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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 05.12.2019

+ W.P.(C) 9125/2019 & CM APPL. No. 37688/2019

UNION OF INDIA

..... Petitioner

Through: Mr. Ravi Prakash & Mr. Farman
Ali, Advs.

versus

RAMAWATAR YADAV & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

None appears for the respondents. None was present even on the last date of hearing.

2. The challenge in this writ petition is to order dated 09.08.2019 in which the Central Administrative Tribunal ('Tribunal') has passed the following directions:-

"6. We, therefore, dispose of the OAs by directing that the case of the applicants shall be considered by the selection committee for appointment to the post of Member, Income Tax Appellate Tribunal without taking into account, the aspect of delay as regards the receipt of APARs. It is

needless to mention that the selection committee shall be entitled to examine the other aspects. There shall be no order as to costs.”

3. In this case, the Department of Legal Affairs, Ministry of Law & Justice *vide* circular dated 06.07.2018 had invited applications for appointment of 37 members (Judicial/Accountant) in the Income Tax Appellate Tribunal (‘ITAT’). The last date for submission of the application was 20.08.2018.

4. Learned counsel for the petitioner submits that the circular clearly stated that the application alongwith upto date CR dossiers, Cadre Clearance and Vigilance Clearance should reach Secretary to Government of India, Department of Legal Affairs, Ministry of Law and Justice by 20.08.2019 at the latest. The said circular also made it clear that the applications which do not conform to the instructions given in the circular will be summarily rejected ; and incomplete applications as well as applications received after the last date will not be entertained.

5. Consequent to the circular, an Interim Search-Cum-Selection Committee (‘Interim SCSC’) was constituted under the chairmanship of an Hon’ble Judge of the Supreme Court of India, President of ITAT and two Secretaries to the Government of India to recommend persons for appointment as members (Judicial/Accountant) in the ITAT arising from circular dated 06.07.2018. The Legislative Department (respondent No. 2 herein) forwarded the application of respondent No.

1 *vide* Office Memorandum dated 20.08.2018 stating that ACR of respondent No. 1 would be sent in due course.

6. The petitioner thereafter issued Office Memorandum dated 01.11.2018 to respondent No. 2 requesting them to send ACR/APARs and Vigilance Clearance alongwith Cadre Clearance of certain officers, including respondent No. 1, latest by 14.11.2018, failing which the candidature of the said officers including respondent No. 1 would stand rejected. The ACR/APARs of respondent No. 1 was sent to the petitioner on 16.11.2018 which was received on 19.11.2018.

“The Interim Search-Cum-Selection Committee (“Interim SCSC”) met to deliberate on and evolve the process of selection for members of ITAT. The Interim SCSC evolved its own procedure in the light of provisions of Rule 4A of the ITAT Members Rules and decided that all applications from the eligible candidates, complete in all respects, including those from Government Servants, which have been received on or before the last date, i.e. 20.08.2018, shall only be considered. It is submitted that since the complete application of the Respondent No.1 for the post of Member (Judicial) in the ITAT with Vigilance Clearance and copy of APARs/ACRs was not received on or before the last date i.e. 20.08.2018, the Respondent No. 1 was not shortlisted.”

7. Learned counsel for the petitioner has drawn our attention to a decision dated 17.05.2019 rendered by a learned Single Judge of this court in the case titled ***Mohinder Kaur Sahlot & Anr. vs. Union of India*** passed in the W.P. (C) 5365/2019, in which it was held as under:

“The Respondent No. 1, being aggrieved by non-issuance of Interview call-letter to him, filed Original Application bearing O.A. No. 1546/2019, titled ‘Ramawatar Yadav vs. Union of India and Anr. (“O.A.”) before the Hon’ble Central Administrative Tribunal – Principal Bench, New Delhi.

“This Hon’ble Court, in a similar case of ‘Mohinder Kaur Sahlot and Anr. vs. Union of India’ bearing W.P.(C) No. 5365/2019, vide common Judgement dated 17.05.2019 held as under:

“6. On careful consideration of the rival contentions of the parties, this Court is of the view that Rule 4A of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 empowers the Selection Board to evolve its own procedure. The aforesaid Rules are not subject matter of challenge before this Court. The decision of the Committee to short-list the candidates is reasonable and not arbitrary. Reference be made to Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar (supra) in which the Supreme Court upheld the action of Madhya Pradesh Public Service Commission to call for interview only 71 applicants out of 188 applicants on the ground that only candidates with 7 ½ years experience be called for interview whereas five years experience was the eligibility criteria.

“7. In W.P.(C) 5365/2019, the complete application of the petitioner was submitted after the last date mentioned in the circular dated 06th July, 2018 which was rejected. There is no infirmity in the rejection of the petitioner’s application on the ground of having been submitted after the due date.”

8. On 20.05.2019, an interim order was passed by Central Administrative Tribunal by which the petitioner herein was directed to consider the feasibility of including the name of respondent No. 1 in the list of candidates to be interviewed, if all other conditions are fulfilled, ignoring the fact that the APARs were received after the due date. On 09.08.2019, the O.A. was allowed and the directions as extracted in para 2 above were passed.

9. Learned counsel for the petitioner submits that the SCSC was competent and entitled to formulate its own procedure ; that the committee had fixed the cut-off date and taken a decision that no applications that were found incomplete after the cut-off date *i.e.* 20.08.2018 will be considered.

10. We have heard learned counsel for the petitioner and it is noticed that the same issue stands decided by the Single Judge of this court in W.P. (C) 5365/2019 by which the order of the Tribunal was set-aside, granting an opportunity to the respondent to make a representation before the petitioner ; and making it clear however that rejection of such representation would not give a fresh cause of action to the respondents. The facts in this case being identical, we see no

reason to take a different view in the matter. Accordingly, we dispose of the present petition with the same direction, granting liberty to the respondent to make a representation to the petitioner; making it clear that rejection of such representation would not give a fresh cause of action to the respondents.

11. The writ petition and the pending application are disposed of in the above terms.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 05, 2019/uj