

(2020) 08 DEL CK 0050

In the Delhi High Court

Case No : Civil Writ Petition No. 4611 Of 2020

Shankar Lal Yadav & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 08 DEL CK 0050

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon , J

Bench : Division Bench

Advocate : Saahila Lamba, Arun Bhardwaj, Abhishek Sharma, Nikhil Bhardwaj

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

W.P. (C) 4611/2020, C.M. Appl. No.16671/2020 (for stay)

1. On 28th July, 2020, when this petition came up first before us, the following order was passed:-

3. The two petitioners, being candidates for the examination process for direct recruitment of Head Constable (Radio Operator) and

Head Constable (Radio Mechanic) in the respondents Border Security Force (BSF), after failing in the recruitment process, have filed this

petition seeking quashing of result of the Descriptive Written Test (DWT) held pursuant to the notification advertised on 15th April, 2019

inviting applications for direct recruitment aforesaid.

4. It is the case of the petitioners, (i) that the Recruitment Examination comprised of (a) Optical Mark Recognition (OMR) Test with multiple

choice questions; (b) Physical Standards and Physical Efficiency Tests; (c) DWT;

and, (d) Medical Examination; (ii) that the OMR

Examination was in Hindi as well as English language and the petitioners took the said test in Hindi language; (iii) that the petitioners, after

passing the Physical Standards and Physical Efficiency Tests became eligible for the DWT and appeared therefor in July, 2020 but were

surprised to see the same to be in English language only; (iv) the petitioners failed in the DWT because of handicap in English language;

and, (v) that the Medical Examination of the candidates successful in the DWT examination is scheduled in August, 2020.

5. The counsel for the petitioners has argued, (i) that the petitioners had appeared for the said examination in the previous years also

though were unsuccessful therein and in the previous years, DWT also was in Hindi as well as English language; (ii) that all the written

examinations conducted by all Central Armed Police Forces (CAPFs) including for officer grade, are in Hindi as well as English language;

and, (iii) that the Notification published on 15th April, 2019 inviting applications for direct recruitment also did not state that the DWT will

be only in English language and the petitioners thus had no inkling thereof and were surprised when found the same to be in English

language only.

6. A perusal of Annexure P-1, being the Advertisement inviting applications shows, (i) that while with respect to the OMR based Screening

Test it was mentioned that the same would be in Hindi as well as English language, it was not so mentioned with respect to the DWT; (ii) that

the DWT comprised also of Dictation Test, for the post of Head Constable (Radio Operator) and which the counsel for the petitioners, on

enquiry states is in English language; (iii) that the DWT was in the subjects of Physics, Chemistry, Maths, Logical Reasoning and English

(12th standard) and was of two hours thirty minutes duration; and, (iv) that the Dictation Test also included paragraph reading, to test the

proficiency in pronunciation and reading of the candidates.

7. From the aforesaid it appears that when the DWT comprised of a test of English language also of 12th class standard, it could not

possibly have been in Hindi language, as the counsel for the petitioners contends. Similarly the dictation and paragraph reading test in

English language only as expressly mentioned in the advertisement, even though for the post of Head Constable (Radio Operator) only and

not for the post of Head Constable (Radio Mechanic) also is indicative of DWT being in English language only.

8. The counsel for the petitioners states that the petitioners be given time to produce the DWT question papers of the previous years.

9. The counsel for the respondents states that he will also obtain instructions whether in the previous years, the DWT was also in Hindi

language. He however contends that the grounds urged of Article 14 of the Constitution of India are not based on any pleadings.

10. We may mention that the relief of quashing of the examination which affects a large number of candidates, is not to be granted lightly

and past precedents (See judgment dated 24th June, 2020 in W.P. (C) 3716/2020 titled Amit Kumar Sharma Vs. Union of India; Tushant Vs.

University of Delhi MANU/DE/1913/2015; Tripti Jha Vs. Guru Gobind Singh Indraprastha University 221 (2015) DLT 609; Uttar Pradesh

Public Service Commission Vs. Rahul Singh (2018) 7 SCC 25; 4 Bihar Staff Selection Commission Vs. Arun Kumar 2020 SCC OnLine SC

443) are to the effect that examinations are not to be annulled.

