

Ran Vijay Singh And 34 Others vs Union Of India And 6 Others on 16 April, 2018

Author: Ashwani Kumar Mishra

Bench: Ashwani Kumar Mishra

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Reserved

Case :- WRIT - A No. - 2813 of 2017

Petitioner :- Ran Vijay Singh And 34 Others

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Siddharth Khare,Ashok Khare

Counsel for Respondent :- A.S.G.I.,Dhruva.Kant.Chaturved.Uoi

With

Case :- WRIT - A No. - 61414 of 2016

Petitioner :- Mohd Ahmad Sher And 65 Ors.

Respondent :- Union Of India And 6 Ors.

Counsel for Petitioner :- Siddharth Khare,Ashok Khare

Counsel for Respondent :- A.S.G.I.,Saurabh Srivastava

And

Case :- WRIT - A No. - 19019 of 2017

Petitioner :- Pushpendra Kumar And Anr.

Respondent :- Union Of India And 6 Ors.

Counsel for Petitioner :- Shamimul Hasnain, Mohammad Azam

Counsel for Respondent :- A.S.G.I., Gyan Prakash Singh

And

Case :- WRIT - A No. - 56620 of 2017

Petitioner :- Bedanand Kumar

Respondent :- Union Of India And 4 Ors.

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- A.S.G.I., Sabhajeet Singh

And

Case :- WRIT - A No. - 17245 of 2017

Petitioner :- Vijay Pal Singh And 2 Ors.

Respondent :- Union Of India And 6 Ors.

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- A.S.G.I., Krishna Dev Raj

And

Case :- WRIT - A No. - 31243 of 2017

Petitioner :- Kamlesh Yadav And 45 Others

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare

Counsel for Respondent :- A.S.G.I., Patanjali Mishra

And

Case :- WRIT - A No. - 32 of 2018

Petitioner :- Ankush Kumar Raushan And 5 Others

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Ashish Kumar Srivastava

Counsel for Respondent :- A.S.G.I.,Om Prakash Gupta

And

Case :- WRIT - A No. - 33246 of 2017

Petitioner :- Diwakar Kumar And 17 Others

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Siddharth Khare,Ashok Khare

Counsel for Respondent :- A.S.G.I.,Pramod Kumar Singh

And

Case :- WRIT - A No. - 35272 of 2017

Petitioner :- Ashok Kumar Yadav And 3 Others

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- A.S.G.I.,A K Pal

And

Case :- WRIT - A No. - 40117 of 2017

Petitioner :- Abhijeet Tripathi And 24 Others

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Siddharth Khare,Ashok Khare

Counsel for Respondent :- A.S.G.I.,Patanjali Mishra

And

Case :- WRIT - A No. - 54153 of 2017

Petitioner :- Rajeev Ranjan And 7 Others

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Ashish Kumar Srivastava

Counsel for Respondent :- A.S.G.I.,Gautam Chaudhary

And

Case :- WRIT - A No. - 2807 of 2018

Petitioner :- Kumar Sonu Bhagat

Respondent :- Union Of India

Counsel for Petitioner :- Mr Siddharth Khare

Counsel for Respondent :- A.S.G.I.

And

Case :- WRIT - A No. - 5145 of 2018

Petitioner :- Saurav Kumar And 4 Others

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Siddharth Khare

Counsel for Respondent :- A.S.G.I.,Sabhajeet Singh

Hon'ble Ashwani Kumar Mishra,J.

1. This bunch of writ petitions involve common questions of law and fact, and have been heard together. Writ Petition No.2813 of 2017 (Ranvijay Singh and others Vs. Union of India and others) is treated to be the leading case. All writ petitions in this bunch are being disposed of by this common judgment.

2. Staff Selection Commission (Central Region), Allahabad published an advertisement inviting applications for appointment to the post of Constable (GD) in Assam Rifles, BSF, CISF, CRPF, ITBP and SSB, for which last date fixed to submit application was 11.1.2013. 22006 posts were advertised and examination was to consist of physical standard test/physical efficiency test, written test and medical test.

