

**2024 LiveLaw (SC) 1**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**J.K. MAHESHWARI; J., K.V. VISWANATHAN; J.**

January 02, 2024

**CIVIL APPEAL NO. 1 OF 2024 (Arising out of SLP (C) No. 12230 of 2023)**

**Vashist Narayan Kumar *versus* The State of Bihar & Ors.**

**Selection Process - Whether the error committed in the application form, which was uploaded is a material error or a trivial error and was the State justified in declaring the candidate as having failed on account of the same? Held, the candidate has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play any part in the selection process. The State was not justified in making a mountain out of this molehill. (Para 19)**

(Arising out of impugned final judgment and order dated 22-08-2022 in LPA No.1271/2019 passed by the High Court of Judicature at Patna)

*For Petitioner(s) Mr. Shivam Singh, Adv. Ms. Shaswati Parhi, Adv. Mr. Ishwar Singh, Adv. Mr. Sahil Bhatiya, Adv. Mr. Suyash Vyas, Adv. Mr. Ravi Shanker Jha, Adv. Mr. Gopal Singh, AOR*

*For Respondent(s) Mr. Azmat Hayat Amanullah, AOR*

**J U D G M E N T**

**K.V. Viswanathan, J.**

1. Leave granted.

2. Vashist Narayan Kumar (the appellant) hails from a small village named Dheodha in Bihar. He belongs to the downtrodden segment of the society. He aspired to become a Police Constable and had applied for the said post under the reserved category. Having possessed the eligibility criteria of being an intermediate (10+2 pass), he also cleared the written examination and the Physical Eligibility Test.

3. The appellant submitted his educational certificates/mark sheet as well as his caste certificate for document verification. On 11.06.2018, the final results reflected him as having failed. The only reason was that, while in the application form uploaded online, his date of birth was shown as 08.12.1997, in the school mark sheet, his date of birth was reflected as 18.12.1997.

4. Distraught, the appellant represented and thereafter having failed to receive any response, filed a writ petition before the High Court. His explanation was simple and straight forward. He stated in his writ petition that, after noticing the advertisement issued by the Central Selection Board on 29.07.2017, he from his remote village went to the Cyber café at Pakribarawan - a nearby town. With the assistance of a person running the Cyber café, he filled in his form and uploaded it online and he received application No. 7236126 indicating thereby that the online application had been duly filled. His case was that, while filling up the form, by an inadvertent error, the date of birth had got recorded as "08.12.1997" instead of "18.12.1997". He derived no benefit from it as either way he fulfilled the eligibility criteria and the age requirement. He prayed for the relief in the nature of a *mandamus* to the respondents to consider his claim for selection and direct them to issue an appointment letter treating the date of birth as 18.12.1997, as reflected in his educational certificates.

5. The respondents vehemently opposed the writ petition. It was their stand that the advertisement had clearly stipulated that candidates should correctly mention their date of birth according to their 10<sup>th</sup> board certificate; that if any discrepancy was found while matching the information, the candidature would be cancelled; that the candidate should read the instructions carefully and if any information is found false or wrong, then the application form would be cancelled and legal action will also be taken. It was further averred that the advertisement also mentioned the method of making corrections and that the appellant never availed that facility.

6. They contended that out of 9900 vacancies advertised, 9839 candidates were declared successful. They submitted that 61 vacancies remained unfilled due to non-availability of suitable Gorkha candidates. They prayed for the dismissal of the writ petition.

7. The learned Single Judge, after referring to the clauses in the advertisement, including the clause providing for correction, held that since incorrect information was provided, no relief could be given. The appellant filed a Letters Patent Appeal to the Division Bench, which has been dismissed by the impugned order. The Division Bench, while affirming the order of the learned Single Judge, additionally recorded a finding that the appellant had not sought for quashing of the result, as declared on 11.06.2018, on the website.

8. Being aggrieved, the appellant is before us in this Appeal.

9. We have heard Ms. Shaswati Parhi, learned counsel for the appellant and Mr. Azmat Hayat Amanullah, learned counsel for the State. Learned counsels have reiterated their respective contentions as advanced in the Courts below. They have also relied on the judgments of this Court and of some High Courts, in support of their respective propositions. Learned counsels have also filed comprehensive written submissions.

### **Question for Consideration**

10. The question that arises for consideration is whether the error committed in the application form, which was uploaded is a material error or a trivial error and was the State justified in declaring the appellant as having failed on account of the same?

### **Discussion**

11. Admittedly, the appellant derived no advantage as even if either of the dates were taken, he was eligible; the error also had no bearing on the selection and the appellant himself being oblivious of the error produced the educational certificates which reflected his correct date of birth.

