

Gianender and ors. Vs. Uoi and ors.

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Court : Delhi

Decided On : Dec-22-2010

Judge : Pradeep Nandrajog; Siddharth Mridul, Jj.

Appeal No. : W.P.(C) 4928/2010

Appellant : Gianender and ors.

Respondent : Uoi and ors.

Advocate for Def. : Mr.A.S.Chandhiok; Mr.Sandeep Bajaj; Ms.Riya Kaul, Advs.

Advocate for Pet/Ap. : Mr.Abhijat; Mr.Mohit Jolly, Advs.

Judgement :

1. OA No.2096/2009 filed by the petitioners has been dismissed vide impugned order dated 8.12.2009 passed by the Tribunal.
2. The grievance of the petitioners can be put in two compartments.
3. The first grievance pertains to the petitioners not being promoted as Income Tax Officer on the basis of marks obtained by them by considering their entitlement for the unreserved vacant posts in the promotee quota for Income Tax Officers. The second grievance pertains to persons junior to the petitioners being promoted post 2008 and as per the petitioners who had less marks than them.
4. The petitioners have lost on both counts before the Tribunal.

5. The petitioners were appointed as Inspectors in the Income Tax Department on the strength of they being members of a Scheduled Caste. They do not dispute that a limited departmental qualifying examination has to be cleared by all candidates working as Inspectors to be promoted as Income Tax Inspector. Parties are not at variance that the examination is a qualifying and not a competitive examination and out of those who attained the cut off percentage only those would be promoted who are senior i.e. based on seniority the vacancies get exhausted. Parties are also not at variance that in the year 2004 when the petitioners took the Limited Departmental Qualifying Examination qualifying marks prescribed for general candidates were 60% and for SC/ST candidates 55%. Parties are not at variance that the petitioners obtained marks ranging between 55% to 58.9% i.e. none of them obtained 60% marks.

6. Pertaining to the first issue raised by the petitioners it may be noted that all of them have admittedly achieved the qualifying marks to earn eligibility for promotion but could not be promoted due to the reason the vacancies falling the SC quota were taken up by persons senior to the petitioners. The claim of the petitioners is that they ought to have been adjusted against unreserved vacancies and for which they claim that qua them the qualifying eligibility cut off should be treated as 55%.

7. The argument needs to be rejected for the simple reason the qualifying cut off being 55% was for SC/ST candidates while competing in their own category. If petitioners desire to be promoted in the unreserved category they must compete at the same level as other unreserved category candidates compete. Petitioners cannot claim a dual benefit. They cannot claim a right to be promoted within their own category with a lower cut off point and at the same time predicate a right to be promoted in the general category with the lower cut off point.

8. To put it differently all those who compete as unreserved candidates must qualify on the same cut off point and not that SC/ST candidates would get the dual benefit of a lower cut off point and eligibility within their quota and additionally retaining the benefit of the lower eligibility claim a right to be promoted in the unreserved category.

9. We may note as a matter of fact that no person in the unreserved category has been promoted having less than 60% marks.

10. On the second plea it may be noted that in the year 2008 the eligibility norms were lowered being 55% for general candidates and 50% for SC/ST candidates and the petitioners never took the subsequent examination. They claim that since the qualifying examination was not a competitive examination, for all times to come, they have to be treated as qualifying for promotion. The grievance on this point is that within the SC category persons junior to them have been promoted till, under protest the petitioners took the qualifying examination and on clearing the same and being senior enough earned a promotion. As per the petitioners they were justified in not taking subsequent exams and for which they rely upon a response dated 21.5.2009 to an RTI query. The query reads as under:-

"Can I again appear in Departmental ITOs Examination for improvement in aggregate marks. If yes, please inform me the relevant rule allowing the candidate to re-appear improvement. Kindly provide me the copy of that rule."

11. The response to the query reads as under:- "In the existing rules, there is no provision for reappearance for improvement, if the candidate has already passed the examination."

12. The petitioners want this Court to read the question and the reply to mean that once a candidate appears at an exam and qualifies he is not permitted to take a subsequent exam.

13. We are sorry, the contention does not merit any approval for the reason information sought was whether a candidate can improve the marks by re-appearing. The words re-appearing in the question are of importance. The answer given is that there is no provision for reappearance for improvement. The question obviously relates to reappearance i.e. taking the same test for improving the marks and for which the response was No. The question was not whether a candidate who has cleared a qualifying examination in a particular year was required to take examinations held in the subsequent year or was he to take the examinations conducted in the subsequent year. We could have appreciated that to this

question if the answer was No, could an argument be predicated that a qualifying examination in one year enures for subsequent years as well.

14. As for the subsequent years qualifying percentage was lowered, is itself proof that depending upon the level of difficulty, different cut offs are prescribed and that each qualifying examination is limited in duration and not applicable for all times to come.

15. Learned counsel for the petitioners drew our attention to an order dated 16.3.2006 passed by a Division Bench of the Andhra Pradesh High Court in W.P.(C) No.2758/2006, but we note that the order in question is admitting the writ petition and on the issue of stay has taken a prima facie view. We only note that prima facie view taken at the stage of passing interim orders is neither here nor there.

16. We find no merit in the writ petition which is dismissed.

17. No costs.

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