

(2022) 07 GAU CK 0016
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1322 Of 2017

Mridul Ray And 11 Ors.

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 25-07-2022

Acts Referred:

Citation : (2022) 07 GAU CK 0016

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : A Hussain, S K Medhi

Final Decision : Dismissed

Judgement

1. Heard Mr. A. Mobaraque, learned counsel for the petitioners and Mr. S K Medhi, learned CGC for the respondents being the authorities in the Ministry of Home Affairs, Government of India and the Border Security Force.

2. An advertisement dated 21.05.2016 was made inviting applications from male citizens for filling up 561 vacancies of the posts of Constable (Tradesman) in the Border Security Force (in short BSF) for the year 2016-17. The petitioners participated in the selection process and were issued call letters. In the selection process, the petitioners also successfully participated in the physical efficiency test, physical standard test and trade test and upon successfully performing in the aforesaid three tests, they were asked to appear in a written test held on 23.10.2016 and the centre allotted for the petitioners was at Dakhin Kamrup College, Mirza in the Kamrup district. The petitioners make a statement that they had qualified in the written examination held on 23.10.2016 and their roll numbers were published in a select list of the short listed candidates for medical test. The petitioners accordingly appeared before the medical test held on 15.12.2016 and 16.12.2016. The petitioners also claim that they successfully passed in the medical examination and were eagerly waiting for selection and appointment.

3. At that stage, they were informed by the Deputy Commandant (recruitment), Frontier Head Quarter, BSF, Guwahati on 06.01.2017 that the complete recruitment process for the posts of Constable (Tradesman) in the BSF for the year 2016-17 had been terminated due to certain malpractice/irregularities that were detected in the recruitment process.

4. Being aggrieved, the present writ petition is instituted firstly with a prayer that the records of the selection process be called for and thereafter to set aside the communication dated 06.01.2017, by which the petitioners were informed that the selection process had been terminated with a further prayer for a direction to complete the recruitment process pursuant to the advertisement dated 21.05.2016.

5. The respondents in the affidavit in opposition dated 13.06.2022 in paragraph 3, stated that an entity namely M/s C.S Datamation of New Delhi was given the contract of preparing and printing the question papers and the evaluation of OMR Sheets for the written examination that was held as a part of the selection process. In paragraph 5, a serious allegation is made that on 22.06.2016, when the medical examination of the selected candidates were undertaken, a candidate bearing roll No. 1334004947 namely Akash Kumar, son of Ombir Singh, resident of village Tofapur, district Meerut of Uttar Pradesh was unable to read the letters that were placed before him. When the matter was referred to the Vigilance Rep namely ASI Vigilance Daya Kishan Joshi, who was present at the recruitment site, it could be revealed that the candidate was actually illiterate who could neither read nor write and upon questioning, he told that his father had given Rs. 6, 00, 000/- to a person, namely, Ravi Kumar, son of Naresh Yadav, resident of village Surainna, district Baghpat of Uttar Pradesh to have him passed in the written examination. It was further revealed that the candidate was asked by the person Ravi Kumar to leave the OMR Sheet blank in the written examination. Accordingly, the authorities undertook a re-evaluation of all the OMR Sheets, which were earlier checked.

6. In the affidavit, it is stated that 90 candidates who were called for medical examination were incorrectly awarded marks in the written examination and the OMR Sheets in respect of 98 other candidates did not tally with the original OMR Sheets. In the process, it is the stand of the respondents that large scale irregularities were noticed in conducting the written examination by the entity M/s C.S Datamation of New Delhi. According to the respondents, if irregularities of such magnitude were detected upon a preliminary enquiry, the authorities were unable to find out as to the extent of irregularities that may have taken place and therefore, no materials could be relied upon which may enable the authorities to segregate and separate as to in respect of which of the participating candidates the irregularities had taken place and which of the candidates had a clean participation in the selection process.

7. It is also stated that considering the magnitude of the irregularities that were noticed, the investigation was also handed over to the Central Bureau of

Investigation, Anti Corruption for further investigation and necessary action. It is the stand of the respondents that taking note of the magnitude of the irregularities, it was not possible for the respondents to separate and segregate as to in respect of which of the candidates, the irregularities had taken place and in respect of which candidates, it is not taken place. Accordingly, a conscious decision was taken to cancel the entire selection process.

8. We also take note of that the cancellation of the selection process had been assailed in different High Courts inasmuch as, the whole process was an all India level selection. Writ petitions assailing the selection process was dismissed by the Calcutta High Court as well as by the Gujarat High Court and in the decision rendered by the Gujarat High Court, it was taken note of that the irregularities had taken place through the agency M/s C.S. Datamation, New Delhi through whom the written examination was conducted.

9. In view of the aforesaid materials that had been produced on record, we are of the view that no arbitrariness or unreasonableness can be noticed in the act of the respondents in cancelling the entire selection process pursuant to the advertisement dated 21.05.2016.

10. In the circumstances, we are unable to find any merit in the writ petition requiring an interference with the decision of the respondents to cancel the selection process. But, however, as submitted by Mr. A Mobaraque, learned counsel for the petitioners and as provided by the Gujarat High Court in its judgment dated 18.07.2022 in Pal Vikram Rameshbhai and two others –vs- Chairman, Recruitment Board and two others, in R/Special Civil Application No. 1895/2017, the petitioners are also given the liberty to file individual applications before the respondent No. 4, if so advised and upon such applications, necessary orders thereon may be passed.

11. The writ petition is dismissed subject to the liberty to file the aforesaid representations, if advised.

12. Let a copy of the judgment of the High Court of Gujarat dated 18.07.2022 be kept on record.