



2023:DHC:8320



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

% **Date of order : 17th November, 2023**

+ **W.P.(C) 14878/2023**

NEHA GOLA

..... Petitioner

Through: Mr.Shashwat Sarin, Mr.Varun
Chopra, Mr.Utkarsh Khandelwal and
Mr.Lokesh Kumar, Advocates

versus

COMMISISONER OF POLICE AND ANR

..... Respondents

Through: Mrs.Avnish Ahlawat, Standing
Counsel for GNCTD-Services with
Mr.N K Singh, Ms.Laavanaya
Kaushik, Ms.Aliza Alam and
Mr.Mohnish Sehrawat, Advocates for
R-1
Mr.Rajesh Kumar and Ms.Mishika
Pandita, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

“A. Issue any appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 2 to set aside the decision regarding non-issuance of the admit card of the petitioner for the Delhi Police Examination-2023.

B. Issue any appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 2 to allow the petitioner an opportunity to change/edit/ re-upload the

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 21.11.2023
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W.P.(C) 14878/2023

Page 1 of 23



photograph uploaded by her along with her online registration form.

C. Issue any appropriate writ, order or direction in the nature of mandamus directing the Respondent No. 2 to issue the petitioner an admit card for Delhi Police Examination 2023.

D. Pass any other and further orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

- a) The petitioner, pursuant to an advertisement dated 1st September 2023, for examination of Constable (Executive) in Delhi Police Examinations-2023, applied for the post of Constable (Executive) (Female), and accordingly registered on 6th October 2023, vide registration no. 50005574423.
- b) On 30th October 2023, the respondent no. 2/Staff Selection Committee issued a notice stating the schedule for examinations for the post of Constable (Executive), i.e., from 14th November 2023, to 3rd December 2023. It was further intimated by the respondent no. 2 that the admit cards for the examinations would be released on 5th November 2023. However, the petitioner was not issued her admit card.
- c) It has been stated by the petitioner that around 12th November 2023 – 13th November 2023, the petitioner was informed by the concerned officials of the respondent no. 2



that there was a problem with respect to the dimensions of the photograph uploaded by the petitioner with the registration form.

- d) Subsequently, the petitioner filed a complaint/representation dated 13th November 2023, with the Office of the Regional Director, Staff Selection Committee (Northern Region), requesting permission to make corrections in her registration form.
- e) Aggrieved by the inaction on behalf of the respondents, the petitioner has approached this Court under its writ jurisdiction seeking issuance of the admit card and opportunity to re-upload her photograph.

3. Learned counsel appearing on behalf of the petitioner submitted that the act of the respondents in not issuing the petitioner's admit card and not providing any opportunity to re-upload the photograph is bad in law and the same is violative of the principles of natural justice. Hence, the said act of the respondent no. 2 infringes upon the petitioner's fundamental and legal rights.

4. It is submitted that the non-issuance of the petitioner's admit card for the Delhi Police Examinations – 2023, is erroneous and reflective of a clear lapse in the statutory obligation of the respondent no. 2 towards the petitioner.

5. It is submitted that the petitioner was informed about the irregularity in her photograph uploaded on the website only after the registration process



for the exam was complete and after the admit cards for other candidates had already been issued.

6. It is clarified that the petitioner was neither intimated about the objection in the photograph uploaded along with the registration form by the concerned officials of the respondent no. 2, nor was there any such message or information prompted to the petitioner on her candidate user account on the respondent no. 2's official website.

7. It is submitted that the soft copy of the registration form generated at the end of its submission displays the photograph of the petitioner, which clearly shows that the photograph uploaded was of correct size and dimension, and that there was no system error at the time of uploading or submitting the registration form.

8. It is submitted that the petitioner was not issued her admit card either on account of a system failure, or an internal failure which has got nothing to do with the specification of the photograph uploaded by the petitioner. The petitioner has neither been permitted to re-submit her registration form for Delhi Police Examinations – 2023, nor been allowed to change/edit/re-upload the photograph uploaded by her.

