

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

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Date of decision: 14th December, 2020

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W.P. (C) 4910/2019

CHAMAN GIRI & ORS

.... Petitioners

Through: Ms. Disha, Advocate.

Versus

UNION OF INDIA & ORS.

... Respondents

Through: Mr. Kirtiman Singh, Mr. Waize Ali Noor, Mr. Rohan Anand and Ms. Taha Yasin, Advocates.

AND

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W.P. (C) 8742/2020

PANKAJ KUMAR

.... Petitioner

Through: Mr. Sarthak Bhatia, Advocate.

Versus

UNION OF INDIA & ANR.

... Respondents

Through: Ms. Anju Gupta, Advocate.

AND

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W.P. (C) 8847/2020

HARIOM GURJAR

.... Petitioner

Through: Mr. Sarthak Bhatia, Advocates.

Versus

UNION OF INDIA & ANR.

... Respondents

Through: Mr. Dilbag Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. W.P.(C) No.4910/2019 was filed by 20 Sub-Inspectors (General Duty) [SI(GD)] of the respondents Central Reserve Police Force (CRPF), seeking (i) mandamus directing the respondents CRPF to continue the petitioners

therein on the post of SI(GD), as held by them since June, 2017, in accordance with the ratio of *Vikas Pratap Singh Vs. State of Chhattisgarh* (2013) 14 SCC 494; and, (ii) impugning the notice dated 30th April, 2019 issued by the Directorate General, CRPF declaring final revised result for the post of SI(GD) through the Limited Departmental Competitive Examination [LDCE] – 2016, to the extent of excluding the names of the petitioners from the revised merit list.

2. It is the case of the petitioners in W.P.(C) No.4910/2019, that (i) they joined the respondents CRPF between the years 2006 to 2012, as Constables (GD); (ii) vide Signal dated 7th September, 2016, applications from eligible Constables and Head Constables (HC) working in the respondents CRPF were invited for selection to the post of SI (GD) through LDCE-2016, for which all the petitioners applied; (iii) the LDCE-2016 written examination took place on 5th February, 2017 and in which all the petitioners appeared; (iv) the result of the LDCE-2016 written examination was declared on 8th February, 2017 and the petitioners were declared qualified in the written examination and asked to appear for the physical test; (v) in the result declared on 18th May, 2017 of LDCE-2016, all the petitioners were selected; (vi) the petitioners were directed to and joined the six months training, on 13th June, 2017 and after successful completion of training, graduated as SI(GD)s; (vii) pursuant thereto, the seniority list of SI(GD)s was updated and the seniority date of the petitioners was given therein as 30th April, 2017; (viii) the petitioners, as of 30th April, 2018, completed two years of probation; (ix) various candidates who did not clear the LDCE-2016 challenged the result of the said examination by filing W.P.(C) Nos.1900/2017, 1983/2018, 7415/2017, 8378/2018 and 8447/2018 and

during the said proceedings, the respondents CRPF agreed that there had been mistakes in the examination procedure; (x) pursuant to the aforesaid, the respondents CRPF, on 20th September, 2018 issued a notification for re-examination of the results and invited objections to the answer key; (xi) on 20th September, 2018, notice for reconciliation of results was issued and wherein additionally 40 more candidates were notified to have cleared the written examination component of LDCE-2016; (xii) on 30th April, 2019, the impugned revised result of LDCE-2016 was published and in which the names of 23 candidates including the 20 petitioners were notified in Appendix-B, being the list of candidates who did not make it to the revised merit list; and, (xiii) the petitioners thus, after two years of their selection, were de-selected.

3. Contending, (i) prejudice to the petitioners without any fault of theirs; (ii) that they were not parties to the petitions aforesaid filed, challenging the result and were not given an opportunity of being heard; (iii) that rank is not removable without following the proper procedure; (iv) that the petitioners have successfully completed their training and have been performing their duties as SI(GD)s since the year 2017; (v) that on being downgraded before their contemporaries, they will lose their morale; (vi) that the petitioners have lost the chance of taking LDCE in subsequent years owing to having been selected in the subject examination, and relying on **Vikas Pratap Singh** supra, **Rajesh Kumar Vs. State of Bihar** (2013) 4 SCC 690 and **Girjesh Srivastava Vs. State of M.P.** (2010) 10 SCC 707, W.P.(C) No.4910/2019 was filed.

4. W.P.(C) No.4910/2019 came up first before this Court on 7th May, 2019 and thereafter on 13th May, 2019 when while issuing notice thereof, direction was issued to the respondents CRPF to disclose the vacancy position in the rank of SI(GD), from the year 2016 onwards and it was further directed that in the meanwhile the petitioners shall not be reverted from the post of SI(GD). The said interim order has continued till now.

