

Than Singh Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Jul-01-2015

Appellant : Than Singh

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Than Singh vs. The State of Raj. & ors. D.B. Civil Special Appeal No.388/2015 under Article 225 of the Constitution of India and Rule 134 of the Rajasthan High Court Rules, against the order dated 6.5.2015 passed by the learned Single Judge in S.B.Civil Writ Petition No.4669/2015. Date of Order :

1. 7.2015 PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR HON'BLE MISS JUSTICE JAISHREE THAKUR. Dr. Nupur Bhati, for the petitioner. BY THE COURT:(Per Hon'ble Ms. Jaishree Thakur,J.) 1. The present Special Appeal has been preferred against the order of the learned Single Judge dated 6.5.2015 dismissing the writ petition filed by the appellant.

2. The appellant-writ petitioner appeared in the written examination in the General Category for the post of Constable. Pursuant thereto he was issued Roll No.101517 and appeared in the written examination which was held on 23.1.2011. The appellant's name was not reflected in the result list prepared by the

respondents, resultantly was not issued a call letter to appear for the physical test. Thereafter, the appellant 2 preferred an application under the RTI Act dated 13.7.2011 and 14.7.2011 seeking information regarding his marks and other information. The respondents vide letter dated 21.10.2011 gave information regarding cut-off marks of the General Category which was 49 marks. Another application was preferred under the RTI Act on 21.7.2011 seeking the details of the marks obtained by him. On 30.9.2011 the respondents gave reply and reasons for declaring the appellant as ineligible. The reason given was that the appellant did not tick mark on the column of 'Gender'. The appellant was also informed that the total marks obtained by him was 68.95 and the cut-off for the General Category was 49 marks. Another application under the RTI Act dated 11.3.2015 was preferred by the appellant asking for a copy of the OMR Sheet filled by the appellant during the examination. The same was supplied to him. Thereafter, the appellant preferred S.B.Civil Writ Petition No.4669/2015 before the High Court which came to be dismissed vide order dated 6.5.2015 on the ground that the process of appointment sought to be challenged by the appellant was concluded a long time back and since the petitioner had not challenged the rejection of his candidature for almost four years, he would not be entitled to the relief claimed for. The 3 writ petition was dismissed on the ground of delay and laches. Aggrieved against the said order, the present special appeal has been filed.

3. We have heard the learned counsel for the appellant and have perused the record of the case.

4. Learned counsel for the appellant has sought to agitate and argue that the rejection of the candidature of the appellant only on the ground that the column 'Gender' had not been filled, is highly arbitrary, unjust and illegal, specially in view of the fact that the admit card issued by the authorities reveals the gender of the appellant as 'male' and, therefore, the rejection of the candidature of the appellant on this count was highly unreasonable. It is further argued that the admit card was issued on the basis of the details furnished in the application form and in case the application form had not been ticked in the 'Gender' column, this being a bona fide and inadvertent mistake, should not be held against the appellant specially in view of the fact that the appellant had secured 68.95 marks.

5. Further the counsel for the appellant has also relied upon the judgment rendered in S.B.Civil Writ Petition No.7188/2012-Kanwaraj Singh v. State of Rajasthan and ors. decided on 10.9.2013 wherein the candidate who had applied for recruitment to the post of 4 Constable pursuant to advertisement dated 14.10.2010 and was not called for the physical test despite the fact that he had secured 67.50 marks in the written examination. The candidature had been rejected on account of the fact that he had not indicated his gender in the column specified for the purpose prescribed in the proforma. An argument had been raised in the said writ petition filed that he had been issued an admit card notwithstanding the fact that the column regarding disclosure of gender had not been filled. The learned Single Judge, while allowing the writ petition, came to the conclusion that not furnishing the said information while filling upon the application form was not significant and, therefore, rejecting the candidature of the petitioner solely on the ground of not indicating gender in the application form was illegal.

6. What has to be noted is that the petitioner, namely, Kanwarraj Singh was vigilant and diligent enough to pursue his case. He had moved an application on 27.2.2012 seeking information regarding marks obtained by him in the written examination. After being informed that he had secured 67.50 marks in the written examination and on coming to know that his candidature has been rejected on account of not indicating the gender in the column prescribed, he preferred the writ petition in the year 2013 itself without much delay.

7. Admittedly, in the present case the appellant's candidature was rejected in the year 2010 on the ground that column of 'Gender' in the form was not filled. The appellant under the information obtained under RTI Act became aware of the reasons for the rejection of his candidature as far back as in the year 2011 itself. Since September, 2011 the appellant kept quiet and remained silent having accepted his rejection. It is only in the month of March, 2015 that the appellant sought to revive his claim and filed a fresh application under RTI Act for procuring the OMR Sheet. Once the appellant was aware of the fact that he had obtained 68.95 marks which was higher than the last marks obtained, that is 49 marks, he should have been vigilant enough to seek redressal of his grievance. There is no explanation as to why he did not seek redressal for a long period of three years.

He has kept silent for inordinate period and preferred the instant writ petition, out of which the present appeal arises in May, 2015. no benefit can be drawn by the appellant from the judgment rendered in Kanwarraj Singh case supra.

8. It is well settled principle of law that courts should be loathe to interfere in the stale claims. In Shiv Dass v. 6 Union of India (2007) 9 SCC274 the Hon'ble Supreme Court in para 8 has held as under:- It was stated in State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC566 that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.. 9. In the present case, the appellant-petitioner kept silent since 2012 and only sought to agitate his claim in 2015. In the meanwhile the selection pursuant to the advertisement would have been finalized and third party rights accrued in favour of selected candidates who are not before us . 7 10. Thus, keeping the above noted facts in mind, we find that there is no infirmity in the order dated 6.5.2015 passed by the learned Single Bench and hence dismiss this appeal being devoid of merit. (JAISHREE THAKUR),J (GOVIND MATHUR),J.

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