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

+ W.P. (C) 5296/2020 & CM No.19129/2020 (of the petitioners for stay/directions)

ROHIT AND ORS

.....Petitioners

Through: Mr. O.P. Saxena, Mr. Ravinder Aggarwal and Mr. Naveen Sharma, Advocates.

Versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr. Naginder Benipal and Mr. Abhishek Khanna, Advs. for R-1&2 with Mr. Kishan Yadav, Deputy Commandant, SSB.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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03/04.09.2020

[VIA VIDEO CONFERENCING]

1. This petition came up first before us on 17th August 2020, when the following order was passed:-

“3. The four petitioners, being Constables (GD) in the respondents Sashastra Seema Bal (SSB), have filed this petition impugning the letters/orders, all dated 11th August, 2020, of the respondents SSB, of termination of the service of each of the four petitioners, under Rule 23 of the SSB Rules, 2009 i.e. on the ground of having furnished false information at the time of recruitment.

4. *It is the case of the petitioners, (i) that they were issued notices, all dated 8th July, 2020, to show cause why their services be not terminated for the reason of the report of the verification got done of the permanent address furnished by each of them being to the effect that the addresses furnished were not verifiable; (ii) that no copy of the report of verification got done was furnished to them; (iii) even otherwise, merely because the Police officials had not traced the address of the residence of the petitioners, was not a ground to terminate the services of the petitioners without giving them an opportunity to satisfy that the address given was correct; (iv) the petitioners earlier filed W.P.(C) No.5027/2020, which was disposed of vide order dated 6th August, 2020, directing an opportunity of hearing to be given to the petitioners; (v) that all the four petitioners, in the morning of 11th August, 2020, were furnished notice of hearing and were given hearing of five to ten minutes each and within half an hour handed over the impugned orders, all dated 11th August, 2020, of termination of their services; and, (vi) that no proper hearing, as directed by this Court in order dated 6th August, 2020 in W.P.(C) No.5027/2020, has been given and thus the termination is bad for this reason only and writ petition against the termination is maintainable.*

5. *The counsel for the respondents SSB appears on advance notice.*

6. *We have enquired from the counsel for the petitioners, whether not there is a departmental remedy available to the petitioners against the letters/orders of termination of their services.*

7. *The counsel for the respondents SSB states that there is an alternate remedy of appeal. The counsel for the respondents SSB further states that in the impugned letters/orders of termination itself, the petitioners have*

been informed that they can prefer an appeal to Deputy Inspector General, SHQ, SSB Almora within 90 days.

8. *The petitioners, instead of preferring the alternate remedy of appeal, have filed this writ petition because this Court, vide order dated 6th August, 2020 in W.P.(C) No.5027/2020 made the order passed in pursuance to the hearing directed, to be not effective till 21st August, 2020, so as to give an opportunity to the petitioners to take their remedy thereagainst. Hence this petition, with an application for interim relief to restrain discharge of the petitioners from service has been preferred.*

9. *A perusal of the order dated 6th August, 2020 supra shows that the Court was inclined to dismiss the petition preferred against the show cause notices, as premature and that the counsel for the petitioners in the face thereof changed his stand and stated that he was confining the relief in the petition to grant of opportunity of hearing in pursuance to the show cause notice; agreeing therewith, this Court disposed of W.P.(C) No.5027/2020 directing an opportunity of hearing to be given. The petitioners, in this petition, have not portrayed the order dated 6th August, 2020 in its true spirit.*

10. *We also find the petitioners to have misrepresented other facts in the pleadings, so as to convey, that the matter is as simplistic as the petitioners have made it out to be. This is obviously in an attempt to get a notice issued of the petition, by hiding the correct facts from this Court and as emerge from the annexures to the petition.*

