
(2010) 03 DEL CK 0024

In the Delhi High Court

Case No : Writ Petition (C) No. 1787 of 2010

Naresh Singh and Others

APPELLANT

Vs

Bharat Sanchar Nigam Limited and Others

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 03 DEL CK 0024

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Amit Gupta, for the Appellant; Dinesh Agnani, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners have challenged the order dated 19th October, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A No. 885/2009 titled as Sh. R.P. Prasad and Ors. v. Bharat Sanchar Nigam Limited and Ors. whereby the counsel for the petitioners was allowed to withdraw the original application of the petitioners with liberty to the petitioners to challenge the recruitment rules and methodology adopted by the respondents in their selection by impleading the affected parties. The petitioners has also challenged the dismissal of their miscellaneous application No. 2585/2009 seeking recalling/modification of the order dated 19th October, 2009 which was also dismissed by the Tribunal by order dated 19th February, 2010 holding that miscellaneous application is not maintainable.

2. The learned Counsel for the petitioners has very emphatically contended that the order dated 19th October, 2009 withdrawing the original application is based on wrong concessions made by the counsel for the petitioner and the petition on behalf of petitioners was not liable to be withdrawn in terms of the law laid down by the Supreme Court.

3. The learned Counsel for the petitioner has relied on The General Manager,

South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, A. Janardhana Vs. Union of India (UOI) and Others, ; State of Haryana and another Vs. Ram Diya, V.P. Shrivastava and Others Vs. State of M.P. and Others, The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari, and Post-Graduate Institute of Medical Education and Research and Another Vs. A.P. Wasan and Others, that other affected persons are not the necessary parties and the petitioners do not wish to challenge the recruitment rules and they only challenge the methodology adopted by the respondents.

4. Perusal of the judgment relied on by the petitioners reveal that they are distinguishable. In General Manager South Central Railway Secunderabad and Ors. (Supra), it was held that the employees who were likely to be affected as a result of readjustment of the seniority of the petitioner in that case in accordance with the principles laid down in the Board's decisions were at the most could be proper parties and not necessary parties and their non joinder could not be fatal for the writ petition. The Supreme Court, however, had not decided in the said case whether a petition which had been withdrawn could be allowed to be re-agitated in the facts and circumstances as has been alleged by the petitioner. In A. Janardhana (Supra), the dispute before the Apex Court was regarding determination of inter se seniority of the promotees and direct recruits and it was held that inter se seniority should be based on just, clear and equitable criterion. In Union of India v. M.P. Singh (Supra), it was held that all the parties need not be impleaded where validity of a rule is being challenged especially where the Tribunal had protected interest of all those persons who were working at that time by directing that they shall not be disturbed and non impleadment of those who should be affected in future could not render the petition vulnerable. In V.P. Srivastava and Ors. (Supra), the dispute was regarding the seniority of direct recruits and promotees and it was held that non impleadment of all the promotees particularly when the Tribunal found that the impleadment of two of the promotees had safeguarded the interest of the promotees was not fatal to the application.

5. In Central Council for Research in Ayurveda & Siddha and Anr. (Supra), an admission was made by the counsel contrary to rule and it was held that a concession made contrary to rules will not bind the parties. The case of the petitioner is, however, distinguishable as no such concession had been made by the earlier counsel as considering the facts and circumstances, it was deemed appropriate by the counsel to withdraw the petition with liberty to file a fresh petition by impleading the affected parties. Nothing has been filed by the petitioners that the earlier counsel who withdrew the petition had acted contrary to any written instructions of the petitioners. In Postgraduate Institute of Medical Sciences and Anr. (Supra), the dispute was whether the promotion should be section wise or cadre wise where some employees who were not parties before High Court sought intervention on the ground that their career prospects would be jeopardized by the decision of the High Court without their being given any

opportunity of being heard. In the peculiar facts of that case it was held that the plea of interveners was not sustainable.

6. Apparently the decision cited by the petitioners are distinguishable and do not support the pleas and contentions of the petitioners. It is no more *res integra* that the ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778 had held that a decision cannot be relied on without considering the factual situation. In the judgment the Supreme Court had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, the Supreme Court had held as under:

There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In *Rafiq Vs. State of U.P.*, it was observed as under:

The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.

7. The dispute in the present petition is not whether all the affected parties are to be impleaded or not but whether the order withdrawing the petition by the counsel who was duly authorized by the petitioner is liable to be set aside or not. This is not the case of the petitioners that the earlier counsel was not duly authorized by them to represent their pleas and contentions. If the counsel on

the basis of facts and circumstances thought it appropriate to challenge the recruitment rules as well as methodology adopted by the respondents in their selection and also thought that the affected parties should be impleaded and sought to withdraw the petition with liberty to file an appropriate petition, the said order cannot be challenged merely on account of the opinion of another counsel that the affected parties are not the necessary parties and the petition ought not to have been withdrawn. The learned Counsel for the petitioners has also not pointed out that the counsel who had withdrawn the petition with liberty to file an appropriate petition has done so contrary to the specific instructions given by any of the petitioners nor any malafide has been imputed against the counsel who had withdrawn the petition with liberty to file a fresh petition.

Not to implead any of the affected parties or not to challenge the recruitment rules and only to challenge the methodology adopted by the respondents, later on the advice of another counsel will not make the order passed by the Tribunal allowing withdrawal of original application with liberty to file a fresh original application, illegal or having such irregularity which require interference by this Court.

8. The learned Counsel has also failed to show that any action has been initiated by the petitioners against the earlier counsel for any alleged misconduct against that counsel who had withdrawn the petition with liberty to file a fresh petition. Filing a fresh petition may delay the grant of relief to the petitioners as has been contended by the learned Counsel for the petitioners but that does not make the order passed by the Tribunal on the basis of statement of the duly appointed counsel for the petitioners before the Tribunal. There are also no grounds to interfere with the order of Tribunal dismissing the application of the petitioners seeking withdrawal of order dated 19th October, 2009 as not maintainable.

For the forgoing reasons in these circumstances with respect to the allegations now made by another counsel appearing for the petitioner, the order dated 19th October, 2009 allowing the petitioners through their earlier counsel to withdraw the petition with liberty to file an appropriate petition challenging the recruitment rules and methodology adopted by the respondents and also by impleading affected parties, cannot be faulted nor it suffers from any such illegality or irregularity which would entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. The learned Counsel for the petitioner has also very emphatically contended that filing a new petition will delay the adjudication of the pleas and contentions of the petitioners. This cannot be a ground to set aside the order passed by the Tribunal on the lawful representation made by a duly appointed counsel on behalf of petitioners. Since the liberty has been granted to the petitioners to file a fresh petition and if in the opinion of other counsel recruitment rules are not to be challenged nor any other parties are to be impleaded in the fresh petition, it will open to the petitioners to take such appropriate pleas and relief as may be deemed fit and appropriate by them.

10. In the circumstances, we decline to exercise any jurisdiction in favour of petitioners and set aside the orders dated 19th October, 2009 and 19th February, 2010 passed by the Tribunal. There are no grounds to set aside the said orders and the writ petition is without any merit. The writ petition is misconceived and the petitioners are not entitled for any relief. The writ petition is, therefore, dismissed.