11. The counsel for the petitioners to come prepared to answer this aspect as well and also, that if not the relief of annulment, what other

relief if any to which the petitioners may be entitled to, can be granted to the petitioners.

12. List on 11th August, 2020.â??

2. The petitioners have filed an additional affidavit stating, (i) that in spite of best efforts, they have been unable to find the question papers of previous

years Descriptive Written Test for recruitment to the post of Head Constable (Radio Operator) and Head Constable (Radio Mechanic) conducted by

the respondents Border Security Force (BSF); (ii) however all the candidates who during the previous yearâ??s took the Descriptive Written Test,

have confirmed that the same was conducted by the respondents BSF in both, Hindi as well as English languages; (iii) the notifications issued in the

previous years for making recruitment to the said posts were the same as for the subject year; (iv) on the contrary the previous yearsâ?? question

papers of the Descriptive Written Test would be available with the respondents

BSF and the respondents BSF should be directed to produce the same; (v) even otherwise, the respondents BSF ought to have conducted the Descriptive Written Test in both, Hindi and English language because for assessment of English language of the candidates, the respondents BSF in any case has made a separate provision by holding a dictation test in English language; fixing a separate dictation test in English language clearly indicates that the candidates shall be given liberty to answer the remaining questions as per their convenience, either in Hindi or English; (vi) the action of the respondents BSF, of conducting the subject test only in English language, adversely affected the petitioners and amounts to denial of fair opportunity and equality to the petitioners; (vii) on making enquiries, it has also been learnt that other examinations for the post of Constables, Sub-Inspectors, Assistant Commandants, etc., conducted by the Staff Selection Commission (SSC)/Union Public Service Commission (UPSC) are being conducted in both Hindi and English language; and, (viii) even if this Court were to not quash the Descriptive Written Test conducted in English language only, the recruitment process should be stayed and a supplementary examination should be ordered to be conducted for the petitioners and others similarly situated as the petitioners, from Hindi background.

3. The counsel for the respondents BSF also has e-mailed to us,

(i) question paper of paper-I for the post of Head Constable (Radio Operator), of the year 2020; (ii) question paper of paper-I for the post of Head Constable (Radio Mechanic), for the year 2020; and (iii) question paper of paper-II, for dictation and reading in English language.

4. The counsel for the petitioners has contended that, (i) the question paper-I for the posts of Head Constable (Radio Operator) and Head Constable (Radio Mechanic), produced by the counsel for the respondents, though in English language, give option to the examinees to answer the questions in English or Hindi language;

(ii) that most of the examinations today are being conducted in all regional languages also; (iii) that though the petitioners today also state that the respondents BSF in the subject year have changed the pattern of the Descriptive Written Test, by distributing the question papers in English language only and in the previous years, the same used to be in English and Hindi language, but have been unable to find the question papers for the past years;

(iv) that since the recruitment process has not been completed and even the medical examinations have not taken place as yet and owing to the prevalent pandemic, are likely to not take place for some further time, a supplementary examination for the Descriptive Written Test with question paper also in the Hindi language should be directed to be held and those who clear the same, can then participate with others who have already cleared the Descriptive Written Test.

5. We have enquired from the counsel for the petitioners, whether the petitioners, in pursuance of the option given, of answering the questions, though in English language, in English or Hindi language, answered the same in English or in Hindi.

6. The counsel for the petitioners states that she will have to obtain instructions.

7. Considering that the entire case of the petitioners is, of having suffered prejudice on account of the Descriptive Written Test being in English

language only with no option of taking the same in Hindi language, as stated to be the case in previous years, we find it strange that the petitioners did

not plead that though the question papers were in English language but they had the option to answer the same in Hindi language. We also find it

strange that the counsel for the petitioners has no instructions on the language in which the petitioners answered the questions. If the petitioners

answered in English language, the entire edifice built, falls.