11. *A perusal of the show cause notices, all dated 8th July, 2020, issued to all the petitioners and which are almost identical, show the show cause notices to be stating that, (i) the petitioners, while applying for the*

post of Constable (GD) to the Staff Selection Commission (SSC), mentioned their postal address and domicile, of Bangalore, Karnataka; (ii) the petitioners, post joining, in their service book, in reply to the question therein, mentioned their place of birth as Village Bidhuna, Distt. Auraiya Uttar Pradesh (UP)/Kanauj (UP); (iii) the petitioners, in reply to another question in the service book, mentioned permanent place of residence, of District Bangalore, Karnataka; (iv) the petitioners, in the enrolment form placed in their service book, in reply to a question, mentioned their father's address as that of Village Bidhuna, Distt. Auraiya (UP)/Bangalore; (v) the petitioners, in the Verification Roll, again gave their address of District Bangalore, Karnataka, from the year 2010 to 2016 and another address in Bangalore, Karnataka, from 2016 till date; (vi) the domicile certificates produced by the petitioners of the Government of Karnataka, also stated that the petitioners had been residing there for five/three years; (vii) the petitioners, in their leave applications, had been furnishing their address of Distt. Auraiya (UP)/Bangalore; (viii) the Additional Deputy Commissioner of Government of Karnataka has reported that the addresses at District Bangalore, Karnataka furnished by the petitioners was not traceable; (ix) the matter had been investigated by the Central Bureau of Investigation (CBI) in which it had been found that the petitioners had obtained domicile certificates for selection in the respondents SSB, by furnishing fake documents; (x) charge sheets had been filed in the Courts at Bangalore against the petitioners, under Section 120B read with Sections 419, 420, 468, 471 and 473 of the Indian Penal Code, 1860 (IPC); (xi) as per Verification Roll, the petitioners were students of Inter College at Auraiya (UP) from 2005-06 to 2007-08/ SSBLHSS Nathapurwa, Kannauj (UP) from 2009-2010/Swami Vivekananda Inter

Coll. Sahar Auraiya (UP)/Radhakrishna ICK Phaphund, Auraiya (UP); (xii) the same showed that the petitioners had obtained education from the State of Uttar Pradesh but the domicile certificate issued by the State of Karnataka showed that the petitioners had prepared fake documents and given false address proof for establishing that the petitioners were permanent residents of Karnataka State; and, (xiii) the petitioners thus had furnished false information at the time of enrolment.

12. The aforesaid shows that the notices to show cause issued to the petitioners were not simplicitor of non-verification of address furnished by them and which can easily be believed, but contained various other facts which the petitioners concealed from this petition and perhaps from W.P.(C) No.5027/2020 also. The same was/is done, obviously, to not inform this Court, which, at least at the time of admission, depends on the counsel pleading the correct facts as emerging from the annexures, to consider whether to entertain the petition or not. Had all these facts been brought to the notice of this Court on 6th August, 2020, perhaps even the direction as issued in the order of that date would not have been issued.

13. The counsel for the petitioners today confirms that what is factually stated in the show cause notices is correct i.e. of the parents of the petitioners being residents of (UP) and the petitioners having been born and brought up in (UP).

14. We may notice that in the replies filed by the petitioners to the show cause notices also, though there was no dispute of the aforesaid facts but absolutely no explanation save for stating that the petitioners had gone to Karnataka for obtaining coaching from Goodwill Coaching Centre, for appearing in the examination leading to their recruitment in the SSB.

15. This raises doubts, why the petitioners, being residents of Uttar Pradesh, would travel to far off land in Karnataka State, to obtain coaching for SSC examination. At least we are not aware of any reputation of the said Goodwill Coaching Centre of Karnataka, as acquired by Kota in Rajasthan, for medical and engineering entrance examination. Rather, much closer to Uttar Pradesh, in Delhi, there are a large number of well known institutes coaching for examinations held by SSC, as the examination for recruitment in the respondents SSB.

16. Moreover the petitioners in the petition have not pleaded any of the facts, that they were born and brought up in Uttar Pradesh, did their education in Uttar Pradesh or till which year they remained in Uttar Pradesh and when did go to Karnataka for obtaining coaching.

