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W.P.No.34026 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	05.04.2024
Pronounced on	:	30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.34026 of 2013

and

M.P.Nos.1 of 2013 & 20291 of 2016

S.V.Srinivasa Rakhavan

...Petitioner

Vs.

1.The Oriental Insurance Company Limited,
Represented by its Deputy General Manager and Promotions Authority,
Head Office,
'Oriental House",
A-25/27, Asaf Ali Road,
New Delhi.

2.Chief Manager,
The Oriental Insurance Company Limited,
Personnel Department,
Head Office, 'Oriental House',
A-25/27, Asaf Ali Road,
New Delhi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of DECLARATION, to declare the action of the respondents in not including the petitioner's name in the list of successful candidates in the written examination issued vide Notice dated 20.09.2011 by the 2nd



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Respondent for promotion to the cadre of Administrative Officer (Scale I Officer) for the year 2011 for which a written test was held on 07.08.2011 is illegal, null and void and consequently direct the respondents to consider and promote the petitioner to the post of Administrative Officer (Scale I Officer) from the date when the candidates selected for the year 2011 were promoted to the cadre of Administrative Officer (Scale I Officer) with all monetary benefits and also by directing the respondents to pay a damages of Rs. 10,00,000/- to the petitioner.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.T.S.Baskaran (for R2)
No appearance (for R1)

ORDER

This Writ Petition is filed to declare the action of the respondents in not including the petitioner's name in the list of successful candidates in the written examination issued vide Notice dated 20.09.2011 by the 2nd Respondent for promotion to the cadre of Administrative Officer (Scale I Officer) for the year 2011 for which a written test was held on 07.08.2011 is illegal, null and void and consequently direct the respondents to consider and promote the petitioner to the post of Administrative Officer (Scale I Officer) from the date when the candidates selected for the year 2011 were promoted to the cadre of Administrative Officer (Scale I Officer) with all monetary benefits and also by directing the respondents to pay a damages of Rs. 10,00,000/- to the petitioner.



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2.The case of the petitioner is that, he joined the services of the Oriental Insurance Company Limited on 05.07.1984 as a Assistant. The next avenue of promotion is to the post of Administrative Officer. This post is filled up by Departmental Channel and by Competitive Channel. On 20.06.2011, Oriental Insurance Limited issued a notification regarding the selection process. The Competitive channel consist of examination in two papers, one being department subject for 100 marks and another one for English and General Knowledge for 100 marks. The candidate who secured aggregate of 60% in both papers will be called for interview and based on the interview, the promotion will be decided. Petitioner applied for examination and wrote examination on 07.08.2011. The results were declared on 20.09.2011. Petitioner name was not there. Petitioner made representation dated 21.09.2011 to the Chief Manager, Personnel Department of Oriental Insurance Company Limited in New Delhi. He filed Application dated 20.10.2011 to the 3rd respondent under Right to Information Act to provide him answer sheet, mark sheet etc. He also made application to the Insurance Institute of India. The Insurance Institute of India by this letter dated 29.10.2011 informed that it is not Public Authority. Petitioner made application under Right to Information Act to the respondent company to provide him with a copy of the answer sheet. The respondent company had been dodging the issue and making him run from



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pillar to post. Petitioner approached the Central Information Commissioner. He passed an order on 28.12.2012, directing the Public Information Officer to provide copy of the answer sheet to the petitioner. Even thereafter, he was not furnished with copy of the answer sheet. Petitioner brought this fact to the notice of the Central Information Authority through a letter dated 04.02.2013. After receiving the copy of the letter, CPIO had informed that it received a reply stating that, Insurance Institute of India, Mumbai, has already destroyed all the answer sheets. Petitioner made application under Right to Information seeking answer sheet on 20.10.2011. Therefore, it is duty of the company to preserve it till the legal proceedings are over. Central Information Authority imposed penalty of Rs.25,000/- to the respondent company on 13.11.2013. In such circumstance, this Writ Petition is filed.

