

112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-14155-2022

Date of Decision:24.01.2024

SANDEEP KUMAR

..... Petitioner

Versus

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ishnoor Singh, Advocate for the petitioner.

Ms. Gehna Vaishnavi, Central Govt. Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 05.05.2022 (Annexure P-7) whereby candidature of the petitioner for the post of SSR has been rejected.

2. The petitioner pursuant to an advertisement applied for the post of SSR in Indian Navy. The petitioner appeared in the written test and cleared the same. The petitioner was also subjected to physical examination which he successfully cleared. The petitioner was called for final medical examination to be held at INS Chilka on 12.02.2020. The petitioner as per instructions was supposed to produce police verification report at the time of final examination.

3. The petitioner applied for police verification report in the office of Superintendent of Police, Jhajjar who issued certificate dated 24.02.2020 with service ID 132572005972. The petitioner produced aforesaid certificate before the respondent authorities at the time of medical examination. The petitioner was subjected to medical

examination wherein he was found fit. The respondent scrutinized documents of the petitioner including police verification report and found that as per police verification report, he is involved in an offence punishable under Section 380 of Indian Penal Code, 1860 (for short 'IPC').

4. On being confronted with this fact, the petitioner sought time to produce another certificate because he was not actually involved in the said offence. The petitioner came back to his home and contacted office of Superintendent of Police, Jhajjar. He again applied for police verification with service ID 132572008040.

5. The Competent Authority issued its report dated 12.02.2020 wherein it was confirmed that petitioner is not involved in any offence. The Deputy Inspector General of Police, Jhajjar also issued certificate dated 15.02.2020 wherein it was clarified that there is another Sandeep Singh S/o Rohtash who is involved in FIR No.285 dated 05.07.2019 under Section 380 of IPC. The petitioner approached respondents, however, they did not pay heed to him. Left with no other option, the petitioner preferred CWP No.6957 of 2020 before this Court which was disposed of vide order dated 23.02.2022 with a direction to respondents to decide representation of the petitioner within 3 months. The respondent vide impugned order dated 05.05.2020 rejected candidature of the petitioner on the ground that police verification report submitted by him is doubtful. It was further observed that petitioner has manipulated Character Certificate.

6. Mr. Ishnoor Singh, learned counsel for the petitioner submits that petitioner cannot be punished for the lapse on the part of

police or respondent authorities. The petitioner cleared written test, physical as well as medical examination. The petitioner was issued provisional appointment letter. The respondent has mechanically rejected claim of the petitioner.

7. Per contra, Ms. Gehna Vaishnavi, Central Government Counsel for the respondents-UOI submits that authorities suspected format of the certificate and signatures on the certificates which compelled them to cancel candidature of the petitioner.

8. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

9. From the perusal of record, it comes out that petitioner was extended two chances to rectify/clarify the observation made in the police verification report. He produced two certificates on 14.02.2020 confirming his character 'Good'. The respondent has rejected candidature of the petitioner on the ground that the certificates submitted by petitioner are doubtful. The relevant extracts of the impugned order read as:

“ AND WHEREAS, INS Chilka has informed that Mr. Sandeep Kumar was provided with two chances over two days to rectify/ clarify the observation in the Police Verification Certificate, issued vide service ID no. 132572005972 dated 24 Jan 2020. On 14 Feb 2020, Mr. Sandeep Kumar produced two different PVCs indicating 'good character'.

AND WHEREAS, INS Chilka has informed that, the authenticity of those two documents was suspected as the format of the certificate and the signature were at significant variance from the first certificate issued on 24 Jan 2020, whilst they were supposedly issued from the same office (SP Jhajjar). Apparently, the submission of multiple PVCs by Mr. Sandeep Kumar

in such a short time pointed to the fact that the individual had intentionally manipulated the PVC documents to gain entry into the service. Accordingly, in accordance with Para 4 of Appendix 'L' NO 27/2015 Mr. Sandeep Kumar's candidature was rejected and he was not considered for enrolment in Indian Navy(IN) during Final Enrolment Medical Examination at INS Chilka."

10. From the perusal of above-noted extracts of the impugned order, it is quite evident that respondents granted opportunity to petitioner to produce fresh police verification report which he submitted well within time. The respondent has rejected candidature of the petitioner on the ground of suspicion. The respondent has doubted format of the certificate as well as signature of the officer who had signed the certificates.

11. It is apt to notice here that State of Haryana has filed reply wherein State has confirmed authenticity and genuineness of the certificates issued by Competent Authorities. The relevant extracts of reply reads as:

"2. That after verification by the local police, a FIR no.285 dated 05.07.2019, under Section 380 IPC, Police Station-Civil Line Sonipat was shown registered against Sandeep Kumar S/o Sh. Rohtash Singh R/o VPO Birohar, Police Station Salhawas, District Jhajjar and the office of the then respondent No.4 issued a character certificate vide Service ID no. 132572005972 in the name of Sandeep Kumar S/o Rohtash Singh R/o VPO Birohar, Police Station Salhawas, District Jhajjar with the record of the above mentioned FIR.

