2023 INSC 455

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2793-98 OF 2023

Sachit Kumar Singh & Ors. Etc. Etc.
...Appellant(s)

Versus

The State of Jharkhand & Ors. Etc. Etc.
...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the Division Bench of the High Court of Jharkhand at Ranchi in respective Letters Patent Appeals, by which, the Division

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Date: 2023.04.28 16:27:29 IST
Reason:

Bench of the High Court has dismissed the said appeals and has not interfered with the common judgment and order passed by the learned Single Judge dismissing the writ petitions, the original writ petitioners – candidates who applied for the post of Sub Inspector of Police have preferred the present appeals.

2. That the respondents – Jharkhand Staff Selection Commission (Commission) invited applications for appointment to the post of Sub Inspector of Police through limited competitive examination from the eligible candidates vide advertisement No. 09/2017. That based on the requisition sent by the parent department, 1544 posts were advertised, against which 3350 applications

were received by the Commission. Total 3219 candidates appeared in the examination including the appellants herein. It was mandatory for the candidates to obtain a minimum of 45% of marks in both the papers (Paper-2 and Paper-3) and a total of 50% marks for qualification in the written examination. Five percent relaxation was allowed to the SC/ST candidates in the minimum qualification marks. The examination was based on OMR basis. That out of total 3219 candidates appeared in the examination only 663 candidates were able to obtain the minimum qualification marks in the written examination. Rest including the original writ petitioners – appellants herein were found ineligible having failed to obtain the minimum qualifying marks. 399

candidates were declared successful, however, thereafter, on the basis of physical and medical examination, only 396 candidates were found eligible for recommendation and came to be appointed.

2.1 The original writ petitioners who were short of one or two marks in getting the minimum qualifying marks made representations dated 01.12.2017, 06.01.2018 and 08.01.2018 and raised the objections against key answers. According to them, key answers with respect to nine questions were wrong and/or incorrect. That thereafter, the respective original writ petitioners filed the writ petitions before the High Court for appropriate reliefs or directing to strike down the questions which were out of the syllabus and/or of

which the key answers were incorrect. They prayed for obtaining the expert's opinion. The writ petitions were opposed, *inter-alia*, on the ground that they have not raised any objection within the stipulated time as informed by the Commission i.e., from 01.12.2017 to 08.12.2017. It was pointed that even accepting that all the answers of those questions have wrongly been printed but the same is wrong for all in general, therefore, no prejudice has been caused to the original writ petitioners/appellants. The learned Single Judge dismissed the writ petitions.

2.2 Feeling aggrieved and dissatisfied with the common judgment and order passed by the learned Single Judge dismissing the writ

petitions, the appellants herein preferred the present letters patent appeals before the Division Bench of the High Court. By the impugned common judgment and order, the Division Bench of the High Court has dismissed the appeals, mainly, on the ground that no objections were raised between the period from 01.12.2017 to 08.12.2017 within which the candidates were required to submit their objections, if any, and therefore, their prayer for obtaining the expert's opinion and/or for re-evaluation is not required to be granted. The Division Bench of the High Court also observed that even if, there is some discrepancy in the answers such discrepancy is for all the candidates and therefore, no prejudice will be said to be caused to the original writ petitioners. The

Division Bench of the High Court also observed that even if the marks would be added of such questions in favour of the writ petitioners/appellants, the same would also be awarded to other candidates and in that view of the matter, there will be no change in the merit position as existing on the date as they were all short of one or two marks from the last selected candidate and if one or two marks would be awarded to them the same would be awarded to the successful candidates as well, therefore, the fact remains the same with respect to the position of the appellants in comparison to the successful candidates.

2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order

passed by the High Court dismissing the letters patent appeals, the original writ petitioners have preferred the present appeals.

3. Shri Gopal Sankaranarayanan, learned Senior Advocate has appeared on behalf of the appellants – original writ petitioners and Shri Anil K. Jha, learned counsel has appeared on behalf of the Jharkhand Staff Selection Commission and Shri Jayant Mohan, learned counsel has appeared on behalf of the State.

4. Shri Gopal Sankaranarayanan, learned Senior Advocate, appearing on behalf of the original writ petitioners - appellants has submitted that as such the first representation was made by the original writ

petitioners on 01.12.2017 which was within the time limit for submitting the objections. It is submitted that therefore, the High Court has materially erred in non-suiting the original writ petitioners on the ground that the objections were not raised within the stipulated time for raising the objections.