3. In the leading Writ Petition No.2813 of 2017 (Ranvijay Singh and others Vs. Union of India and others), petitioner nos.1, 2, 3, 4, 5, 8, 9, 10, 12, 14, 15, 16, 21, 22, 23, 26, 28, 29, 31, 32, 33, 34, 35 and 36 belong to Other Backward Classes, while petitioner nos. 6, 7, 13, 17, 18, 20, 25 and 27 belong to General Category. Petitioner nos.11, 19, and 30 belong to Scheduled Caste and petitioner no.24 belong to Scheduled Tribes. Petitioners duly applied for appointment pursuant to advertisement in question and their applications were entertained. Physical standard test/physical efficiency test was got conducted between February, 2013 to April, 2013 at the designated centres, on the dates specified. All the petitioners cleared the test and were found physically fit for the post. The process for selection continued further with admit cards issued to petitioners for appearing in the written test on 12.5.2013, at the centres specified. Petitioners had to carry their proof of identity as specified by the recruitment agency i.e. the Commission. All the petitioners appeared in the written examination and cleared it vide results published in November, 2013. Communication through E-mail was then received by the petitioners requiring them to appear for medical examination between December, 2013 to March, 2014, which too was cleared. Final result was declared in April, 2014, wherein all the petitioners stood provisionally selected for appointment to the post of Constable in CRPF. The final result was also revised in May, 2015, but not to the detriment of petitioners.

4. Nomination list was thereafter issued in the month of November, 2014 for the purposes of appointment of petitioners, provisionally. Although name of the petitioners were forwarded by the Commission to CRPF for appointment, but no appointment orders were issued. This apparently was for the reason that the Commission found mismatch in the signatures and handwriting of petitioners on various documents signed by them and had consequently recommended scrutiny/verification of their candidature.

5. CRPF Authorities in such circumstances issued notices to the petitioners on 5.8.2015. The communication recorded that petitioners' dossier received from Commission carries endorsement that in different stages of examination i.e. physical standard test/physical efficiency test, written test and medical test, there is mismatch in the handwriting and signatures of the petitioners. Difference in the left thumb impression was also observed. In order to verify such facts, petitioners were required to appear at the concerned office at Allahabad and furnish their handwriting, signatures and thumb impression of left and right hand, for the purposes of its due verification by Central Forensic Science Laboratory (CFSL). The notice further recorded that only in the event petitioners' identity based upon their signatures and handwriting is established that appointment orders would be issued to the petitioners. The notice further provided that in case the report of Central Forensic Science Laboratory conforms the doubt expressed by the Commission, the candidate would be debarred from appearing in the examination for a period of 05 years and criminal proceedings would also be initiated by registering an F.I.R. Pursuant to such notices issued on 5th August, 2015,

all the petitioners appeared at the designated centre and submitted their handwriting, signatures and thumb impression.

6. After a gap of nearly an year and a half, within which no correspondence ensued, a communication was received by the petitioners on 14th December, 2016, intimating them that their handwriting and signatures do not match and that petitioners have resorted to impersonation. In view of the stipulation in the advertisement as well as para 10 of the write up of the final examination, petitioners have been found guilty of misconduct and their candidature stands rejected. Petitioners have further been debarred from appearing in the examination of Commission for a period of three years. The order dated 14th December, 2016 has been issued with the approval of Regional Director under the signatures of Deputy Director (Nomination). Petitioners are aggrieved by this order, and therefore, have filed the present writ petition challenging it. Prayer has been made to quash the order and issue a direction to the respondents for issuance of appointment to petitioners as Constable (GD) in CRPF.

7. Learned counsel for the petitioners submits that the impugned action is arbitrary and violates Articles 14 and 16 of the Constitution of India. It is asserted that allegation of impersonation is not based upon any objective assessment of petitioners' candidature and proceeds on vague and unacceptable materials. Submission is that merely on the strength of handwriting expert's report a conclusive opinion cannot be formed that petitioners had cleared the examination by impersonation. The order is also said to have been passed without due application of mind as most of the reports are identically worded. According to petitioners, the allegations of impersonation are not made out on the basis of materials adduced. It is also urged that the materials relied upon against the petitioners to hold that they have resorted to impersonation was never provided to them, nor they had any opportunity to confront it, and therefore, the principles of natural justice has been breached in the process. It is also contended that the order being stigmatic and punitive in nature clearly carried civil consequences and could not have been passed without affording an opportunity of hearing and permitting the petitioners an opportunity to confront the materials relied upon against them.