17. Thus the deception practised by the petitioners in their recruitment, to portray that they belong to Karnataka State, appears to be continuing till now, in pursuing this petition and we are sorry to say, now with the assistance of the counsel for the petitioners who has acted hand in glove with the petitioners in suppressing the correct facts emerging from the annexures.

18. It appears that the petitioners have some criminal cases pending against them in Uttar Pradesh for them to obtain a domicile certificate of Karnataka.

19. The counsel for the respondents SSB states that the petitioners may have gone to Karnataka to avail of the Karnataka quota in recruitment.

20. However what we find strange is that the domicile certificates issued by the Government of Karnataka contain a notation “for the purpose of job” or that “they are valid for a period of one year only”.

21. We have asked the counsel for the respondents SSB, (i) what are the Rules of recruitment, if any in this regard i.e. domicile of how many years in a State is required to be eligible for being treated for recruitment in the quota of a particular State; (ii) what are the Rules of Karnataka State with respect to grant of domicile certificate; and, (iii) whether any inquiry has been conducted with respect to Goodwill Coaching Centre, which it appears is in the business of assisting the candidates as the petitioners in availing of Karnataka domicile.

22. Since the CBI is stated to be already investigating, we suggest that inquiry be also conducted with respect to Goodwill Coaching Centre as well whether the authority which has issued the certificate has issued the same in compliance of the applicable laws i.e. after the requisite enquiry.

23. The counsel for the respondents SSB to submit a copy of this order to the appropriate authorities for consideration.

24. It is deemed apposite to grant an opportunity to the counsels to study the aforesaid aspects.

25. However we are of the prima facie view that the petitioners, for the reasons of having practised the deception aforesaid before this Court, in an attempt to have the petition entertained by suppressing the facts therefrom, are not entitled to any discretionary relief.

26. List on 3rd September, 2020."

2. The petitioners have filed an additional affidavit of petitioner No.1 Rohit, stating that (i) till now, neither any court nor any other quasi judicial authority has given any finding that the documents submitted by the petitioners are fake documents or have been obtained by committing fraud;

(ii) the petitioners reiterate that the documents filed alongwith present petition as well as alongwith the earlier writ petition preferred by the petitioners, like Domicile Certificate, Bank Account Passbook, Aadhaar Card, all are genuine documents; (iii) that the documents of the petitioners passing Class 'X' Examination from the State of U.P. were submitted to the respondent No.3 Staff Selection Commission (SSC) when the petitioners applied to appear in the examination; (iv) that the post of Constable (GD) under the control of respondent No.2 Sashastra Seema Bal (SSB) is a general post and based upon All India Examination and there is no State-wise quota; (v) the petitioners, after passing Class 'X' Examination, shifted to Bangalore, where they started taking coaching and were residing in the tenanted premises; (vi) that the Aadhaar card, bank account, of each of the petitioners were prepared after due verification and the petitioners separately applied online for issuance of domicile certificate, to the Tehsildar and the petitioners, after personal appearance before the Tehsildar, were issued the domicile certificates; (vii) the CBI also in the charge-sheet has not given any finding about the genuineness of the documents but has only taken a *prima facie* view and filed the charge-sheet after conducting the examination and interrogating the petitioners; (viii) the charge-sheet was filed without arresting the petitioners; (ix) the petitioners, in their Enrolment Form have given the address of Uttar Pradesh as well as of Bangalore and the police verification has been done from Uttar Pradesh as well; (x) no criminal case against any of the petitioners is pending or was pending at the time of filling up of the forms; (xi) that the bank accounts of the petitioners at Bangalore are still operative and the salary of all the petitioners was being credited to the accounts at Bangalore; (xii) that the petitioners, after passing their Class

