

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2020

Pronounced on : 05.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.7825 of 2020 and
W.M.P.No.9238 of 2020

K.Palanisamy

.... Petitioner

-Vs-

The Zonal Manager,
South Zone Office,
Life Insurance Corporation of India,
Chennai 600 002. Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 24.03.2020 made in SZ/MKTG passed by the respondent, quash the same as null and void and consequently, direct the respondent to appoint the petitioner as Apprentice Development Officer in the respondent Corporation.

For Petitioner : Mr.P.M.Subramaniam for
: Ms.T.Madhumitha

For Respondent : Mr.C.K.Chandrasekar

O R D E R

This writ petition has been filed to call for the records relating to the impugned order dated 24.03.2020 made in SZ/MKTG passed by the respondent, quash the same as null and void and consequently, direct the respondent to appoint the petitioner as Apprentice Development Officer in the respondent Corporation.

2. The case of the petitioner is that he has been working as a Full Time Agent since 2002 at Thanjavur Division, Mayiladuthurai Branch in the respondent Corporation. According to the petitioner, the respondent Corporation used to conduct examination for appointment to the post of Apprentice Development Officer, for which, a separate quota (25%) has been earmarked for the agents of the Corporation. The petitioner had been participating in the selection for the last 14 years, but, he was unable to get selected in the past.

3. On 20.05.2019, the respondent Corporation issued notification inviting candidates for recruitment to the post of Apprentice Development Officer. The petitioner being eligible, had applied for the said post and he appeared for the written examination on 11.08.2019. At the time of the written examination, the Biometric verifying authority took the petitioner's photograph and biometric data of his right thumb in order to verify the identity of the candidate. Since the petitioner had cleared the biometric verification, he was allowed to participate in the examination. The petitioner successfully cleared the examination and thereafter received call letter for the interview which was scheduled on 07.11.2019, at the Divisional Office, Thanjavur. The petitioner was also directed to produce all the relevant documents in support of his claim at the time of the interview. The petitioner belongs to Scheduled Caste community.

4. In response to the call letter, the petitioner appeared for the interview on the slated date. In terms of the notification, the biometric verification should have to be done at every stage of the examination viz., preliminary, main and interview. The petitioner was subjected to biometric verification in the venue where the interview was to be conducted. However as the petitioner's right thumb was injured and developed a scar, the device showed "not verified". In fact, the petitioner was directed to try several times scanning the thumb, but the biometric machine could not verify the identity every time when it was scanned. Therefore, the petitioner was not permitted to attend the interview, in view of the doubt in the identity of the petitioner.

5. According to the petitioner, when he appeared for the written examination conducted on 11.08.2019, the recruiting authority took photograph of the petitioner prior to the commencing of the written examination and in the examination centre, there was also installation of CCTV Cameras, capturing the candidates who were participating in the examination. Therefore, there was enough proof to show that the petitioner was the one who attended the written examination and any mismatch in the biometric verification was not the fault of the petitioner.

6. According to the petitioner, after the written examination, he had suffered a small injury viz., a cut in the right thumb and because of that, the biometric machine did not find match in the thumb impression of the petitioner as that of the scanned result at the time of the written examination. It may also be possible that the machine was faulty and therefore, the test which was done at the time of the interview was not fool proof. In any event, the petitioner had appeared in the written examination which was factually verifiable and there was no scope of any impersonation at all.

7. The petitioner was 45 years old at the time of the selection and that was his last attempt to be appointed as Apprentice Development Officer. Unfortunately, due to the discrepancy in the biometric verification, the petitioner was disqualified by the Corporation in terms of the Instruction 14, particularly, Clause b and g. According to the petitioner, in Thanjavur Division, there are vacancies available even after completion of the selection against the Scheduled Caste quota and the petitioner being successful in the written examination, cannot be deprived of his valuable right to be appointed as Apprentice Development Officer. The denial of the appointment to the petitioner would cause irreparable hardship and suffering to him, as for the rest of his career, he has to remain as Agent only without any career progression.