8. It is submitted that at all stages of examination i.e. physical standard test/physical efficiency test, written test and medical test, petitioners had appeared alongwith valid identity card, and the authorities had permitted them to appear at all stages of examination only after being satisfied with regard to their identity, and there was no material to suspect petitioners' candidature. Submission is that identity of petitioners was checked at all stages, and the allegation of impersonation made after substantially long period is not only vague and unsubstantiated, but is otherwise not established on the evidence adduced. Petitioners further assert that in the medical examination, bio-metric machine was used in which thumb impression of each of the petitioners was taken, but there is no report/finding on record that petitioners' thumb impression do not match. Reliance is placed upon a judgment of this Court in *Rajesh Kumar Vs. Union of India and others*, reported in 2013(10) ADJ 672, in order to assert that procedure followed for cancellation of petitioners' appointment is arbitrary and hit by Article 14 of the Constitution of India.

9. A counter affidavit has been filed by the respondents disputing the averments made in the writ petition. It is contended that CRPF Authorities in order to verify the genuineness of candidature of petitioners had directed them to appear before the concerned authority of CRPF, and specimen thumb impression, handwriting and signatures were obtained. Such materials were then sent to Central Forensic Science Laboratory for obtaining necessary reports. Paras 8 and 9 of the counter affidavit refers to the material available on record of the respondents on the basis of which impugned action has been taken and are, therefore, reproduced:-

"8. That after careful and thorough examination of original documents in respect of petitioners in all aspects of handwriting identification and detection of forgery with the scientific aids available in Govt. of India Laboratory, the CFSL submitted their Examination Report to CRPF returned to dossier of the petitioners alongwith Expert opinion to Staff Selection Commission (CR), Allahabad for further necessary action.

9. That the detailed opinion of CFSL clearly establishes that the petitioners had procured impersonation in the written part of the Examination and it also confirmed that the petitioners had tried to secure Govt. job by fraudulent means. The CFSL while submitting their opinion also submitted the reason of reaching to the conclusion that the handwritings and signatures available on the Admission Certificate of Written part of the Examination did not tally with the specimen signatures and handwritings obtained by the CAPF at subsequent stage of the Examination. Further, the CFSL while submitting their report also opined about the identical signature, handwriting etc. available on the document of different stage of the examinations other than written part of the Examination, which also proves that the petitioners had procured impersonation in the written part of the examination.
....."

10. Respondents assert that on the basis of report of CFSL, the Commission was satisfied that petitioners have resorted to impersonation, and consequently, their candidature stands rejected. The respondents have relied upon a decision of this Court in Writ Petition No.32867 of 2016 (Pradeep Fauzdar Vs. Union of India and Others), wherein a similar challenge was repelled by this Court observing that impugned action is based upon the opinion given by expert Agencies, and it is not for the Court to sit in appeal over it. Reliance is also placed upon an order of this Court in Writ Petition No.56185 of 2004 (Shailendra Kumar Verma Vs. Union of India and Others) decided on 29.3.2006, whereby a similar view of Central Administrative Tribunal has been affirmed by a Division Bench of this Court. Reliance is then placed upon a judgment of the Hon'ble Supreme Court reported in AIR 1996 SC 2052, to contend that in case of malpractice in examination, no notice or opportunity is required to be given. Reliance is also placed upon a decision of the Apex Court reported in State of Chhatisgarh Vs. Dhirjo Kumar Sengar, reported in 2009 (13) SCC 600. At the time of hearing of the writ petition, the respondents have also produced a judgment of a Division Bench of this Court in Special Appeal Defective No.782 of 2016 (Abhishek Kumar and another Vs. Union of India and Another), decided on 23.12.2016. Another Division Bench Judgment of this Court in Sanjeev Kumar Vs. Institute of Banking Personnel Selection and another, reported in 2017(5) AWC 5278, has also been relied upon for similar proposition.

11. The question that falls for consideration is as to whether respondents were justified on the basis of materials available on record to hold that petitioners had cleared the examination in question on the strength of impersonation? An ancillary question also arises as to whether petitioners were given reasonable opportunity in the matter, or not?

