

(2014) 08 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17096/2013 and Stay Application No. 14470/2013, Civil Writ Petition No. 17099/2013 and Stay Application No. 14473/2013, Civil Writ Petition No. 17537/2013 and Stay Application No. 14877/2013, Civil Writ Petition

Hemant Kumar Sharma and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19

Citation : (2014) 08 RAJ CK 0027

Hon'ble Judges : Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Dilip Kumar, Rahul Ritha, Jai Singh Hansawat, Alka Rani, Amit Kumar, Rahul Shrivastava, Ashok Kumar Maharhniya, Hemant Tangra, Mohit Agrawal and Waseem Ali, for the Appellant; Gopal Bhardwaj, OIC and Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.?All these writ petitions seek to challenge selection made by respondents on the post of Informatics Assistant on various grounds.

2. In the writ petitions, it is prayed that result of second part of examination, which pertains to type-tests of Hindi and English both, being contrary to prescribed norms, be declared illegal and quashed and set aside with direction to respondents to hold fresh type test. Further prayer is made for a direction to the respondents to consider the petitioners for appointment on the post of Informatics Assistant pursuant to advertisement dated 25.04.2013. In writ petition No. 20255/2013 prayer is made for a direction to the respondents to declare the actual result of type test and to award him marks in typing test as per his marks in written examination of Phase-I. In writ petition No. 119/2014, prayer is made for a direction to the respondents to give appointment to the petitioner by rechecking his type test sheet. In writ petition No. 20876/2013

prayer is made for a direction to the respondents to evaluation the marks of English type by taking average or according to the marks of Hindi typing and to appoint the petitioner on the post of Informatics Assistant pursuant to said advertisement.

3. In some of writ petitions, alternative prayer is also made that the respondents be directed to operate the waiting list and if the waiting list is not operated, then the respondents be directed to conduct a fresh type test for the post of Informatics Assistant and to conduct the type test by providing the key board of Hindi as per the diagram mentioned in the guidelines.

4. Briefly stated the facts of the cases are that the respondent Information Technology and Communication Department of the State Government issued an advertisement on 25.04.2013 for recruitment to 6300 posts of Informatics Assistant. According to the petitioners, the Medical and Health (Group-2) Department sanctioned 3617 posts of Informatics Assistant for successful implementation of Point No. 41 announced by the then Chief Minister in the Budget of the Year 2012-13, presented to the Rajasthan Legislative Assembly on 05.02.2013. Likewise, the Medical and health (Group-2) Department, on 04.03.2013, sanctioned 1848 posts of Informatics Assistant under the Scheme of Chief Minister Free Diagnostic Scheme. It further sanctioned 835 posts of Informatics Assistant for various departments of the State Government. Thus total 6300 posts were sanctioned.

5. As per the scheme of examination, the examination was to take place in two phases. In first phase, the candidates were required to clear the online test and in the second phase, the successful candidates were required to appear for type test on computers. The admit cards were issued to the candidates. Centers were allotted within the State of Rajasthan and also outside the State. On-line written examination took place on 06.07.2013. Petitioners cleared the on-line written examination and thereafter their type test took place on different dates. Candidates three times the vacancies were called for type test, which included name of petitioners. Petitioners eventually did not find their names in the select list.

6. Action of the respondents in doing so is violative of Articles 14, 16 and 19 of the Constitution. Petitioners have also submitted that as per the progress representation of the department for the financial year 2013-14, only 1763 Informatics Assistants are working against 4014 sanctioned posts, which clearly shows that 2251 posts are still lying vacant.

7. Petitioners have also contended that the respondents issued guidelines for type test, wherein it was mentioned that the candidate shall be required to perform the type test of Hindi and English languages on the Computer. In the said guidelines, the diagram of the key board for Hindi type was also mentioned, according to which the petitioners made preparation for the type test, but the key board, which was supplied to them at the time of examination was different

and the Hindi words were not appearing in the key board and that the keys were also different and for that reason the petitioners could not perform perfectly in the type test. Petitioners made a complaint regarding this to the Instructor/Invigilator at the time of type test but no action was taken by them to solve the problem. The example of the case of Sushil Kumar Jindal (petitioner in Writ Petition No. 19194/2013) has been given, who has been awarded zero mark in the type test, which cannot be accepted because he performed the type test very well.