9. It is submitted that the entire process of not providing an opportunity to the petitioner for any hearing or granting the petitioner any explanation in respect of non-issuance of the petitioner's admit card despite the photograph of the petitioner being duly uploaded along with the petitioner's online registration form bestows unbridled power upon the respondent no. 2, and the same is being exercised arbitrarily by it.



10. In view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

11. *Per Contra* the learned counsel appearing on behalf of the respondents vehemently opposed the instant writ petition and submitted that the instant petition is liable to be dismissed on the grounds of non-maintainability and the same is also devoid of any merits.

12. It is submitted that the instant petition is liable to be dismissed at the threshold since the grievances of the petitioner cannot be raised before this Court due to the reason that the Central Administrative Tribunal (hereinafter “CAT”) is the Court of first instance.

13. It is submitted that since the petitioner has not approached the appropriate forum, i.e., CAT, therefore, this Court cannot entertain the petitioner’s dispute in view of the provisions of Section 14 and 28 of the Administrative Tribunals Act, 1985, which confers the power upon CAT, to deal with the service matters.

14. Learned counsel has placed reliance upon paragraph no. 94 of the judgment passed by the Hon’ble Supreme Court in the matter of ***L. Chandra Kumar v. Union of India, (1997) 3 SCC 261***, wherein, Hon’ble Court has affirmed the aspect of the Tribunal being the Court of first instance and that the High Courts or the Hon’ble Supreme Court shall not act as a substitute of the Tribunal.

15. It is submitted that the present petition is also liable to be dismissed on merits due to the reason that the petitioner has admittedly filled the application form on 6th October 2023, which is after the notified cut-off date,



i.e., 30th September 2023.

16. It is submitted that as per Clause 8.2 of the advertisement dated 1st September 2023, the candidates are required to upload the scanned colour passport size photograph in JPEG format (20 KB to 50 KB), and the dimensions of the image should be about 3.5 cm (width) x 4.5 cm (height).

17. It is further submitted that the photograph uploaded by the petitioner was too small in size, and hence, her application form was rejected leading to non-issuance of her admit card. Furthermore, to prevent any malpractice in the examination process, once the application process has been closed, admit cards have been issued and examinations have commenced, no further applications can be processed.

18. It is submitted that the candidates were cautioned under Clause 21 (9) of the advertisement that after the closing date for the receipt of online applications, the Commission will provide a period of 2 days to enable them to correct/modify online application parameters, wherein, the candidates will be allowed to re-submit applications after making requisite corrections/changes. The window for correction of the application form was open from 3rd October 2023 till 4th October 2023.

19. It is also submitted that despite having been given the opportunity for rectification of application form 3rd October 2023, till 4th October 2023, the petitioner never rectified her application form and did not upload the photograph in the prescribed format.

20. It is contended that the petitioner on her own account did not rectify her form and since the petitioner did not follow the instructions of the



examination, therefore, the reliefs prayed for in the present petition cannot be granted.

21. It is further contended that the petitioner being ignorant in not uploading the correct size of the photograph in accordance to the instructions, now cannot plead before this Court another opportunity for submitting her photograph. The petitioner did not exercise due care and caution in filing the form and for the said negligent behavior, she cannot take advantage by way of filing the instant petition.

22. In view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

23. Heard and perused the material available on record. Learned counsel appearing on behalf of the respondent no. 1/Commissioner of Police, has produced a short affidavit dated 17th November 2023, before this Court and the same is take on record.

24. It is the case of the petitioner that the entire process of not providing an opportunity to the petitioner for any hearing or granting the petitioner any explanation in respect of her application being rejected is unconstitutional, and violates her fundamental and legal rights. It has been submitted that the conduct of the respondent is violative of principles of fairness and equality as enshrined under Article 14 of the Constitution. Further such a decision adversely affects the right to carry on a trade or business under Article 19(1) (g) of the Constitution of India, and the right of livelihood of the petitioner.

25. The petitioner has further contended that in the event she was apprised of the fact that her photograph is under objection and not uploaded as per the



requisites, she would have rectified the same but no such opportunity was provided to her at all.