8. After notice, Mr.C.K.Chandrasekar, entered appearance for the Corporation. A detailed counter affidavit has been filed. According to the counter affidavit, the biometric verification was done by the Service Provider M/S TCS, an Outsourcing Agency. It is admitted in the counter affidavit that the petitioner had obtained qualifying marks against Agents category and therefore, he was called for interview which was scheduled on 07.11.2019. According to the counter affidavit, 42 candidates attended the interview at Thanjavur Division Office, except the petitioner, all other candidates who had undergone the biometric verification, had no problem with the verification at the venue of the interview, as the same matched with the verification at the time of the written examination. The authority who was entrusted with the job of biometric verification, has certified that the biometric data of the petitioner has not matched with the biometric data taken at the time of the written examination. Therefore, he was not allowed for the interview in terms of the Instruction 14 of the Corporation dated 20.05.2019.

9. The learned counsel for the respondent would vehemently submit that the Instruction issued by the Corporation was very clear that at every stage, the biometric data verification has to be conducted and unless the data verification matches with one another, no candidate will be permitted to attend the next stage of the selection. According to the learned counsel, it is an all India examination and the question of biometric machine being faulty, did not arise at all as there was no complaint from any of the centres against the biometric data verification. Therefore, the pleading of the petitioner that it was possible that the machine could have been a faulty one, is unacceptable and unsustainable also.

10. Moreover, even assuming that the petitioner had an injury at right thumb, he could have intimated the fact to the officials concerned of the Corporation. In fact, Instruction 14 (b) clearly stipulates as to what should be done in such

contingencies. The petitioner has not chosen to inform the officials at any point of time and for the first time, raising this plea before this Court. Even otherwise, the fact whether the petitioner had a cut on his right thumb after the examination or it was there earlier, cannot possibly be verified for sure.

11. The learned counsel would also strenuously contend that in the selection process like this, the Instructions issued in the notification have to be scrupulously followed and any deviation is impermissible and in case, the Corporation was to accept the plea of the petitioner, the same would invite several such claims from several other candidates who were denied participation in the selection on the ground that their biometric data did not match. He would also submit that if such challenges are to be entertained, there would not be any end to the selection and there would be uncertainty for years together.

12. The learned counsel in support of his contention, would rely on two decisions, one is reported in (2018) 2 SCC 357 (Ran Vijay Singh Vs.State of U.P). He would rely on paragraph Nos.30 to 32, which are extracted hereunder:

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate - it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the

examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse - exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination - whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers."

The above judgment of the Hon'ble Supreme Court has been recently followed in judgment reported in (2020) 6 SCC 362 in the case of Bihar Staff Selection Commission and others Vs. Arun Kumar and others.

13. The learned counsel therefore submitted that the Instructions given in the notification calling for the selection, must be scrupulously adhered to and no candidate has any right to seek any consideration of his claim outside the frame work of the notification. The learned counsel in fact would also rely on a recent decision of the Single Judge of this Court in identical selection by the respondent Corporation, this Court has dismissed the writ petition filed by an unsuccessful candidate. He would draw the attention of this Court to an order dated 19.09.2019 in W.P.No.27424 of 2019. The learned Judge of this Court relied on similar Instructions regarding biometric verification, refused to entertain the claim of the candidate therein and dismissed the writ petition. He would rely on paragraph Nos.5 to 7, which are extracted hereunder:

"5. The learned counsel for the LIC Corporation would submit that even as per the Clause 11 G, if the primary finger (right thumb) to be captured is injured/ damaged, immediately notify the concerned authority in the test centre. In such cases impression of other fingers, toes etc may be captured. However, no certificate was produced with regard to the damaged finger or was not notified to the concerned authority. In view of the above and as per Clause 11 G, the petitioner is not entitled to claim the completion of selection process. Hence prays for dismissal of the writ petition.

6.This Court on perusal of the material available on record, which shows that the petitioner appeared for Biometric Verification on 05.09.2019 and his right hand thumb matches only 20.56% accordingly his candidature was rejected and this Court also perused the clause 11 G of the notification which reveals that if the primary finger (right thumb) to be captured is injured/damaged, immediately notify the concerned authority in the test centre. In such cases impression of other fingers, toes etc. may be captured.

