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

% Judgment delivered on: 19.07.2022

16

+ W.P.(C) 5892/2019
YASHPAL GAHLAWAT Petitioner

versus

STAFF SELECTION COMMISSION & ORS. Respondents

18

+ W.P.(C) 9682/2019 & CM APPL. 39996/2019
STAFF SELECTION COMMISSION & ORS. .. Petitioners

versus

VIRENDER SINGH Respondent

19

+ W.P.(C) 9799/2019 & CM APPL. 40453/2019
STAFF SELECTION COMMISSION & ORS. Petitioners

versus

RAVIKANT Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Ravi Sikri, Senior Advocate with Mr. Nitin K. Gupta, Mr. Abhishek S., Mr. K.P. Ranjan and Ms. Ritika Gautam, Advocates in W.P.(C) 5892/2019



Mr. Vijay Joshi and Mr. Gurjas Singh Narula, Advocates in W.P.(C) Nos.9682/2019 and 9799/2019

For the Respondent : Mr. Sushil Kumar Pandey, Senior Panel Counsel with Mr. Rahul Mourya, Advocate in W.P.(C) 5892/2019

Mr. Ravi Sikri, Senior Advocate with Mr. Nitin K. Gupta, Mr. Abhishek S., Mr. K.P. Ranjan and Ms. Ritika Gautam, Advocates in W.P.(C) Nos.9682/2019 and 9799/2019

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner in W.P.(C) 5892/2019 impugns order dated 13.03.2019 whereby the review application filed by the Respondent/Staff Selection Commission seeking review of the original order dated 15.12.2017, passed in Original Application No.4462/2017, has been allowed. Said Review was allowed holding that as no opportunity was granted to the Respondent/Staff Selection Commission of filing a response. The original order dated 15.12.2017 allowing the Original Application filed by the Petitioner was set aside and the matter has been restored to its original number.



2. Petitioners in W.P.(C) 9682/2019 and W.P.(C) 9799/2019 i.e. the Staff Selection Commission impugn order dated 27.11.2018 whereby the review application filed by them seeking review of the original order dated 05.04.2018 passed in the subject Original Applications, has been dismissed. By order dated 05.04.2018, the Original Applications were allowed.

3. The officers (i.e. Petitioner in W.P.(C) 5892/2019 and the Respondents in W.P.(C) 9682/2019 and W.P.(C) 9799/2019) had filed their respective Original Applications seeking implementation of the decision of the Supreme Court dated 19.07.2017 in SLP (C) No.9019-9021/2015, titled *Staff Selection Commission vs. Sudesh*.

4. For the same of convenience, the Petitioners in Original Applications before the Tribunal would be hereinafter referred to as “*the Officers*” and the official Respondents as the “*Staff Selection Commission*”.

5. The contention of *the Officers* was that a show cause notice dated 27.05.2013 was issued to them requiring them to show cause as to why their candidature be not cancelled and they be not debarred for 5 years from appearing in the Commission examination.

6. *The Officers* amongst other candidates had appeared in an examination - Combined Graduate Level Examination, 2012.



7. The *Staff Selection Commission* issued show cause notices to several candidates alleging that on a post examination scrutiny, an analysis of performance of the candidates in objective type multiple choice question papers, the Commission was informed by incontrovertible and reliable evidence that *the Officers* had resorted to copying in the said paper in association with other candidates who also took the same examination. In these circumstances, show cause notices were issued to show cause as to why their candidature be not cancelled. *The Officers* were directed to respond to the said show cause notice.

8. It is an admitted position that reply to the show cause notice was filed by *the Officers*. It is further an admitted position that show cause notices have till date not been decided by the *Staff Selection Commission* and no final order passed thereon.

9. One such show cause notice was issued to a candidate *Sudesh*. *Sudesh* impugned the show cause notice by filing an Original Application before the Tribunal.

10. The show cause impugned by *Sudesh* was set aside by the Tribunal on 22.11.2013 holding that the show cause notice did not give the requisite particulars and was defective. Opportunity was given to the Staff Selection Commission to issue a fresh show cause notice and take action in accordance with law.