5. CMs No. 29214/2019 and 48690/2019 were filed seeking impleadment, claiming to be identically situated as the petitioners and were accompanied by CMs No. 48691/2019 and 48693/2019 seeking ad-interim stay. The said applications came up before the Court on 8th November, 2019 when while issuing notice thereof, it was directed that the applicants seeking impleadment be also not reverted from their then position as SI(GD) in the respondents CRPF.

6. The respondents CRPF filed CM No.1758/2020 for recall/modification of the order dated 8th November, 2019 staying the reversion from the post of SI(GD) of the applicants seeking impleadment, pleading that (i) on the basis of objections invited to the answer key, answer of some of the questions were changed and some questions were discarded; (ii) marks for right answers as per final answer key were given to the candidates; (iii) marks for wrong questions / all wrong answer options were given to those candidates who had attempted them, as per the orders of the Supreme Court in *Anil Kumar & Ors. Vs. State of Uttar Pradesh* 2014 SCC OnLine SC 1687 wherein full marks were granted to the candidates who had attempted the wrong questions; (iv) revised result of the written examination component of LDCE-2016 was prepared as per the directions contained in

the order dated 27th September, 2018 pronounced in W.P.(C) Nos.9632/2018, 7415/2017, 8378/2018, 8395/2018, 7283/2018 and 8447/2018; (v) based on the revised result / merit, cut off marks for the last candidate selected in the General / Other Backward Caste (OBC) category stood enhanced from 125 in the earlier result to 138 in the revised result, for male candidates; (vi) final fresh merit-cum-selection list was prepared on the basis of total vacancies notified and released for the post of SI(GD) through LDCE-2016, vide notification dated 7th September, 2016; (vii) total 115 candidates, of which 109 were male and 6 were female, were selected; (viii) the final result so prepared was uploaded on the website of the respondents CRPF on 2nd May, 2019; (ix) due to revision of result of written examination, some new candidates passed the written examination and were found eligible for consideration for selection; (x) accordingly, 39 candidates of which 29 were male and 10 were female, were directed to undergo Physical Standard Test (PST) / Physical Efficiency Test (PET) and Medical Examination; (xi) 9 candidates of which 3 were male and 6 female, could not pass the PET; (xii) thus total 24 new candidates of which 20 were male and 4 were female found place in the new final merit-cum-selection list and 23 previously selected candidates including the petitioners could not secure a place in the revised merit list; (xiii) applicant in CM No. 29214/2019 for impleadment viz. Constable Kuldeep Singh, after revision of results had below 45% qualifying marks and thus stands on a different footing than the 22 other candidates and thus applicant in CM No. 29214/2019 for impleadment namely Constable Kuldeep Singh, cannot avail the benefit of the interim order dated 13th May, 2019; and, (xiv) the aforesaid facts could

not be brought to the notice of this Court when the application aforesaid of Constable Kuldeep Singh for impleadment came up before this Court.

7. The respondents CRPF have also filed a counter affidavit, additionally pleading, that (a) the quota for appointment of SI(GD) through LDCE is 17%; (b) for LDCE-2016, there were 119 vacancies; (c) at the time of revision of the results, notice was given to all candidates to submit objections; (d) any additional selection of SI(GD)s will affect the promotional aspect of the directly appointed and promotee SIs who are likely to file cases against the additional selection beyond the quota of 17% for LDCE; (e) if the petitioners are allowed to remain SI(GD)s, then 119 more candidates would also request for selection; (f) as per the scheme of LDCE prescribed by Ministry of Home Affairs (MHA), the unfilled vacancies in LDCE for the year are filled up by promotion quota and not carried forward; (g) since the vacancies of SI(GD) in the LDCE quota for the year 2016 have already been filled, the petitioners cannot be selected against future vacancies; (h) selection of additional candidates beyond quota of LDCE will result adversely in promotional aspect of directly appointed SI(GD)s and promotee SI(GD)s; (i) the exercise of revision of result was carried out in a fair and transparent manner, in compliance of the orders of the Court; (j) while reverting the petitioners, the original seniority in rank of the petitioners is maintained; (k) through the process of revision of result, justice has been done to candidates who scored higher marks than the petitioners; (l) the petitioners were not confirmed for the post of SI(GD); and, (m) training is always imparted to improve efficiency and to impart new techniques, knowledge and information and is beneficial to the petitioners and the

respondents CRPF; thus training cannot be considered as a loss to the exchequer.

