

HIGH COURT of CHHATTISGARH, BILASPUR

Judgment reserved on 04.12.2019

Judgment pronounced on 17.12.2019

Writ Appeal No. 60 of 2019

(Arising out of Order dated 10.12.2018 passed by Hon'ble Single Bench in WPS-8085 of 2018)

- Arun Kumar Pathak, S/o Late Ramesh Prasad Pathak Aged About 43 Years, R/o Village Dhangawan, post Sadhwani, District Bilaspur Pin 495117 Chhattisgarh, District Bilaspur Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh, Through Secretary, Department of General Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission Through its Secretary, Shankar Nagar, Raipur, Chhattisgarh, District Raipur Chhattisgarh
3. Exam Controller, Chhattisgarh Public Service Commission, Shankar Nagar, Raipur, Chhattisgarh

-----Respondents

For Appellant	: Shri Arun Kumar Pathak, Appellant in person
For Respondent-1	: Shri Ghanshyam Patel, Government Advocate
For Respondents/ PSC	: Shri Sudeep Agrawal, Advocate

**Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
CAV Judgment**

Per Parth Prateem Sahu, J.

1. Refusal to grant the relief sought for by the appellant in his Writ Petition and consequently dismissing the same on the ground of delay and laches, made the appellant to approach this Court by filing this Writ Appeal.

2. Brief facts for disposal of this appeal are that on 26.11.2016 respondent- 2 issued an advertisement inviting applications from the eligible candidates for appointment on 18 different posts under the State services. Selection of eligible candidates is based on three phases; first stage being Preliminary examination (objective questions), followed by Main examination (subjective questions) and finally, interview. Pursuant to the said advertisement, appellant submitted his application form and he was issued admit card for appearing in examination. He succeeded in Preliminary examination and on that basis, participated in Main examination, which commenced in between 18.05.2017 to 21.05.2017. Result of main examination was declared on 17.11.2017 in which 863 candidates were short-listed and were called for interview. The appellant could not find place amongst successful candidates in main examination. On completion of selection process, final selection list was published on 30.12.2017. After completion of final selection process, petitioner not finding place in the final selection list, filed a Writ Petition on 28.11.2018 with following reliefs:

“3.1 A writ/writs including a writ in the nature of mandamus thereby directing respondents to produce the entire records pertaining to selection process and impugned results.

3.2 A writ/writs including a writ in the nature of mandamus constituting and directing an independent expert body to get the Model Answer key and revaluated on the basis of correct answers.

3.3 A writ/writs including a writ in the nature of mandamus directing Respondents to issue fresh result on the basis of fresh revaluation by independent expert body.”

3. The said Writ Petition came up for hearing on 10.12.2018 and learned Single Judge after adverting to the dates and events ie commencement of recruitment proceedings, date of declaration of final result and considering the date on which the appellant made an application under RTI to get certain information with regard to his answer sheet from respondent- 2, as well the date of filing writ petition has held that the recruitment process has already been completed and selected candidates have been given appointments, therefore, it will be a futile exercise to grant relief to the petitioner/appellant, as claimed in the Writ Petition, declined to entertain the Writ Petition by impugned order.

4. Learned counsel for the appellant submits that learned Single Judge failed to consider the fact that marks-sheet has been issued only on 08.03.2019, model answers were published on 18.04.2018. Looking to the award of marks, he made an application under RTI for copies of answer sheets. It is only on 25.10.2018, answer-sheets were made available by respondent- 2 from which it revealed that appellant's answers have not been evaluated properly and less marks have been awarded to him, though the answers written by him were correct. He further submits that after getting copies of answer-sheets from respondent- 2, Writ Petition was filed and therefore, it ought to have been decided on merits after dealing with all the issues raised in the petition. He placed reliance in the matter of **Sanjay Singh and Another Vs UP Public Service Commission, Allahabad and another** {Writ Petition (Civil)165 of 2005} (with WPC-172, 409,466 and 467) decided on 09.01.2007 and **AP Public Service Commission Vs Balaji Badhavath and others** in Civil Appeal

No.2244 of 2009 {Arising out of SLP (Civil) No.18308 of 2008}, decided on 08.04.2009.

