

Satya Prakash Rai vs Union Of India & Anr on 23 March, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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SINGH NAYAL
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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3651/2021

SATYA PRAKASH RAI Petitioner

Through: Ms. Priyanka Kakkar and Mr. Akshit
Guruswamy, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. R.V. Sinha, Advocate for R-1.
Mr. Naresh Kaushik, Advocate for
UPSC.

With

+ W.P.(C) 3860/2021 & CM APPL. 11651-52/2021

SAVITA RANI Petitioner

Through: Ms. Bharat Bhushan, Advocate.

versus

UNION OF INDIA THROUGH: ITS SECRETARY..... Respondent

Through: Ms. Sarika Singh, Advocate for R-1.
Mr. Naresh Kaushik, Advocate for
UPSC.

CORAM:

JUSTICE PRATHIBA M. SINGH
ORDER

% 23.03.2021

1. These are two writ petitions which have been filed by the Petitioners seeking an additional attempt to appear in the Preliminary Examination of the Civil Services Examination.

2. The case of the Petitioner in W.P.(C) 3651/2021 is that the Petitioner himself was affected by the serious and life threatening infection of Corona virus on 1st October, 2020 and due to the mandatory requirement of isolation he could not take the preliminary examination which was held on 4th October, 2020. The facts in W.P.(C) 3860/2021 are similar to W.P.(C) 3651/202, Digitally Signed By:DINESH SINGH NAYAL Signing Date:26.03.2021 16:03:11 wherein the Petitioner was also suffering from COVID-19 infection and could not appear in the examination.

3. It is submitted by Ms. Priyanka Kakkar, ld. counsel appearing for the Petitioner that the nature of the disease is such that the Petitioner, being unwell, cannot attempt the examination owing to the mandatory requirement of self-isolation. She submits that the present petition is in the nature of a mercy petition seeking one additional opportunity to the Petitioner to appear in the preliminary examination. On behalf of the Respondents preliminary objections as to maintainability is raised that the Petitioners ought to approach the Central Administrative Tribunal.

4. Ld. counsels appearing for the Respondents i.e, the Union of India and the UPSC have also opposed the petition and placed reliance on the recent judgment of the Supreme Court in Rachna & Ors. v. Union of India & Anr., [W.P.(C) 1410/2020 decided on 24th February, 2021]. On the strength of the said judgment it is argued that grant of an additional attempt was sought in the said writ petition and the other batch of petitions including impleadment applications. Mr. Kaushik, ld. counsel submits that various reasons for which an additional attempt ought to be granted were placed before the Supreme Court, however, the Supreme Court has rejected the said request for an additional attempt and he submits that the said issue having now been considered by the Supreme Court, the petition is not liable to be entertained.

5. The Supreme Court in Rachna (supra), as per ld. counsels had the occasion to consider all the multifarious reasons seeking an additional attempt for the IAS Prelims examination. However, after weighing the various factors, the Supreme Court rejected the said request. The relevant portion of the aforementioned judgment is as under:

Digitally Signed By:DINESH SINGH NAYAL Signing Date:26.03.2021 16:03:11 "35.
This court cannot lose sight of the fact that apart from the present Examination 2020, it has been brought to the notice of this Court that remedial measures were adopted for the candidates who had participated in the various examinations/recruitment tests held for Central services by the Commission at the given point of time during the Covid 19 pandemic and apart from that, the State Commissions/recruiting agencies must have conducted their examinations/recruitment tests for various services and merely because the present petitioners made a complaint to this Court, cannot be taken into isolation for the purpose of seeking additional chance/attempt in the backdrop of Covid-19 pandemic, which has been faced by not only the candidates appeared in Examination 2020 but by the candidates appeared in the various examinations/recruitment tests held by the State Commissions or by other recruiting agencies and by and large, every member of the society in one way or the other but that does not in any manner give legitimate right to the petitioners to claim additional benefit/attempt which is otherwise not permissible under the scheme of Rules 2020.

36. So far as the instant case is concerned, there are limited attempts for the candidates who appeared in the general category and the scheme of Rules 2020 does not provide any discretion to the 1st respondent to grant relaxation either in attempt or in age and any exercise of discretion which does not vest with the 1st respondent, if exercised, may go in contravention to the scheme of Rules 2020.

...