12. Advertisement pursuant to which selection proceedings have been undertaken is brought on record as Annexure-1 to the writ petition. The examination consists of three stages i.e. physical standard test/physical efficiency test, written test and medical test. The qualification required for the post is High School. Clause 13 of the advertisement relates to identity of the candidate and is extracted hereinafter:-

"13. ijh{kk esa lfEefyr gksus gsrq mEehnokjksa dks igpku gsrq QksVks;qDr igpku i= tSlS M^akbfoax ykblsUl] oksVj dkMZ] vk/kkj dkMZ] fofo }kjk tkjh igpku i=@vk;dj@isu dkMZ ewy :i esa ykuk gksxk vU;Fkk ijh{kk esa lfEefyr gksus dh vuqefr ugha nh tk;sxhA"

13. For the purposes of enabling the petitioners to appear in the written test, the Commission had issued admission certificate, which contained their photograph as also their signatures. Their identity with reference to specified identity card was verified at that stage. Similarly at the time of medical examination also, all the petitioners have been identified by the department based upon the identity card specified in Clause 13 of the advertisement. At none of the stages of examination, any question or doubt was raised with regard to petitioners' identity. Reasonable safeguard otherwise appeared to have been taken by the respondents to ascertain identity of candidate.

14. All the petitioners have produced their identity cards, before the concerned respondents at each of the three stages, and no issue regarding their identity was ever raised. In the physical standard test and physical efficiency test, the respondents have clearly certified in Appendix 'B-1' that petitioners have qualified on all parameters. This certification has been issued after verifying the petitioners' identity with reference to the identity cards specified by the respondents themselves. Although possibility of error in ascertaining identity of a candidate by an invigilator cannot be ruled out, nor petitioners can claim any right to appointment on account of default of the invigilator, but such error on part of the invigilator must be shown to exist. There cannot be any presumption of error on part of the invigilator, particularly when the examination was in three stages and it is doubtful that same invigilators were deployed at each of the stages or that same mistake was committed at all stages.

15. A counter affidavit has been filed on behalf of the Staff Selection Commission (Central Region) and its authorities, which does not contain any material in support of Commission's opinion that petitioners' photograph or thumb impression do not match. The only material placed on record is the report of Central Forensic Science Laboratory, Hyderabad, as per which the signatures and the handwriting on the specimen as well as written examination do not match. For the sake of convenience,

the report in respect of petitioner no.1 contained in Annexure-1 to the counter affidavit is reproduced:-

Resp. No. Name & Roll No. CFSL Report No & Date Opinion of CFSL Ranvijay Singh 3003527586 CFSL (H)/1554/ DOC/583/2015/ CH-199/2015 dt. 30.06.2016 The CFSL vide their Report, opined that the person who wrote the writings and signatures stamped and marked as S1 to S42 (specimen signatures & writings obtained from the Petitioner by the CAPF authority on 20.08.2015) did not write the writings and signatures similarly stamped and marked Q6 to Q8 (writings and signatures available on front & back side of Admission Certificate of Commission's Copy filled up in the Examination Hall at the time of written examination held on 12.05.2013).

16. There is no opinion of the concerned Laboratory disputing the specimen thumb impression and the admitted thumb impression, available with the respondents. It would be relevant to note at this stage that although in the notice a categorical recital is contained to the effect that thumb impression of the petitioner do not match, but in the counter affidavit as well as the reports annexed to it, no such material is placed on record to substantiate it. The only material relied upon is the opinion of CFSL regarding handwriting and signatures of petitioners being different in the written answer sheets/admit card and the specimen signatures and handwriting.

17. The Division Bench judgment in Abhishek Kumar (supra) had noticed the facts of that case in following words:-

"The appellant-petitioners by the instant intra-court appeal are assailing the order dated 4 February 2016 passed in a petition being Writ-A No. 4947 of 2016, whereby, the learned Single Judge dismissed the petition.

The impugned order would note that the appellants had applied for the post of constable and upon passing the written test they appeared for medical examination, however, their result was not declared. The competent authority pursuant to a direction of this Court in a petition filed by the appellants earlier rejected the candidature of the appellants for the reason that upon verification of the record, the signature and thumb impression of the appellants failed to match with that appended on the application submitted by the appellants. The signature and thumb impression was duly got verified from the Government Examiner. The case being of impersonation, therefore, their candidature was rejected on expert opinion.

Learned counsel for the petitioner would dispute the finding recorded by the expert opinion."