7. In view of the non compliance of the provisions, the petitioner is not entitled for selection and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

14. Therefore, the learned counsel would submit that the claim of the petitioner cannot be considered, in view of the settled legal position and also the Corporation is bound by the certificate issued by the biometric data verifying authority and they cannot act against that certification. In the said circumstances, the order passed by the authority in rejecting the claim of the petitioner dated 24.03.2020, is to be upheld and the writ petition may be dismissed.

15. The learned counsel for the petitioner on the other hand would submit that as stated by the petitioner in the affidavit filed in support of this writ petition, at the time when the petitioner participated in the written examination, photographs were taken and there were CCTV Cameras installed capturing the proceedings of the examination. Therefore, it is still possible for the Corporation to resort to a different mode of verification in order to establish the fact that the petitioner was the same candidate who participated in the written examination and who has attempted to participate in the interview as well.

16. The learned counsel would passionately plead that the petitioner belongs to downtrodden community (SC) and the 2019 selection was the last opportunity for him to get in the regular stream of appointment as Apprentice Development Officer. Such valuable opportunity ought not be denied to the petitioner because of some procedural lapse either due to the petitioner suffering a small injury on the right thumb or due to the possible fault of the machine. In any case, the petitioner had worked 17 years as Agent and the officials of the Corporation would have knowledge as to the petitioner's credentials and therefore, there is always a possibility of verifying the identity of the petitioner and consider the claim of the petitioner favourably. Such an exercise may be directed to be undertaken particularly in the face of the admitted fact that there are still vacancies available in Thanjavur Division as per the statement given on behalf of the Corporation.

17. Considered the submissions of the learned counsel for the petitioner and the learned counsel for the respondent. The issue that calls for adjudication before this Court is to whether the petitioner's claim could be considered for appointment to the post of Apprentice Development Officer, notwithstanding the adverse biometric result of the petitioner at the time of the interview, or not. As a corollary, this Court is also called upon to decide as to whether notwithstanding the clear instructions issued in this regard in the subject notification, the petitioner's claim to be considered as an exceptional case or not.

18. The formidable submission made on behalf of the Corporation appeared to have substance and force as the Corporation is bound by its own notification and Instructions issued for the subject selection. As contended by the learned counsel, the selection is on all India basis and any deviation from the Instruction would be impermissible. In that point of view, the rejection of the candidature of the petitioner cannot be faulted at all. The learned counsel's reliance on the decision of the Hon'ble Supreme Court and also the decision of the Hon'ble Single Bench of this Court would strengthen his submissions in this regard. This Court cannot

have any quarrel with the contention that the employer is under obligation to strictly follow the Instructions in the matter of selection.

19. At the same time that in every selection, there were always exception which require out of the box perspective to be applied in most deserving cases. The rigidity of any rule or Instruction in exceptional circumstances need to be interpreted in order to serve larger interest of justice. There are always situations where justice and law do not come to terms, in such situation, in the humble opinion of this Court, justice may have to be allowed to prevail for securing the ends of justice.

20. From the above perspective stand point, looking at the claim of the petitioner herein that admittedly he has served as an Agent of the Corporation for 17 years and the impugned selection was a last opportunity for the petitioner to get appointed as Apprentice Development Officer. According to the petitioner, his repeated earlier attempts have ended in a fiasco. Fortunately, this time, he had cleared the written examination and was close to being selected for the appointment, but, for the mismatch of his biometric data. Therefore, this Court has to see whether it is still possible for the administration of the Corporation to verify the identity of the candidature of the petitioner in respect of his participation in the written examination on 11.08.2019 as well as his participation in the interview on 07.11.2019. Instead of helplessly accepting the officious position as disclosed by the respondent Corporation, this Court has to embark upon to find any other sources available and such possibility is to be explored with a view to ensure that a deserving claim ought not to be turned down on the basis of a possible mischief of the biometric machine.

21. The petitioner has stated in the affidavit that photographs were taken at the time of written examination and in the venue of the examination, CCTV Cameras were also installed. In that case, it is still possible for the Corporation to ascertain the photos taken and also the footage of the picture captured by the CCTV Camera installed in the venue and compare the same in order to establish the fact that there was no attempt of impersonation on behalf of the petitioner. Ultimately, any Instruction or rule was intended to serve a particular purpose. In this case, the intention was to prevent any impersonation, if the impersonation was not the allegation and it was not established, the valuable right of the petitioner to get appointed as Apprentice Development Officer need not stand negated on the technical report/clarification.

