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

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Judgment delivered on: 21.11.2022

+ W.P.(C) 13259/2022 & CM APPL. 40209/2022

UNION OF INDIA & ORS.

..... Petitioner

versus

JITENDRA JOSHIA

..... Respondent

+ W.P.(C) 13626/2022, CAV 294/2022, CM APPL. 41524/2022 &
CM APPL. 41525/2022

UNION OF INDIA & ORS.

..... Petitioners

versus

KESHAV KUMAR CHAHAR & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms. Pratima N. Lakra, CGSC with Mr. Chandan
Prajapati, Advocate.

For the Respondents : Mr. K.K.L. Gautam, Ms. Vaishali Nariyala, Ms.
Vasundhara Rana & Mr. Pawas Kukshrestha,
Advocates in W.P.(C) 13259/2022.

Mr. Sachin Chauhan, Advocate in
W.P.(C)13626/2022.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn order dated 28.04.2022, whereby the Original Application ('OA') filed by the Respondents, has been disposed of with a direction to the petitioners to open the sealed cover and declare the result of the Respondents provisionally and, if found eligible and meeting the cut off marks, may be given appointment. The Tribunal has further directed that a Clause will be incorporated in the appointment order that the appointment shall be subject to the final outcome of an ongoing enquiry and has further directed that in case of appointment, the Respondents shall be entitled to consequential benefits i.e., seniority and notional fixation of pay without any arrears of pay.

2. The Respondents had appeared in a Combined Graduate Level Examination – 2015 ('CGL 2015') consisting of Two Tier process. Respondents qualified Tier-I examination and subsequently, appeared in the Tier-II examination. The result of the Respondents was withheld. On a query, Respondents were informed by an information being uploaded on the website that the OMR sheets of 159 candidates have been referred to CFSL and accordingly, the result was not declared. It is an admitted position that Respondents were provisionally called for the interview process as well. However, in view of an enquiry being conducted by the Central Bureau of Investigation ('CBI'), the result has been withheld on the ground that the matter is under investigation by the CBI.

3. CBI has thereafter registered an FIR under Section 154 Cr.P.C. on 28.06.2016 and investigation was conducted. After investigation, a final report has been filed before the concerned Court. It is not in dispute that in the final report, filed with the concerned Court, none of the Respondents have been arrayed as accused.

4. On 13.09.2022, when this matter was listed before this Court, it was conceded by learned counsel for the petitioner that the Respondents are neither named in the FIR nor arrayed as accused in the charge sheet filed. She had prayed for time to ascertain as to whether there was any enquiry pending against the Respondents or not.

5. Learned counsel for the Petitioner submits that Status Report has been received from the CBI, which states that Respondents were asked to join investigation. Sh. Keshav Kumar Chahar and Sh. Sanjay appeared had joined investigation and their statements under Section 161 Cr. PC were recorded.

6. In so far as the Respondent/Jitendra Joshia is concerned, it is stated that notices could not be served upon him because the address was incomplete.

7. Learned Counsel appearing for Jitendra Joshia submits that Jitendra Joshia was Petitioner before the Tribunal since the year 2017 and never received any intimation to join investigation. He submits that as and when any requirement is there of CBI to join investigation, he shall join investigation and that his address mentioned in the memo of parties is the correct address.

8. Learned Counsel appearing for the Respondents submits that even as per status report of the CBI, there is no adverse material pointed out against either of the Respondents.

9. Learned counsel for the Petitioner fairly states that as per the Status Report, there is no adverse material reported against any of the

Respondents except to state that two different inks (tint and lusture) were used in marking of the OMR sheets of the Respondents in Tier-I as well as Tier-II examination.

10. Learned Counsel appearing for the Respondents further submits that admittedly no adverse material has been gathered by CBI against any of the Respondents, as such there is no embargo on the Petitioner implementing the order of the Tribunal.

11. Learned Counsel further submits that Tribunal has itself protected the interest of the Department by directing that in the appointment order, clause may be incorporated that the same would be subject to final outcome of the on-going inquiry.

12. In view of the fact that the Respondents are neither named in the FIR nor arrayed as accused in the charge sheet and further that admittedly till date, no adverse material has been gathered by the CBI against the Respondents, we find no justification on the part of the petitioners in not implementing the order of the Tribunal.

13. It may at this juncture be noticed, that the Tribunal has also passed a conditional order directing that even in the order of appointment, there shall be a condition incorporated that the appointment is subject to final outcome of the ongoing enquiry and in case anything adverse is finally found against the Respondents in the enquiry, they shall be liable to vacate the office without prejudice to their right to challenge the report of the said enquiry and pursue a remedy in accordance with law.

14. In view of the above noted facts, we are of the view that the Tribunal has protected interest of both sides and has taken a pragmatic view of the whole case, particularly, in view of the fact that nothing adverse has been found against the Respondents till date in an FIR, which was registered as far back as on 28.06.2016 and over six years have elapsed.

15. In that view of the matter, we find no reason to interfere with the impugned order. The petition is accordingly without any merit and is consequently, dismissed. The pending applications are also disposed of. Petitioners shall implement the order of the Tribunal within six weeks.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

NOVEMBER 21, 2022/nd