4.1 It is further submitted that even the High Court has also materially erred in observing that even if the marks would be added of such questions, it will be added to all the candidates and therefore, no prejudice shall be caused to the original writ petitioners. It is submitted that in fact, the respective original writ petitioners were not found eligible solely on the ground that they failed to obtain minimum qualifying marks. It is submitted

that as such the respective original writ petitioners were short of one or two marks only in achieving the minimum qualifying marks. It is submitted that therefore, if the marks would have been added of such questions of which the answers were found incorrect, the original writ petitioners would be achieving the minimum qualifying marks and therefore, their cases would have been considered. It is submitted that therefore, the High Court has materially erred in observing that no prejudice shall be caused to the appellants even if the marks would have been added of such questions.

4.2 It is further submitted by learned Senior Advocate appearing on behalf of the appellants that out of 1544 posts advertised

only 396 appointments were made and the remaining posts had remained vacant.

5. While opposing the present appeals, learned counsel appearing on behalf of the Commission as well as the State have vehemently submitted that as original writ petitioners failed to achieve the minimum qualifying marks and therefore, they were found to be ineligible. It is submitted that as such the original writ petitioners submitted the objections after the prescribed period to raise the objections and therefore, the High Court has rightly non-suited the original writ petitioners.

5.1 It is further submitted that as rightly observed by the High Court that even if there was some discrepancy in the answers with

respect to certain questions, the same was with respect to all the candidates and therefore, even if, the marks are added with respect to such questions, no prejudice shall be caused to the original writ petitioners as similar marks will have to be added in case of other selected candidates.

5.2 Making the above submissions, it is prayed to dismiss the present appeals.

6. At the outset, it is required to be noted that the original writ petitioners applied for the post of Sub Inspector of Police. Their cases were not considered for further appointment as they were found ineligible, having failed to achieve the minimum qualifying marks. They submitted their objections with respect to nine questions and according to the original

writ petitioners, answers with respect to nine questions were incorrect. The Division Bench of the High Court has refused to consider the objections on merits, mainly, on the ground that objections were raised beyond the prescribed period of submitting the objections. The High Court has noted that the objections were filed on 06.01.2018 and 08.01.2018. However, it is the case on behalf of the original writ petitioners that the first objection was submitted on 01.12.2017 the copy of which is placed on record (page 235 of SLP paper books). Therefore, the High Court ought to have considered the objections on merits and ought to have considered obtaining the expert's opinion. The High Court has as such taken too technical view and has erred in refusing to consider the

objections on merits. At this stage, it is required to be noted that even if, the objections were raised on 06.01.2018 and 08.01.2018, the same were prior to the date of the declaration of result i.e., on 09.01.2018. Therefore, the High Court ought to have considered the objections on merits and/or called for the expert's opinion on nine questions of which as per the original writ petitioners, answers were incorrect. If the expert's opinion would have been taken on the correct answers and/or on the answers with respect to such nine questions for which the objections were raised, the truth would have come out.

7. Even, the High Court has materially erred in observing that no prejudice shall be caused to

the original writ petitioners even if the marks would have been added with respect to such questions as the marks would be added in case of other successful candidates also. However, it is required to be noted that as the original writ petitioners failed to achieve the minimum qualifying marks by one or two marks only, therefore, if some marks would have been added they would be achieving the minimum qualifying marks and therefore, they would have been eligible and their cases would have been considered on merits. Therefore, the High Court is not right in observing that no prejudice shall be caused to the original writ petitioners.

8. As the High Court has refused to consider the objections on merits on the ground that the

objections were not raised within the stipulated period prescribed for submitting the objections and thereby, has refused to get the expert's opinion, the matter is to be remanded to the Division Bench of the High Court for fresh consideration of the appeals on merits with the observation that it will be open for the Division Bench to call for the expert's opinion on the questions of which their answers were alleged to be incorrect for which the objections were raised so that if ultimately it is found that the answers with respect to some questions were incorrect and consequently, the marks are added and they may become eligible.

9. In view of the above and for the reasons stated above, present appeals are allowed in

part. The impugned common judgment and order passed by the High Court dismissing the Letters Patent Appeals is hereby quashed and set aside. Matters are remitted back to the Division Bench of the High Court for fresh decision of Letters Patent Appeals in accordance with law and on its own merits and in light of the observations made hereinabove. The Letters Patent Appeals on remand be decided and disposed of at the earliest preferably within a period of three months from the date of the present order. As observed hereinabove, it will be open for the Division Bench of the High Court to call for the expert's opinion with respect to the questions of which the answers were alleged to be incorrect for which the objections were raised. However, the same is left to the High

Court. Present appeals are accordingly allowed in terms of the present order. No costs.

.....J.
[M.R. SHAH]

NEW DELHI; .....J.
APRIL 28, 2023 [C.T. RAVIKUMAR]