12. The facts are undisputed. The appellant's application uploaded from the cyber café did mention the date of birth as 08.12.1997 while his date of birth as recorded in the educational certificate was 18.12.1997. It is also undisputed that it is the appellant who produced the educational certificates. He was oblivious of the error that had crept into his application form. It is also undisputed that the advertisement had all the clauses setting out that in case the information given by the candidates is wrong or misleading, the application form was to be rejected and necessary criminal action was also to be taken. It also had a clause that the candidates had to fill the correct date of birth, according to their 10<sup>th</sup> board certificate. The clause further stated that candidates will fill their name, father's name, address etc. correctly in the application form. It states that any discrepancy, if found, while checking the documents, the candidature of the candidate will stand cancelled. There was also a clause providing for correction of wrong/erroneously filled application forms, which stated that the errors can be corrected once by re-depositing the application

fee and filling a new application. It also provided that those filling the application on the last date could correct the application till the following day.

13. Equally undisputed is the fact that after filling out the application, the appellant cleared the written examination and the Physical Eligibility Test. It was also stated in the counter affidavit that there were 61 unfilled vacancies though it was submitted that it was meant for the Gorkha candidates.

14. We are not impressed with the argument of the State that the error was so grave as to constitute wrong or mis-leading information. We say on the peculiar facts and circumstances of this case. Even the State has not chosen to resort to any criminal action, clearly implying that even they did not consider this error as having fallen foul of the following clause in the advertisement: -

“Instructions to fill online application form are available on the website. It is recommended to all the candidates to carefully read the instructions before filling the online application form and kindly fill the appropriate response in the following tabs. In case, the information given by the candidates found wrong or misleading, the application form will get rejected and necessary criminal actions will also be taken against the candidate.”

15. Recently this Bench in **Divya vs. Union of India & Ors.**, 2023:INSC:900 = 2023 (13) Scale 730, while declining relief to candidates who acquired eligibility after the date mentioned in the notification carved out a narrow exception. There, the judgment in **Ajay Kumar Mishra vs. Union of India & Ors.**, [2016] SCC OnLine Del 6563, a case very similar to the facts of the present case, was noted. In **Ajai Kumar Mishra (supra)**, Indira Banerjee, J. (as Her Ladyship then was) speaking for the Division Bench of the Delhi High Court in para 9 stated as under: -

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/ or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.”

(emphasis supplied)

The exception for trivial errors or omissions is for the reason that law does not concern itself with trifles. This principle is recognized in the legal maxim - *De minimis non curat lex*.

16. Learned counsel for the appellant, in her written submissions, cited the following judgments in support of her proposition that inadvertent error in filling up the date of birth when no advantage is derived will not constitute a wilful misrepresentation and contended that in all those cases reliefs were given to the candidates:

- i) **Arkshit Kapoor vs. Union of India**, 2017 SCC OnLine Del 10154 [para 20]
- ii) **K. Sangeetha vs. Tamil Nadu Public Service Commission** (2018) SCC OnLine Mad 5075 [Paras 9 & 11]
- iii) **Anuj Pratap Singh vs. Union Public Service Commission**, 2018 SCC OnLine Del 10982 [Paras 15,16 & 21]
- iv) **Shubham Tushir vs. Union of India**, 2019 SCC OnLine Del 9831 [Paras 4 & 10]
- v) **Staff Selection Commission & Anr. Vs. Shubham Tushir** LPA No. 237 of 2020 before the Delhi High Court
- vi) **Poonam Pal vs. M.P. Gramin Bank**, (2022) SCC OnLine MP 2921 [Paras 9-12]

17. In fact, in Anuj Pratap Singh (supra), as is clear from para 14 of the said judgment, the candidate unable to correct the error at the first point was forced to repeat it while

submitting the application for sitting in the main exam since he had no other option. The Court accepted the explanation and condoned the error in the filling up of the column pertaining to the date of birth.

18. The learned counsel for the State drew attention to the verification by the appellant, of the details in a printed form furnished by the selection board. He contended that the appellant signed the form which carried the date of birth. First of all, the form was a printed form which reflected the date of birth as given by the appellant and the appellant signed the printed form on 10.03.2018. We are inclined to accept the explanation of the appellant that since the appellant was unaware of his own mistake he had mechanically signed the printed form. It is only later, on 11.06.2018, on the publication of the result that the appellant realized the error. We do not think that the appellant could be penalised for this insignificant error which made no difference to the ultimate result. Errors of this kind, as noticed in the present case, which are inadvertent do not constitute misrepresentation or wilful suppression.

19. In this case, the appellant has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play any part in the selection process. The State was not justified in making a mountain out of this molehill. Perhaps the rarefied atmosphere of the cybercafe, got the better of the appellant. He omitted to notice the error and even failed to avail the corrective mechanism offered. In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 [**Prince Jaibir Singh vs. Union of India & Ors.**], this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide.

