

(2024) 11 SHI CK 0059
In the High Court Of Himachal Pradesh
Case No : CWP No. 43 Of 2023

Shakun Saini

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-11-2024

Acts Referred:

Citation : (2024) 11 SHI CK 0059

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Shrawan Dogra, Saurav Rattan, Nand Lal Thakur, Devyani Sharma, Anirudh Sahrma

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has prayed for quashing of order dated 23.09.2022 (Annexure P-7) and for issuance of a mandamus to the respondents to consider the petitioner for appointment against the post of Physical Training Instructor, pursuant to selection process conducted in terms of advertisement dated 03.12.2021 by conducting Trade/Skill test afresh.

2. The case of the petitioner is that vide Annexure P-1, dated 03.11.2021, the respondent-Institute advertised certain posts, including the post of Physical Training Instructor. In all, six posts of Physical Training Instructors were advertised. It is further the case of the petitioner that he being eligible applied for the post in issue. In terms of Annexure P-5, dated 17.08.2022, the petitioner was called upon to appear for written, trade and skill tests on 19.09.2022. According to the petitioner, he appeared in the said tests and was hopeful of his selection, more so, for the reason that the petitioner was the only candidate out of the six candidates, who were shortlisted to participate in the process. It is further the case of the petitioner that in the written examination, the petitioner secured 59 marks out of 100 and it was thereafter that he was called upon to

clear the ground test. According to the petitioner, vide Annexure P-7, result for the post of Physical Training Instructor was declared and in terms of this communication dated 23.09.2022, none of the candidates was found suitable. Feeling aggrieved, the petitioner sought certain information from the respondent-Institute under the Right to Information Act and the information supplied to the petitioner is appended with the petition as Annexure P-8.

3. Learned Senior Counsel appearing for the petitioner submitted that ground test to which the petitioner was subjected to by the committee was duly undertaken by the petitioner and at no stage, any impression was given by the Committee to the petitioner that he was not able to perform the ground test or the skill test primarily. Learned Senior Counsel further submitted that in terms of Annexure P-8, the petitioner inter alia sought information from the respondent-Institute as to what was the qualifying criteria for written test as well as for ground test and how many marks the petitioner scored in the ground test and written examination. Learned Senior Counsel further submitted that a perusal of the response received under the Right to Information Act demonstrates that it stands mentioned therein that the skill test was qualifying in nature, whereas the written test exam question paper with marks of the candidate appeared in the selection process was attached with the information supplied. With regard to the question as to how many marks the petitioner had scored in the ground test and written examination, again it was stated that the ground test was qualifying in nature and that in the written test, the petitioner scored 59 marks. Learned Senior Counsel submitted that when in terms of this response, the skill test was only qualifying in nature and the petitioner has successfully qualified the written examination, it is not understood as to how the respondent-Institute could have declared that none of the candidates was found suitable. Learned Senior Counsel further submitted that the rejection of the petitioner is completely arbitrary. He further submitted that taking into consideration the credentials of the petitioner, who happens to possess all the qualifications necessary for being appointed against the post of Physical Training Instructor and besides this, had represented the State in National Championships in various cricket tournaments including Vijay Merchant Trophy, Cooch Behar Trophy, Col. C.K. Naidu Trophy, Ranji One Day and Ranji T-20 Trophies, the arbitrary rejection of candidature of the petitioner cannot be sustained. Learned Senior Counsel also submitted that in the absence of there being any objective criteria having put in place by the respondent-Institute for assessing the skills of the candidates, everything becomes extremely subjective and future of candidates like the petitioner cannot be put to test alongwith their skills on subjective satisfaction of the Committee Members. Accordingly, learned Senior Counsel prayed that the writ petition be allowed as prayed for. In support of his contentions, learned Senior Counsel has relied upon the following judgments:-

i) *Anamica Mishra and others vs. U.P. Public Service Commission, Allahabad, 1990 (Supp) Supreme Court Cases 692;*

- ii) Tej Prakash Pathak and Others vs. Rajasthan High Court and others;
- iii) Sushil Kumar Pandey and others vs. High Court of Jharkhand and another, (2024) 6 Supreme Court Cases 162;
- iv) K. Manjusree vs. State of Andhra Pradesh and another, (2008) 3 Supreme Court Cases 512.

