



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order: 29th August, 2023**

+ W.P.(C) 12005/2018 & CM APPL. 12619/2019
 NARENDER KUMAR Petitioner
 Through: Mr. Nitin K. Gupta, Mr. Rahul
 Sinha & Mr. Sudhanshu Kathuria,
 Advocates.

versus
 UNION OF INDIA AND ORS. Respondents
 Through: Mr. Vikram Jetly, CGSC with Ms.
 Shreya Jetly, Advocate for R-1 &
 2.
 Mr. Manoj, SC for R-3

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present writ petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India, praying as follows:

- “a) Quash and set aside the Impugned Order dt. 13.08.2018 issued by the Respondents;*
b) direct Respondents to Appoint the Petitioner on the appropriate post as per his merit with all consequential benefits from the date of appointment of his counterparts; and;
c) Pass any order or such further order/directions as this Hon'ble Court deems fit and proper In the interest of justice”

2. The respondent No.2 ('respondent Commission' hereinafter) is the body responsible for recruitment with the Government Agencies for various posts. In 2011, the respondent Commission notified an advertisement



inviting the applications for recruitment of Assistant Grade III in General Depot, Technical and Accounts Cadres and Hindi Posts (AG-II) in the respondent No. 3 Corporation ('respondent Corporation' hereinafter).

3. The petitioner applied for the said posts and appeared for the tests conducted by the respondent Commission and qualified for the position. After sometime, the petitioner along with other candidates received a Show cause notice dated 10th June, 2013, from the respondent Commission alleging therein that petitioner was *prima facie* found to have resorted to malpractices in paper I and paper II of the said examinations.

4. Thereafter, the petitioner replied to the said notice within the time period as stipulated by the respondent Commission, however, the petitioner did not receive any response rather was issued a debar notice from the respondent Commission prohibiting the petitioner to appear in any examination conducted by the respondent Commission for the next three years.

5. Aggrieved by the same, the petitioner made several representations to the respondent Commission, however, the respondents did not act on the representations and cited pendency of a similar matter in the Hon'ble Supreme Court.

6. Aggrieved by the inactions of the respondent Commission on the said representations, the petitioner has preferred the instant Writ Petition.

7. The learned counsel appearing on behalf of the petitioner submitted that the similarly placed candidates who had challenged the debar notice issued by the respondent Commission, were granted relief in the said cases.

8. It is submitted that the Hon'ble Supreme Court had already dismissed the SLP filed by the respondent Commission against the order of CAT



where the learned Tribunal held that the respondent Commission had failed to provide any evidence to prove any sort of malpractice resorted to by the candidates and therefore, the aggrieved candidates were directed to be appointed within 3 months.

9. It is also submitted that the petitioner by way of filing the Writ Petition No. 1780/2018 had approached this Court which was disposed of by this Court *vide* order dated 26th February, 2018 thereby directing the respondent Commission to decide the representation of the petitioner by passing a speaking order within a period of six weeks. However, the respondent Commission has failed to comply with the said directions, leading to filing of Contempt Petition No. 332 of 2018 by the petitioner.

10. It is submitted that the respondent Commission had decided the representation of the petitioner after a significant delay, however, the Commission erred in rejecting the candidature of the petitioner and falsely alleged him to be a fence sitter, whereas, in the earlier petitions, the Commission had cited the pendency of the SLP as the reason for not deciding the petitioner's representations.

11. Therefore, in view of the foregoing submissions, it is prayed by the petitioner that this Court may allow the petition and grant relief to the petitioner

12. *Per Contra*, the learned Counsel appearing on behalf of the respondent vehemently opposed the petition and submitted to the effect that the respondent Commission had undertaken a post examination scrutiny test where the petitioner was found to be indulged in using unfair means in the written examination. Therefore, the respondent Commission had issued the show cause notice to the petitioner.



13. It is submitted that the petitioner had filed a Writ Petition No. 1780/2018 whereby the respondent Commission was directed to pass a speaking order on the petitioner's representation, and the Commission complied with the said directions by passing a speaking order dated 13th August, 2018 stating reasons for non-consideration of his case.

