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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 30.01.2020

+ **W.P.(C) 10812/2017**

SUBHASH CHANDRA SHARMA Petitioner
Through: Mr.Anshuman Mehrotra, Adv.

Versus

UNION OF INDIA & ANR. Respondents
Through: Ms.Anjana Gosain, Adv. with
Ms.Himanshi, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This so-called Public Interest Litigation has been preferred for the following prayers:-

“(i) Give effect to the recommendations of the various Parliamentary Committee Reports being the 218th Report of the Demands for Grants (2015-16) of Ministry of Civil Aviation, the 230th Report of issues related to security at Airports in India and the 231st Report of the Demands for Grants (2016-17) of Ministry of Civil Aviation.

(ii) Direct the respondents to immediately develop cadre based recruitments in BCAS from the lowest level to the highest level in the larger interest of public safety. Aviation security, National security and public interest

which has been deliberately overlooked by vested interests and Government in past 40 years or so.

(iii) Quash the existing Recruitment Rules and direct the Respondents to formulate and/or amend the proposed, fresh and existing Recruitment Rules as notified in order to comply with the directions of the various parliamentary committee reports.

(iv) Quash the Appointments made pursuant to the existing Recruitment Rules and direct the Respondents to make fresh appointments pursuant to the Fresh/Amended Recruitment Rules as prayed for in the present Public Interest Litigation.

(v) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case.”

2. Having heard the learned counsel for both the parties and looking to the facts and circumstances of the case, it appears that this petition has been preferred for quashing of existing Recruitment Rules of Bureau of Civil Aviation Security and also the appointment made pursuant to the existing Recruitment Rules. However, the concerned appointees are not joined as party respondents in this writ petition.

3. It appears that in pursuance of the Chicago Convention signed in the year 1944, Mr.B.P. Pandey Committee was constituted and Bureau of Civil Aviation Security was set up in 1987 for compliance of India's obligation of Chicago Convention. It is noted that Section 4 of the Aircraft Act, 1934 empowers the Central Government to make rules necessary for carrying out the Chicago Convention as amended from time to time.

4. The Bureau of Civil Aviation Security is an expert body advising the Government on planning and co-ordination of Aviation Security matters and its recommendations are being implemented by the Government for the safety and security of the persons who are travelling in the airport and the aircraft itself.

5. This petition has been preferred by a retired employee of the Ministry of Civil Aviation, challenging the Recruitment Rules of Bureau of Civil Aviation Security ('BCAS'). No representation has been preferred to the respondents before filing this Public Interest Litigation. Moreover, the prayer for quashing of the appointments in pursuance to the existing Recruitment Rules is without joining the concerned appointees as the party respondent. The Recruitment Rules have been enacted in consultation with Department of Personnel & Training and Union Public Service Commission and the same have already been uploaded on the website of the respondents.

6. Looking to the prayers in this writ petition especially prayer (ii), the petitioner is suggesting to develop a cadre based recruitment in Bureau of Civil Aviation Security.

7. The learned counsel for the respondents submitted that the recruitment rules are already in existence. Policy decision has also been taken by the respondents to recruit the persons in BCAS in accordance with the said rules as presently 23 personnel are on deputation from IPS cadre.

8. Thus, if any individual's appointment is to be challenged, the same can be done by way of separate writ petition but not as a general public interest litigation. We, therefore, see no reason to quash all the

appointments made in pursuance to the Recruitment Rules of Bureau of Civil Aviation Security.

9. Prayer (iii) of the writ petition is about the amendment in the Rules. It ought to be kept in mind that the Courts cannot suggest the amendment in the enactment or the rules as it is the duty of the respondents to enact the Rules and Courts are to check the violation of the Rules. As per the theory of Positivism, the Court has to check the “law as it is” and not as the “law as it ought to be”. Only in exceptional cases, to fill up the gap, the Court can enact the law. Exception cannot be converted into rule. As and when such violation of Recruitment Rules is brought to the notice of the Courts in any individual case, the same can be considered after hearing the parties. Hence, we see no reason to entertain this public interest litigation.

10. In fact this is not a Public Interest Litigation but in fact a Publicity Interest Litigation. Bureau of Civil Aviation Security is an independent body created by the respondents and the reports which are referred in this writ petition have already been considered and sufficiently given effect to by the respondents. The petitioner should have kept the same in mind before indulging in frivolous litigation by filing a PIL seeking directions against an organization as how to carry out its functions.

11. Hence, this writ petition is hereby dismissed with costs of ₹25,000/- (Rupees twenty five thousand only) to be deposited with the Delhi State Legal Services Authority. This amount shall be utilized for the programmes “Access to Justice”.

12. A copy of this order will be sent to the Member Secretary, Delhi State Legal Services Authority, Central Office, Patiala House Courts Complex, New Delhi – 110001 for information.

13. With the aforesaid observation, the writ petition stands disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 30, 2020

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