4. On the other hand, learned Senior Counsel appearing for the respondents-Institute submitted that the petitioner participated in the selection process knowing fully well the mode and criteria of the selection and after being declared unsuccessful, he has no locus to file and maintain the writ petition. Learned Senior Counsel further submitted that after the petitioner had cleared the written test, he was subjected to skill test by the experts and as the petitioner failed to clear the ground/skill test, which was qualifying in nature, it was for this reason that the petitioner was found not suitable for the post in issue. Learned Senior Counsel submitted that as the Committee constituted by the respondent-Institute comprised of experts in the field, they were the best judges of the fact as to whether the petitioner was good enough to be appointed against the post in issue or not. She further submitted that in the absence of any malafide having been alleged by the petitioner, the petitioner cannot be permitted to pray for the reliefs, more so, in light of the fact that he participated in the process without any protest. Learned Senior Counsel also submitted that if criteria of ground test/selection process was opaque, as has been suggested by the petitioner, then nothing prevented the petitioner from participating in the selection process under protest. After participating, the petitioner cannot turn around and say that process is bad. Learned Senior Counsel for the respondents has relied upon the following judgments to substantiate her contentions:-

- (i) Anil Bhardwaj vs. Hon'ble High Court of Madhya Pradesh, (2021) 13 SCC 323;
- (ii) Baidyanath Yadav vs. Aditya Narayan Roy and others, (2020) 16 SCC 799;
- (iii) Union of India and others vs. C. Girija and others, (2019) 15 Supreme Court Cases 633;

5. Before dwelling further, this Court would like to refer to the judgments being relied upon by learned Counsel for the parties.

6. In Anamica Mishra and others vs. U.P. Public Service Commission, Allahabad, 1990 (Supp) Supreme Court Cases 692, Hon'ble Supreme Court was dwelling with a case wherein on account of improper feeding into the computer, some of the candidates who had better performance in the written examination were not called for interview and the candidates securing less marks in the written examination were not only called for interview but were also finally selected. Whereas the Public Service Commission decided to cancel the entire recruitment process and the High Court upheld the action of the Public Service Commission, Hon'ble Supreme Court was pleased to hold that the situation could have been appropriately met by setting aside the recruitment and asking for a fresh

interview of all eligible candidates on the basis of performance in the written examination and select those who on the basis of the written and the freshly held interview became eligible for selection.

7. In *Tej Prakash Pathak and Others vs. Rajasthan High Court and others*, (2013) 4 Supreme Court Cases 540, Hon'ble Supreme Court of India has been pleased to hold that it is a salutary principle not to permit the State or its instrumentalities to tinker with the 'rules of the game' insofar as the prescription of eligibility criteria is concerned.

8. In *Sushil Kumar Pandey and others vs. High Court of Jharkhand and another*, (2024) 6 Supreme Court Cases 162, Hon'ble Supreme Court of India has again reiterated that there cannot be a change in the rules midway after the issuance of advertisement and that the recruitment criteria cannot be altered by changing it after the recruitment process has been put into motion.

9. In *K. Manjusree vs. State of Andhra Pradesh and another*, (2008) 3 Supreme Court Cases 512, Hon'ble Supreme Court of India has held that where the rule do not prescribe any procedure, the selection committee may prescribe the same but if the selection committee wants to prescribe the procedure/minimum marks for interview, it can do so before starting of the selection process.

10. In *Anil Bhardwaj vs. Hon'ble High Court of Madhya Pradesh and others*, (2021) 13 Supreme Court Cases 323, Hon'ble Supreme Court of India has held that there can be no dispute that in the event it is found that the decision by which the candidature of a candidate is rejected is arbitrary or actuated by malafide, such decision can be interfered with by the Constitutional Courts and any arbitrary decision taken by the Selection Committee can very well be interfered with by the constitutional Courts in exercise of judicial review jurisdiction.