3. That the petitioner had again applied for police verification on the portal of Haryana Police citizen Services on 12.02.2020 and after thorough verification

by the local police this time, as per record, no FIR was found registered against the present petitioner and character certificate of the present petitioner was issued vide Service ID no. 132572008040 without any FIR.

4. *That the previous character certificate issued in the name of the present petitioner was issued containing record of FIR no. 285 dated 05.07.2020, U/s 380 IPC, Police Station- Civil Line Sonipat which is actually registered against one other Sandeep S/o Rohtash who is also resident of VPO Birohar, Police Station Salhawas, District Jhajjar but after proper verification, it was revealed that he belongs to Schedule caste(Balmiki) and the present petitioner belongs to Backward class(prajapat/kumhar).*

5. *That due to similarity of name, father's name and address, the previous character certificate was inadvertently issued in favour of the petitioner by the office of respondent no.4 with the record of FIR no. 285 dated 05.07.2019, U/s 380 IPC, Police Station- Civil Line Sonipat.*

6. *That the then Deputy Inspector General of Police cum Superintendent of Police also issued a certificate no. 2850/Sec dated 15.02.2020 in this regard in favour of the present petitioner mentioning all the above mentioned facts which is already enclosed as Annexure P-4."*

12. Learned counsel for the respondents-UOI has expressed her inability to controvert averments made in the reply of the State Government.

13. The petitioner has not secured certificate from a private agency whereas certificates were issued by Higher Police officers. The certificate dated 15.02.2020 was signed by Deputy Inspector General

cum Superintendent of Police. The respondent within few hours forgetting days could get verified authenticity of the certificates whereas respondent left the petitioner in lurch. This Court is at pain to notice that instead of discharging duties in just, fair and rightful manner, the respondent has acted in whimsical, capricious and mechanical manner. The attitude of the respondents seems to deny opportunity to petitioner to serve the force whereas they should act like responsible officers.

14. In *Maneka Gandhi v. Union of India, (1978) 1 SCC 248*, a Constitution Bench elaborated and expounded the relationship between different articles guaranteeing fundamental rights and enunciated that every action of the State is violative of article 14 which is arbitrary. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Justice Bhagwati speaking for the bench has held:

“7. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its allembicing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions

and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3 namely, that “from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14”. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or nonarbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.”

15. Supreme Court in ***Vashist Narayan Kumar (s) Versus The State of Bihar & Ors 2024 SCC OnLine SC 2*** while dealing with the question as to whether candidature of a candidate can be cancelled when the error committed is trivial in nature has held:

“10. The question that arises for consideration is whether the error committed in the application form, which was uploaded is a material error or a trivial error and was the State justified in declaring the appellant as having failed on account of the same.

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15.The exception for trivial errors or omissions is for the reason that law does not concern itself with trifles. This principle is recognized in the legal maxim - *De minimis non curat lex*.

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19. In this case, the appellant has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play any part in the selection process. The State was not justified in making a mountain out of this molehill. Perhaps the rarefied atmosphere of the cybercafe, got the better of the appellant. He omitted to notice the error and even failed to avail the corrective mechanism offered. In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 [Prince Jaibir Singh vs. Union of India & Ors.], this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.

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25. On the peculiar facts of this case, considering the background in which the error occurred, we are inclined to set aside the cancellation. We are not impressed with the finding of the Division Bench that there was no prayer seeking quashment of the results declared over the web. A reading of the prayer clause in the writ petition indicates that the appellant did pray for a mandamus directing the respondents to consider the candidature treating his date of birth as 18.12.1997 and also sought for a direction for issuance of an appointment letter. A Writ Court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities.

16. It is well known fact that in our country, it is very difficult to get job especially Government job. The petitioner got selected for the post of SSR with the respondent-department. The appointment is neither fundamental nor vested right of the petitioner, however, matter needs to be examined in totality. The denial of appointment, ignoring the second police verification report disclosing non-involvement of petitioner in criminal case, would amount to indirect punishment. The petitioner wants to serve armed forces and he should not be deprived from an opportunity which he deserves.

17. In the wake of above discussion and finding, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The impugned order dated 05.05.2022 (Annexure P-7) is hereby quashed.

18. The respondents authorities are directed to do the needful within 3 months from today. It is hereby clarified that petitioner would not be entitled to salary for the past period and he would be entitled to all the service benefits from the date of joining. As stated by counsel for the respondents, the last batch of SSR was recruited in February’ 2022, the appointment of the petitioner would be considered as last candidate of 2022 batch.

(JAGMOHAN BANSAL)

JUDGE

24.01.2024

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>