

(2022) 12 GUJ CK 0066

In the Gujarat High Court

Case No : R/Special Civil Application No. 24720 Of 2022

Mahendra Chawla S/O Gopal Chawla

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 08-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 GUJ CK 0066

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : CZ Sankhla

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The writ petition has been filed for the following prayers:

"6(B) YOUR LORDSHIPS be pleased to issue writ of mandamus and or any other appropriate writ, orders or directions to the Respondents herein to declare the Petition as FIT in Medical Examination as the Petitioner already undergone to Remove the Tattoo and further be pleased to declare the act of the Respondents as illegal, arbitrary and discriminatory against the petitioner.

(C) YOUR LORDSHIPS be pleased to quash and set aside the Report dated 18/11/2022 issued by the Respondent no.6 and further direct the Respondent no.5 and 6 to allow the Petitioner to re-conduct Medical Examination afresh."

2. The petitioner applied for the post of Constable Store Keeper (Male) in Border Security Force (BSF) on 12.07.2022 and cleared all the examinations and thereafter, he was called for Medical Examination on 17.11.2022. It is the case of the petitioner that he has not been appointed in view of a tattoo on his right forearm. After such a report was made by the Medical Board declaring him unfit in view of the tattoo, he thereafter, got the tattoo removed and accordingly, also

obtained certificate dated 18.11.2022 from one M/s.Jai Bhole Tattoo. The petitioner was called for Review Medical Examination however, he was declared unfit.

3. Learned advocate appearing for the petitioner has submitted that the petitioner is a resident of rural village and there is custom and tradition in the rural areas to get the tattoo on the body and when his case was rejected on the ground of tattoo, he immediately got it removed. It is submitted that the respondents may accordingly, be directed to consider his case of appointment to the said post since tattoo was only 2/3 cm in size. Learned advocate on the contrary, has submitted that the petitioner has appeared before the Review Committee in view of the suggestion of the Medical Board to undergo the process of removal of tattoo and after he had removed the same immediately within a period of 4 days, he was examined by the Review Board.

4. The petitioner is seeking appointment to the post of Constable Store Keeper in a Disciplined Force such as BSF. The norms are already published by the Ministry of Home Affairs (Directorate General Board Security Force) in the detailed advertisement. The provision with regard to tattoo has been mentioned in paragraph No.D(d), which reads as under:

“(D) MEDICAL STANDARDS FOR THE POST OF SUB INSPR(TECH) & CONSTABLE(TECH)

(d) TATTOO :-

Content – Being a secular country, the religious sentiments of our countryman are to be respected and thus, tattoos depicting religious symbol of figures and the name, as followed in Indian Army are permitted.

Location – Tattoos marked on traditional sites of the body like inner aspect of forearm but only left forearm, being non saluting limb or dorsum of the hands are to be allowed.

Size – Size must be less than $\frac{1}{4}$ of the particular part (Elbow or hand) of the body.

In case of candidate has undergone removal of tattoo (s) prior to appearing for recruitment process and the same has faded substantially, this will be treated as a “scar” and not a tattoo. Such candidate will be permitted to undergo the entire selection process with approval of Presiding officer of the recruitment Board. Further, the scar resulting due to removal of tattoo will be reviewed by the Medical Board of officers during detailed Medical examination.”

5. In the advertisement, the location and size of tattoo are already mentioned. It is also mentioned that in case of a candidate, who has undergone removal process of tattoo “prior to appearing in the recruitment process” and the same has faded substantially, the same will be treated as a scar and not a tattoo and such candidate is permitted to undergo the entire selection process with the

approval of Presiding Officer of the Recruitment Board and further, the scar, resulting due to removal of tattoo, will be reviewed by the Medical Officer during the detailed examination.

6. Unquestionably, in the present case, the petitioner was already having tattoo, after he had undergone the recruitment process. As per the Review Examination Board, the tattoo was found on the right forearm of the petitioner depicting a heart and arrow with initials 'M' and he was declared unfit. Thus, the provision of the advertisement mandates that tattoo should have been removed prior to the recruitment process and the same must have faded substantially. Thus, the petitioner cannot claim appointment in the Disciplined Force, after removal of his tattoo, that too after undergoing the recruitment process.

7. Thus, this Court does not find any illegality or infirmity in the order passed by the respondent authority denying his appointment as per the specific provision of paragraph No.D(d) of the advertisement. Infirmity cannot be subsequently cured in order to dilute the provision of the advertisement. The candidate, as per the provision as mentioned hereinabove, prior to participation in the recruitment process should have undergone the process of removal of tattoo resulting into its fading substantially and only such removal of tattoo can be treated as a scar and not tattoo.

8. In the present case, the aforesaid provisions are absolutely violated and hence, the petitioner cannot claim appointment to the aforesaid post and this Court, while exercising discretion under Article 226 of the Constitution of India, cannot issue such directions, which are contrary to the conditions envisaged in the advertisement.

9. The present writ petition is summarily rejected.