



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

% *Date of decision: September 14, 2023*

+ W.P.(C) 12111/2023, CM APPL. No.47579/2023

(64) DIKSHIKA MEENA Petitioner
Through: Mr. Shivanshu Bhardwaj, Adv.

versus

UNION PUBLIC SERVICE COMMISSION & ORS...Respondents
Through: Mr. Naresh Kaushik, Mr. Manoj
Joshi, Mr. Anand Singh and
Ms. Shikha John, Advs. for UPSC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been listed through a "Supplementary List" circulated in pre-lunch session.
2. The challenge in this petition is to an order dated September 13, 2023 of the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 2709/2023, whereby the Tribunal while considering the interim relief sought by the petitioner has rejected the same.
3. The case of the petitioner is that her brother and she had filed application forms for UPSC Civil Services (Preliminary) Examination, 2023 on February 01, 2023. On May 09, 2023, upon receipt of the admit card, she came to know that instead of uploading her own photograph and signature, she had inadvertently uploaded the photograph and signature of her brother.



It is also her case that on the very same day i.e., May 09, 2023, she contacted the office of UPSC by sending them an email with a request to rectify the mistake committed by her while filling the online application. In response to this, she received an email from UPSC on May 10, 2023, wherein, she was instructed to contact the telephone numbers mentioned therein. On February 20, 2023, she made a phone call on the numbers given in the email, whereupon she was directed to submit an undertaking at the Examination Centre along with her own Photograph and Aadhaar Card. Thereafter, she appeared in the examination and passed the same on June 12, 2023.

4. However, on August 22, 2023, she received a letter from the respondent UPSC, cancelling her candidature for uploading incorrect photograph and signature. Aggrieved by the same, she approached the Tribunal.

5. The case of the petitioner before the Tribunal was that it was an inadvertent mistake on the part of the applicant while filling her application form, and she could not have gotten any benefit out of the said mistake. Even otherwise, the respondents, by allowing the applicant to appear for the preliminary exam, condoned the mistake.

6. On the other hand, the case set up by the UPSC before the Tribunal was by relying upon the instructions issued by the UPSC in terms of the Civil Services Examination Rules, 2023, more specifically, Clause 2.2 therein, which deals with modification in the application form. Under the said clause, a window of seven days is given to the candidates for making corrections in any field of the application form. This period of seven days commenced on February 22, 2023 and ended on February 28, 2023.



Concedingly, the petitioner did not correct her mistake during the said period. A reference was also made to Clause 5, which deals with the procedure to apply. Clause 5(a)(ii) deals with modification in the application form. Note 6 of the said Clause 5 makes it clear that if any of the claims made by a candidate is found to be incorrect, that would render such a candidate liable to disciplinary action by the UPSC. Clause 7 of the examination notice makes it clear that the mere fact that e-Admit Card for the Examination has been issued to an applicant would not imply that his or her candidature has been finally cleared by the UPSC or the entries made by the candidate in his/her application form has been accepted as true and correct. The Tribunal has in paragraphs 8 and 9 has stated as under:-

*“8. The aforesaid clauses of the Examination Notice have been derived from the Examination Rules, which have a statutory force. In light of the rules discussed above, we are unable to accept the submissions of Mr. Bhardwaj, learned counsel for the applicant. This takes us to consider the reliance placed by Mr. Bhardwaj on the judgment of Hon’ble Delhi High Court in the case of **Anuj Pratap Singh**(supra). In this regard, Mr. Sinha has produced the order dated 04.09.2018 passed by the Apex Court in **UPSC v. Anuj Pratap Singh & Anr.**(supra). This SLP arises out of the very same judgment given by Hon’ble Delhi High Court in **Anuj Pratap Singh**(supra). The Special Leave to Appeal for final disposal in the third week of January 2019 and meanwhile, stayed the operation of the impugned judgment passed by Hon’ble Delhi High Court. Mr. Bhardwaj, learned counsel for the applicant pointed out that subsequently, on 22.01.2019, in the said case, the Hon’ble Apex Court directed the appellant, i.e., UPSC to process the application of respondent no. 1, namely, Mr. Anuj Pratap Singh, and to declare his result while making it subject to the final outcome of the SLP. In our view, this may not help the applicant in the present case, inasmuch as by the earlier order dated 05.12.2018, the operation of the judgment of Hon’ble Delhi*



High Court in Anuj Pratap Singh(supra) has been stayed.