18. Similarly in Sanjeev Kumar (supra), the Division Bench had noticed the facts of that case in para 6, which is reproduced hereinafter:-

"6. We have proceeded to examine the averments that have come forward in the light of the arguments that have been advanced before this Court and what we find that petitioner appellant has appeared in the online examination from the centre namely BBD Northern India Institute of Technology, Sector 2, Akhilesh Das Nagar, Lucknow with Roll No. User ID 3581092577 and at the said point of time he has proceeded to append his signatures as well as his thumb impression in presence of Invigilator and at the point of time when interview was to be held, there has been suspicion on said score as there was mismatch in between the two i.e. thumb impression and signatures of petitioner appellant and, in view of this, petitioner appellant has been provisionally permitted to undertake the interview and on safer side a report from Handwriting Expert has been called for and Handwriting Expert, in his wisdom, on both aspect of the matter pertaining to thumb impression as well as signatures has clearly opined that as far as the thumb impression is concerned there is no ample material for comparison as no ridge characteristics found in disputed thumb impressions are clear enough for being identified, hence no opinion whatsoever can be furnished regarding identity but as far as signatures are concerned certainly there is mismatch as the disputed signatures has not been written by the writer of admitted signatures. Once such an opinion has been expressed by an expert and in such a situation the candidature of petitioner appellant stands cancelled, then petitioner appellant's submission that opportunity of hearing has not been provided to him, cannot be accepted by us, inasmuch as, petitioner's candidature at all point of time has to be accepted as provisional and it is always in the domain of examining body, if there is any suspicion to cancel the candidature of a candidate provided there is adequate material in respect of the same, in view of this, the opinion has not been formed arbitrarily."

19. In Pradeep Fauzdar (supra) also, the authorities had relied upon mismatch in the thumb impressions to arrive at a satisfaction of impersonation. Relevant portion of the order of learned Single Judge in Pradeep Fauzdar (supra) is reproduced:-

"Considering the fact that the expert agencies have verified the thumb impression of the petitioner on the Admit Card of the written examination and the thumb impression taken before the Board which do not tally with each other, I do not find any illegality or infirmity in the impugned orders. The impugned order has been passed on the basis of opinion given by the expert agencies and it is not for the Court to sit in appeal over the opinion of the expert agencies and controvert the findings recorded by expert agencies."

20. Conclusion of the employer/Commission that petitioners had impersonated if was based upon matching of the thumb impression or the photograph then it was definitely entitled to greater respect. Such a conclusion, based only upon the handwriting expert's opinion, however, would not be justified. The judgments in Pradeep Fauzdar (supra), Sanjeev Kumar (supra) and Abhishek Kumar (supra) are, therefore, distinguishable on facts, inasmuch as Commission's conclusion of impersonation in the present case is not based upon evaluation/matching of thumb impression.

21. In the facts of the present case, specimen thumb impression and admitted thumb impression were on record, but the expert's opinion in that regard has neither been produced, nor relied upon to hold that petitioners have impersonated. The averment made in para 39 of the writ petition that the thumb impression could have been verified to establish the identity of petitioners has been replied in para 23 of the counter affidavit, contending that the specimen handwriting and signatures do not match with the signatures and handwriting in the written examination. There is no justification brought on record as to why thumb impressions, though available, were not tallied.

22. A learned Single Judge of this Court in *Rajesh Kumar (supra)* had examined a similar controversy, where services of a probationer was dispensed with by the Bank, on the ground that he had cleared recruitment exam on the basis of impersonation. This Court observed that handwriting expert's opinion is at best an expert opinion, which is not conclusive. Observation of the learned Single Judge is apposite for our purposes and is reproduced hereinafter:-

"Expert opinion is only an opinion and has been considered to be of a very weak nature. The decision of the bank is based on the expert opinion alone to establish the guilt of impersonation.

In *Gulzar Ali Vs. State of Himachal Pradesh*⁶ the Supreme Court observed that the observation of the High Court that there is a natural tendency on the part of an expert witness to support the view of the party who called him, could not be downgraded. Many so-called experts have been shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them.