14. Therefore, in view of the foregoing discussions, it is prayed on behalf of the respondents that this Court be pleased to dismiss the instant Writ Petition, being devoid of any merit.

15. Heard the counsel for the parties and perused the records.

16. As per material on record, it is apparent that the respondent Commission had issued several similar show cause notices thereby cancelling the candidature of several candidates. Aggrieved by the same, the affected candidates had preferred various Writ Petitions before this Court which have already attained finality. The relevant part of the said show cause notice dated 10th June, 2013 is reproduced herein:

"Whereas Mr./Ms. NARENDER KUMAR was provisionally called for CPT of the aforesaid Examination.

'Whereas the Commission undertakes regular post-examination scrutiny and

analysis of performance of the candidates in objective type multiple choice question papers with the help of experts, who have proven expertise in such scrutiny and analysis and had carried out such scrutiny and analysis in the case of written examination papers in Paper II/ Paper III of the aforesaid examination.

Whereas, as informed by SSC (Hqrs.), Commission has undertaken post examination analysis for the concerned examination also with the help of experts and on the basis of such analysis and scrutiny, incontrovertible and reliable evidence has emerged during such scrutiny and



analysis that Mr./ Ms NARENDE' KUMAR had resorted to copying in the said papers in association with other candidates who also took the same examination.

Hence, as directed by SSC(Hqrs.), Mr./Ms narender kumar is hereby given an opportunity to show cause, within 10 days of issue of this notice, as to why his/her candidature should not be cancelled and why he/she may not be debarred for five years from appearing Commission's examinations due to his/ her indulgence in unfair means in above mentioned examination.

If he/she fails to respond within prescribed time limit his/her candidature for above mentioned examination will be cancelled and he/she will be debarred for five years from appearing Commission's examinations and thereafter no further correspondence will strictly be entertained."

17. On receiving the said notice, the petitioner duly complied with the deadline and replied to the show cause denying the allegations levelled against him. However, the petitioner was directly debarred from any recruitment conducted by the respondent Commission.

18. The petitioner had earlier approached this Court by filing a Writ Petition No. 1780/2018 whereby the Court had disposed of the petition *vide* order dated 26th February, 2018 on the assurance provided by the respondent Commission that it would consider the case of the petitioner and other similarly placed persons when the issue of post examination analysis attains finality from the Hon'ble Supreme Court in the case of ***Staff Selection Commission Thr. it's chairman and Anr. v. Sudesh*** in Civil Appeal Nos. 2836-2838 of 2017.

19. In the said case pending before the Hon'ble Supreme Court, the Hon'ble Court dismissed the petition filed by the respondent Commission



and upheld the order of the CAT whereby the Tribunal had directed the respondent Commission to appoint the aggrieved petitioners, which led filing of several petition by the similarly placed candidates.

20. Thereafter, the respondent Commission formulated four categories, and it was decided that the candidates falling in any such category shall be provided relief. The said categories are enlisted hereunder:

“a) Who have filed Court case before the date of dismissal of SLP in the Apex Court in the matter of Ms. Sudesh Kumari i.e. 19.07.2017 and the same was disposed of in their favour;

(b) Who had filed Court cases and had judgments in their favour before 19.07.2017 (which was not implemented by the Commission at that time) and are filing fresh OAs/MA after 19.07.2017 for revival of their cases;

(c) Cases which have been adjourned by Courts in view of pendency of SLP in Apex Court; and

(d) Cases in which the Commission has filed averments in the court that action will be taken as per verdict in Ms. Sudesh Kumari case.”

21. On perusal of aforesaid, it is clear that the respondent acted upon the issue and had formulated four categories to accommodate the affected individuals. However, the respondent left out a major chunk of similarly placed candidates, forcing them to file Writ Petitions before this Court.

22. As per the material available on record, it is amply clear that the respondent Commission's contentions were out rightly rejected, firstly by the CAT, then the Division Bench of this Court in other petitions filed by the similarly placed candidates and the issue had attained finality upon dismissal of the SLP filed by the respondent Commission, however, the respondent Commission came up with the aforesaid categories and still



excluded some of the candidates rightly eligible to get appointed as per its own policy.