9. In view of the above discussion, we are not inclined to grant interim relief to the applicant.”

7. Even today, Mr. Shivanshu Bhardwaj, learned counsel appearing for the petitioner has made similar submissions before this Court, that the error was inadvertent and she came to know about the same only on receipt of the Admit Card on May 09, 2023. He states there was no occasion to correct the mistake before May 09, 2023. Even otherwise, it is his submission that the concerned Examination Centre having allowed the petitioner to appear in the exam on the basis of an undertaking given by the petitioner, and the petitioner having succeeded in the Preliminary Examination, her candidature could not have been cancelled. He also submits that in any case, the petitioner is only concerned with the interim prayer, inasmuch as the petitioner be permitted to appear in the Civil Services (Main) Examination, as the main issue need to be decided by the Tribunal. According to him, it may so happen that the petitioner may succeed before the Tribunal and if she is not allowed to sit in the Main Examination, great prejudice would be caused to her.

8. On the other hand Mr. Naresh Kaushik, learned counsel appearing for the respondent would contest the case of the petitioner by stating that clear instructions have been issued to the candidate, of which a reference has been made by the Tribunal, more specifically in paragraph 2.2 which reads as under:-

“2.2 Modification in application form (Other than OTR Profile):

The Commission has also decided to extend the facility of making correction(s) in any filed(s) of the application form for



this examination from next day of the closure of the application window of this Examination. This window will remain open for 7 days from the date of opening of the same, i.e., from 22.02.2023 to 28.02.2023. In case a candidate wants to carry out any change in his/her OTR profile during this period, then he/she should login to the OTR platform and do the needful accordingly. In other words, no change in the OTR profile can be made by visiting the window for Modification in application form.”

9. He has also relied upon Clause 24 which is reproduced below to state that the candidates were required to preview the application form before they upload it, and it is only after confirmation, they were required to upload the same. He submits that the petitioner also had opportunity to correct the filled application form in the next seven days. If she has not done that, her prayer invoking equitable relief under the equitable jurisdiction of this Court need not be entertained in her favour. He also submits that the Examination Centre allowing the petitioner to sit in the preliminary examination on the undertaking given by her was totally unauthorized inasmuch as instructions were issued to the centres not to allow any candidate to sit for the examination when there is a mismatch in the photograph and signature and the physical appearance of the candidate. On the date of examination, despite instructions, the Centre allowing the petitioner to sit in the examination shall not enure to the benefit of the petitioner. That apart, he submits that the petitioner has been selected to the Indian Revenue Service, and she has unlimited chances to appear in the Civil Services Examination. Even if she cannot appear in the instant Mains Examination, she is not precluded from appearing in the Civil Services Examination next year.

Clause 24



*“24. After uploading a fresh page shows the preview of the uploaded images by the candidate. **Here the candidate is advised to see his/her uploaded photograph that the photograph is clearly visible/identifiable in the upper row and the specimen signature in the lower row.** In no case these rows should be swapped and uploaded photograph and specimen signature must be clearly identifiable / visible, otherwise the candidature of the candidate is liable to be cancelled by the commission and no representation from the candidate will be entertained by the commission regarding any change for the wrong data uploaded/filled up by the candidate. If the candidate is satisfied with the uploaded images, he may **CONFIRM** the uploading of photograph and signature by clicking on **Confirm Upload** button. **If by any reason uploaded images are not up to the mark then the candidate can RELOAD these images by clicking on the Reload Photograph and/or Reload Signature button.** They can view reloaded Photograph/signature by clicking on **"Image refresh"** button. The software will not save photograph and signature of the candidate unless he confirms the upload by clicking on **Confirm Upload** button.*

Note: Candidates should satisfy themselves about the quality of photograph & signature files upload. Applications having poor quality photo or signature files are liable to be rejected.”

10. His submission is that in the facts of this case, no equitable relief need to be granted in her favour. He has also relied upon the judgment of the Supreme Court in the case of **Union Public Service Commission v. Gaurav Singh & Ors., Civil Appeal No. 4152/2022**, wherein, the Supreme Court has clearly held that negligence on the part of the candidate cannot be lightly brushed aside as inadvertent lapses of the certifying authority. He states that in the present examination, around six lakh candidates have appeared and around ten applications have been rejected on the ground of mismatch of photographs and signatures, and hence any order in favour of the petitioner



would be in violation of Article 14 of the Constitution of India as the petitioner cannot be given a benefit which was denied to other candidates.

