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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.07.2019

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THE HON'BLE MR.JUSTICE **S.M. SUBRAMANIAM**

W.P. (MD) No.21419 of 2015

and

M.P. (MD) No.1 of 2015

R.K.Jeeva Bharathi

... Petitioner

-vs-

1.The Union of India,
Represented by its Joint Secretary,
Ministry of Finance,
Department of Economic Affairs,
Room No.34-C,
New Delhi-110 001 (India)

2.Institution of Banking Personnel Selection (IBPS),
Rep. by its Director/Chief Executive Officer,
IBPS House, No.90, Feet Road, D.P. Road,
New Thakur Polytechnic,
Western Express Highway,
Post Box No.8587,
Kandivali (East),
Mumbai 400101.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd respondent to declare results for the petitioner Roll No.2920104206 with Registration No.1411587967 for the online main exam held on 31.10.2015, for the common recruitment process for recruitment of Probationary Officer/Management Trainee (CWE PO/MT - V) and further direct the 2nd respondent to add the petitioner name in the interview list in case of obtaining pass mark in the online main exam and pass such further orders, as this Court.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.R.Murugappan (for R-1)
Mr.K.M.Vijayakumar (for R-2)

O R D E R

The relief sought for in the present writ petition is for a direction to direct the second respondent to declare the results for the petitioner Roll No.2920104206 with Registration No.1411587967 for online, the main exam held on 31.10.2015, for the common recruitment process for recruitment of Probationary



Officer/Management Trainee (CWE PO/MT - V) and further direct the second respondent to add the petitioner's name in the interview list in case of obtaining pass mark in the online main exam.

2.The grievance of the writ petitioner is that he participated in the recruitment process for appointment to the post of Probationary Officer / Management Trainee. Though the writ petitioner was successfully in the written examination, he was not selected. Thus, the writ petitioner is constrained to move the present writ petition.

3.The petitioner narrated the manner in which he participated in the process of selection and states that the petitioner is entitled for appointment to the post of Probationary Officer/ Management Trainee.

4.The counter affidavit filed by the second respondent reveals that the petitioner indulged into unfair practices and therefore, he was deemed to be disqualified for the main examination. The said contentions were elaborately stated in Paragraph No.10 of the counter affidavit, which is extracted hereunder:-

"...10.The main case in the matter is that the petitioner indulged into unfair practices and therefore he was deemed to be disqualified for Main Examination as per the following provision of clause K of the Advertisement dated 06.07.2015. The relevant clause of the Advertisement /Notification dated 06.07.2015 reads as under:

"K. Action against Candidates Found Guilty of Misconduct/Use of Unfair Means

Candidates are advised in their own interest that they should not furnish any particulars that are false, tampered with or fabricated and should not suppress any information while submitting online application.

At the time of examination or in a subsequent selection procedure, if a candidate is (or has been) found guilty of -

- (i) using unfair means or
- (ii) impersonating or procuring impersonation by any person or
- (iii) misbehaving in the examination/interview hall or disclosing, publishing, reproducing, transmitting, storing or facilitating transmission and storage of contents of the test(s) or any information therein in whole or part thereof in any form or by any means, verbal or written, electronically or mechanically for any purpose or
- (iv) resorting to any irregular or improper means in connection with his/her candidature or

Copy of such document annexed herewith and marked as "EXHIBIT-M" is the guidelines for "Detection of use of unfair means/malpractices in



objective tests" used by IBPS.

Copy of such document annexed herewith and marked as "EXHIBIT-N" is the Research Monography Article on the subject of "Crime in the classroom Part III: The case of the ultimate Identical Twin" to highlight the issue.

(v) obtaining support for his / her candidature by unfair means, or

(vi) carrying mobile phones or similar electronic devices of communication in the examination/interview hall such a candidate may, in addition to rendering himself/herself liable to criminal prosecution, be liable:

(a) to be disqualified from the examination for which he/she is a candidate

(b) to be debarred either permanently or for a specified period from any examination conducted by IBPS

(c) for termination of service, if he/she has already joined the Participating Organisation.

Important: IBPS would be analysing the responses (answers) of individual candidates with other candidates to detect patterns of similarity of right and wrong answers. If in the analytical procedure adopted by IBPS in this regard, it is inferred/concluded that the responses have been shared and scores obtained are not genuine/valid, IBPS reserves right to cancel the candidature of the concerned candidates and the result of such candidates (disqualified) will be withheld."

11. The wrong answers of the petitioner, Roll No.2920104206 were found to be identical with that of one Anbazhan A, Roll No.2920104190. Both of them appeared at the same examination centre-Tirunelveli and on finding their wrong answer pattern to be same the candidature of both these candidates were cancelled as per clause K of the Advertisement dated 06.07.2015.