8. The counsel for the petitioners and the counsel for the respondents CRPF in W.P.(C) No.4910/2019 were heard on 5th November, 2020 and judgment reserved.

9. The counsel for the petitioners in W.P.(C) No.4910/2019, besides reiterating all that is pleaded, has contended that (i) the petitioners are not at fault; (ii) the petitioners had participated in the competitive examination and were declared successful therein and were accordingly appointed as SI(GD)s; (iii) the petitioners had undergone the training and have been serving as SI(GD)s for three years; (iv) there was no complaint whatsoever against the petitioners or with respect to the performance of duties by the petitioners as SI(GD)s; (v) the petitioners should not now be reverted and will face a lot of humiliation in front of their juniors, who, if the petitioners are reverted, will become equivalent to the petitioners; (vi) in uniformed services, rank is a very significant thing; and, (vii) status of the petitioners should now not be disturbed. Reliance was placed on the judgment dated 18th July, 2019 of the Division Bench of High Court of Jharkhand in Letter Patent Appeal (LPA) No.473/2016 titled ***The State of Jharkhand Vs. Hari Kujur*** and in other connected appeals. The said LPAs had arisen out of the common judgment dated 12th August, 2016 of the Single Judge of that High Court in a batch of cases filed for quashing of the revised result of different posts pursuant to the advertisement dated 8th August, 2009 and impugning the order of removal of the petitioners therein from service. The Single Judge had quashed and set aside the order of termination of the service of the

petitioners therein and directed the State of Jharkhand to reinstate the petitioners in service against the existing / anticipated or future vacancies, treating it to be fresh appointment and by placing them at the bottom of the seniority list for the revised merit list. The Division Bench of the High Court of Jharkhand dismissed the LPAs reasoning, that (a) the Single Judge had correctly allowed the petitions following the ratio of **Vikas Pratap Singh** supra; (b) the petitioners therein had not made any misrepresentation or committed a fraud; (c) the petitioners therein had successfully completed their probation period of one year and undergone training of all varieties and therefore, for no fault on their part, it would be highly unjust and unfair to terminate their services for any irregularity committed by the Selection Committee and for which the petitioners therein were not responsible in any manner whatsoever; (d) the petitioners therein were dismissed from service in exercise of powers under Rule 668 (Ka) of the Police Manual but which dealt with removal or reversion of officers on probation; the petitioners therein were not on probation as they had completed one year of satisfactory service as per the stipulation made in Rule 668 (Ka) itself; (e) the State had invoked the wrong power to terminate the services of the petitioners therein; and, (f) the dismissal of the petitioners therein from service amounted to major punishment for which Rule 828 of the Police Manual had to be invoked by full-fledged departmental proceedings, which had not been done. We may notice that in the aforesaid case, during the pendency of the writ petitions before the Single Judge, intervention applications were filed by the candidates who had been successful/scored higher than the petitioners therein in the revised merit, list contending that they should be given preference over, or treated at par with the petitioners therein, but no relief

was granted by the Single Judge to the interveners. However the Division Bench noted that though the Single Judge had directed the State of Jharkand that in case any selection was made on the post in question in future, the State would be obliged to consider the case of the interveners by relaxing the age in appropriate cases in accordance with law but the Division Bench could not subscribe to that view, being violative of Articles 14 and 16 of the Constitution of India vis-a-vis the fresh candidates making applications in any such future selection process.

10. The counsel for the petitioners also relied upon *Vikas Pratap Singh* supra to contend that weightage has to be given to the petitioners having successfully undergone training and having efficiently served for more than three years and termination of their employment would impinge upon not only their economic security but also economic security of their dependents and affect their careers and that it was highly unjust and unfair to the innocent appointees of an erroneous evaluation of answer script if their services were terminated.

11. Per contra, the counsel for the respondents CRPF has contended that while in the judgment of the Division Bench of the High Court of Jharkhand, the probation period had been completed and the appointments had been confirmed, the petitioners herein, at the time of their reversion, were still under probation. Attention was invited to the reply to the grounds 'K' and 'L' in the counter affidavit, where it was pleaded that recruitment through LDCE is to be determined from the date of announcement of results and since the result of the petitioners was declared on 18th May, 2017, the period of two years of probation of the petitioners was to stand completed on 17th

May, 2019 and not on 30th April, 2018, as pleaded by the petitioners. It was thus contended that the petitioners were not confirmed for the post of SI(GD). It was further contended that the training imparted to the petitioners would not go waste as they would continue to serve the respondents CRPF, making use of the training imparted to them. It was further the contention of the counsel for the respondents CRPF that as per the Recruitment Rules, 17% of the total posts of SI(GD) were to be filled by LDCE and the said 17% quota of the posts of SI through LDCE for the year 2016 were filled up and if the petitioners remained at the said post, the same would lead to complexities of seniority and lead to multifarious litigations. Attention was also invited to the orders in W.P.(C) No.7283/2018 titled ***Mithilesh Singh Vs. Union of India*** and other connected petitions impugning the result of the LDCE-2016 to contend that the result, in the present case was revised pursuant to court orders.