This Court considering large number of judgments in *Tika Ram vs. Daulat Ram*⁷ held as follows:-

"9. Evidence of an expert is only an opinion. Expert evidence is only a piece of evidence and external evidence. It has to be considered along with other pieces of evidence. Which would be the main evidence and which is the corroborative one depends upon the facts of each case. An expert's opinion is admissible to furnish the Court a scientific opinion which is likely to be outside the experience and knowledge of a Judge. This kind of testimony, however, has been considered to be of very weak nature and expert is usually required to speak, not to facts, but to opinions. It is quite often surprising to see with what facility, and to what extent, their views would be made to correspond with the wishes and interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think, but their judgment becomes so warped by regarding the subject in one point of view, that, when conscientiously deposed, they are incapable of expressing a candid opinion."

The Court has made the observation in trial, treating handwriting expert evidence as being opinion evidence. In service jurisprudence allegation has to be proved on preponderance and not beyond reasonable doubt. But the delinquent employee has to be confronted with the evidence as it is rebuttable.

Applying the law on the facts of the case, a perusal of the report dated 5.7.2011 submitted by one R. Krishna (B.Sc., L.L.B., M.A. (Criminology & Forensic Science) Consulting Forensic Expert formerly Assistant Professor of Criminology & Forensic Science (Sagar University) rendered the following opinion which is extracted below:

On a very careful examination of the signatures, thumb impressions and photographs of the above referred person, I am of the following opinion:-

(a) The signatures made on Call Letter at the time of examination does not match with the other standard signatures of Sri Rajesh Kumar. The reasons of my opinion are in Annexure No. 1.

(b) The thumb impression on the Call Letter, which is expected to be of Right Thumb do not match with the specimen thumb of Right Thumb of Sri Rajesh Kumar. The reasons of my opinion are given in Annexure No. 2.

(c) The photographs on the Call Letter of the person who appeared in the examination does not match with the photographs of the person who is joining the Bank. The reasons of my opinion are given in Annexure No. 3.

Opinion: On very careful examination of the above referred signatures and writing written as 'Rajesh Kumar' as in A-2, I am of the opinion, that the signature D-1 is not made by the same person, who has made the signatures and writing S-1 to S-3 and A-1 to A-3.

Reference of Photographs:

(A)= Standard photograph of Sri. Rajesh Kumar Submitted at the time of joining of the Bank.

(B)= Photograph of the Call Letter of the person who appeared in the examination.

Opinion: On very careful examination of the two above referred photographs marked (A) and (B), I am of the opinion, the photograph (A) differs with that of (B) and both the photographs are not of the same person.

The reasons of my opinion are follows:

1.

2.The length of face of photograph(A) is more than that of (B).

3.The width of the face of photograph (A) should have been more than that of the face of photograph (B) in the same proportion, but it is not. The width of the face of photograph(A) is lesser than of the face of the photograph (B) as marked by the red

line of the photographic enlargement.

4.....

5.....

6.....

It is contended on behalf of the respondents that the principles of natural justice would not apply in the facts of the present case, as the petitioner has obtained appointment on the basis of fraud and misrepresentation and in any case, the petitioner was on probation hence, the petitioner's service could be terminated without assigning any reason.

The contention is not accepted for the simple reason that the bank instead of simply terminating the services on the ground of unsuitability or poor performance during the probation, conducted an enquiry regarding the conduct of the petitioner for impersonation, fraud and misrepresentation, and after a full fledged enquiry conducted behind his back, evidence was collected by inviting expert opinion to prove the guilt. The motive is not termination simpliciter, the foundation being as to whether the petitioner impersonated in the written examination or not and the bank has acted upon the opinion of an expert taken behind the back of the petitioner without confronting the petitioner, the findings of the handwriting expert.

The contention of learned counsel for the respondent that the fact of impersonation is not rebuttable, even after giving opportunity, the petitioner shall not be able to rebut the findings of the expert opinion, cannot be accepted for the simple reason that the expert opinion can always be questioned by the petitioner. It is not a case where the petitioner had obtained appointment by filling forged verification documents or caste certificate, but is a case of impersonation i.e. act of fraud and misrepresentation which is being sought to be proved on evidences to justify the action and suspicion of the Bank. Fraud and misrepresentation is a question of fact, which has to be pleaded and proved after opportunity to the aggrieved party.

A perusal of the impugned order dated 13.9.2011, addressed to the petitioner, the subject is 'cancellation of appointment'. After giving background of the examination conducted, the petitioner appearing in the examination the impugned order records as follows:

Cancellation of Appointment.

