 23.04.2017 in first phase, none of the petitioners were permitted to participate in the second phase of the selection process that was scheduled to be conducted between 11.09.2017 to 16.09.2017. Pertinently, the first phase comprised of a written examination and the second phase comprised of the Physical Measurement Test, Shorthand Speed Test, Typing Speed Test, Documentation and Medical Examination. The results of the written examination were declared by the respondents on 03.08.2017, on the website of the BSF. It is an undisputed position that the petitioners were aware of the fact that their names did not appear in the list of successful candidates in the first phase.

3. Knowing very well that the second phase of the examination was to commence on 11.09.2017 and was to conclude on 16.09.2017, all the petitioners except for the petitioner in W.P.(C) No.8318/2017, who filed the petition in this Court on 14.09.2017, did not seek legal recourse till the middle of October, 2017. On 15.11.2017, the following order was passed in these cases:

“1. Pursuant to the order dated 03.11.2017, learned counsel for the respondents states that he has brought the original OMR sheets of the petitioners which indicates that they have made a mistake in filling up the OMR sheets.

2. *Learned counsel for the respondents states that against 144 vacancies for the recruitment to the post of Head Constable (Ministerial), approximately 54,286 applications were received and out of the aforesaid applications, 9746 applications were rejected due to discrepancies in the OMR sheets submitted by the candidates. He submits that the first phase of the examination was conducted in August 2017 and the petitioners were well aware of the errors made by them in filling up the OMR sheets in the month of August 2017 itself, when the results were declared. The second phase of the selection process took place between 11.09.2017 to 16.09.2017, but the petitioners have elected to approach the Court for relief after the passage of one month therefrom and in the given facts and circumstances of the case, there is an inexplicable delay on their part in approaching the Court for relief.*

3. *We have inquired from learned counsel for the respondents as to when the entire exercise of recruitment to the posts of Head Constable (Ministerial) have concluded. He submits that the results will be declared within one week and only thereafter will the vacancy position be clear.*

4. *List on 30.11.2017 for learned counsel for the respondents to inform us about the status of the vacancies after declaring the results for recruitment to the post of Head Constable (Ministerial). In case there are any vacancies available after the results are declared, the same shall not be filled by the respondents without seeking prior permission of the Court."*

4. Thereafter, the matter was listed on 30.11.2017, on which date learned counsel for the respondents had sought time to file an affidavit

to furnish the requisite information, as directed on 15.11.2017. On the said date, learned counsel for the respondents had stated that the entire exercise of conducting recruitment to the post of Head Constable (Ministerial) would be concluded by the second week of January, 2018. As this court was informed that other connected matters were coming up on 17.01.2018, the remaining matters were also directed to be listed on the same date. On 17.01.2018, the following order was passed:-

“1. Learned counsels for the respondents state in unison that the final results in respect of both the phases of the examination i.e. first phase that comprises of the written examination and the second phase that comprises of shorthand speed test, typing speed test, physical measurement test, documentation and medical examination has been completed and the result has been declared only yesterday. As per the said results, 121 direct entry candidates and 23 departmental candidates have been declared as successful but the appointment letters have yet to be issued.

2. We may note that the second phase of the selection procedure is qualifying in nature and the merit is based only on the written examination that has been conducted in the first phase.

3. Learned counsels for the parties are directed to compile a common tabulated statement in respect of all the petitions indicating inter alia the names of the petitioners, their respective writ petition numbers, their results of the written examination and placement in terms of the merit list and the reasons for disqualifying them in the written examination in the remarks column. The said tabulated statement shall be

kept available on the next date of hearing fixed in the connected petitions i.e. on 25.01.2018.

4. Till the next date of hearing, the respondents are restrained from issuing appointment letters in terms of results declared by them.”

5. Pursuant to the aforesaid order, the respondents have handed over a summary of the candidates as also a tabulated statement in respect of all the petitioners indicating the marks secured by them in the written examination, their placement in terms of the merit list and the reasons for disqualifying them in the written examination.

6. The summary of the candidates furnished by the learned counsel for the respondents reveals that a total of 144 vacancies (Direct Entry – 121 + Departmental – 23) were advertised for the post of Head Constable (Ministerial) in the BSF 2016-2017. After scrutiny of application forms, 74,129 candidates were called in the written examination in the first phase but only 54286 candidates had appeared. The written examinations were conducted at 17 Centres located all over the country; the candidature of 9746 candidates including the petitioners herein were rejected due to wrong filling/non-filling/shading mandatory fields in the OMR sheets. This number included 268 candidates who had achieved the qualifying marks in the written test in the second phase examination. 1581 candidates were called for the second phase examination; out of 1332 candidates who had appeared in the Physical Standard Test (PST), 45 candidates did not qualify. Similarly, 991 candidates did not qualify the Typing Test and 39 candidates were found unfit during the

Medical Examination/Review Medical Examination. Finally, 257 candidates were found fit for appointment.

7. After drawing a merit list, 121 candidates from the direct entry category and 23 candidates from the departmental category were ultimately selected, totalling to 144 candidates, in terms of the number of vacancies that were advertised. The cut off percentage of marks secured by the last selected candidate in the direct entry list was 84.27% and by the last selected candidate in the departmental category list was 74.44%. Thus, learned counsel for the respondents submits that no vacancies have remained unfilled after completion of the above exercise. Only the letters of appointment in terms of the results declared, have not been issued so far in view of the restrain order dated 17.01.2018.

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. 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]

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 who 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.

21. The petitions are accordingly dismissed along with the pending applications.

22. Parties are left to bear their own costs.

HIMA KOHLI, J.

PRATIBHA RANI, J.

MARCH 06, 2018

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