

**Central Administrative Tribunal
Principal Bench, New Delhi**

M.A. No.994/2016 in O.A. No.3993/2015

Order reserved on 17th March 2016

Order pronounced on 18th March 2016

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Neelam & others

..Applicants

(Ms. Priyanka Bhardwaj, Advocate)

Versus

Union of India & others

..Respondents

(Mr. Gyanendra Singh, Advocate)

O R D E R on interim relief

Mr. Sudhir Kumar:

Heard the learned counsel from both sides on the point of interim relief. Learned counsel for applicants has submitted that the applicants of this O.A. are already working on contractual employment with respondents and the O.A. has been moved for a decision regarding their eligibility to appear at the interview process, which is going to be held by the respondents tomorrow, i.e., on 18.03.2016, at Kolkata. By way of interim relief, she is only praying that the applicants may be permitted to appear at the interview tomorrow, subject to the outcome of the O.A.

2. Learned counsel for respondents, Mr. Gyanendra Singh has very strongly opposed the prayer and has submitted that in view of the decision of the Hon'ble Supreme Court in **Secretary, Union Public Service Commission & another v. S. Krishna Chaitanya**, (2011) 14 SCC 227,

this prayer of the applicants cannot be entertained. He has also submitted that the interim prayer of applicants is hit by the principle of constructive *res judicata*. However, in her reply arguments, learned counsel for applicants has relied upon an interim Order passed by the same Bench on 25.01.2016 in O.A. No.299/2016 – **Dr. Sanjeev Kathuria v. Union Public Service Commission**, in which, after considering the very same judgment in the case of **Secretary, Union Public Service Commission & another v. S. Krishna Chaitanya** (supra), the applicant therein had been provisionally permitted to appear at the interview, and she seeks parity with that interim Order passed by the same Bench on 25.01.2016. In that case, in O.A. No.299/2016, on 25.01.2016, the following Orders were passed:-

“Heard the learned counsel for the applicant, and both the learned counsel for the respondents on the point of interim relief. Learned counsel for the applicant has emphasized that the applicant is eligible for grant of interim relief, since he has requested the respondent (Union of India) through Annexure A-9 of the OA for age relaxation, which has been received by the respondents on 13.01.2016, and is yet to be decided. He submits that this representation has been submitted in pursuance of the Paragraph 16 "Power to Relax", as contained in the Ministry of Health & Family Welfare's Notification dated 07.04.2014, notifying the Central Government Health Service Rules 2014. He also points out that on the aspect of merits of the case, he would be relying upon the Supreme Court's judgment in the case of Union Public Service Commission vs. Dr. Jamuna Kurup, Civil Appeal Nos.2294-2329 of 2008, and the orders passed by the Coordinate Benches, which have been annexed to the OA (Annexure A-10 colly).

2. Shri R.V.Sinha, learned counsel for the UPSC has submitted that there is nothing wrong or illegal in the impugned order Annexure A-2 passed by the respondents on 29.12.2015, inasmuch as it is clear that the issue of age relaxation applies only to the Central Government employees appointed on regular basis, and does not apply to the contractual employees, while it is an admitted case of the applicant that he had been appointed on contractual basis for the past many years. He has also submitted that on the point of merit, he would be relying upon Para-30 of the Supreme Court's judgment in the case of Secretary, Union Public Service Commission and Another vs.

S.Krishna Chaitanya : (2011 14 SCC 227 and paras 19, 20 and 24 in the judgment Secretary, Union Public Service Commission and Another vs. Girish Jayanti Lal Vaghela and Others (2006) 2 SCC 482 copies of which have been submitted in the Court and he has read out therefrom.

3. Learned counsel for the respondents no. 2 and 3 has submitted his brief arguments only mainly adopting the arguments advanced by the learned counsel for respondent no.1.

4. Shri R.V.Sinha, learned counsel for respondent no.1 has made a further submission that since the final relief cannot be granted in the garb of interim relief, and the applicant has not been able to make out a prima facie case, or that balance of convenience lies in his favour, or that irreparable harm would be caused to him, no case for grant of interim relief arises in his favour.

5. However, we find that a proper appreciation of the rival contentions of the parties, and an appreciation of the case laws submitted by the learned counsel for both sides can only be arrived at in the final order passed in the OA. Presently, at the stage of consideration for grant of prayer for interim relief, we are only concerned with as to whether the interim prayer is in the nature of grant of final relief, or not, and can be granted or not.

6. After comparison of the prayers at Para 8(i) and 8(ii) and Para-9 of the OA, it appears that the interim relief prayed for is not the same as the prayer for grant of final relief. The OA may or may not succeed later, since plurality of reliefs have been sought for in this OA, and since the appreciation of the case laws and rival contentions and arguments have to be done in the final order, but since the interview for the post is going to be conducted on 27.01.2016, which would not be conducted later, if the applicant misses the interview, the third of the prerequisites for grant of Interim Relief, , which learned counsel Shri R.V.Sinha has submitted that in this case does not lie in favour of the applicant, is not correct, and irremediable harm will be caused to the applicant, if he is denied a chance for this being considered for the post, and once the interviews are over, there will be no scope for him to be interviewed.

7. Therefore, we direct the respondent-UPSC to include the name of the applicant, on a provisional basis, in the list of candidates to be interviewed, and make it clear that his result will be kept in a sealed cover, and no right whatsoever shall accrue to the applicant, till the final outcome of this OA, just because he has been provisionally permitted to appear at the interview, which is going to be held on 27.01.2016. It is also made clear that the applicant will not claim equity just because he has been provisionally allowed to appear in the interview. Call on 21.03.2016.

Issue Dasti.”

3. Issue regarding the eligibility or otherwise of the applicants for their appointments on the posts of Assistant Archivists would be decided only when the O.A. is decided finally. Also, it is trite law that no final relief can be granted in the garb of an interim relief. However, for parity of considerations, and since the applicants of this O.A. are already contractual employees of the respondents-department, the prayer for interim relief is accepted, and respondents are directed to provisionally permit the applicants to appear at the interview to be held tomorrow at Kolkata. However, it is made clear that such participation in the interview will not create any right or equity in favour of the applicants, and their participation in the interview will not lead to a presumption that they have been held to be eligible for the posts in question, in any manner, without a final decision in their O.A.

List the O.A. on 31.03.2016.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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