5. Per contra, learned counsel appearing for respondent- 2 submits that the appellant filed Writ Petition with inordinate delay ie after completion of entire recruitment proceedings, and by that time, almost all the selected candidates, who have been issued order of appointment, have joined. He further submits that though the Writ Petition has been filed after issuance of final selection list, further looking to the period that appointment orders were issued, but the selected candidates have not been arrayed as party respondents and therefore, the Writ Petition was liable to be dismissed on this count alone. He submits that the appellant was awarded less marks though he wrote the correct answers and there was different markings found to be placed in the answer-sheets recorded by him is not correct.. The answer-sheets were initially checked by the evaluator and thereafter, it was further looked into by the Deputy Head and the Head Valuer. He also submits that there is inordinate delay in filing Writ Petition as final results as well as list of selected candidates has been declared on 30.11.2017, whereas, the Writ Petition was filed only on 12.11.2018.

6. We have gone through the records of Writ Appeal as well as the Writ Petition and also perused the impugned order passed by the learned Single Judge.

7. It is case of the appellant himself that the select list /final list has been published on 30.11.2017 and mark-sheets were published on

08.03.2018. The appellant made an application under the RTI for supply of copies of answer-sheets only on 17.08.2018 ie after about more than 7 ½ months from the date of declaration of final results/select list.

8. The selection process creates a right in favour of all the candidates, who got themselves selected by finding name in the select list and therefore, the period to challenge the process of selection or the select list has to be construed strictly. Any candidate, who became unsuccessful in any selection process cannot be permitted to approach the Courts and file a petition challenging the selection process at his own convenience and sweet will. But it is for the candidate to approach the Court challenging the select list within the shortest possible time.

9. Hon'ble Supreme Court in the matter of **Sanjay Singh** (supra) though have granted relief to some of the candidates, but restricted the benefit of the order only to the candidates who have approached the Courts before 31st August, 2005, wherein that case, the final results of examination were declared on 01.05.2005. In aforementioned case, dates and events as mentioned in the judgment passed by the Hon'ble Supreme Court in the matter of **Sanjay Singh** (supra) cautiously mentioned cut off date for the candidates who have approached the Courts within four months and have excluded other candidates.

10. Hon'ble Supreme Court in case of **Chairman, UP Jal Nigam Vs Jaswant Singh** reported in AIR 2007 SC 924, after considering a catena decisions on the aspect of delay, at Paragraph 13, held as follows :

“13.....Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted.”

11. In the case at hand also, the appellant filed Writ Petition after about more than 11 months from the date of issuance of final select list and therefore, we do not find any error in the view taken by learned Single Judge in declining to exercise extra ordinary writ jurisdiction under Article 226 of the Constitution of India.

12. The objection of non joinder of necessary party objections raised by learned counsel for respondent- 2 is also fatal for the appellant because he filed the Writ Petition after more than 11 months of declaration of final select list and pursuant to that list, most of the candidates whose names find place in that select list have joined on their respective posts and they have not been impleaded as party respondents in Writ Petition. The issue of necessary party for just decision of case is considered by Hon'ble Supreme Court in the matter of **Public Service Commission, Uttaranchal Vs Mamta Bisht and Others** reported in AIR 2010 SC 2613 and held thus:

“7. In case the respondent No.1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been

entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in *Udit Narain Singh Malpaharia V Additional Member, Board of Revenue, Bihar and Anr.*, AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh V. State of Gujarat*; AIR 1965 SC 1153; *Babubhai Muljibhai Patel V Nandlal, Khodidas Barat and Ors.*, AIR 1974 SC 2105; and *Sarguja Transport Service V. State Transport Appellate Tribunal, Gwalior and Ors* AIR 1987 SC 88)"

13. Hence, the Writ Petition was not entertainable for want of non-joinder of necessary parties.

14. Both the case laws relied upon by learned counsel for the appellant are on different facts. In the first case **Sanjay Singh** (supra) the scaling system adopted by the UPPSC for preparing merit list was under challenge and also the Writ Petitions have been filed within reasonable period and the benefit of judgment passed in the Writ Petition has been extended only to the candidates who have approached the Court within four months from the date of declaration of final select list. In case of **Baloji Badhavath** (supra), the dispute is with regard to the rights of reserved candidate.

15. In view of above discussions, we do not find any merit in the submissions of appellant.

16. Appeal being devoid of any substance, it is liable to be and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge