

SUPREME COURT OF INDIA

Sec.,U.P.S.C. & Anr.

Vs.

S.Krishna Chaitanya

C.A.No.6349 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

05.08.2011

JUDGMENT

Anil R.Dave,J.,

SLP.(Civil) No.11779 of 2011

1. Leave granted.

2. Being aggrieved by the Judgment and Order dated 7.2.2001 passed in W.P. No.33367 of 2010 by the High Court of Andhra Pradesh at Hyderabad, confirming the Order dated 1st September, 2010, passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad, this appeal has been filed by the appellants - the Secretary and the Joint Secretary of Union Public Service Commission (UPSC).

3. According to the case of the respondent, being desirous of taking Civil Services Examination, 2010, he had filled up his application form and had sent the same to UPSC through DTDC Courier and Cargo Ltd. The respondent had handed over his application form to the above named courier on 28th January, 2010, and the courier had intimated to the respondent that the application form was delivered to UPSC on 29th January, 2010. Thus, according to the respondent, his application form had been duly received by UPSC and, therefore, he was expecting his admission certificate but as he had not received it even in the month of April, 2010, he had made a representation to the appellants on 20th April, 2010, making a grievance with regard to non-issuance of admission certificate to him. In pursuance of the aforesaid representation made by the respondent, a letter dated 23rd April, 2010, was addressed to the respondent whereby he was informed that his application for Civil Services Examination (Preliminary), 2010 had not been received by the appellants and the respondent was also requested to furnish acknowledgment card duly stamped by UPSC to enable the appellants to take further action in the matter.

4. As the respondent had not received any acknowledgement card from the appellants, the respondent rushed to the Central Administrative Tribunal, Hyderabad, by filing O.A. No.470

of 2010 praying inter alia for an interim relief to the effect that the appellants be directed to furnish an admission certificate to the respondent so that the respondent can take the examination. By an interim order dated 12th May, 2010, the Central Administrative Tribunal directed the respondent to submit a copy of his application form to the appellants and directed the appellants to issue an admission certificate to the respondent so that the respondent can take the examination. It was clarified that the admission certificate would be subject to the final result of the said original application.

5. In pursuance of the aforesaid interim order passed by the Central Administrative Tribunal (CAT), the respondent had filed another application form which was received by the appellants around 17th May, 2010 and in pursuance of the said application form, an admission certificate was issued to the respondent and he took the Civil Services Examination (Preliminary).

6. The aforesaid original application was finally heard by the CAT and by an Order dated 1st September, 2010, the application was allowed, whereby the appellants were directed to declare result of the respondent and if he was found qualified, he should be permitted to take the Civil Services Examination (Mains), 2010. While allowing the application, the Tribunal had considered reply filed on behalf of the appellants. It was stated in the reply filed on behalf of the appellants that no application form from the respondent was received by the appellants. The respondent had specifically stated that his application form bearing No.37573985 had been submitted through the courier named hereinabove to the appellants on 29th January, 2010 at 4 p.m. The respondent had mainly relied upon an acknowledgement given to him by the courier to the effect that his application form had been delivered to the appellants on 29th January, 2010 at 4 p.m. and an affidavit had also been filed in support of the said averment by Shri V.S. Kumar Raju, Manager, Administration, Regional Office of DTDC, Hyderabad. The aforesaid averments of the respondent were specifically denied by the deponent of an affidavit filed on behalf of the appellants. While passing the final order, the Tribunal had considered the above facts and had also observed about two possibilities - either the application form of the respondent was misplaced in the office of the appellants or the courier agency had failed to deliver the application form of the respondent to the appellants. The Tribunal did not come to the final conclusion that the application form of the respondent was delivered to the appellants or the appellants in fact had received the application form of the respondent. Though the Tribunal observed in its order that it was difficult to come to a definite conclusion that the application form of the respondent was in fact received by the appellants, the Tribunal gave a final direction to the appellants to declare the result of the respondent and if he was found successful in the Civil Services Examination (Preliminary), he should also be permitted to take the Civil Services Examination (Mains) and should also be permitted to appear for interview. Thus, the application filed by the respondent was allowed by the Tribunal by the order dated 1st September, 2010.