12. During the hearing, we enquired from the counsel for the petitioners that if the petitioners were allowed to continue on the post of SI(GD), would not others, who also, as per the revised result, had scored more or equivalent marks as that of the petitioners, claim appointment as SI (GD).

13. The counsel for the petitioners contended that none had approached since the time these petitions were pending.

14. However as if prophesied, W.P.(C) No.8742/2020 and W.P.(C) No.8847/2020 came up before us soon thereafter, on 6th November, 2020 and 9th November, 2020 respectively, the petitioner in both of which claim to have scored the same marks in the revised result as the petitioners in W.P.(C) No.4910/2019 and have contended that since the petitioners herein, inspite of

being not eligible as per the revised result of the examination, have been granted interim relief against their reversion, they were also entitled to be appointed as SI(GD) and if were not appointed, would be discriminated against.

15. We informed the counsel for the petitioner in W.P.(C) No.8742/2020 and W.P.(C) No.8847/2020 that we had on 5th November, 2020 heard final arguments in W.P.(C) No.4910/2019 and reserved judgment and thus the question of entertaining W.P.(C) No.8742/2020 and W.P.(C) No.8847/2020 would arise only if W.P.(C) No.4910/2019 was allowed. We thus, after hearing the counsel for the petitioners in W.P.(C) No.8742/2020 and W.P.(C) No.8847/2020, reserved orders on admission in the said petitions.

16. We have considered the contentions of the counsel for the petitioners in W.P.(C) No.4910/2019 with emphasis on **Vikas Pratap Singh** supra and are unable to find the petitioners entitled to the relief claimed, for the following reasons:

A. Though undoubtedly the petitioners were found successful in the result declared of the LDCE-2016 but the said result was under challenge in the writ petitions aforesaid filed before this Court and which writ petitions had been entertained. The result declared of the LDCE-2016, finding the petitioners successful, thus remained inchoate and did not attain finality. However, it appears that since there was no interim order in the writ petitions aforesaid filed impugning the result, the respondents CRPF proceeded with making appointments in pursuance thereto. However since the writ petitions impugning the result remained pending, all steps taken by the respondents CRPF of

appointment of successful candidates including the petitioners, as SI(GD), remained, in law, subject to the outcome of the pending petitions challenging the result of the LDCE-2016. Axiomatically, when ultimately the result was revised under Court orders, it is the said revised result which has attained finality and the earlier result in which the petitioners were found successful stood superseded by the revised result.

- B. Admittedly, as per the revised result to which there is no challenge, the petitioners were not successful in the LDCE-2016 and were not entitled to the appointment as SI(GD)s and the inchoate appointment of the petitioners as SI(GD)s became illegal on the declaration of the revised result.
- C. The question for consideration is that when something is illegal as per the order of the Court in one proceeding, can the order, in another proceeding, validate the same. In our opinion, no. As per the orders of the Court in the writ petitions impugning the result of LDCE-2016, the result declared and in pursuance to which the petitioners were appointed, was not correct, was erroneous and the selection in pursuance thereto was no selection in law and the result needed to be revised. Those orders have attained finality and we are not sitting in appeal thereagainst. In accordance with those orders and the revised result prepared in accordance therewith, the result to the extent declaring the petitioners successful, was / is bad in law. As a consequence, the appointment of the petitioners as SI(GD), in accordance with the orders in those petitions, are bad in law. We

cannot in this petition filed by the petitioners, pass a conflicting order, holding the appointment of the petitioners to be valid. The appointment of the petitioners, as per the orders in the writ petitions filed impugning the result of LDCE-2016, are illegal and the petitioners never had any right of appointment as SI(GD). Though undoubtedly the petitioners were not parties to those writ petitions but considering the nature of the challenge and relief claimed in the writ petition i.e. of impugning the result of a competitive examination, the relief granted therein was *in rem* and the petitioners would be bound thereby and had option, if aggrieved from those orders, only to challenge those and have no right to file a independent petition claiming inconsistent relief. If the Courts start entertaining petitions claiming relief contrary to the orders passed in some other petitions and start granting reliefs inconsistent in law to the orders in some other proceedings, it would result in judicial chaos, with instead of parties, orders / judgments of different courts in different proceedings, being pitted against each other and leaving the parties, in this case the Executive, with a discretion, which order to follow and abide by. This would erode the role of the Courts in dispute adjudication and being the final arbiter of conflicting claims and vest such power in some other organ of the State.