‘X’ examination, shifted to Bangalore and joined a coaching institute and because they intended to stay in Bangalore for long, also rented accommodation at different places within the jurisdiction of different Tehsildars, who issued the domicile certificates after verifying the Aadhar Card, Bank Account Passbook, etc.; (xiii) the petitioners learnt of Goodwill Coaching Centre, which has sound reputation of training people for competitive examinations and is a unit of Goodwill Heritage Business Private Limited; (xiv) the petitioners, alongwith the petition have annexed the receipts of the charges paid by them to the Goodwill Coaching Centre; (xv) the petitioners have not fabricated any documents; (xvi) that the documents or the facts relating to the petitioners obtaining their education at Uttar Pradesh were not mentioned in the writ petition because the said facts were mentioned at the time of enrolment in the respondent No.2 SSB; (xvii) even in the writ petition it is mentioned that the petitioners after passing their Class ‘X’, shifted to Karnataka and started the coaching at Goodwill Coaching Centre; (xvii) the petitioners learnt about the Goodwill Coaching Centre from others who had obtained coaching therefrom; (xix) the domicile certificates have been issued as per the prescribed form; (xx) the petitioners, when left Uttar Pradesh, the place of their birth, after passing the Class ‘X’ examination, decided to permanently settle themselves in Bangalore and try their luck to secure a job in the State of Karnataka, either in the Private Sector or in the Government Sector; and, (xxi) that all correspondences regarding the selection was from Bangalore address only.

3. Per contra the counsel for the respondents has stated; (i) that there is indeed a State-wise quota for recruitment of Constables (GD); (ii) that the Notification of the SSC for recruitment of Constables (GD) in Central

Armed Police Forces (CAPFs), of the year 2015-2016, had vacancy quota for the State of Karnataka, of 1529 and for which, in the relevant year, 15116 candidates applied; (iii) the quota for the State of Uttar Pradesh, to which the petitioners belong, was 4977 and for which 284084 candidates applied; (iv) the charge-sheet against Mr. Satya Prakash, owner of Goodwill Coaching Centre has also been filed; and, (v) that the Rules of the State of Karnataka for grant of domicile require permanent residence and the petitioners who claim to have gone to Bangalore, only for coaching, can by no stretch be said to be permanent resident of the State of Karnataka. The counsel for the respondents SSB also states that he has emailed just now to us as well as the counsel for the petitioners, the Notification dated 6th November, 2013 of the Government of Karnataka, publishing “The Karnataka Public Employment (Reservation in Appointment for Hyderabad-Karnataka Region) Order, 2013” and the Notification dated 29th January, 2014 of the Government of Karnataka notifying the “Karnataka Public Employment (Reservation in Appointment for Hyderabad-Karnataka Region) (Issue of Eligibility Certificates), Rules, 2013” and contends that the same would be applicable to the residency claimed by the petitioners, of the State of Karnataka. He also contends that the petitioners, thereunder do not qualify for appointment under the Karnataka State quota, whereunder the petitioners have deceitfully procured employment. He thus contends that the petition is liable to be dismissed.

4. The counsel for the petitioners seeks adjournment till tomorrow i.e. 4th September, 2020, to examine the documents forwarded by the counsel for the respondents SSB and to take instructions from the petitioners.

5. The hearing, on 3rd September, 2020, was thus adjourned to 4th September, 2020.
6. Today i.e. on 4th September, 2020, the counsel for the petitioners states that the petitioners seek to withdraw this petition with liberty to pursue departmental remedy.
7. The counsel for the respondents SSB opposes contending that the petitioners, having been caught on the wrong foot, cannot be afforded a second chance.
8. However, considering that it was noticed on the very first date when the petition had come up, that the petitioners had an alternative remedy, it is not deemed appropriate to deprive the petitioners therefrom.
9. The petition is thus dismissed as withdrawn with liberty to prefer departmental remedies but on the condition that the petitioners, while preferring any other remedy, will enclose therewith a copy of this order.
10. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 03/04, 2020
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