22. As stated earlier, as far as the rejection of the claim of the petitioner is concerned, it cannot perse be faulted in view of the clear instructions, which read as

follows:

"14. BIOMETRIC DATA-CAPTURING AND VERIFICATION:

a. The biometric data (right thumb impression or otherwise) and photograph of the candidates will be captured and verified during the process of recruitment on the following stages:

(i) Before the start of the Preliminary / Online examination.

(ii) At the time of entry and exit during main examination.

(iii) At the time of document verification before the interview.

(iv) At the time of reporting for the training

b. Decision of the Biometric data verification authority with regard to its status (matched or mismatched) shall be final and binding upon the candidates.

c. Refusal to participate in the process of biometric data capturing/verification on any of the above mentioned occasions may lead to cancellation of candidature.

d. If fingers are coated (stamped ink/mehandi/coloured etc.) ensure to thoroughly wash them so that coating is completely removed before the exam/interview/joining day.

e. If fingers are dirty or dusty, ensure to wash them and dry them before the finger print (biometric) is captured.

f. Ensure fingers of both hands are dry. If fingers are moist, wipe each finger to dry them.

g. If the primary finger (right thumb) to be captured is injured/damaged, immediately notify the concerned authority in the test centre. In such cases impression of other fingers, toes etc. may be captured.

h. Please note that apart from the occasions mentioned above, LIC reserves the right to capture/verify biometric data of candidates at other stages as well."

23. There is no doubt that the above Instructions are binding both on the candidates as well as the Corporation, particularly, Instruction (b) and (g) for the case on hand, but when there is an extraordinary claim like this where there was no attempt of impersonation, an extraordinary remedy is to be offered, otherwise, the concept of justice would get pigeon-holed into wooden application of Instructions. Moreover, the petitioner has been working as Agent for 17 years, his credentials could also be a matter of verification by the officials of the Corporation and this Court is very sure that there would be some evidence available in order to establish the factum that the petitioner had factually

participated in the written examination.

24. For these purposes, if it is necessary, that the Corporation may hold a fact finding enquiry as an exceptional case and in case, such enquiry establishes the factum of petitioner's plea herein being proved, the valuable appointment would be extended to him as that procedure would alone serve larger purpose of equity, good conscience, fair play and justice. In claims like this, it is always easier to reject by sticking to the rigours of the rule or Instructions, but, on the other hand, it is equally imperative for fair administration to get beyond the rigid frontiers and to appreciate the claim of the petitioner and explore any avenue open to establish the veracity of the claim of the petitioner. Such exercise would go a long way to assuage the feeling of the let down on the part of the petitioner who has served in the Corporation as Agent for 17 long years. This exercise is more required as admittedly vacancies are still available in the petitioner's category and any positive outcome in the enquiry would certainly fulfil the dream of the petitioner to become an Apprentice Development Officer of the Corporation on the verge of his career.

25. In the above circumstances, this Court is of the view that the impugned order is liable to be set aside and the Corporation is to be directed to re-visit the entire issue afresh. Hence, the impugned order dated 24.03.2020 made in SZ/MKTG passed by the respondent, is hereby set aside. The respondent Corporation is directed to conduct an enquiry into the claim of the petitioner by calling for necessary evidence that are available and in the process, examine the petitioner himself and any other officials involved in the subject selection. On conclusion of the enquiry, if it is unimpeachably proved that the petitioner was a person who attended the main examination, the Corporation is directed to complete the process of interview and in the process, if the petitioner successful, appoint him to the post of Apprentice Development Officer. It is also made clear that in any case, the result of the enquiry shall also be communicated to the petitioner.

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26. The petitioner is also directed to extend his full co-operation for conduct and completion of the enquiry. The Corporation is directed to initiate and complete the process of enquiry and comply with the directions of this Court, within a period of twelve weeks from the date of receipt of a copy of this order.

27. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gsk
To
The Zonal Manager,
South Zone Office,
Life Insurance Corporation of India,
Chennai 600 002.

+lcc to Ms.T.Madhumitha , Advocate SR.No. 6474
W.P.No.7825 of 2020 and
W.M.P.No.9238 of 2020

A.SK(24.02.2021)



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