3.It is the submission of the learned counsel for the petitioner that petitioner has sought the copy of the answer sheet through Right to Information Application on 20.10.2011. The submission of the respondent that the answer sheet destroyed, for the reason that the Insurance Institute of India will not keep the answer sheet more than three months, cannot be accepted. The respondent company was expected to inform the Indian Institute to retain the answer sheet till the proceedings is over. When that is not done, petitioner is entitled for the



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relief of considering the petitioner's promotion to the post of Administrative

Officer along with the candidates selected in 2011 with all monetary benefits

and damages of Rs.10,00,000/-. In support of his submissions, he pressed on

the judgment in W.P.(MD).No.18059 of 2019 in the case of ***G.Arun Kumar Vs.***

The State of Tamil Nadu and ors.

4.In reply, learned counsel for the respondents submitted that respondents issued notification inviting applications from qualified employees for promotion. This exercise was a common one for all the four Public Sector General Insurance Companies. GIPSA is a all India governing body for all the four companies. Insurance Institute of India was invested with the task of conducting the written examination for all the four companies. Respondent would not interfere with the conduct of the written examination. For the examination conducted on 07.08.2011, results were declared on 20.09.2011. It is true that the petitioner made an application on 20.10.2011 under the right to Information Act, seeking a copy of the answer sheet, mark sheet and list of candidates appeared for examination and other details. Since the answer sheet was with the Insurance Institute of India, respondents company could not comply with the request in time. On 29.12.2011, respondent company informed that the Insurance Institute of India is not within the scope of Rights to



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Information Act, 2005. Petitioner refused to accept this letter. After continuous litigation, a second appeal was filed to the Central Information Commissioner, New Delhi and it was ordered to provide the required answer sheet to the petitioner on 28.12.2012. However, the answer sheets were destroyed and it was informed to the petitioner by letter dated 26.02.2013. Therefore, the restaurant company cannot be faulted for not supplying the copy of the answer sheet. Petitioner should have impleaded the Insurance Institute of India and GIPSA as a party to the Writ petition. Having not done, this petition is liable to be dismissed for the reasons stated above.

5.Considered the rival submissions and perused the records.

6.From the case set out, it is not in dispute that petitioner appeared for the examination held on 07.08.2011 for the post of Administrative Officer. Petitioner was not selected, obviously for the reason that, he did not secure the required mark of 60 % in aggregate. Believing that he did well, petitioner wanted to verify his answers sheet, to find out whether the answers sheet was properly evaluated. It is admitted in the counter that even on 21.09.2011, petitioner sent representation to the Chief Manager of respondent company, seeking certain details including the copy of the answer sheet of his written



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examination held on 07.08.2011.

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6.1.It is the case of the respondent that the Insurance Institute of India was not in the possession of the answer sheet and it would keep the answer sheets only for 3 months and thereafter, answer sheets would be destroyed. That was the reason that the answer sheet could not be provided to the petitioner. Respondents seeks to exonerate themselves from this case, for the reason that, it is not their responsibility to keep the answer sheet and it was only the responsibility of Insurance Institute of India, to keep the answer sheet for certain period.

6.2.From the materials produced, it is established that, right from next date of result i.e., from 20.09.2011, petitioner has been agitating for the copy of the answer sheet with the Chief Manager of respondent company and then through Rights to Information Act. Insurance Institute of India had taken a defense that, it is not a public authority and therefore, it is not liable to supply copy of the answer sheet. However the Central Information Commissioner in his order dated 15.10.2013 in Adjunct to Appeal No.CIC/DS/A/2012/002132 ordered as follows,

“4. After hearing both parties Commission notes that



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the former CPIO Shri CJ Joseph and the Chief Manager Ms Meenakshi Talwar had erred in denying information that was disclosable to the appellant under the RTI Act. Certainly the appellant has been put to great disadvantage by the denial of this information which was critical for advancement in his career. Disclosure of answer sheet of the appellant would have helped him in learning about his weaknesses and building on his strengths thereby allowing him to gain from this experience at the time of his next promotion opportunity. This opportunity was snatched away from him causing him detriment and putting him at a disadvantage. Also, the appellant and the Commission were misled regarding the true facts of the status of the information while the respondents and the Insurance Institute of India carried out a charade. The Commission draws the attention of the respondents to CIC order no. CIC/DS/A/2010/000623 in which it is made amply clear that it is the responsibility of the public authority to access and provide information from the private agency to information seekers in all cases where the public authority has outsourced its core activity to such private agency.”

