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Court : Delhi

Decided On : Feb-22-2006

Reported in : 129(2006)DLT191; 2006(87)DRJ677; 2007(2)SLJ256(Delhi)

Judge : Mukul Mudgal and; H.R. Malhotra, JJ.

Appeal No. : W.P.(C) 1974-1980/2005

Appellant : Vikas Kumar and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Reeta Kaul, Adv.

Advocate for Pet/Ap. : Ajay Vir Singh Jain, Adv

Judgement :

Mukul Mudgal, J.

1. Rule DB. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. Pursuant to an advertisement published in June, 2004, the petitioners filled up their forms for recruitment of 1435 vacancies to the post of Constables in BSF from the States of Delhi, UP & Uttaranchal. The petitioners cleared the written test, interview, physical test and the medical examination and were given reporting

letters on the basis of their selection. It appears that thereafter the petitioners were told not to continue their stay in the BSF unit where they had reported because of the apparent view taken by the respondents that the petitioners did not fulfill the conditions as stipulated in the reporting letters. The only cause why the petitioners are said to be not qualified according to the respondents is that they do not have certificate of hill area which was given in the letters selecting the petitioners, which certificate was a sine qua non of the selection of the petitioners.

3. The main plea of the learned counsel for the petitioners is that the petitioners' exclusion from the unit which prevented them from deriving the benefit of the selection, was done without any semblance of any show cause notice to the petitioners in complete violation of the principles of natural justice and the petitioners, who had produced certificates were not given any opportunity to establish the authenticity/efficacy of such certificates and the certificates were ruled out by the respondents without just cause.

4. In *T.C. Bassappa v. T. Nagappa* : [1955]1SCR250 the Hon'ble Supreme Court laid down that certiorari is granted when the Court has acted without jurisdiction or in excess of its jurisdiction. It was also held that a writ of certiorari may also be issued if the Court or Tribunal acted in flagrant disregard of the rules or procedure or in violation of principles of natural justice where no particular procedure is prescribed. It has also been held that an error in the decision or determination may also be amenable to a writ of certiorari subject to the fact that the error is manifest and apparent on the face of the proceedings i.e. when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of certiorari.

5. In the Constitution Bench judgment of the Hon'ble Supreme Court in *Custodian of Evacuee Property v. Khan Saheb Abdul Shukoor* : [1961]3SCR855 , the following principles were laid down :-

(1) Certiorari will be issued for correcting errors of jurisdiction.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction as when it decides without giving an

opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is patent error, which can be corrected by certiorari but not a mere wrong decision.

6. In *Syed Yakoob v. K.S. Radhkrishnan*, : [1964]5SCR64 it was held that when a question is decided without giving opportunity of hearing to a party affected, a writ of certiorari can be granted. Similarly in *Harbans Lal v. Jagmohan Saran*, : AIR 1986 SC302 it was held that certiorari shall issue if there is any breach of principles of natural justice.

7. We are of the view that the plea of the learned counsel for the petitioner in so far as the lack of opportunity to the petitioners is justified. Even if the respondents have ruled out the petitioners' appointment pursuant to the selection letter dated 16th October, 2004 which is part of Annexure P2 collectively. This ought not to have been done without affording the petitioners any opportunity of establishing the authenticity/genuineness of the hill area certificates submitted by them since that was the reason for cancelling their selection. Such action cancelling the effect of the selection of the petitioners is in complete violation of the principles of natural justice as per the position of law noticed above.

8. Accordingly we set aside the action by the respondents in ruling the petitioners as being disentitled to selection on the basis of the letter of 16th October, 2004. The respondents are, therefore, directed to issue show cause notices to the petitioners through their counsel on or before 15th March, 2006. The petitioners will furnish their replies to the show cause notice to the respondents on or before 15th April, 2006 through the counsel for the respondents. The respondents are thereafter directed to pass a reasoned order on the basis of show cause notice(s)

and its reply not later than 15th May, 2006. In case the petitioners' replies are found satisfactory they shall be employed with effect from 1st June, 2006. In case the petitioners are aggrieved by the disposal of reply and the show cause notices by the respondents, they will be at liberty to assail such disposal in accordance with law.

9. With the aforesaid directions, the writ petition stands disposed of accordingly. A copy of this order be given dusty to the counsel for the parties.

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