

(2011) 01 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) No. 8754 of 2010

Sanjay and Others

APPELLANT

Vs

Employees State Insurance Corporation (ESIC)

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0007

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Avadh Bihari Kaushik, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioners have challenged the order dated 7th September, 2010 passed by the Central Administrative Tribunal, Principal Bench in O.A No. 2913/2010 titled "Sh. Vikas and Ors. v. Employees State Insurance Corporation" dismissing the original application of the Petitioners seeking direction to the Respondent to declare the Petitioners as selected and to appoint them to the post of Nursing Orderlies or alternatively to set aside the selection process and the select list dated 11th May, 2009 and to direct the Respondent to make a fresh select list after combining the marks obtained by candidates in the written examination and in the interviews.

2. The Respondent had advertised the filling up of number of vacancies of Nursing Orderly a Group "D" post by notification dated 13th October, 2007. The Petitioners alleged that they fulfilled the qualifications and applied for the same and the result was declared in March, 2009 and 945 candidates were declared qualified for the interview including the Petitioners. A final select list of a total 201 candidates was issued. On the basis of the performance of the candidates in the interview only, 9 candidates who were called for the interview but had failed, challenged the select list dated 11th May, 2009 by filing writ petitions before the Hon'ble High Court of Delhi on the ground that the selection could not have been

done on the basis of marks obtained by the candidates in the interview alone. Marks should have been given on the basis of written as well as interview both. The said writ petitions were transferred to the Tribunal and numbered as T.A Nos. 39/2010, 40/2010 and 41/2010. All the T. As were allowed by the Tribunal by order dated 20th May, 2010 declaring the selection process as illegal. Respondents were directed to re-compute and recalculate the marks obtained by the 945 candidates in the written as well as interview both and prepare a new merit list. However, the said judgment was challenged before the Hon''ble High Court of Delhi, and the orders of the Tribunal was modified directing the Respondents to accommodate 8 out of 9 candidates who had filed the O.A and issue them appointment letters within a period of four weeks.

3. The Petitioners then filed an O.A No. 2409/2010 on the ground that 4 posts of Nursing Orderlies were still lying vacant because out of 201 candidates invited for interview, 189 posts and 8 post pursuant to the settlement and direction of the High Court had been filled in. Rest of the posts remained vacant. The said O.A was dismissed as withdrawn vide order dated 30th July, 2010 with liberty to approach the department. A representation was made requesting the extension of the benefit of judgment dated 14th July, 2010, however, the request was rejected because of which the Petitioners had filed O.A No. 2913/2010 before the Central Administrative Tribunal, Principal Bench, New Delhi.

4. The main relief sought by the Petitioners in this original application was to extend the benefit of order dated 14th July, 2010, however, on perusing the same the Tribunal observed CM No. 9122/2010 filed by the Petitioners in W.P (C) No. 4255/2010 wherein the Hon''ble High Court had rejected their CM observing that they had chosen to sit by and accept their fate. It was further observed that it is settled law that law does not come to the rescue of those who sleep and do not assert their rights at the right time. The High Court had also held that the act of the Respondent which was to be challenged came to light in the month of April, 2009 when the select list was published and some of the candidates filed W.P(C) No. 4255/2010; 4256/2010 and 4257/2010, however, the candidates who had moved the application for impleadment in the writ petition did not do so and, therefore, their applications were dismissed.

5. The Tribunal, therefore, has declined to give any relief to the Petitioners, who had filed the original application on 30th August, 2010. In the circumstances, it has been held that the applicants would not be entitled to challenge the select list which was finally declared in April, 2009.

6. The learned Counsel for the Petitioners is unable to disclose any sufficient or cogent reason for not approaching the Tribunal and High Court when the select list was declared and for the undue delay on their part. In the circumstances, there is no illegality or any ground which will make the order of the Tribunal unsustainable or perverse in any manner. In the facts and circumstances, this Court finds no ground to interfere with the order dated 7th September, 2010 dismissing the petition of the Petitioners seeking a direction to the Respondent to

declare them selected and appoint them to the post of Nursing Orderly or to carry out a fresh selection after preparing a merit list as has been claimed by the Petitioners.

The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.