39. We do find substance that any concession either in attempt or age is not available under the scheme of Rules 2020, at the same time, proposal which has been placed by the 1st respondent before us apart from complaint made inter se by the petitioners/intervenors themselves of being discriminatory in character, we are also of the view that it is advisable to avoid this situation Digitally Signed By:DINESH SINGH NAYAL Signing Date:26.03.2021 16:03:11 and any relaxation which is not permissible either in attempt or age under the scheme of Rules 2020 apart from being in contravention to the rules, it may be discriminatory and it is advisable not to exercise discretion in implementing what being proposed by the 1st respondent in compliance of the order of this Court dated 30th September, 2020."

6. Ld. counsel for the Petitioner seeks to distinguish the present petition from Rachna (supra) by arguing that none of the Petitioners in the said petitions were suffering from COVID-19 and in view thereof, the present case is clearly distinguishable. Mr. Kaushik, ld. counsel, however, categorically submits before the Court that since he was the counsel of the UPSC before the Supreme Court, even this argument of the candidates of having suffered from COVID-19 was raised before the Supreme Court and the Court had considered all the various reasons as to why an additional attempt was being sought.

7. Mr. R.V. Sinha, ld. counsel appearing for the Union of India also relies upon the judgment of Rachna (supra) and submits that a policy decision has been taken not to give an additional attempt, though certain other relaxations have been given. Accordingly, the present petition is not liable to be entertained.

8. The Court has heard the counsels for the parties and has perused the judgment in Rachna (supra). The said judgment has now finally settled the issue of an additional attempt in the UPSC preliminary examinations as also the issue of age relaxation. The judgment has been passed in the context of the COVID-19 pandemic and a perusal of the judgment clearly shows that various situations in which candidates were placed has been considered by the Digitally Signed By:DINESH SINGH NAYAL Signing Date:26.03.2021 16:03:11 Supreme Court. The Supreme Court has categorically laid down that no additional attempt or age relaxation could be granted as the same would be in contravention of the scheme of the Civil Services Rules, 2020.

9. Even previously, in the case of Praveen Sharma v. The Secretary, Union Public Service Commission The Secretary Ministry of Personal Public Grievances & Pensions, [W.P.(C) 4569/2008 decided on 16th December, 2008], a ld. Division Bench of this Court was considering a case involving the Petitioner therein who had met with an accident and could not appear in the preliminary examination. The Court, in the said case observed:

"17. We are unable to accept the contention of learned counsel for the Petitioner on a plain and clear reading of the rules and regulations referred to above. Any appearance in the examination whether preliminary or main would constitute an

attempt in the examination. The reason why a candidate cannot successfully complete the examination and be selected is of no consequence at all. There can be myriad reasons for which a candidate may not be able to complete his preliminary or main examinations - it could be illness, accident or any other reason beyond the control of a candidate. It is quite possible that in every attempt that a candidate makes, if he makes an assessment that he is not likely to succeed, he can always feign an illness and request the UPSC not to treat the appearance as an attempt. If such non-genuine requests are accepted by the UPSC, a candidate may get a large number of attempts at the examination until he reaches the age of disqualification."

10. In the opinion of this Court, the factual situation in case of the present two writ petitioners are clearly covered by the judgment in *Rachna* (supra) as also judgment in *Praveen* (supra), where the Court has specifically Digitally Signed By:DINESH SINGH NAYAL Signing Date:26.03.2021 16:03:11 considered that when due to illness, a person cannot seek to compete again in the preliminary examination, and an additional attempt cannot be granted. There is no doubt that if a person has suffered from COVID-19 it is indeed an unfortunate situation, however, in order to maintain the credibility and integrity of the examination itself and to ensure that the conduct of the examinations happens on an annual basis, and the candidates appearing in the subsequent years are not put to any prejudice, interference with the Civil Services Examination Rules, 2020 is not permissible. Since the said Rules do not permit an additional attempt and for relaxation of age, the Court is not inclined to entertain the present writ petitions.

11. The petitions are dismissed with no order as to costs.

12. The question of maintainability raised by the Respondents, in view of the above facts and circumstances is not gone into and is left open.

13. With these observations, the present petition along with all pending applications are disposed of.

PRATHIBA M. SINGH, J MARCH 23, 2021 Dj/Ap