"1. With reference to above, we advise that the written test for the captioned recruitment exercise was conducted on 8th, 15th and 22nd November, 2009 and you were required to appear in the written test at Bal Vidya Mandir, Station Road, Charbag, Lucknow on 8th November, 2009 at 9:15 A.M. However, you did not appear in the written test at the scheduled date, time and venue but some body else appeared in the above said test impersonating to be yourself.

2.

3.

4. Therefore you suppressed this material fact that you did not appear in the written test held on 8th November, 2009 at 9:15 A.M. On Roll No. 2601001887 allotted to you at Bal Vidya Mandir, Station Road, Charbagh, Lucknow and allowed some one else to appear in the written test in your place, as such your so called selection in Bank is void ab-initio. Accordingly, there is no service contract between you and the Bank and any engagement thereto in pursuance to the referred appointment letter is invalid and void ab-initio. However, for the record sake you are informed by this letter that your selection on the referred ground is cancelled in express terms by virtue of this letter which please note. Accordingly, your name has been struck off from the employee's roll/list of the Bank.

5. Please acknowledge receipt of this letter."

The discharge order is not order simpliciter, it in clear terms states that the foundation for termination is that the petitioner "did not appear in the written test and somebody else appeared.....impersonating to be yourself" is stigmatic and punitive and reflects upon the character/reputation of a person, it is blemish, imputation, label indicating deviation from a norm.

In the case of State of Punjab Vs. Balbir Singh⁸. The order of discharge mention the words "unlikely to prove an efficient police officer." Further before passing the aforesaid order of discharge it appears that Shri Balbir Singh, who was found to have consumed liquor and misbehaved with a lady constable was medically examined and thereafter discharge order was passed. The appeal, which was filed before the Deputy Inspector General of Police, was rejected and while rejecting the appeal, he referred to the aforesaid facts and stated that the discharge order was correct. Shri Balbir Singh challenged the order of discharge on the basis of the averments contained therein as well as in the order of the Deputy Inspector General of Police. The Hon'ble Apex Court upholding the aforesaid order of discharge held as under;-

"In the present case, order of termination cannot be held to be punitive in nature. The misconduct on behalf of the respondent was not the inducing factor for the termination of the respondent. The preliminary enquiry was not done with the object of finding out any misconduct on the part of the respondent, it was done only with a view to determine the suitability of the respondent within the meaning of Punjab Police Rule 12.21. The termination was not founded on the misconduct but the misbehaviour with a lady constable and consumption of liquor in office were considered to determine the suitability of the respondent for the job, in the light of the standards of discipline expected from police personnel."

The term 'stigma' has to be understood in its plain meaning as something that is detraction from the character or reputation of a person. It is blemish, imputation, a mark or label indicating a deviation

from a norm The assessment of work and performance and recording of satisfaction of the authority concerned that he is not satisfied with the work and performance regarding fitness of the employee concerned would not make the order stigmatic since it is not a blemish on the character and reputation of the person concerned but it reflects on the capacity and efficiency of the incumbent with respect to the work for which he/she was employed.

It has been held in various judgments rendered by the Supreme Court that reasons assigned in the termination order, at times may not be punitive or stigmatic, the following words/phrases mentioned in the order have been held to be not punitive.

i.) "want of application' ii.) "lack of potential"

iii.) "found not dependable"

iv.) "under suspension"

v.) "work is unsatisfactory"

vi.) "unlikely to prove an efficient officer"

(Refer: Dipti Prakash Banerjee vs. Saytendra Nath Bose National Centre for Basic Sciences, Calcutta and others (1999) 3 SCC 60, Paras Nath Pandey vs. Director, North Central Zone, Cultural Centre, Nyay Marg, Allahabad (2009) 1 UPLBEC 274) Considering the facts of the case, in the light of the legal principles, discussed herein above, I am of the view that the impugned order of termination is nothing but punitive and stigmatic, therefore, cannot be sustained.

In the result, the writ petition is allowed. The impugned order dated 27.8.2011 passed by Regional Manager, State Bank of India is quashed. The petitioner shall be entitled for reinstatement with all consequential benefits but with respect to arrears of salary, he will be paid 50% of the backwages for the period he remained out of employment pursuant to impugned order of termination. It goes without saying that this judgment shall not prevent to the respondents from proceedings afresh against the petitioner and pass a fresh order in accordance with law."