12. The Respondent No.2 has adopted a systematic procedure for detection of unfair means by IBPS while analyzing patterns of similarity of right and wrong answers of the candidates. A brief narration in this regard is given below:

a. Institution has system based capability of identifying cases of use of unfair means based on an internationally accepted method. The responses of each candidate are compared with responses of the remaining candidates and matched for identical responses. The system generates report of all cases of cases which have identical responses mainly identical wrong responses. This report is critically reviewed by high power committee



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appointed by IBPS. The committee considers the following in addition to identical wrong answers while deciding on reporting unfair means and a final report is prepared only after the committee review the other factor supporting the analysis:-

- i. Evidence of any random/ pattern marking;
- ii. Identical matches of "intermittent" and "end" skipped questions;
- iii. Item which otherwise show different answer across centre;

The above mentioned method of identifying the use of unfair means is an internationally accepted practice and in many countries for various examinations, candidates are identified for having use of unfair means by following this method.

b. While analyzing the responses having alternate choices of A,B,C,D and E with A as the right answer, possible identical wrong answers of two candidates are BB, CC, DD, EE. For a pair of candidate to get anyone of these four identical wrong answers, either BB or CC or DD or EE is $1/16$ i.e. 0.0625 or $(0.25)^2$. This probability becomes $(0.25)^{24}$ for 12 identical wrong answers. For the high match group, since the number of the wrong answer would be much lower, the method has been tuned to detect such cases which have 90% of higher matches with 5 identical wrong answers. This scientific and theoretical method, which is time tested and using by IBPS for last more than 3 decades for detection of use of unfair means, is applied in every test.

13. In the petitioner's case, the similarities of identical Wrong Wrong answer was found with other participant candidate/s. Based on this analytical data it was observed that the petitioner's case has been found to be a case of "use of unfair means". The basis of use of unfair means was that there were identical wrong answer and the review report of the high power committee of IBPS.

14. In academic matters particularly when malafide has been alleged against experts constituting the selection committee, it would normally be prudent, wholesome and safe for the Court to leave the decisions to the academicians and experts. As a matter of principle, the Court should never make an endeavour to sit in appeals over the decisions of experts. The Courts must realize and appreciate its constraints and limitations in the academic matters. The Hon'ble Supreme Court has taken this view in various case laws as under:

<https://hcservices.ecourts.gov.in/hcservices/>
2. In the case **Basavaiah (Dr) versus Dr.H L Ramesh and Ors, 2010 (8) Supreme Court Cases 372,** Hon'ble Supreme Court has taken the view as under:-



"That in academic matters particularly when malafide has been alleged against experts constituting the selection committee, it would normally be prudent, wholesome and safe for the Court to leave the decisions to the academicians and experts. As a matter of principle, the Court should never make an Endeavour to sit in appeals over the decisions of experts. The Courts must realize and appreciate its constraints and limitations in the academic matters."

b. In *Dental Council of India v. Subarti*, 2001 (5) Supreme Court Cases 486, Hon'ble Supreme Court held that the Court's jurisdiction to interfere with the discretion exercise with expert body is extremely limited. So in view of the submissions made above the present writ petition is liable to be dismissed.

c. I further state that it is stated that exactly in a similar matter, the Hon'ble High Court of Delhi at New Delhi held in W.P.(C)No.3707 of 2011 (*Varun Bhardwaj V. State Bank of India and Ors*), that in such cases of unfair means wherein unfair means is detected by an expert hand, normally the Hon'ble Courts should not interfere in the writ jurisdiction under Article 226 of the Constitution of India.."

4. In view of the facts and circumstances that the writ petitioner had indulged in certain malpractices and unfair practices, this Court is of the opinion that the petitioner is not entitled for any relief as sought for in the present writ petition.

5. In view of the above observations, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

Ns/sji

To

1. The Joint Secretary
Union of India,
Ministry of Finance,
Department of Economic Affairs,
Room No.34-C,
New Delhi-110 001 (India)



2. The Director/Chief Executive Officer,
Institution of Banking Personnel Selection (IBPS),
IBPS House, No.90, Feet Road, D.P. Road,
New Thakur Polytechnic,
Western Express Highway,
Post Box No.8587,
Kandivali (East),
Mumbai 400101.

+1CC TO MR.K.M.VIJAYAKUMAR, Advocate Sr. No.73716
+1CC TO MR.R.MURUGAPPAN, Advocate Sr. No. 73670

W.P.(MD) No.21419 of 2015
and
M.P.(MD)No.1 of 2015
05.07.2019

SCR(CO)
TR (16.07.2019) 6P 5C