8. The counsel for the respondents BSF states that he, in the short time since the last date, has been unable to obtain clear instructions as to the past

practice of the subject examination, i.e. whether the question paper of the Descriptive Written Test, in the previous years, was published in the Hindi

language also.

9. We have also enquired from the counsel for the petitioners that since the Descriptive Written Test Examination includes test for taking dictation in

English and reading a paragraph in English language also, whether not therefrom the petitioners were expected to know English language to that

extent; from a perusal of the question papers, it also seems that knowledge of English to the said extent would enable the petitioners to understand the

questions, even if they opted to answer the same in Hindi.

10. The counsel for the petitioners states that test of taking dictation in English and reading a paragraph of English language was only for the post of

Head Constable (Radio Operators) and not for the post of Head Constable (Radio Mechanics).

11. We have considered the controversy, including from the aspect of whether to issue notice of the petition and to call for pleadings to be completed

and are of the view that no purpose will be served in keeping this petition pending.

12. We have also considered the suggestion of the counsel for the petitioners, of directing the respondents BSF to hold a supplementary examination

with question paper in the Hindi language, with option to those desirous of taking the same in English language, but do not find any merit therein also.

13. Our reasons are as under: -

(A) While the notification of the examination expressly stated with respect to the Optical Mark Recognition (OMR) examination, that it will be in Hindi

as well as English language, it was not so stated with respect to the Descriptive Written Test. Once it was so, there was nothing for the petitioners to

assume that the same will also be in English as well as Hindi language. Once with respect to successive stages of the same examination, with respect

to one stage it is stated that the same will be in Hindi as well as in English language and with respect to the other stage it is not so stated, the

petitioners cannot be believed to have presumed that the second stage also will be in both the languages. The petitioners thus participated in the

examination on such terms and cannot after failing therein seek change of the terms on which they participated in the examination.

(B) Though the counsel for the petitioners on the last date of hearing contended that in the examination for the earlier years, the Descriptive Written

Test was also in the Hindi language but has been unable to substantiate the same. Going by experience of conduct of such examinations, it appears

that no change would have been made in the pattern for the subject year and had any such change been made, consequential changes would have

been made in the notification of the examination also.

(C) The memory of the petitioners, of having taken the Descriptive Written Test in the past in Hindi language, can as well be from the option this time

around also, of answering in Hindi language.

(D) The admission of the petitioners on the last date of hearing, of having participated in the said examination in the earlier years and being

unsuccessful therein, when the examination is stated to have been in Hindi language also shows that the petitioners have been unable to clear the said examination in the past years when the same was in the language of their choice.

(E) On our asking the counsel for the petitioners today, why the petitioners cannot represent for the question paper of the Descriptive Written Test

also to be in Hindi and take the examination next year, it is vaguely stated that the petitioners may be over-age by then. Therefrom it appears that the

petitioners, realizing that this year was their last chance to take the examination, by filing this petition, are seeking yet another chance and which cannot be given.

(F) The filing up of the vacancies for Head Constable (Radio Operator) and Head Constable (Radio Mechanic) in BSF, for which the recruitment

process has been initiated, cannot be stalled by keeping this petition pending.

(G) The counsel for the petitioners today states that though she had stated on the last date of hearing that the petitioners had appeared for the said

examination in previous years also and were unsuccessful therein, but after taking instructions, has learnt that the petitioners have taken the subject

examination for the first time only and have never taken the examination in the past. That also, in our view takes out the brunt from the challenge,

which was based primarily on past practice.

(H) We may notice that the petitioners, neither in the pleadings in the petition nor during the hearing on the last date informed that though the question

papers of the Descriptive Written Test were in English language but gave option to the examinees to answer the questions, either in Hindi or in English

language. Had the petitioners faced any difficulty in understanding the questions, to answer the same in Hindi, the petitioners were required to

expressly plead the terms/words of English language in the question papers which they were unable to understand and which prevented them from

replying in Hindi thereto. Therefrom it appears that the entire case of the petitioners is false and merely to wrangle another chance.

(I) The entire case of the petitioners hinged on question papers of the past years and which the petitioners have been unable to even prima facie

establish.

14. No merit is found in the petition.

15. Dismissed.