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**(2020) 08 RAJ CK 0037**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 17260 Of 2019**

Deepak Singh Khatana

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

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**Date of Decision :** 24-08-2020

**Acts Referred:**

**Citation :** (2020) 08 RAJ CK 0037

**Hon'ble Judges :** Inderjeet Singh, J

**Bench :** Single Bench

**Advocate :** Tanveer Ahamad, Avinash Choudhary, Dr. V.B. Sharma

**Final Decision :** Allowed

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## **Judgement**

This writ petition has been filed by the petitioner with the following prayer:-

It is, therefore, humbly prayed that Your Lordship may graciously be pleased to accept and allow this Writ Petition and by an appropriate writ, order or direction:

1. The non participation / absence of the petitioner in the Physical Efficiency Test conducted by the respondents on 27.09.2019, due to his illness may kindly be condoned and accordingly the respondents may be directed to conduct Physical Efficiency Test of the petitioner for appointment on the post of Sub Inspector in pursuance of the advertisement (Annx. 1)
2. That the respondents may be further directed to consider the candidature of the petitioner for further process of selection i.e. interview, for appointment on the post of Sub Inspector consequent upon the successful participation in Physical Efficiency Test in pursuant to the Advertisement (Annx.1) in the interest of justice.
3. Any other appropriate order, which may be found just and proper in the facts and circumstances of the case, be passed in favour of the petitioner.
4. Cost of writ petition may be awarded in favour of the petitioner.

Brief facts of the case are that the petitioner applied for the post of Sub-Inspector in pursuance to advertisement dated 05.10.2016. After qualifying in the written test, the petitioner was called for physical efficiency test which was scheduled to be held on 27.09.2019. The petitioner was suffering with Dengue fever and was admitted in the Narayan Multispeciality Hospital on 23.09.2019 and remained there upto 29.09.2019.

Counsel for petitioner submitted that the petitioner submitted application through registered post on 26.09.2020 (Annex.8) to the respondent for extension of his physical efficiency test from 27.09.2019 to some other date, as he was not well on the said date.

Counsel further submitted that since the respondents did not provide chance to him for his physical efficiency therefore he filed the present writ petition before this Court on 05.10.2019. Counsel for the petitioner further relied on the judgment passed by the Hon'ble Supreme Court in the matter of Mahendra Pratap Singh Vs. State of Uttar Pradesh and Others reported in (2019) 13 SCC wherein it has been held as under:-

2. The appellants are candidates who participated in the selection process of Ranker Sub-Inspector conducted during 2011. According to them, they were not physically fit to participate in the physical efficiency test and yet they were compelled to participate. It is further submitted that for those who have not thus participated in the selection on account of the physical illness, the Competent Authority had issued a circular permitting them to participate on a subsequent date. Therefore, it is submitted that the candidates who have been compelled to undergo physical efficiency test despite their illness could not have been put in a worse condition.

3. Ms. Aishwarya Bhati, learned Additional Advocate General, appearing for the respondents points out that the State had taken a stand before the High Court that in the case of those who have participated without any objection could not be given a second chance.

4. We find from the penultimate paragraph of the impugned judgment that the Division Bench of the High Court has permitted for re-test in the case of those candidates who had informed about the ailment on the date of the physical efficiency test or earlier. The relevant paragraph of the impugned judgment is extracted below:-

"In view of the aforesaid discussions, we find no infirmity or illegality in the impugned judgment, which is hereby approved.

However, it is provided that in respect of Category III and Category IV candidates, benefit of the above judgment shall not be extended to the candidates, who have not informed about the ailment on the date of Physical Efficiency Test or earlier."

5. In case, the appellants had actually informed prior to the test or at the time of

test regarding their ailment they are otherwise protected by the High Court. Such of the appellants are permitted to approach the competent authority with supporting material, in which case the needful in the light of the judgment as extracted herein above will be done within another one month.

6. Therefore, no further orders are required in these appeals. The appeals are, accordingly, disposed of.

Counsel for the respondent opposed the writ petition and submitted that conducting the PET/PST requires various mechanical equipment and availing them for conducting the PET/PST for the petitioner would not be feasible for the respondents.

Heard counsel for the parties and perused the record.

This writ petition filed by the petitioner deserves to be allowed for the reasons; firstly admittedly the petitioner was not well on the day of physical efficiency test i.e. on 27.09.2019 which is proved by documentary evidence i.e. medical record of the concerned hospital; secondly on 26.09.2019 the petitioner duly informed the respondents for giving one more chance due to his illness and lastly in view of the judgment passed in the matter of Mahendra Kumar (Supra) the petitioner deserves one more chance.

In that view of the matter, the respondents are directed to re-conduct the PET/PST for the petitioner within a period of ten days from receiving of certified copy of this order and respondent No. 4 is directed to allow the petitioner provisionally in the interview and if the petitioner is found successful in PET/PST, then his case be considered for appointment as per his merit and category for the post in question.

The writ petition is accordingly allowed.