

Union Of India & Others

v.

Vijay Pal Singh

(Supreme Court Of India)

HON'BLE DR. JUSTICE B.S. CHAUHAN HON'BLE MR. JUSTICE SWATANTER KUMAR

Union Of India & Others v. Vijay Pal Singh

Civil Appeal No. 5724 Of 2006 With Civil Appeal No. 2369 Of 2007 Civil Appeal No. 2417 Of 2008
| 18-05-2010

CIVIL APPEAL NO. 5724 OF 2006

1. The present appeal is directed against the judgment and order of the Division Bench of the Delhi High Court dated 16th December, 2005 in Writ Petition © No. 13363 of 2005. The High Court vide impugned order directed that the petitioner in the writ petition should be reinstated and join by 1st January, 2006. It further directed that he should pass the matriculation examination on or before 1st August, 2008.

2. The necessary facts are that the respondent before us had joined the Central Reserve Police Force on 29th may, 1991. He had passed the examination and obtained the certificate of 'Prathama' on the basis of which he was selected and appointed on the said post. The Government of India had issued a Notification dated 6.5.1960 in terms thereof the persons holding the 'Prathama' certificate were treated to be equivalent to matric. This Notification was clarified vide another Notification dated 18th January, 1992 that passing of the examination of Prathama was equivalent to matric only for Hindi and not as a cumulative qualifying examination for matriculation as no other subjects like English etc. were taught. It is on this basis that the competent authority took action against the respondent. He was ordered to be dismissed after holding the departmental inquiry vide Order dated 5th October, 2004. The correctness of this order was questioned in the writ petition before the Division Bench of the High Court.

3. The contention raised on behalf of Union of India is that the Notification dated 6th May, 1960 on its plain reading makes examination of 'Prathama' equivalent to matric only for the purpose of Hindi. The Government had issued the Notification dated 18th January, 1992 only by way of precaution and to place the matters beyond ambiguity. The Division Bench of the Delhi High Court had allowed the Writ Petition while relying upon its earlier judgment on the same subject in Writ Petition No.4374 of 1992 and thereupon had passed the direction permitting the respondent herein to join the service. During the course of arguments it is conceded before us that the judgment of the High Court in Writ Petition No.4374 of 1992 dated 3rd February, 2003 has attained finality and has been implemented and correctness thereof was not questioned by the Union of India before this Court. Be that as it may, another important fact is that now in furtherance of the order of the High Court, the respondent has cleared his matriculation examination from the National Institute of Open Schooling by Government of India itself. The certificate produced before us show that all subjects have been taught. The correctness thereof can hardly be disputed as this Institute/School is run by the Union of India itself.

4. It is not necessary for us to decide the merit or otherwise of the contentions raised in regard to the legality or otherwise, interpretation of the Notification dated 6.5.1960. While leaving the question of law open, we do not propose to interfere with the judgment of the High Court, suffice it to note that the respondent would be permitted to join the service now but he will not be entitled to any pay and allowances with effect from 2005 till his joining, on the principle of 'No work No pay', particularly, in view of the fact that the operation of the judgment of the High Court was stayed by this Court. In any case, the counsel for the respondent has taken instructions from his client, who is present in Court, that he would not ask for any claim with regard to pay and allowances, seniority and promotion for this period. This period will be treated as dies non, however, with continuity of service permissible under the Rules.

5. The appeal is disposed of with the above directions while leaving the parties to bear their own costs.

CIVIL APPEAL NO. 2369 OF 2007 AND CIVIL APPEAL NO. 2417 OF 2008

6. No one is present on behalf of the respondents though service is complete. These appeals are heard ex-parte.

7. In view of our Order passed in Civil appeal No.5724 of 2006, these appeals are also disposed of in same terms.

8. We also direct that the respondents herein be reinstated into service provided they have passed the matriculation examination from any recognised Institute and produce the certificate at the time of joining of their service.

9. In these appeals also, the respondents will not be entitled to any pay and allowances with effect from the date of their dismissal from service till their joining on the principle of 'No Work No Pay'. They will not ask for any claim with regard to pay and allowances, seniority and promotion for this period. The period in question will be treated as dies non.