26. The respondent has opposed the case of the petitioner and has made two fold submissions. *Firstly*, the respondent contends that the grievances of the petitioner cannot be entertained before this Court since the CAT is conferred with the powers to act as the Court of first instance in the matter of service disputes. *Secondly*, it was the duty of the petitioner to upload the photograph as per the prescribed format given in the instructions provided in the advertisement dated 1st September 2023. Furthermore, the respondent no. 2 Commission has acted as per the provisions of instructions of the Examination and the petitioner failed to avail the opportunity provided by the Commission for making correction in the application form via correction window opened from 3rd October 2023, till 4th October 2023. It has been submitted on behalf of the respondent that since the petitioner did not follow the instructions for making corrections and did not upload the photograph as per the explicit instructions given in the notice of the examination, she is not entitled to any relief sought for in the petition.

27. Before delving into the merits of the instant matter. It is prudent to decide whether the present petition is maintainable.

28. This Court is of the view that in the event a Court or a Tribunal which has been constituted under a Statute and is ascribed with the jurisdiction to entertain and adjudicate upon such disputes, the said jurisdiction has to be exercised in precedence to the extraordinary jurisdiction of the High Court.

29. The legislative intent behind the constitution of a Tribunal gets



defeated, in case the High Court or the Hon'ble Supreme Court entertains such matters by way of a writ petition. This view has been supported by the Constitution Bench of the Hon'ble Supreme Court in the matter of ***L. Chandra Kumar v. Union of India, (1997) 3 SCC 261***. The relevant portion of the judgment has been reproduced here below:

“88. In R.K. Jain case [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] this Court had, in order to understand how the theory of alternative institutional mechanisms had functioned in practice, recommended that the LCI or a similar expert body should conduct a survey of the functioning of these Tribunals. It was hoped that such a study, conducted after gauging the working of the Tribunals over a sizeable period of more than five years would provide an answer to the questions posed by the critics of the theory. Unfortunately, we do not have the benefit of such a study. We may, however, advert to the Report of the Arrears Committee (1989-90), popularly known as the Malimath Committee Report, which has elaborately dealt with the aspect. The observations contained in the Report, to this extent they contain a review of the functioning of the Tribunals over a period of three years or so after their institution, will be useful for our purpose. Chapter VIII of the second volume of the Report, “Alternative Modes and Forums for Dispute Resolution”, deals with the issue at length. After forwarding its specific recommendations on the feasibility of setting up “Gram Nyayalayas”, Industrial Tribunals and Educational Tribunals, the Committee has dealt with the issue of Tribunals set up under Articles 323-A and 323-B of the Constitution. The relevant observations in this regard, being of considerable significance to our analysis, are extracted in full as under:

“Functioning of Tribunals



8.63 *Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.*

8.64 *Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition.*

Tribunals — Tests for Including High Court's Jurisdiction

8.65 *A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less efficacious than the High Court. Such a tribunal must inspire confidence and public esteem that it is a highly competent and expert mechanism with judicial approach and objectivity. What is needed in a tribunal, which is intended to supplant the High Court, is legal*



training and experience, and judicial acumen, equipment and approach. When such a tribunal is composed of personnel drawn from the judiciary as well as from services or from amongst experts in the field, any weightage in favour of the service members or expert members and value-discounting the judicial members would render the tribunal less effective and efficacious than the High Court. The Act setting up such a tribunal would itself have to be declared as void under such circumstances. The same would not at all be conducive to judicial independence and may even tend, directly or indirectly, to influence their decision-making process, especially when the Government is a litigant in most of the cases coming before such tribunal. (See S.P. Sampath Kumar v. Union of India [(1987) 1 SCC 124 : (1987) 2 ATC 82] .) The protagonists of specialist tribunals, who simultaneously with their establishment want exclusion of the writ jurisdiction of the High Courts in regard to matters entrusted for adjudication to such tribunals, ought not to overlook these vital and important aspects. It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself. Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the framework of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass the aforesaid test in order to be constitutionally valid.



8.66 The overall picture regarding the tribunalisation of justice in our country is not satisfactory and encouraging. There is a need for a fresh look and review and a serious consideration before the experiment is extended to new areas of fields, especially if the constitutional jurisdiction of the High Courts is to be simultaneously ousted. Not many tribunals satisfying the aforesaid tests can possibly be established.”