8. Writ petitioners have alleged that there was problem in the software, which was provided by the agency hired by the respondents, which evaluated the type test script. This software was used for evaluating the type test script. Some of the petitioners, who were allotted Shankara Institute of Technology situated at SP-44, RIICO Industrial Area, Kukas, Jaipur, as their center for type test, have submitted that at the time of type test there was no problem in the software and they were satisfied from the type test given by them. Their attendance was also marked by the Invigilator but when the result was declared on 14.09.2013, they did not find their names in the select/merit list. On enquiry, it was found that their type test displayed on the website indicated that the petitioners failed in the same. The candidates were required to type 20 correct words per minute and it was also provided that the time of typing test in Hindi and English shall be of 15 minutes, respectively. This would mean that a candidate had to type 300 correct words in 15 minutes. On enquiry, they found that their transcript in both the languages i.e. Hindi and English, was totally blank and they were treated as disqualified as their transcript did not reveal a single word being typed by them. This problem has occurred in the case of only those candidates who appeared in the type test at Shankara Institute of Technology. The problem was faced not only by one or two, but by several candidates from the same Institute. Petitioners immediately submitted representation to the respondents on 16.09.2013 but no heed was paid. As there was no marking of speed test, the candidates secured merit position based upon marks secured in written examination subject to the condition of typing 20 correct words in one minute in both the Hindi and English. This problem arose due to the defect of the software. Respondents have not paid any heed to their problem and mechanically declared them disqualified. Similar problem occurred at Arya Engineering College.

9. Petitioner in Writ Petition No. 20876/2013 has contended that the examination was held in two phases. While the first phase consisted of written test, second phase was of typing test of Hindi and English on computer. He has cleared the written test and qualified for typing test. He appeared in typing test at examination center - Arya College of Engineering, Kukas, on 05.09.2013. The screen of his computer became black after typing for about 13 minutes and 14 seconds and did not clear till completion of 15 minutes. Thus his computer became black for one minute and 46 seconds. Petitioner typed out 319 words, out of which 291 words were correctly typed. He lacked only by one correct word for selection as due to blackening of screen, he could not type out for 1 minute

and 46 seconds.

10. Petitioner in Writ Petition No. 119/2014 has contended that petitioner appeared in the written examination on 06.07.2013 for the post of Informatics Assistant and was declared pass. He was called for type test conducted on 04.09.2013 at Shankara Institute of Technology, Kukas. Petitioner has done 34 lines in Hindi typing and 29 lines in English typing within prescribed time of 30 minutes. The type test was auto saved and message of type complete was shown on the screen of computer. The result of the type test was declared on 04.09.2013 and he was declared disqualified. It is contended that when he tried to print his type test sheet, no option was shown on the screen of the computer. While in case of one Ramesh Kumar Meena, the option was shown on the computer screen to view the type test sheet. Owing to this reason, he was not selected. When he failed to print his type test sheet, he submitted an application for re-checking on 18.09.2013, but no steps have been taken by the respondents.

11. Petitioners, in support of their cases, have relied on judgment of the Supreme Court in K. Manjusree Vs. State of A.P. and Another, , wherein it was held that selection criteria has to be prescribed in advance. Rules of game cannot be changed in the midst of process of selection.

12. Shri Gopal Bhardwaj, OIC for respondents, submitted that all the petitioners have failed to secure place in the select list and reason for this was that they could not clear the type test. It is submitted that the respondents had very clearly mentioned in the guidelines issued that the example of diagram given in the guidelines was tentative and that they were required to check the keys as per Devlys010 font and that some keys may be differ in Devlys010 from the example diagram given in the guidelines. Such guidelines were uploaded on the website. The respondents have produced on record copy of the guidelines containing aforesaid key board, and the proof showing that it was uploaded.

13. It is contended that for practice of the candidates, a mock test was also provided on the website and a press note was also issued in this regard. There are three types of key boards in Hindi type, namely, Remington, Inscript and Phonetics. Remington layout is most popular in Hindi type. Therefore, petitioners cannot blame if they are not able to perform perfectly. It is further contended that the department clearly mentioned in the guidelines regarding key board font, evaluation criteria, definition of correct word and direction for using typing software. In point No. 30 of the issued guideline, it was also mentioned that if any candidate finds any problem during exam, he/she can immediately notify by use of bell provided in the examination software, to the invigilator. In pursuance of the order dated 31.07.2013 of the department, a committee was constituted in the chairmanship of Shri A.M. Deshpandey, Technical Director, to examine and inspect the software provided by the selected agency for type speed test to be held in the second phase of the Informatics Assistant Recruitment Examination - 2013. On examining the typing application, the Committee found total eight errors and the said eight errors were rectified by the agency holding the

examination. Thereafter, on receiving such complaints, another departmental committee consisting of one Technical Director and two System Analyst, was constituted, which has again examined the typing application and found the application commensurate with the instructions of the respondent Department.

14. It is contended that qualifying the type test was mandatory. The respondents have issued the list of selected candidates after verification and thereafter the appointment orders were issued to only those candidates whose verification has been done by the respondent Department.

