

(2017) 12 RAJ CK 0012
In the Rajasthan High Court
Case No : 9376 of 2016

Anil Kumar Meena S/o Shri Dinesh Chandra Meena	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 12 RAJ CK 0012

Hon'ble Judges : Ashok Kumar Gaur

Bench : SINGLE BENCH

Advocate : Amit Mathur, P.C.Sharma

Final Decision : Allowed

Judgement

1. The present matter comes up on application no.52291/2017 filed by the petitioner for deciding the writ petition as per the orders passed by this Court in S.B.Civil Writ Petition No.3281/2015 (Anil Kumar Vs. Union of India & Ors.), decided on 09.03.2017 and order passed in S.B.Civil Writ Petition No.2937/2015 (Ramesh Kumar Kuri & Ors. Vs. Union of India & Ors.) and other connected matters, decided on 10.05.2017.
2. The learned counsel for the petitioner submits that petitioner has also challenged the rejection of his candidature on the ground of "mis-match of thumb impression". The Counsel for the petitioner has submitted that the disputed thumb impression were sent for examination to the Forensic Laboratory and favourable

report has been given by such Lab. The counsel further submits that self same controversy has been decided by this Court in the case of Anil Kumar Vs. Union of India & Ors. as well as in Ramesh Kumar Kuri & Ors. Vs. Union of India & Ors. (supra) and as such, the petitioner is also entitled for the same relief as has been granted by this Court.

3. Per contra, Mr. P.C. Sharma, the learned counsel for the respondents submits that the case of the petitioner is distinguishable and the report is not in his favour as claimed by him.

4. I have gone through the orders passed by the coordinate Bench in the case of Ramesh Kumr Kuri & Ors. Vs. Union of India & Ors. (supra). The Court while relying on another judgment of this Court in the case of Anil Kumar Vs. Union of India (Ors. (S.B.Civil Writ Petition No.3281/2015, decided on 09.03.2017, passed the following order:-

"(4) Accordingly, I find that this writ petition deserves to be allowed in terms of the judgment passed by the coordinate Bench in the case of Anil Kumar (supra) which reads as under : - "The present writ petition has been filed under Article 226 of the Constitution of India, praying that a writ in the nature of mandamus be issued and respondents be directed to issue appointment letter in favour of the petitioner and furthermore, action of the respondents to cancel the examination of the petitioner be set aside. Admittedly, the petitioner in pursuance of Employment Notice No.1/11, issued by Indian Railways applied for the recruitment as Constable in Railway Protection Force. The petitioner was allotted roll number. The petitioner had taken written examination. The petitioner also passed physical efficiency test and thereafter, he appeared in the interview. Mr. P.C. Sharma, the learned counsel for the respondent Railway, has submitted that later on, the department learnt that copying at large scale had taken place and certain candidates had taken examination by way of impersonation. The learned counsel for the respondent contended that definitive information was received by the department that candidates arranged highly qualified persons to appear in their place in the examination and impersonation had taken place. The learned counsel for the respondent has contended that in order to restore sanctity and purity of the examination, thumb impressions on the applications form and answer sheets (OMR Sheet) were got compared from

the Fingerprint Expert. The learned counsel for the respondents appearing for the Railways, has further submitted that Fingerprint Expert opined that the thumb impression on the application form and on the OMR Sheet were different, hence, the candidature of the petitioner was cancelled and a criminal prosecution has launched. Mr. Hem Singh Rathore, the learned counsel for the petitioner has contended that thorough investigation was carried by the police and investigating agency came to conclusion that there is no evidence to prosecute the petitioner. It is contended that the investigating agency had also sent application form of the petitioner and the answer sheet (OMR Sheet) for verification and it was concluded that there is no evidence available to send the petitioner for trial. This Court on 6.3.2017, had passed the following order:-

"SHO, Police Station, Sadar, Jaipur City (South), is directed to produce the report of Forensic Science Expert obtained by him from the Forensic Science Laboratory regarding the comparison of specimen thumb impression of the petitioner and the thumb impression appended by the petitioner on the OMR sheet and the application form. List on 09.03.2017.

Mr. Sanjay Kumar Sharma, Govt. Counsel, is directed to ensure presence of the Investigating Officer of case FIR No.476/2014 dated 05.12.2014, Sadar, Jaipur City (South), along with record on the date fixed. Copy of this order be handed over to Mr. Sanjay Kumar Sharma, Govt. Counsel, under the seal and signature of the Court Master for onward transmission and necessary compliance."

In pursuance of the said order, Mr. Sanjay Sharma learned Govt. Counsel through ASI, Mr. Rameshwar, Police Station Sadar, Jaipur City has produced before this Court the report of the Fingerprint Expert from the Forensic Science Laboratory, Jaipur. The said report qua petitioner reads as under:-

"XXXVL Disputed thumb print Q43 alleged to be of Anil Kumar S/O Vishram Meena is unfit for comparison being smudged & lacking in sufficient number of clear ridge details. Note:- Admitted thumb prints marked A100, A101, A102 of Anil Kumar S/O Vishram Meena are similar & identical with his own specimen left thumb print marked T71L."

The learned counsel for the petitioner has submitted that the answer sheet (OMR Sheet), contained the thumb impression of the petitioner as per the report of experts. It is further submitted that at the time of physical efficiency test, and the interview thumb impression of the petitioner were also obtained. It is submitted that thumb impression on OMR sheet, and documents prepared at the time of physical efficiency test and interview tally. The learned counsel for the petitioner, thus, submits that it stands conclusively proved that it is petitioner who had undertaken the written examination, physical efficiency test and the interview. The learned counsel for the petitioner submits that admitted signatures on the answer sheet (OMR Sheet) attendance sheet at the time of physical efficiency test and interview, contain thumb impression of the petitioner and it is confirmed by the Fingerprint Expert, FSL.

This assertion made by the learned counsel for the petitioner has gone uncontroverted.

After hearing the learned counsel for the parties, there remain no doubt that it is petitioner who had undertaken the written examination and appeared in the physical efficiency test and he had also appeared in the interview. Merely because the thumb impression on the application form is smudged, the petitioner cannot be ousted from the selection process. It is good for the respondents to adhere to the highest standards in a recruitment of the employment but the respondents cannot be harsh to deny employment to rightful claimant. Merely because thumb impression is smudged on the application form and a doubt has been cast, the petitioner cannot be ousted from the selection process. Thus, the respondents without application of mind had denied employment to the petitioner. At this stage, unable to dislodge the argument raised by the learned counsel for the petitioner, that it is the petitioner who had appeared in the written examination and succeeded on merit, the learned counsel for the respondent Railways, has raised hyper-technical objections. Merit has to prevail, merit has to shine therefore, less meritorious persons have to make way for meritorious persons.

Consequently, the present writ petition is allowed.

The respondents are directed to issue appointment letter in favour of the petitioner to enable him to join his services. The petitioner shall be only entitled to notional benefits upon his joining."

5. The present writ petition is also required to be decided in terms of the orders passed by the coordinate Bench and accordingly, this writ petition is allowed in the same terms as in the judgment passed by coordinate Bench of this Court in the cases of Anil Kumar and Ramesh Kumar Kuri (*supra*). The required exercise of considering the case of the petitioner for appointment and sending for training and for other purposes like document verification etc. shall be undertaken within a period of three months from the receipt of the copy of this order. The application (52291/2017) also stands allowed.