20. In one of the cases cited as a precedent in the counter affidavit, before the High Court, **Pankaj Paswan vs. State of Bihar Anr.**, 2015 SCC On Line Patna 8739, the State had taken a defence that many candidates applied in more than one place and hence there could be deliberate tweaking in the date of birth to take advantage of the selection process in more than one district or region. It is very important to notice that there is no such plea taken in the present case. If any such device or trick had been adopted, the State would have easily detected the same and placed the same before the Court. The fact that the same has not been done shows that there was no trick or device resorted to by the appellant. It is a trivial error which appears to be a genuine and bona fide mistake. It will be unjust to penalise the appellant for the same.

21. Learned counsel for the State, in the written submissions, stated that the instructions clearly stipulated that if two or more candidates obtain the same marks in the Physical Eligibility Test, their relative rank in the final merit list could be determined on the basis of their date of birth. The implication in the submission is that the date of birth is a significant aspect. On that basis, he submits that the cancellation ought to be upheld. We do not find merit in the submission. The original date of birth, as available is 18.12.1997, in the educational certificates. There is no dispute that the appellant's date of birth was, in fact, 18.12.1997. In view of that, we do not see the said clause in the instructions as an impediment for the selection of the appellant.

22. Learned counsel for the State has also, in the written submissions, cited the judgment of this Court in **Yogesh Kumar and Others vs. Govt. of NCT, Delhi and Others**, (2003) 3 SCC 548. The said judgment is clearly distinguishable. There the issue was about allowing entry of ineligible persons into the selection. While the eligibility prescribed was Teacher's Training Certificate from a recognized institute or intermediate

or equivalent from a recognized Board/University with an elective subject in the required language at the matric level, candidates with B.Ed. degree sought appointment as Assistant Teacher. Negating their claim, this Court held that the B.Ed. qualification cannot be treated as a qualification higher than the Teacher's Training Certificate, because the nature of the training imparted for grant of certificate and for grant of degree was totally different. In that context, this Court held that deviating from the rules and allowing entry to ineligible persons would deprive many others who could have competed for the post. **Yogesh Kumar (supra)** has no application to the facts of the present case. Equally distinguishable are the judgments of the Delhi High Court in **Rohit Kumar and Another vs. Union of India and Others**, 2022 SCC OnLine Del 1219 and **Pradeep Kumar vs. Union of India and Others**, 2022 SCC OnLine Del 239.

23. In the case of **Rohit Kumar (supra)**, the undisputed facts, as is clear from para 10 of the judgment, was that the candidate was declared unsuccessful on two counts, namely, that the OBC certificate uploaded by the candidate was not as per the format as mentioned in the advertisement and additionally on the ground that the date of issuance of the certificate was wrongly mentioned in the online application.

24. In **Pradeep Kumar (supra)**, the identity proof (Aadhaar Card) was not uploaded and instead the self photograph of the candidate has been uploaded. We find that the said two judgments are distinguishable on facts for the reasons set out above.

25. On the peculiar facts of this case, considering the background in which the error occurred, we are inclined to set aside the cancellation. We are not impressed with the finding of the Division Bench that there was no prayer seeking quashment of the results declared over the web. A reading of the prayer clause in the writ petition indicates that the appellant did pray for a *mandamus* directing the respondents to consider the candidature treating his date of birth as 18.12.1997 and also sought for a direction for issuance of an appointment letter. A Writ Court has the power to mould the relief. Justice cannot be forsaken on the altar of technicalities.

### **Conclusion**

26. For the reasons stated above, we set aside the judgment of the Division Bench of the Patna High Court in LPA No. 1271 of 2019 dated 22.08.2022 and direct the respondent-State to treat the appellant as a candidate who has "passed", in the selection process held under the advertisement No. 1 of 2017 issued by the Central Selection Board (Constable Recruitment), Patna with the date of birth as 18.12.1997. We further direct that if the appellant is otherwise not disqualified, the case of the appellant be considered and necessary appointment letter issued. We further direct that, in the event of there being no vacancy, appointment letter will still have to be issued on the special facts of this case. We make the said direction, in exercise of powers under Article 142 of the Constitution of India. We further direct that the State will be at liberty in that event to adjust the vacancy in the next recruitment that they may resort to in the coming years. We notice from the written submissions of the State that 21,391 vacancies have been notified in Advertisement No.1 of 2023 and it is stated that the procedure for selection is ongoing. We place the said statement on record. We direct compliance to be made of the aforesaid direction within a period of four weeks from today.

27. The appeal is allowed in the above terms. No order as to costs.