23. In the facts of the present case, despite allegation made in the notice dated 5.8.2015 about thumb impression, signatures and handwriting having not tallied, the respondents have confined their conclusion to the opinion of the handwriting expert. Such opinion cannot be construed as being conclusive.

24. In the present case not only the petitioners have been denied appointment but they are also debarred from appearing in any examination conducted by the Commission for three years. Such order of Commission is clearly stigmatic in nature. The order under challenge carries civil consequences also. Such order cannot be sustained merely on the strength of handwriting report,

nature of which remains that of an opinion, and cannot be construed as conclusive.

25. The report of CFSL based upon handwriting expert's opinion, moreover, has not been furnished to the petitioners. Petitioners consequently had no opportunity to controvert it. Attention of the Court has been invited to pages 252, 253, 273, 274, 333 and 334, which contain identical expressions. Report at pages 513, 594 and 554 also contain identical language. In case an opportunity was afforded to the petitioners then all such materials could have been highlighted.

26. The respondents were expected to confront the petitioners with material relied upon against them. A show cause containing such materials was required to have been issued, particularly when petitioners were being debarred from appearing in any other exam conducted by Commission for three years. The notice dated 5.8.2015 cannot be construed as a show cause notice. It only called upon the petitioners to give their specimen signatures, handwriting and thumb impression in view of Commission's opinion that they do not match. After the CFSL report was received neither the petitioners were put to any notice, nor the content of report was made known to them.

27. The opinion of handwriting expert was required to have been viewed with other materials available on record. Admittedly the petitioners had carried their identity cards, which had been verified at all stages of examination by the Commission and their officers. There cannot be a presumption that all the staffs/employees of Commission had failed to correctly identified the petitioner despite existence of identity card. The presumption that petitioners had identified themselves with reference to specified identity cards could not be lightly brushed aside. The fact that respondents had admitted thumb impressions and specimen thumb impressions with them, which have not been tallied also, is a factor to be kept in mind. There apparently was no reason for the respondents not to have verified the identity of petitioners with reference to their thumb impression, which is an evidence superior to the report of handwriting expert. The nature of expert's opinion otherwise not being conclusive, could not solely be relied upon to cancel petitioners' provisional selection, ignoring other materials, particularly when the order itself was stigmatic.

28. Respondents cannot find support for their action on the basis of judgment of the Apex Court in *Dhirjo Kumar Sengar* (supra), inasmuch as compassionate appointment was claimed by the respondent Dhirjo Kumar Sengar on the basis of his adoption. The adoption itself was not established. In such circumstances, it was observed that facts of the case clearly fell in the well recognized exceptions to the rule of *audi alteram partem*. The present case also does not fall in category of cases of mass-copying, where exclusion of principles of natural justice stands judicially recognized. As a matter of fact, no adverse report was ever received at the time of examination and it is at a subsequent point of time that allegation of impersonation is made and held to be proved only upon opinion of handwriting expert. The judgment of Central Administrative Tribunal relied upon by the respondents places reliance upon the judgment of Apex Court in AIR 1996 SC 2052. This judgment relates to land acquisition proceedings and has no relevance for present purposes.

29. Although the report of Government Laboratory and opinion of its experts would be entitled to weight, particularly when no bias or mala fide is alleged, yet, being in the nature of opinion, it cannot conclusively establish impersonation on part of the petitioners. The respondents' action is

otherwise not in conformity with the principles of natural justice. In such circumstances, I am of the considered view that action of respondents in cancelling petitioners' provisional selection, and debarring them from appearing in any exam conducted by the Commission for three years, is violative of Article 14 of the Constitution of India. Orders impugned dated 27.10.2016 and 14.12.2016, accordingly, stands quashed.

30. It shall, however, be open for the respondents to verify identity of petitioners upon material and evidence admissible in law by following the principles of natural justice. The required exercise be undertaken preferably within a period of four months from the date of presentation of certified copy of this order, as petitioners have already lost sufficient time. Based upon such consideration, the respondents shall take a fresh decision in the matter relating to grant of appointment to the petitioners.

31. Writ petitions are, accordingly, disposed of.

Order Date :- 16.4.2018 Anil (Ashwani Kumar Mishra, J.)