23. In the order dated 13th August, 2018, the respondent Commission conveyed the rejection of the petitioner on the grounds of him not falling under any of the four categories formulated by them. Therefore, it is pertinent to mention that the respondent Commission had earlier pleaded to decide the matter once the issue attains finality after disposal of the SLP filed by the respondent in the Hon'ble Supreme Court, however, the respondent Commission has failed to abide by its own assurances given to this Court and include him in the category (d).

24. In W.P. (C) 10518/2018 titled *Amit Chikara v. Union of India*, the Coordinate Bench of this Court had granted relief to a similarly placed candidate and rightly interpreted the four categories formulated by the respondent Commission, and directed them to appoint the petitioner to the post for which he had qualified in 2012. The relevant paragraphs of the order dated 3rd October, 2018 are reproduced herein:

“13. To my mind, the impugned order may border on contempt, especially in view of the law laid down by the Supreme Court in Baradakanta Mishm, Ex-Commissioner of Endowments v. Bhimsen Dixit, (1973) 1 SCC 446. It is incomprehensible, how, in the face of so many decisions of the Tribunal, this Court and the Supreme Court, the Staff Selection Commission could arrogate, to itself, the authority to decide how to implement judicial orders passed by the Tribunal, this Court, and the Supreme Court, and limit the implementation thereof to four categories of cases to which, alone, the benefit of the said judgments would be extended by it, which have been carved out by the SSC, on no discernible basis whatsoever.



14. In view of the fact that it may not be necessary to do so, I am not making any further comments on the propriety of the impugned order dated 13th August, 2018 which, nevertheless, appears highly questionable.

15. It was admitted, by the SSC before this Court, on 6th December, 2017, that the case of the petitioner would be decided on the anvil of the decisions in the case of Sudesh (supra). That being so, it is difficult to understand how para 4 of the impugned order states "that the case of the petitioner did not deserve relief, as he did not fall in any of the four categories". It is obvious that, irrespective of the propriety of the impugned order, the petitioner did fall under category (d), as conceptualized by the SSC in para 4 thereof.

16. For these reasons, it is obvious that the refusal to grant relief, to the petitioner, by the SSC, following earlier judicial authorities on the point, cannot sustain either on facts or in law.

17. As a result, the Show Cause Notice dated 14th June, 2013, issued to the petitioner, deserves to be set aside and is accordingly quashed. The impugned order, dated 13th August, 2018, insofar as it applies to the petitioner, is also quashed and set aside."

25. On perusal of aforesaid paragraphs, it is clear that the petitioner being a similarly placed candidate is eligible for appointment as sought and is entitled to all consequential benefits, thereby, treating him as having been appointed as Assistant on the same date as other candidates, who were declared successful in the examination with him.

26. On the basis of the foregoing discussion, it is also clear that the category (d) as enunciated by the respondent Commission squarely covers the petitioner's case as his representation was pending in light of the pending SLP before the Hon'ble Supreme Court. Thus, the case of the



petitioner is well within the categories formulated by the respondent Commission.

27. Therefore, the Writ Petition is liable to be allowed, and the impugned order needs to be set aside. The respondent Commission is directed to appoint the petitioner as Assistant Grade III at FCI within the period of 3 months starting from today. This direction aligns with the decision laid down by the Co-ordinate Bench of this Court in W.P. (C) No. 10518/2018 - *Amit Chikara v. Union of India*, where, the Coordinate Bench relied upon the dismissal of the SLP filed by the respondent Commission, which resulted in the matter attaining finality.

28. As held in the similar cases, the petitioner shall also be entitled to notional fixation of pay, however, shall not be entitled to any arrears.

29. The writ petition is allowed and the same stands disposed of in the above terms with no orders as to costs.

30. Pending applications, if any, also stand disposed of.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 29, 2023
SV/AV

[Click here to check corrigendum, if any](#)