7. The aforesaid order of the Tribunal was challenged before the High Court by the appellants by filing Writ Petition No.33367 of 2010. After hearing the concerned advocates and after considering the above facts, the High Court disposed of the petition by observing that the respondent be permitted to take the Civil Services Examination (Mains) and should

also be permitted to appear for the interview, if he is qualified in the Civil Services Examination (Mains). With the aforesaid observations, the petition was disposed of by the High Court.

8. It is pertinent to note that during the pendency of the aforesaid proceedings, the respondent took the Civil Services Examination (Mains) and also appeared for the oral interview. The final result has not been declared and it has been retained by the appellants in a sealed cover. Interlocutory Application No.1 has been filed by the respondent before this Court praying for directions to the appellants to declare the result of the respondent and keep a post vacant in a particular cadre so as to enable him to join the service. The said application is also pending for hearing.

9. Mr. Parag P. Tripathi, learned Additional Solicitor General appearing for the appellants submitted that the impugned order of the High Court confirming the order of the Tribunal is absolutely unjust and improper especially in view of the fact that neither the Tribunal nor the High Court had come to any final conclusion that the application form of the respondent was in fact submitted to the appellants.

10. The learned counsel apprised us of the procedure with regard to acceptance of application forms and he had also kept the entire relevant record pertaining to the application forms regarding the Civil Services Examination, 2010 in this Court. He explained to us as to how an application form was being received by the appellants. He submitted that as per normal practice of the appellants, whenever any application form pertaining to the Civil Services Examination is sent by post, the candidate sending it by post is supposed to enclose a self addressed acknowledgement card, with postal stamp affixed, along with the application form. The said acknowledgement card is returned by the appellants to the concerned candidate with a distinct numerical mark affixed thereon. The acknowledgement card is sent by post to the concerned candidate. If any application form is received by the appellants either through hand delivery or through a courier, the person who hands over the application form to a representative of the appellants at a particular counter, would be given an acknowledgement card after affixing a stamp having a distinct numerical mark.

11. He further stated that a facsimile of each stamp having distinct numerical mark is also retained by affixing it in a register maintained by the appellants so that in an event of any effort to forge the acknowledgement mark, fraud can be detected easily. The register containing such marks and record pertaining to the applications received on each day was placed before this Court for its perusal.

12. According to the learned Additional Solicitor General, in view of the aforesaid procedure, if the application form of the respondent bearing No.37573985 had been received by the appellants, an acknowledgment card ought to have been received by the courier's representative, who had personally handed over the application form to a representative of the appellants. He further submitted that according to the respondent, his application form was submitted on 29th January, 2010 at 4 p.m. A list of all applications, which had been received on 29th January, 2010, was shown to this Court but in the said list, there was no

reference to the application form bearing no.37573985, belonging to the respondent. He, therefore, submitted that in fact the application form of the respondent had not been received by the appellants.

13. The learned counsel for the appellants further submitted that 100 application forms and record pertaining thereto is retained in one separate packet and he also explained the system whereby all application forms are received and processed by the appellants. Even in the packets containing application forms received on 29th January, 2010, the respondent's form was not found.

14. The learned counsel further submitted that as the application form of the respondent had never been received by the appellants, it would not be proper to declare result of the respondent because as per the case of the appellants, the form of the respondent was never submitted to the appellants. In such an event, declaration of the result of the respondent would be absolutely unjust and would set a wrong precedent. He, therefore, submitted that the appeal be allowed and the judgment of the High Court confirming the order of the Tribunal be quashed and set aside.