- D. As far as **Vikas Pratap Singh** supra is concerned, the law laid down by the Constitution Bench in **Secretary, State of Karnataka Vs. Uma Devi** (2006) 4 SCC 1 is that an appointment which is illegal, cannot be regularized. To grant relief to the petitioners in these petitions would amount to this Court, in contravention of the Recruitment Rules,

validating the illegality of appointment of the petitioners as SI(GD). Recently in *State of Bihar Vs. Kirti Narayan Prasad* (2019) 13 SCC 250 and in *Punjab Urban Planning & Development Authority Vs. Karamjit Singh* (2019) 16 SCC 782, reiterating *Uma Devi* supra it was held that appointments which are illegal, are void *ab initio*. Mention may also be made of *Renu Vs. District & Sessions Judge, Tis Hazari* (2014) 15 SCC 731 where recruitments held without advertisement / interview, were held to be liable to be quashed and it was held that mere issuance of appointment letter confer no right.

- E. Though undoubtedly the petitioners are not to blame and would suffer embarrassment and humiliation on reversion and our sympathies are with the petitioners but at the same time we are conscious that sympathy shown in this case would be misplaced. The said sympathy is likely to lead to multiplicity of litigation, with the petitioners occupying the posts of SI(GD) in excess of that provided for in the Recruitment Rules. Continuation of the petitioners as SI(GD)s of LDCE-2016 would deprive the subsequent appointees to the post of SI(GD), whether by direct recruitment or by promotion or by LDCE, of their seniority and would affect their future prospects of promotion. In *Bhupendra Nath Hazarika Vs. State of Assam* (2013) 2 SCC 516, selection of 20 candidates in excess of permitted quota was held to be bad and illegal and unsustainable and it was held, that whether any active part is played by a selectee or not has nothing to do with the appointment made in contravention of the Rules. It was further held that an equitable ground does not clothe an appointment with legal status. It was yet further held that legitimate aspirations of regularly

appointed employees should not be guillotined and situations not created where hopes end in despair, as would happen to the aspirations of those validly appointed and whose seniority and promotional avenues would be affected if the appointments of the petitioners were to be retained. In *Arbind Kumar Vs. State of Jharkhand* (2018) 17 SCC 762 also, submission that the appointees were victims and hence deserve sympathy, was rejected holding that beneficiaries cannot blame appointing authority alone and claim continuation of illegal appointment in perpetuity. Mention may also be made of *State of Orissa Vs. Mamta Mohanty* (2011) 3 SCC 436 holding that the concept of adverse possession of lien on post or holding over are not applicable to service jurisprudence.

- F. Not only so, if the petitioners are continued as SI(GD)s, we would have no reason to discriminate others similarly situated as petitioners, who had scored same or higher but less than the marks of the last candidate in the revised merit list, claiming appointment as SI(GD) and would be thus similarly or better placed as the petitioners. We are informed that there are 191 such candidates and retention of the 20 petitioners, three seeking impleadment as well as induction of 191 others would play havoc with the cadre strength.
- G. We are also of the view that the remedy if any of the petitioners was to, when the process of revision of the result was undertaken and objections invited to the answer key, make proper representation or appeal against the orders in the petitions filed impugning the result of LDCE-2016 in pursuance where to the revision of the result was taking

place. It was at that stage only that the relief if any could have been granted to the petitioners, as is often done by the Courts when faced with challenge to the answer key of questions in competitive examination, by allowing those declared selected in the original result also to participate further in the selection process, even though not eligible as per the revised result. The petitioners did not act at that stage and cannot now claim relief inconsistent to the reliefs granted in earlier petitions orders wherein have attained finality and selectee in pursuance whereunto have been appointed.

17. Considering all the aforesaid factors, it is best to nip the matter in the bud, by dismissing W.P.(C) No.4910/2019.
18. Accordingly, W.P.(C) No.4910/2019 is dismissed but with the clarification that the emoluments paid / benefits conferred on the petitioners as SI(GD)s shall not be recovered back and that the period served by the petitioners as SI(GD)s will be counted as the period served by the petitioners in their original cadre, whether it be of Constable or Head Constable and no other prejudice would be caused to the petitioners owing to the situation in which they are, for no fault of theirs.
19. Axiomatically, W.P.(C) Nos.8742/2020 & 8847/2020 are also dismissed.
20. The petitions are disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 14, 2020

‘gsr’..