(emphasis added)

Having expressed itself in this manner, the Malimath Committee specifically recommended that the theory of alternative institutional mechanisms be abandoned. Instead, it recommended that institutional changes be carried out within the High Courts, dividing them into separate divisions for different branches of law, as is being done in England. It stated that appointing more Judges to man the separate divisions while using the existing infrastructure would be a better way of remedying the problem of pendency in the High Courts.

x x x

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires



of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

*x**x**x*

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to



scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

30. The Hon'ble Supreme Court in the abovementioned case observed that the Tribunals created pursuant to insertion of Article 323-A, or under Article 323-B of the Constitution of the India, are the authorities competent to hear and adjudicate matters entrusted upon them. The Tribunals would continue to act as Courts of 'first instance' in the areas of law for which they have been constituted by way of statutory provisions. It was further observed by the Hon'ble Court that it will not be open to the litigants to approach the High Court or the Hon'ble Supreme Court by overlooking and ignoring the jurisdiction of the concerned Tribunal.

31. In cases where the dispute raised has a question concerning infringement or enforcement of fundamental rights, the High Court has all the powers to entertain the writ, however, in the case of infringement of rights, except the fundamental rights, the enforcement of such writ is discretionary. The point which is to be considered by the Court while using its discretion is the existence of any other effective, efficacious, or alternative remedy for the relief. The same was also observed in a recent



judgment passed by the Hon'ble Supreme Court in the matter of *South Indian Bank Ltd. v. Naveen Mathew Philip*, 2023 SCC OnLine SC 435.

32. Upon a bare perusal of the observations made in the judgments mentioned hereinabove, it is evident that Section 14 of the Administrative Tribunals Act, 1985, explicitly states the CAT shall exercise the jurisdiction, power and authority over all the service matters concerning the affairs of the State or any local authority i.e., the Commissioner of Police and Staff Selection Commission, in the instant matter.

33. After considering all the facts and circumstances, this Court is of the view that due to the imposition of jurisdiction upon CAT, under Section 14 of the Administrative Tribunals Act, 1985, there already exists an alternate remedy which the petitioner has failed to exercise and has approached this Court's extraordinary jurisdiction under Article 226. The CAT is empowered to act as the Court of 'first instance' for adjudication upon the disputes relating to the service matters, such as the petitioner's case herein.

34. Accordingly, the instant petition is held to be non maintainable.

35. At this juncture, this Court deems it imperative to analyze the facts of the instant matter on its merits that whether the petitioner is entitled to the issuance of her admit card after making the required corrections pertaining to the her photograph uploaded along with the application.

36. Before adjudicating the above said issue, it is prudent to reproduce the relevant extracts of the advertisement dated 1st September 2023, and the same is as follows:

"8. How to apply:



8.1 Applications must be submitted in online mode only through the official website of SSC Headquarters i.e. <https://ssc.nic.in>. For detailed instructions, please refer to **Annexure-I** and **Annexure-II** of this Notice. Sample Proforma of One-time Registration and Online Applications are attached as **Annexure-IA** and **Annexure-IIA**.

8.2 In the online Application Form, candidates are required to upload the scanned colour passport size photograph in JPEG format (20 KB to 50 KB). Image dimension of the photograph should be about 3.5 cm (width) x 4.5 cm (height). In compliance of the Order dated 05.03.2020 of Hon'ble Supreme Court in the matter of Shantanu Kumar & Ors. [Writ Petition (C) No.234 of 2018], **the photograph of the candidate should not be more than three months old from the date of publication of notice of the examination. The Photograph should be without cap and spectacles. The frontal view of the face should be clearly visible.**

8.3 Before submitting the Application Form, candidate must ensure that the photograph is uploaded as per the given instructions. If the photograph is not uploaded by the candidate in the desired format, his application/ candidature will be rejected or cancelled. Specimen of photographs delineating photograph acceptable/ photograph not acceptable is also given at **Annexure-IIB**.....