15. On the other hand, Mr. L. Nageshwara Rao, learned senior counsel appearing for the respondent mainly submitted that the respondent had forwarded his application form through DTDC Courier and Cargo Ltd. and the courier had delivered the form to the appellants on 29th January, 2010. He also relied upon an affidavit filed by a responsible officer of the above named courier agency stating that the respondent's application form was delivered to U.P.S.C. on 29th January, 2010.

16. He further submitted that there was no reason for the respondent to make any false averment with regard to submission of the application form because the respondent was quite serious about the examination and in fact he had passed the Civil Services Examination (Preliminary) and the respondent was quite hopeful of even succeeding in the Civil Services Examination (Mains) and oral interview. He further submitted that there was no reason for the courier agency not to deliver the application form of the respondent and there was no reason for a responsible officer of the courier agency to file a false affidavit supporting the respondent to the effect that his application form had been submitted to the appellants.

17. The learned counsel further submitted that by declaration of the result, there would be no harm to anyone because if the respondent is not declared successful, he would not get any benefit but if in fact he is found successful in the examination as well as in the oral interview and if he is not given benefit of doubt, career of a bright young person would be ruined. He, therefore, submitted that the judgment of the High Court confirming the order of the Tribunal is just and legal and, therefore, the appeal should be dismissed.

18. We have heard the learned counsel at length and have also meticulously gone through the relevant record produced before this Court by the learned Additional Solicitor General.

19. It is pertinent to note that the respondent, at no point of time, had adduced any evidence before the Tribunal or even before this Court to the effect that the appellants had received the application form of the respondent bearing no.37573985.

20. Right from the beginning i.e. the stage at which an original application was filed before the Tribunal, the respondent had relied upon an affidavit filed by the Manager Administration, Regional Office of the DTDC Courier and Cargo Ltd., having its branch office at Hyderabad. According to his affidavit, the respondent's application form had been delivered to the appellants on 29th January, 2010. The application form had not been delivered by him personally but it was delivered by an employee of the above named courier agency and so as to substantiate his say, he had relied upon the delivery Run Sheet No.12878919 dated 29th January, 2010. The said run sheet is a part of the record. Upon perusal of the run sheet, we do not find any acknowledgement given by any of the officers of the appellants to the effect that an application form of the respondent was received by the appellants. The said run sheet incorporates numbers of consignments which had been addressed to UPSC, Shahjahan Road, New Delhi. Beyond numbers of five different consignments and name of UPSC, to whom the consignments were to be sent, there is no indication on the said run sheet that the said consignments were received on behalf of UPSC.

21. In our opinion, on the basis of the aforestated record, by no stretch of imagination one can say that the respondent's application form had been received by the appellants.

22. As the case involves a career of a young man, who can turn out to be a good civil servant, we had very meticulously gone through the record maintained by the appellants. Looking to the system which is being followed by the appellants, we find that the said system is very comprehensive and flawless. It is very clear that if the application form of the respondent had been received by the appellants in the manner provided, it would have been recorded somewhere. Even the eight digit number of the application form of the respondent has not been recorded anywhere. Receipt of an application form through a courier is treated as 'hand delivery' by the appellants. In case of receipt of an application by hand delivery, on the spot, an acknowledgement card stamped with a distinct numerical mark is handed over to the person who delivers the application form. If the application form had been delivered by a representative of the courier agency to the office of the appellants, there was no reason for the appellants not to give a duly stamped acknowledgement card bearing a distinct numerical mark. No such acknowledgment card, duly stamped, could be produced by the respondent or by the courier agency. Thus, on perusal of the record and looking the facts of the case, we come to a conclusion that no proof could be submitted by the respondent that the application form was received by the appellants.

23. It is pertinent to note here that while passing the final order, even the Tribunal was not sure whether the application form of the respondent was received by the appellants. The Tribunal, in para 8 of its final order dated 1st September, 2010, has observed as under:

"8.It is quite possible that the applicant's application had been misplaced. It is also quite possible that the courier agency failed to deliver the application form of the applicant at the respondent's office.....".

