

(2018) 12 RAJ CK 0315
In the Rajasthan High Court
Case No : Special Appeal Writ No. 1489 Of 2018

Kishan Lal Jat

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 14-12-2018

Acts Referred:

Citation : (2018) 12 RAJ CK 0315

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : Rajendra Singh, Harish C. Khandpal, G.S. Gill

Final Decision : Dismissed

Judgement

Challenge in the instant appeal has been made to the order dated 15.11.2018 passed by the learned Single Judge dismissing the appellant's writ petition.

The facts relevant for the present appeal are that the appellant appeared in the selection process for the post of Constable pursuant to the advertisement dated 25.5.2018. After clearing the written examination, the appellant was to undertake Physical Standard Test/Physical Efficiency Test ('PST/PET'), however, the respondent department did not disclose the date of PET/PST test individually and the petitioner living in rural area where no suitable internet facility available. Result was declared on 05.06.2018. Therefore, he could not download his admit card for PET/PST test well in time. According to the appellant such belated information has prejudiced his chance of faring well in the physical efficiency test.

It is the admitted case of the appellant that the appellant had downloaded his admit card on 31.08.2018 from his SSO Id. It is also not in dispute that the appellant was required to report for the aforesaid PST/PET Test at Shri Pratap Yadav Stadium, Chitrakoot, Jaipur on 01.09.2018 at 6:00 AM.

The learned Single Judge dismissed the appellant's writ petition, inter alia, observing that he had sufficient time to participate in the physical efficiency test.

Learned counsel for the appellant relied upon the Division Bench judgment dated 14.11.2018 passed by this Court in DBSAW No.1732/2018 (Thawara Ram Vs. State of Rajasthan & Ors.) and claiming parity with the said judgment, submitted that the appellant is also entitled for an additional opportunity to appear for PST/PET, as he did not have sufficient time to prepare himself for the test held on 01.09.2018.

Mr. Harish C. Kandpal appearing on behalf of Mr. G.S. Gill, learned Addl. Advocate General on the other hand submitted that the findings recorded by learned Single Judge are correct and the case of Thawara Ram (supra) is clearly distinguishable on facts.

Having heard learned counsel for the parties and upon perusal of material on record, we are of the considered opinion that learned Single Judge has committed no error of law in dismissing the appellant's writ petition vide order under challenge. In wake of the undisputed facts that the admit cards in question were uploaded well in time, it is evident that the appellant did not timely download the same within the time. The appellant was well aware of the requirement even when he filled the application form for the post of Constable and therefore, the plea regarding grant of inadequate time to the appellant in this regard is totally baseless. His plea of not having sufficient time is a lame excuse, particularly when, he had participated in the test and failed. Thus, the appellant cannot claim that he did not have sufficient time to participate in the PET/PST, which was held on 01.9.2018 at Jaipur.

Adverting to the judgment dated 14.11.2018 of coordinate bench in the case of Thawara Ram (supra), strong reliance whereupon has been placed by learned counsel for the appellant, suffice it to observe that the facts of the case at hands are clearly distinguishable from the facts noticed in Thanwara Ram's case. The appellant in the aforesaid case or Thawara Ram (supra) claimed parity with another judgment passed by the Single Bench in the case of Rajesh Kumar Vs. State of Rajasthan, decided on 6.10.2018. While allowing the appeal filed by Thawara Ram (supra), the Division Bench of this Court has held that learned Single Judge was not justified in non-suiting the appellant on the ground of delay and laches. Apart from the above, the Division Bench has recorded a finding that the appellant therein, a resident of Sirohi, required to appear for the PST/PET on 5.9.2018 at Jodhpur, did not have enough time to report, as his admit card came to be uploaded in the late night of 4.9.2018. It will not be out of context to reproduce the relevant excerpts of the Division Bench judgment in the case of Thawara Ram (supra):

"14. After hearing learned counsel for the parties as well as perusing the record of the case alongwith the precedent law cited at the Bar, we find that in the peculiar facts of the present case when the appellant/writ petitioner's admit card was uploaded in the night of 04.09.2018, and he was to report from District Sirohi to District Jodhpur, and since he has travelled the whole night, it is virtually amounts to denial of opportunity to participate in the Physical Efficiency

Test with a proper state of mind and body, as the lack of information and admit card in time, has virtually deprived the appellant/writ petitioner of his valid opportunity to have qualified the Physical Efficiency Test, which was 5 kilometres run within the stipulated time, in which the appellant/writ petitioner was disqualified by 29 seconds.

15. This Court would not have interfered in the Physical Efficiency Test in the normal circumstances, but we realize that a candidate must be given a reasonable opportunity to appear in the endurance test, which is quite strenuous, as running 5 kilometres within the stipulated time would require the candidate to be in a proper state of mind and body. The test of reasonableness, in the present facts and circumstances, thus stands answered in favour of the appellant/writ petitioner.

16. The Physical Efficiency Test which required a normal physical compatibility of the candidate cannot be said to be in the right spirit of a fair opportunity to the appellant/writ petitioner to participate in the Physical Efficiency Test and qualify the same, due to the slackness and complacency on the part of respondents by causing delay in issuing the admit cards.

17. The appellant/writ petitioner has taken the requisite steps within a reasonable period, as he has approached even while the selection process is yet to be completed. The improper opportunity to the appellant is writ large on the face of the facts, and the appellant/writ petitioner, who has reasonably approached the Court on 12.10.2018, after taking the requisite steps before the authorities concerned, due to improper opportunity to participate in the Physical Efficiency Test on 05.09.2018 requires to be allowed to participate in the said Test."

If the facts noted in the judgment aforesaid are compared with the facts involved in the present case, we find that the admit card had been downloaded by the appellant on 31.08.2018. The PST/ PET was scheduled on 01.09.2018. For this, the respondents can neither be held wanting in promptness nor can they be held slack in any manner because they uploaded the admit cards well in advance. The appellant had reasonable time to reach at the Centre and undertake the requisite test.

As a result, the intra-court appeal is dismissed.