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10. Window for Application Form Correction [03-10-2023 to 04-10-2023 (2300 hours)]:

10.1 After the closing date for receipt of online applications, the Commission will provide a period of 2 days to enable candidates to correct/ modify online application parameters, wherein candidates will be allowed to re-submit applications after making requisite corrections/changes in the one-time registration/ online application data as per their requirement.



10.2 A candidate will be allowed to correct and re-submit his modified/ corrected 10 application two times during the 'Window for Application Form Correction' i.e. if he has made mistake in his updated application also, he will be allowed to re-submit one more modified/corrected application after making requisite corrections/modifications. No more corrections in the application form will be allowed under any circumstances.

10.3 Only those candidates will be allowed to make corrections in the application form, whose completed online applications along-with payment of requisite fee, have been received by the Commission within the specified period....

x

x

x

21. Important Instructions to candidates:

....

9 After the closing date for receipt of online applications, the Commission will provide a period of 2 days to enable candidates to correct/ modify online application parameters, wherein candidates will be allowed to re-submit applications after making requisite corrections/ changes in the one-time registration/ online application data as per their requirement. This facility can be availed by online payment of stipulated correction charges as per details given at **Para-10** of the Notice of Examination. Latest modified application will be treated as the valid one and the previous application(s) submitted by such candidates for the examination will be ignored.....”

37. Upon bare perusal of the advertisement dated 1st September 2023, it is contemplated that a considerable time was provided to the candidates to register in the examination process and accordingly, 30th September 2023, was the date fixed as the last date of submitting online applications.

38. In view of Clause 8.2 of the advertisement dated 1st September 2023, it is observed that the candidates were duly informed and instructed that they



are required to upload their scanned colour passport size photograph in JPEG format (20 KB to 50 KB), and the dimensions of the image which is to be uploaded was prescribed to be about 3.5 cm (width) x 4.5 cm (height).

39. It is further observed that as per Clause 21 (9) of the advertisement, the candidates were provided with an opportunity to modify, edit, or re-submit their application forms after making requisite changes or corrections in their online application data.

40. It is noted that the window for making corrections in the application form was open from 3rd October 2023, till 4th October 2023. However, even after such explicit and clear instructions, and sufficient opportunities being available with the petitioner, she evidently failed to avail the same in a timely manner and hence, no admit card was issued to her.

41. Also, as per sub paragraph (a) of paragraph 6 of the petition, it is an admitted fact that the petitioner completed her registration vide registration no. 50005574423 on 6th October 2023. It is crystal clear that the petitioner herself did not adhere to the instructions provided in the time schedule mentioned in the advertisement since the last date of registration was 30th September 2023.

42. Moreover, as per the affidavit on behalf of the respondent no. 1, dated 17th November 2023, produced before this Court during the course of the arguments, it is observed that the photograph uploaded by the petitioner was too small in size, and hence, her application form was rejected leading to non-issuance of her admit card.

43. It is also the contention of the respondents that to prevent any



2023: DHC: 8320



malpractice in the examination process, once the application process has been closed, admit cards have been issued and examination has commenced, no further applications is processed by them. Therefore, the respondents did not provide the petitioner with the further opportunity to make rectifications in her application.

44. In view of the foregoing discussions, this Court is of the view that sufficient measures were taken and implemented by the respondents to ensure that the candidates appearing in the examination fill out their application/registration form as per the conditions and requirements prescribed by the examination authority and due opportunity to make corrections was also provided.

45. This Court is also of the view that the process of recruitment involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of the concerned authority in-charge for recruiting. The law on the scope and extent of the judicial review of a recruitment process in context with the facts of the instant matter, and results thereof may be understood by referring to the observations made by the Hon'ble Supreme Court in the matter of ***Divya v. Union of India, 2023 SCC OnLine SC 1305***. The relevant extract has been reproduced as under:

“50. It is also very well settled that if there are relevant rules which prescribe the date on which the eligibility should be possessed, those rules will prevail. In the absence of rules or any other date prescribed in the prospectus/advertisement for determining the eligibility, there is a judicial chorus holding that it would be the last date for submission of the application. (See Rekha Chaturvedi v. University of Rajasthan [1993 Supp



(3) SCC 168]; *Bhupinderpal Singh v. State of Punjab* [(2000) 5 SCC 262]; *Ashok Kumar Sonkar v. Union of India* [(2007) 4 SCC 54].