Thus, even while giving final direction to the appellants with regard to permitting the respondent to take the Civil Services Examination, the Tribunal had not come to a definite finding and specific conclusion that the application form of the respondent was in fact received by the appellants but the same had been misplaced by the appellants. In our opinion, in such a set of circumstances, it would not be proper to direct the appellants to permit the respondent to take the examination especially when there was nothing on record to show that the respondent had submitted his application form to the appellants.

24. We also record that there was some negligence on the part of the respondent. The learned counsel appearing for the appellants had drawn our attention to the advertisement given by UPSC inviting applications from the candidates who were desirous of joining civil service and taking examination for that purpose. Clause 7 of the said advertisement relating to acknowledgement of application is reproduced hereinbelow:

"7. Acknowledgment of applications: Immediately on receipt of an application from a candidate, the Acknowledgment Card submitted by him/her alongwith the Application Form will be dispatched to him/her by the Commission's Office duly stamped in token of receipt of his/her Application. If a candidate does not receive the Acknowledgment Card within 30 days, he/she should at once contact the Commission by quoting his/her Application Form No.(8 digit) and name and year of examination. Candidates delivering the Application form in person at the Commission's Counter will be issued Acknowledgment Card at the Counter itself. The mere fact that a candidate's application has been acknowledged by the Commission does not mean that his/her candidature for the examination has been accepted by the Commission. Candidates will be informed at the earliest possible about their admission to the examination or rejection of their application."

25. According to the respondent, he had forwarded his application form through the aforesaid courier on 28th January, 2010. If the respondent did not receive any acknowledgment for a period of 30 days from the date on which he had forwarded his application form, he ought to have made necessary enquiry in the office of the appellants. Even according to the case of the respondent, for the first time on 20th April, 2010, he made an enquiry about his application form as he had not received the acknowledgment card from the appellants. As stated in the aforesaid clause no.7, as a prudent candidate, the respondent ought to have made enquiry latest by the end of February, 2010, but for the reasons best known to the respondent, he waited upto 20th April, 2010 to make an enquiry whether his application form was received by the opponents. In our opinion, no vigilant student aspiring to become a responsible officer of the State would remain so indifferent so as not to make any enquiry for more than two months. It is also pertinent to note that the respondent was not taking the examination for the first time. According to him, he had taken the examination earlier also but unfortunately he was not successful. Thus, he was having experience about

the way in which the application form is filled up, how that is to be submitted and the way in which acknowledgement card is sent by the appellants. In our opinion, this negligence on his part has resulted into his sufferance and he himself is only to be blamed for the events.

26. For the aforesaid reasons, we are of the view that the appellants cannot be directed to declare the final result of the respondent, especially when his application form had not been received by the appellants within the period prescribed. We ignore the second application form which was submitted by him in pursuance of the direction given by the Tribunal.

27. We may add here that this Court has observed time and again that an interim order should not be of such a nature that by virtue of which a petition or an application, as the case may be, is finally allowed or granted even at an interim stage. We reiterate that normally at an interlocutory stage no such relief should be granted that by virtue of which the final relief, which is asked for and is available at the disposal of the matter is granted. We, however, find that very often courts are becoming more sympathetic to the students and by interim orders authorities are directed to permit the students to take an examination without ascertaining whether the concerned candidate had a right to take the examination. For any special reason in an exceptional case, if such a direction is given, the court must dispose of the case finally on merits before declaration of the result. In the instant case, we have found that the respondent not only took the preliminary examination but also took the main examination and also appeared for the interview by virtue of interim orders though he had no right to take any of the examinations. In our opinion, grant of such interim orders should be avoided as they not only increase work of the institution which conducts examination but also give false hope to the candidates approaching the court.

28. For the reasons stated hereinabove, we allow the appeal by quashing and setting aside the judgment delivered by the High Court as well as the order of the Tribunal with no order as to costs. The Interlocutory Application filed by the respondent is also rejected.