15. The respondents, in reply to the writ petitions, have contended that the candidates were also allotted centers at Shankara Institute of Technology and Arya College of Engineering & IT. The type test of the candidates who appeared at those centers, was conducted on three consecutive days i.e. 3rd, 4th and 5th of September, 2013. The type test on all the three days was successfully conducted. However, on 04.09.2013 at beginning of type test at 10.45 AM it was found that many candidates were not being able to log-in. This problem was immediately rectified and the candidates were asked to exit from the software and restart their type test by re-login in the software. The Invigilators of each of the computer labs and officers of the respondents, who were present at the time of examination, repeatedly informed the candidates to re-login in the software. Out of 321 candidates, who appeared on the 04.09.2013, 278 candidates carried out the instructions and their data was successfully stored on the computer. Only 43 candidates did not follow the instructions and their data was not stored. The respondents have referred to similar problem at Arya Engineering College but they have contended that entire type test examination and its evaluation was fully based on software without there being any manual intervention, therefore, they could not do anything. The respondents fairly conducted the type test and the petitioners, who chose not to comply with the instructions, cannot be allowed to question the result of type test. They have been absolutely fair and equitable in their approach to the issue.

16. It is contended that the evaluation of typing test was got done through software. Typing copies were evaluated by the service provider Detha Info-Media Private Limited and private Firm (BIPS) through software. The department, on receiving such complaints, also constituted a higher level committee to verify both evaluated result. The department also prepared software to cross-check the result using same data and the committee concluded that candidate-wise statistics through the software of Detha Info-media Limited, BIPS and software of DoIT&C matched exactly with each other. The said committee consisted of Senior Project Manager, Joint Director and Technical Director. The respondents also uploaded copies of all the candidates on website. In speed test, copies uploaded by the department, mentioned line-wise total typed words, total wrongly typed words, total overly typed words and total correctly typed words by the candidates. Respondents have also produced for perusal of the court, copies of some of the candidates.

17. It is contended by the respondents that there was no power failure in any of the exam test centers during exam because exam was conducted on generators, and there was no report of generator break-down.

18. In rejoinder, petitioners have contended that they received the instructions that they were required to re-login and they did so after restarting the computer as per the instructions of the Invigilator. After completion of typing test, the computer screen indicated the type test to be successfully completed but even then if the data have not been stored and nothing has been shown in the type test screen, the petitioners cannot be blamed. The respondents, in a way, have admitted their case. It is not the case of one candidate but 43 candidates have faced the problem of zero line typing and this happened due to software defect.

19. Petitioners have submitted a chart indicating that the cut-off marks of the selected candidates of the written examination in their category is much lesser than the marks secured by them in the written examination and therefore, if only on their answer-sheets of the type test in Hindi and English had been evaluated, they would have most certainly secured the appointment, and this would be evident from the charts in Schedule-I and Schedule-III given in Writ Petition No. 17096/2013 (Hemant Kumar Sharma and Others v. State of Rajasthan and Others):--

"SCHEDULE-I

SCHEDULE-III

20. On examining the rival submissions, it is revealed that the respondents could not dispute that this problem had arisen particularly at two centers, namely, Shankara Institute of Technology and Arya College of Engineering. The respondents also do not dispute that when the type test started, there was difficulty faced by the candidates in login and when they reported this difficulty to the Invigilators, the candidates were advised to restart and re-login and then advised to start afresh. The respondents have asserted that out of 321 candidates at Shankara Institute of Technology, 278 candidates carried out the instructions correctly and their data was successfully saved but 43 candidates did not follow the instructions. The petitioners assert that though they did follow the instructions as per the advice of the Invigilator; they did re-login and thereafter did the typing and on completion of such test, the computer screen indicated that typing test was successful, but still no entry was shown in the type test screen and that their script was showing zero line typing. This has happened at particular center. The only requirement in Phase-II was to type 20 words per minute correctly in Hindi and English type and they were required to type 300 total words correctly in 15 minutes each. These petitioners are justified when they say that if they were provided the right opportunity to do so, they would have been in a position to type the requisite number of words to secure place in merit. In any way, the petitioners have not been evaluated for type test. Though this court is not inclined to uphold their contention that there was any defect in

the software adopted by the respondents because on comparison of the result prepared through the software of Detha Info-media Limited, BIPS and software of DoIT&C with the result and the same matched exactly with each other. The act of the respondents has deprived the petitioners of level playing field and fair chance to compete for appointment along-with others. This has thus violated their right of equity enshrined under Articles 14 and 16 of the Constitution. Therefore, the petitioners in second batch of writ petitions have made out a case for issue of mandamus. There is thus justified reason for allowing re-test for evaluation of speed on computer in Hindi and English languages, both. Such re-test should be held not just for the petitioners of second batch of writ petitions, but also of all those 43 candidates, who had faced the difficulty.

21. In the result, the writ petitions succeed and are accordingly allowed. The respondents are directed to conduct re-test of all 43 other candidates including the petitioners, referred to above, of Shankara Institute of Technology, or any other candidate who would have faced such difficulty at Arya College of Engineering. Such type test should be conducted within one month. Evaluation of their merit be made thereafter. If it is found that any candidate lower in merit than the petitioners, has been appointed, the respondents shall take steps to also appoint the petitioners within one month thereafter along-with all consequential seniority benefits, however notional benefits, equivalent to those who secured appointment despite their placement lower than the petitioners.