6.3.This order makes it clear that, it is the responsibility of the public authority to access and provide information from the private agency to information seekers in all cases where the public authority has outsourced its core activity to such private agency.



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6.4. Thereafter, by order dated the 13.11.2013,, it was ordered as follows,

“2. After hearing the averments of the respondent, Ms Meenakshi Talwar, Commission has not found her explanation to be credible. Lack of knowledge of the law cannot be cited as plea for having denied information. The RTI application was received on 20 October 2011 and disposed of by Ms Meenakshi Talwar on 20 December 2011. The Supreme Court decision referred to above was announced on 9 August 2011 and was widely publicized. It was the responsibility of her organization to have circulated this Important decision of the apex court to the CPIOs/holders of information. Denial of Information to the appellant resulted in the destruction of the requested information as the holding authority was not alerted regarding the pendency of the matter before the public authority and the Commission. Accordingly, Commission Imposes a penalty of Rs. 25,000/- on the former Chief Manager, Ms Meenakshi Talwar as per the provisions of section 20 (1) of the Act. This amount will be deducted from her salary in five equal installments @ Rs..5,000/- pm. The Appellate Authority is directed to recover the amount of Rs. 25,000/- from the salary of Ms Meenakshi Talwar, Chief Manager/CPIO and remit the same by a demand draft or a Banker's cheque in the name of the Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Director and



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8. Petitioner filed this Writ Petition for the relief to declare the action of the respondents in not including the petitioner's name in the list of successful candidates in the written examination issued vide Notice dated 20.09.2011 by the 2nd Respondent for promotion to the cadre of Administrative Officer (Scale I Officer) for the year 2011 for which a written test was held on 07.08.2011 is illegal, null and void and consequently, direct the respondents to consider and promote the petitioner to the post of Administrative Officer (Scale I Officer) from the date when the candidates selected for the year 2011 were promoted to the cadre of Administrative Officer (Scale I Officer) with all monetary benefits and also by directing the respondents to pay a damages of Rs. 10,00,000/- to the petitioner.

9. It is true that petitioner was deprived of the copy of the answer sheet. Even if the answer sheet was made available to the petitioner, there would be no guarantee that petitioner would get 60% or more than 60% of marks. Maybe the marks awarded to him was correct. Thus, merely for the reason that answer sheet was not made available to him, petitioner cannot seek him to be promoted to the post of Administrative Officer from 2011. He can only be awarded a reasonable sum as compensation for omission on the part of the respondents,



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who failed to promptly inform the Insurance Institute of India to keep the petitioner's answer sheet in safe custody till the proceeding are over. Had the respondents intimidated the Insurance Institute of India to keep the petitioners answer sheet in safe custody till the proceedings are over, it would have kept the answer sheet, and copy would have been furnished. That was not done in this case. Therefore, respondents 1 and 2 are directed to pay a sum of rupees Rs.1,00,000/- as damages to the petitioner, for not supplying the copy of the answer sheet to him.

10.Thus, this Writ Petition is allowed in part. Consequently, the connected Miscellaneous Petitions are closed. Parties shall bear their own costs.

gd
Internet:Yes
Index:Yes/No
Speaking/Non speaking order
NCC: Yes/No

30.04.2024



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To
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- 1.The Oriental Insurance Company Limited,
Represented by its Deputy General Manager and Promotions Authority,
Head Office,
'Oriental House",
A-25/27, Asaf Ali Road,
New Delhi.

- 2.Chief Manager,
The Oriental Insurance Company Limited,
Personnel Department,
Head Office, 'Oriental House',
A-25/27, Asaf Ali Road,
New Delhi.



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G.CHANDRASEKHARAN.J.,
gd

Pre-Delivery Order in
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