x x x
82. The rules clearly mandate and as has been held in the case of *Gaurav Singh* (*supra*), any mistake/omission/negligence cannot be condoned so as to extend the deadline for production of the documents. Neither the Office Memorandum nor the rules in question can be construed as directory. They prescribe clearly the eligibility criterion and the date before which the certificate should be possessed and the date before which the certificate should be submitted. They also prescribe the consequence for the omission. As the old ditty goes for a want of a horseshoe nail, kingdoms have been lost. Here we are dealing with crucial documents determining eligibility. The petitioners who did not possess the valid documentation determining their eligibility, before the prescribed cut-off date, cannot complain, if their claim for categorization as EWS was rejected.

x x x
84. It will be noticed that UPSC has considered these omissions as trivial and as not going to the root of the eligibility, unlike in the case of the petitioners herein. In *Ajay Kumar Mishra v. Union of India* 2016 SCC OnLine Del 6563, *Indira Banerjee, J.* (as *Her Ladyship* then was) speaking for the Division Bench of the Delhi High Court felicitously put the issue about the examining body's right to decide as to which errors are material and which are inessential and trivial. We do nothing more except to extract paras 6, 7 & 9 from the said judgment:—

“6. There can be no doubt that a candidate applying for a government job, or for that matter, any job should fill in the application form carefully. No candidate can claim any vested right to rectification of arrears in an



application. Union Public Service Commission and the State Public Service Commissions deal with lacs of applications, which are received pursuant to an advertisement. Such applications are required to be processed within a short time. A candidate, who is not short-listed and/or not allowed to participate in the selection process by reason of his own laches in making careless mistakes, cannot claim any right to be allowed to participate in the selection process.

7. It is for the body conducting the selection process to decide whether mistakes should be allowed to be rectified, if so, whether they should be rectified within any specific time and what are the mistakes which can be allowed to be rectified and other similar questions. However, in view of the mandate of Articles 14 to 16 of the Constitution of India, there should be no discrimination or arbitrariness in deciding these questions. All candidates applying for the particular post/posts should be treated equally.

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors. ”..”

46. Upon analysis of the observations made in the foregoing paragraphs, this Court is of the view it is not within the domain of the Courts, exercising the extraordinary powers, to enter into the merits of a recruitment process, a



task prerogative of the concerned authority in-charge of the recruitment process. The Courts while exercising the power of judicial review cannot step into the shoes of the authority in-charge or assume an appellate role to examine the various aspects of recruitment.

47. In light of the above discussions, this Court is not inclined to pass any such orders as has been sought by the petitioner. Merely because the petitioner claims that she was not aware of the fact that the uploaded photograph suffers from infirmity, is no ground to direct the respondents to issue the admit card to the petitioner. There can be no doubt that a candidate applying for a government job, or for that matter, any job should fill in the application form carefully. No candidate can claim any vested right to rectification of arrears in an application.

48. This Court by way of writ petition has an obligation to exercise equity such that it has to take into account the interest of the various stakeholders. Moreover, this Court has to take into consideration that selection process which is undertaken on a very large scale, cannot be delayed or withheld on account of the circumstances of a particular candidate. The same will impact a lot of candidates and the authority conducting the exam. Hence, this Court by way of exercising equity and balancing the interest of the various stakeholders cannot grant any relief to the petitioner.

49. The petitioner while registering herself in the examination process was well aware of the terms and conditions mentioned in the advertisement, and it was her duty to remain vigilant. The petitioner now cannot pass on the baton of her negligence by contending that she was denied an opportunity to



2023:DHC:8320



re-submit the photograph.

50. In view of the above discussions of facts and law, it is held that the petitioner has been unable to make out his case and this Court finds no force in the propositions put-forth by the petitioner. Upon finding no infirmity within the actions of the respondents, it is, hereby, held that the instant petition is not a fit case to exercise the writ jurisdiction of this Court.

51. In view of the above, the instant petition stands dismissed along with the pending applications, if any.

52. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 17, 2023

Dy/ryp/db

Click here to check corrigendum, if any