11. Having heard the learned counsel for the parties, this Court is of the view that in the facts of this case, the conclusion drawn by the Tribunal in denying the interim relief in favour of the petitioner is justified.

12. This we say so, as in terms of the instructions, more particularly, Clause 2.2, the petitioner had a window of seven days to correct any error which has crept in the application form. Admittedly, the petitioner has not done that. Even otherwise, the plea of the petitioner is that her being allowed to sit in the preliminary examination by the Centre, and her succeeding in clearing the said examination would not enure to the favour of the petitioner. It is the submission of Mr. Kaushik that instructions were issued by the UPSC not to allow the candidates to sit for the examination where there is a mismatch in the photograph and signature and the physical appearance of the candidate. Even otherwise, we note that the rejection of the petitioner's candidature was made on August 21, 2023 and the petitioner could only approach the Tribunal on September 05, 2023 i.e., after almost a period of 15 days. It was too late in the day for the petitioner to approach to the Tribunal on September 05, 2023. She should have approached the Tribunal forthwith on receipt of the rejection from the UPSC. That apart, we are of the view that Mr. Kaushik is justified in stating that the petitioner will have unlimited chances in future, also inasmuch as even if she is not permitted to write the Main Examination, she can sit in the examination next year and attempt to improve on her own performance in the Civil Services Examination. As has been submitted by Mr. Kaushik, the relevant conclusion of the Supreme Court in the case of *Gaurav Singh & Ors.*



(*supra*), is in page 10 of the order, which reads as under:-

“The Respondent-Writ Petitioners were required to submit Certificates for the relevant financial year. The negligence of the Respondent-Writ Petitioners in not checking if the Certificate related to the correct financial year, cannot be lightly brushed aside as inadvertent lapses of the certifying authority. A candidate applying for a post pursuant to an advertisement, cannot afford to be negligent. Documents required to be submitted have to be carefully checked by the candidate concerned before submission. An appointing authority proceeds on the basis of what is stated in a certificate. When a certificate pertains to a different financial year, the same is liable to be outright rejected. No candidate can, in such case, claim any legal right to reconsideration of his/her candidature by submission of a fresh certificate and/or rectified certificate.

Where appointments are made to a large number of vacancies from amongst lakhs of candidates and there are errors which go to the root of eligibility, the Courts ought not to interfere, particularly in an age of computerization where documents are scanned, compared, classified and stored electronically. It may be pertinent to note that certificates are necessarily issued on the basis of the data furnished by the applicant after enquiry. The appointing authority could not have proceeded on the presumption of an inadvertent error in the certificates. The possibility that the Income and Assets Certificates might have reflected income for a part of the financial year mentioned in the Certificate could not have been ruled out.”

13. That apart, we also find that the Tribunal has also considered the nature of the instructions issued by the UPSC, which are statutory in nature, based on the Civil Services Examination Rules, 2023, which have to be mandatorily followed and uniformly implemented. We also note the finding of the Tribunal that Note 6(1)(e) of the Examination Rules stipulates uploading irrelevant photo/signature in place of the actual photo/signature



would result in disqualification by the UPSC for the examination held under the said Rules.

14. Further, we have been informed that the Main Examination is scheduled to take place tomorrow at 09:00 AM. The submission of Mr. Kaushik that any directions given, permitting the petitioner to appear in the examination shall entail issuance of admit card, determining an examination centre, preparing her question paper and answer sheet, which cannot be organized in such a short time, is appealing. We reiterate that the petitioner had taken almost 15 days to approach the Tribunal and even the phone call made by the petitioner initially on the receipt of the email from the UPSC was after a period of 18 days which surely suggest, the petitioner should have been more proactive in seeking her remedy.

15. In view of the foregoing discussion, we are of the view that the order of the Tribunal does not warrant any interference and this writ petition has to be dismissed. We order accordingly.

16. Before parting, we may clarify here that any conclusion drawn in this order shall not, in any manner, be construed to reflect the conduct of the petitioner to her detriment.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

SEPTEMBER 14, 2023/ds