

CASE NO.:
Appeal (civil) 23 of 1999

PETITIONER:
Union of India and Ors.

RESPONDENT:
Joseph P. Cherian

DATE OF JUDGMENT: 26/09/2005

BENCH:
Arijit Pasayat & C.K. Thakker

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

The Union of India through the Secretary, Ministry of Home affairs and other functionaries of the Union have questioned correctness of the judgment rendered by a Division Bench of the Punjab and Haryana High Court holding that the respondent (hereinafter referred to as the 'employee') was entitled to be promoted to the post of Sub Inspector on the basis of marks secured by him in the departmental examination held on 24th and 25th July, 1995, in respect of the vacancies arising in 1998.

A brief reference to the factual aspect would suffice:

In the Border Security Force 25% of the posts in the rank of Sub Inspector is filled up from amongst the Assistant Sub Inspectors who have put in not less than five years of regular service provided they come out successful in the prescribed departmental examination held from time to time for the said purpose. The promotion for the rest of the posts is given from different channels with which the present dispute has no relevance. On 24th and 25th July, 1995 departmental examination was held at ten different centres throughout the country. The departmental examination was conducted in regard to 24 vacancies existing in the grade of Sub Inspector. The respondent-employee appeared at the Siliguri (West Bengal) centre. Though in May, 1996 results of the departmental examination were declared, complaints were received that there was malpractice in various centers and more particularly at the Jalandhar Centre. Grievance was that most of the candidates who had appeared from that center had come out successful. Taking note of the complaint enquiry was made by Staff Court of Inquiry and before the list of successful candidates could be placed before the Departmental Promotion Committee, on being satisfied about the unfair means adopted, the entire examination held at various centers was cancelled vide order dated 10th July, 1997. In the year 1996 no examination was held and, in fact, the next examination which was to be held in December, 1997 was held in April, 1998. The respondent did not appear at the 1998 examination. Writ petition was filed by the respondent-employee essentially praying for direction to promote him with effect from the date he became eligible as Sub Inspector/Clerk in the quota fixed for promotion on the basis of the departmental examination. Prayer was also made for direction to the functionaries of the Union to hold the Departmental Promotion Committee for finalizing the promotion. The High Court was of the view that if there were allegations of malpractice in respect of one centre the whole examination should not have been cancelled. It, however, was of the view that since only one candidate had questioned the legality and for not giving effect to the departmental examination result, it was unnecessary to examine the question whether the cancellation of result of all the centres was justified. It, however, allowed the writ petition by holding that the respondent-employee for all intent purposes was entitled to be considered on the basis of marks secured by him in the examination held in July, 1995.

Authorities were directed to take that marks into consideration while making the merit list in the examination held in April, 1998. According to the High Court respondent-employee was entitled to be considered against the 86 vacancies for which examination was held in 1996 and not necessarily against the 24 vacancies which were available at the time he had appeared at the earlier examination. The further direction of the High Court was that if the respondent-employee came within the first 86 in the list to be prepared by the Departmental Promotion Committee, and actual appointments are made up to that number then he is to be promoted.

Learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. There was no challenge to the cancellation of results and the direction for fresh departmental examination. In the case of malpractice there is no question of considering an individual's case separately, as is a settled position in law. Further, the direction to place the respondent-employee in the merit list on the basis of the marks secured by him in the examination held in July, 1995 while drawing up the merit list on the basis of April, 1998 examination is legally untenable.

There is no appearance on behalf of the respondent when the matter is taken up.

We find that the High Court's approach is clearly indefensible. There was no challenge to the cancellation of the result in the writ petition. In fact, the High Court itself noted that on the basis of a single individual's challenge the question whether the examination in its entirety was to be nullified was not examined. Yet it granted relief to the respondent-employee with clearly unsustainable directions. High Court's view appears to be that if unfair means were adopted at one center, result of other centers should not have been cancelled. This view is wholly indefensible. The Staff Court of Inquiry recorded a finding that there were serious irregularities in the conduct of examination at Jalandhar centre and unfair means on a large scale were adopted. There was leakage of question papers and its transmission to candidates at other centers through model modes of communication was not ruled out. Having regard to all these factors, the decision to cancel the examination was taken. When the results of 1995 examination have been cancelled, the question of the respondent-employee's case being considered on the basis of marks secured by him at the said examination does not arise. As is settled in a long line of decisions, while considering the case of mass malpractice there is no scope of examining an individual's case. (See *The Bihar Education Board v. Subhas Chandra Sinha and Ors.*, AIR (1970) SC 1269, *Krishan Yadav and Anr. v. State of Haryana and Ors.*, AIR (1994) SC 2166, *P.A. Ratnakar Rao and Ors. v. Government of Andhra Pradesh and Ors.*, AIR (1996) SC 2523, *Kendriya Vidyalaya Sangathan and Ors. v. Ajay Kumar Dass and Ors.*, [2002] 4 SCC 503 and *Union of India and Ors. v. O. Chakradhar*, AIR (2002) SC 1119.

Further the direction that the respondent-employee will be considered in respect of 86 vacancies which arose subsequent to the examination taken by him is equally indefensible direction. The High Court failed to take note of the very significant and relevant aspect that the respondent-employee did not appear at the departmental examination held in April, 1998.

Above being the position the relief granted to respondent-employee is unsustainable. The order of the High Court is set aside and the appeal succeeds, but in the circumstances without any order as to costs.