11. In *Baidyanath Yadav vs. Aditya Narayan Roy and others*, (2020) 16 Supreme Court Cases 799, Hon'ble Supreme Court of India has held that in the absence of any requirement mandating disclosure of reasons in the relevant rules, regulations and guidelines, the procedure adopted by the Screening Committee cannot be faulted with. Even the principles of natural justice do not require a duly constituted Selection Committee to disclose reasons for its decision as long as no rule or regulation obliges it to do so.

12. In *Union of India and others vs. C. Girija and others* (2019) 15 Supreme Court Cases, 633, Hon'ble Supreme Court of India by referring to its decisions has been pleased to reiterate that a candidate who participated in a process without any objection cannot subsequently turn around and claim that the process is bad after the candidate is declared unsuccessful.

13. Herein the entire issue which this Court has to answer is whether the petitioner indeed was subjected to a fair skill and ground test by the respondent-Institute or not? A perusal of the record demonstrates that it was on the date of

the written test as well as holding of the skill test/ground test, the selection committee decided to test the candidates on the following parameters to determine the qualifying in the trade Test:-

"The Selection Committee constituted for selection of Physical Training Instructor (UR- 01) (on contract) decided to test the candidates on following parameters to determine qualifying in the trade Test:

1. Shuttle Run-4X10 mtrs.
- 2 Sprint-30 mtrs
3. Standing Broad Jump
4. Run-800 mtrs.
5. Sit ups in 30 secs.
6. Push Ups in 30 secs.

Total Time allowed: 01 hour for each candidate

Venue: Cricket Ground, South Campus, IIT Mandi"

14. Now, whereas the contention of the petitioner primarily is that he satisfactorily passed the qualifying trade test, the stand of the respondent-Institute is to the contrary. Incidentally, on a query put to learned Senior Counsel for the respondent-Institute, the Court was informed that there was no videography of the process of the skill test of the petitioner. Not only this, no other record has been maintained by the respondent-Institute that the tests quoted hereinabove were performed by the petitioner in what manner. In other words, except the bald contention of the respondent-Institute, that the petitioner was declared as not qualified by the Selection Committee, there is no material on record from which it could be inferred as to whether the said conclusion arrived at by the Selection Committee, was justified on the basis of the performance of the petitioner or not.

15. Though, this Court is not even remotely suggesting that the Court has to sit over the conclusion arrived at by the Selection Committee, but the Selection Committee cannot adjudge the suitability of a candidate by adopting the criteria which is not per se objective. Herein, it was only on the day when the written test was conducted that the Selection Committee laid down the parameters to determine the selection of the candidates. Be that as it may, no video recording etc. of the selection process was done to satisfy the judicial conscious of this Court that indeed the petitioner was subjected to a fair selection process, however, the petitioner was not able to do the needful satisfactorily.

16. The selection when it envisages, evaluation of skill test, cannot be subjective and the same has to be based on some objective criteria so that in case the act of the Selection Committee is assailed, then the committee is able to justify its decision objectively before the fora concerned.

17. Herein, there is no material on record whatsoever from which it can be inferred that as to what was the performance of the petitioner in the skill/ground test? In the absence of the availability of said material, this Court cannot put its stamp of approval to the mode and manner in which the ground/skill test was conducted by the Selection Committee.

18. This Court reiterates that the mode of assessment, but natural, has to be worked out by the selection committee, but then, the same besides being objective, also has to be duly recorded in terms of the performance of the candidate so that the evaluation of the selection committee can be judicially reviewed by the Court in case need so arises.

19. In light of above discussion, this writ petition is allowed. Annexure P-7, order dated 23.09.2022, is quashed and set aside and the respondent-Institute is directed to test the ground/skill abilities of the petitioner either on the parameters fixed on 19.09.2022 by making them more objective or by framing fresh parameters which are objective in nature and then by subjecting the petitioner to the said criteria after informing the petitioner of the said criteria in advance. Needful be done within a period of four weeks from today and if on the said performance of his alongwith marks scored by him in the written test, the petitioner is found eligible on merit to be offered appointment, then appointment be offered to him against the post in issue forthwith.

The petition stands disposed of in above terms, so also pending miscellaneous application(s), if any.