11. Pursuant to the liberty, a second show cause notice dated 28.01.2014 was issued to Sudesh.

12. Said second show cause notice to Sudesh also became subject matter of a challenge. The Tribunal on comparison of the two show cause notices found that the second notice was no different from the first and also lacked details and specifics. Consequently, the second show cause notice was also held to be vague as the first one and was quashed by the Tribunal by its order dated 30.07.2014.

13. The Staff Selection Commission impugned the order quashing the said second show cause notice issued to Sudesh, before this Court in W.P.(C) 9055/2014.

14. By judgment dated 19.12.2014, a Co-ordinate Bench of this Court on a comparison of the two notices also found that the second notice was in terms identical to the first show cause notice and thus upheld the quashing of the second notice by the Tribunal as it suffered from lacuna from being vague or devoid of any relevant particulars.

15. The Co-ordinate Bench of this Court was further of the view that no purpose would be served in permitting the Staff Selection Commission to deal with the replies or pass any further orders on the basis of a vague show cause notice.

16. Further challenge by the Staff Selection Commission to the



quashing of the second show cause notice to Sudesh, before the Supreme Court was unsuccessful and the Supreme Court by order dated 19.07.2017 dismissed the appeal filed by the Staff Selection Commission.

17. After the matter in the case of Sudesh was laid to rest by the Supreme Court on 19.07.2019, a decision was taken by the Petitioners on 14.05.2018 creating 4 different types of categories of candidates to whom relief identical to Sudesh was to be granted.

18. As per the *Staff Selection Commission*, the *Officers* do not fall in the said category and as such relief was denied to them. *The Officers* filed their respective Original Applications seeking benefit of the judgment in the case of Sudesh.

19. By order dated 15.12.2017 in the case of Yashpal Gahlawat (Petitioner in W.P.(C) 5892/2019) and by orders dated 05.04.2018 in the case of Virender Singh and Ravikant (Respondents in W.P.(C) 9682/2019 and 9799/2019), the respective original applications were allowed and the *Staff Selection Commission* was directed to grant identical relief to them as had been granted in the case of Sudesh.

20. The orders dated 15.12.2017 and 05.04.2018 were challenged by the *Staff Selection Commission* by filing review petitions. The review petitions were predicated on the ground that there was delay in approaching the Tribunal on the part of *the Officers* and that no



opportunity was given to the *Staff Selection Commission* to respond to the original application.

21. Two out of the three review petitions were listed before a different bench and the same were dismissed by order dated 27.11.2018 and the *Staff Selection Commission* has impugned the said order in W.P.(C) 9682/2019 and 9799/2019. The third review petition got listed before another bench and was allowed by order dated 13.03.2019 in the case of Yashpal Gahlawat and he has impugned the said order in W.P.(C) 5892/2019.

22. The Tribunal, in the order dated 27.11.2018, rejecting the review application, has noticed that the original application was allowed following the decision in the case of Sudesh, which had been confirmed until the Supreme court and finding no difference in the show cause notice issued to *the Officers* and Sudesh, Tribunal was of the view that identical relief was liable to be granted to the Respondents.

23. It may be noticed that the show cause notices issued to *the Officers* herein and the one issued to Sudesh are identical.

24. We have also perused the comparative chart extracted by the Coordinate Bench of this Court in its order dated 19.12.2014 drawing a comparison between two show cause notices issued to Sudesh.



25. Having compared the same with the show cause notices issued to *the Officers* herein, we find that the notices issued to *the Officers* herein are identical to the show cause notices issued to Sudesh.

26. In that view of the matter, we find no infirmity in the view taken by the Tribunal in holding that *the Officers* are entitled to identical relief as in the case of Sudesh.

27. Looked at from another angle, it may be noticed that show cause notices were issued to *the Officers* on 27.05.2013 requiring them to show cause as to why their candidature be not cancelled.

28. As noticed hereinabove, it is an admitted position that *the Officers* duly replied to the show cause notices and till date the show cause notices have not been disposed of by the *Staff Selection Commission*. The sequitur to that is that the candidature of *the Officers* has never been cancelled by the *Staff Selection Commission* and as such, there is no reason as to why the consequence of *the Officers* having appeared in the examination, i.e. declaration of their result, should not follow in their case.

