

(2023) 07 DEL CK 0268

In the Delhi High Court

Case No : Civil Writ Petition No. 9545 Of 2023, Civil Miscellaneous Application
No. 36514 Of 2023

Sunil Bhaskaran

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 25-07-2023

Acts Referred:

Citation : (2023) 07 DEL CK 0268

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Vikas Mehta, Rashi Rampal, Garima Sachdeva, Sahib Gurdeep Singh,
Komal

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J

1. The challenge in this writ petition is to an order dated March 1, 2023 passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) dismissing the Original Application No.3831/2015 ('OA', for short) filed by the petitioner. The petitioner had filed OA 3831/2015 wherein, he had sought the following prayers:

"a) Regularize the services of the applicant with all consequential benefits such as pensionary benefits, leave benefits and Monitory benefits;

b) Declare that respondent no.1 cannot have cent percent reservation on single post of computer science at ACC Wing, IMA, Dehradun.

c) Set aside the Advertisement no. 812013 to the extent of appointment of one Assistant Profession in Computer Science reserved for "OBC) as mentioned as Item no. (4 -Vacancy No.13060804308) of the advertisement."

2. This OA filed by the petitioner is a third round of litigation, the first one being OA 1348/2001 which was decided by the Tribunal on December 13, 2001,

whereby the Tribunal has directed the following:

"10. In the above view of the matter, all the four applications succeed and are accordingly allowed with the following directions :-

(a) The impugned advertisement dated 15-4-2001 inviting applications for ad-hoc appointment for the post of Lecturers, which the applicants have been holding, is quashed and set aside.

(b) The respondents shall permit all the applicants to continue to work in the post they are/were holding on ad-hoc basis without subjecting them to any fresh selections or interviews for holding such ad-hoc post, till such time, replacement regularly selected by the UPSC arrive to join duty.

(c) If the services of any one of the applicants have been terminated, he/she should be re-engaged and permitted to continue till regular appointee is report for duty, though such persons would not be entitled for backwages during the period between their dis-engagement and re-appointment.

(d) All the applicants would be entitled for monetary benefits like pay and allowances, increments and service benefits like leave etc. as are granted to a regular staff.

(e) The applicants shall also be permitted to appear for selection for regular appointment in accordance with the Rules. No costs."

3. The petitioner filed the second OA being OA No.2387/2004 before the Tribunal which was decided along with OA 2400/2004 on September 30, 2005 wherein the Tribunal has in paragraph 12 stated as under:

"12. In view of the above discussion, we are of the considered opinion that since the applicants are now working as ad-hoc Lecturers, they shall continue as such till the regular appointees by the UPSC are selected. They can also become a candidate for the post of Lecturer and their cases shall be considered along with others by relaxing their age to the extent of the service they rendered in the institution. At the time of selection, the respondents may also keep in mind their past service rendered as such and weightage to be given."

4. The order dated September 30, 2005, became a subject matter of a writ petition being W.P.(C) 12115/2006.

5. It is the submission of Mr. Mehta, learned counsel appearing for the petitioner that this Court vide order dated September 14, 2006, in the writ petition W.P.(C) 12115/2006 filed by the Union Public Service Commission had stayed the order passed by the Tribunal dated September 30, 2005. The said order was confirmed on September 16, 2008. According to him, the writ petition was finally dismissed for want of prosecution on September 27, 2022.

6. The case of the petitioner (in the present OA 3831/2015) before the Tribunal was that the petitioner having worked for six years is entitled for regularisation

and that the respondent No.1, Indian Military Academy could not have reserved one post of Assistant Professor, (Computer Science) in the advertisement 8/2013, as the same amounts to 100% reservation. The petitioner had also sought prayer for setting aside the advertisement 08/2013 to the extent that the appointment of one post of Assistant Professor (Computer Science) was reserved for OBC. There is no dispute that against the said advertisement, one Ms. Leena Singh has been appointed as Assistant Professor (Computer Science).

7. Mr. Mehta do concede that the petitioner belongs to OBC. His submissions before us are also reiteration of the submissions as advanced by the petitioner before the Tribunal, inasmuch as the respondent No.2 could not have reserved the post of Assistant Professor (Computer Science) under OBC category and the same be set aside.

8. He also submits that the petitioner having put in six years of service at the relevant point of time, his services were required to be regularised.

9. Suffice to state, the plea advanced could not have been granted by the Tribunal for the reason that such a plea gets covered by the judgment of the Tribunal dated September 30, 2005 wherein in paragraph 12 the Tribunal has clearly stated that the applicants therein including the petitioner herein shall continue as such till the regular appointees by the UPSC are selected.

10. So, in that sense, the Tribunal has not granted any direction for regular appointment of the petitioner. Rather, the Tribunal has said, the petitioner could also be a candidate for regular appointment, with age relaxation. No doubt, the said direction was stayed by this Court in the aforesaid writ petition, it was required for the petitioner to approach this Court to seek a direction to enable him to apply against the advertisement 8/2013 issued by the respondent No.2 for filling up the post of Assistant Professor (Computer Science), as he is also an OBC, candidate. Admittedly, no such steps were taken by the petitioner.

11. Insofar as the first submission is concerned, we are of the view that the petitioner is precluded from advancing such plea more so when he himself belongs to the OBC category and the post was reserved to be filled under OBC category. We find that the Tribunal has primarily rejected the OA on the ground that the petitioner has not made Ms. Leena Singh a party. We agree with the said conclusion. Even, if the petitioner has made Ms. Leena Singh a party in these proceedings, we are of the view petitioner himself being an OBC candidate could not have challenged the advertisement.

12. We are of the view that the present petition is without any merit and the same is dismissed.

CM APPL. 36514/2023

Dismissed as infructuous.