29. We also notice that in the case of Sudesh, the Tribunal when faced with the challenge to the second show cause notice finally directed as under :-



“48. In view of the aforementioned reasons, we hold that the impugned second show cause notice dated 28.01.2014 (in the lead OA) as well as the show cause notice issued to all applicants in the connected OAs, are not fit to be legally sustained. Accordingly, we quash and set aside the same. Consequently, the respondents are directed to declare the result of all applicants in these OAs and to allocate them the Service for which they have been found eligible on the basis of pure merit, if they have been found successful. We clarify that while doing so the respondents shall take action fully in consonance with the rules and instructions governing the subject while declaring the result and for allocating the service for which the applicants are found successful on the basis of merit. The afore-noted action shall be completed within a period of three months from the date of receipt of a copy of this order.

30. It is also contended by learned counsel for *the Officers* that another similarly situated candidate (i.e. one Deepak Kumar Sinha), who had also not filed any proceedings, had approached the Central Administrative Tribunal, Allahabad Bench by filing O.A. No.330/00202/2018.

31. In his case, the Tribunal has noticed that it was unclear as to whether he had replied to a show cause notice or not. However, the Tribunal directed that a second show cause notice be issued only if the Staff Selection Commission was in a position to put in the said show



cause notice substantial evidence in support of their allegation in a manner which could be reasonably rebutted by the Applicant and in case the second show cause notice was not issued within the stipulated time i.e. one month, the benefit of selection be given to the said applicant.

32. It is contended by learned counsel for *the Officers* that no show cause notice was issued to the said individual and benefit of selection has been granted to him. This he submits is based on a response received to a query raised under the Right to Information Act, which was responded to on 22.03.2022.

33. Since the *Staff Selection Commission*, in the case of Deepak Kumar Sinha has granted relief to him, they cannot be permitted to deny the same relief to *the Officers* herein on the ground of delay. It is unclear as to where Deepak Kumar Sinha had responded to the show cause notice or not. *The Officers* admittedly have responded to the show cause notice but the *Staff Selection Commission* has till date not disposed of the show cause notices and as such there is no delay on the part of *the Officers* in approaching the Tribunal.

34. Further, it may be seen that the show cause notices issued to *the Officers* are identical to the two show cause notices that were issued to Sudesh and which were quashed and the said order was upheld until the Supreme Court and benefit of selection has been granted to



Sudesh and other similarly situated persons. In view thereof, we find no infirmity in the view taken by the Tribunal in granting identical relief to *the Officers*.

35. Further it may be noticed that in the case of Yashpal Gahlawat (i.e. W.P.(C) 5892/2019) the review application was allowed by order dated 13.03.2019 without noticing that a coordinate bench of the Tribunal by its order dated 27.11.2018 had already rejected the review petitions in the other two cases.

36. In view of the above, the petitions filed by the *Staff Selection Commission* (i.e. W.P.(C) 9682/2019 and 9799/2019) are dismissed. The petition filed by Yashpal Gahlawat (i.e. W.P.(C) 5892/2019) is allowed and the order impugned therein dated 13.03.2019 is set aside.

37. Consequently, the *Staff Selection Commission* is directed to, within two months, grant the same benefit of selection to *the Officers* herein as has been granted to other similarly situated candidates.

38. At this stage, it is prayed by learned counsel for *the Officers* that they be granted retrospective consequential benefits from the date of their initial examination as has been granted to others.

39. Learned Counsel for the *Staff Selection Commission* submits that he is not in a position to respond as to whether other candidates have been granted retrospective benefits or not and as to whether any



litigation is pending qua the same.

40. In view of the above, we direct that in case the *Staff Selection Commission* has granted consequential retrospective seniority to other candidates, same relief be also granted to *the Officers* herein. However, if in case no such relief has been granted and a challenge to the same is pending before any Court of Law then the benefit be granted to *the Officers* in accordance with the decision in those proceedings.

41. Petitions and the applications filed herewith are disposed of in above terms.

42. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

JULY 19, 2022/'yg'