
(2019) 08 RAJ CK 0311

In the Rajasthan High Court

Case No : Special Appeal Writ No. 319 Of 2019

State Of Rajasthan And Ors

APPELLANT

Vs

Mahendra Choudhary And Ors

RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 08 RAJ CK 0311

Hon'ble Judges : S. Ravindra Bhat, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Sandeep Shah, Shreyansh Mardia

Final Decision : Allowed

Judgement

1. This Court has heard the appeal, finally, with consent of counsel for the parties.
2. The State has preferred this appeal, aggrieved by the judgment and order of a learned Single Judge, who directed the conduct of a second or "re-test" to determine physical fitness (known as PET) for the purpose of selection to the post of Police Constable.
3. The learned Single Judge cited Revant Ram Meghwal v State of Rajasthan [SBCWP 13731/2018] and connected batch of cases, decided by a Single Judge on 27-11-2018 and allowed the respondent-writ petitioner's plea that the weather conditions prevailing when the PET was held for them were inconducive for proper testing as a result of which, they were arbitrarily denied a fair opportunity to compete. The Single Judge had relied on data, produced by the State, to hold that according to the facts, the track (on which candidates were asked to run for 5 kms) was muddy because of rains, which impeded a fair chance. Therefore, the impugned order directed a fresh test or a re-test to evaluate the petitioner's fitness and endurance.
4. The State's counsel contends that recently, the ruling in Revant Ram Meghwal (supra), was upset by a Division Bench, in a judgment, dated 31-07-2019 (in

DBSAW 124/2019) and therefore, the impugned judgment cannot be sustained. It is also argued, besides that the Single Judge did not consider that on the specific date (when the PET was held) other candidates too participated.

5. The counsel for writ petitioners did not dispute that the Single Judge's decision in Revant Ram (supra) was reversed. He, however, argued that the State is now seeking to rely on data which was available but never produced before the Single Judge, to show that several other candidates participated and that some of them were successful. It is also submitted that the state did not object to the report of a commissioner, who had seen the video recording of the PET and made observations based on the track conditions.

6. The judgments of this Court in Revant Ram Meghwal (supra) by the Division bench and other previous instances have set out the contours of the writ proceedings in such matters. However, learned counsel for the respondents urged that the State could not have relied upon the documents which were produced subsequently. A pointed argument was made that a third party document, such as the logs maintained by the Company, involved in the selection process and which monitored the PET with electronic logs, was not supported by affidavit.

7. This Court is of the opinion that the respondent/writ petitioners' arguments are unmerited. The data in question, in fact, formed the basis of the electronic logs as well as video-recordings, which were taken into account by the state, while determining the time spent by each candidate in the run, including the time taken by the writ petitioners. The writ petitioners' basic argument was that the conditions of the track were so bad that it was not up to the mark; that as a consequence the marks awarded to them were inadequate and that they were entitled to a re-test.

8. As is evident from the learned Single Judge's analysis, the decision in Revant Ram Meghwal vs. State of Rajasthan & Ors. [S.B. Civil Writ Petition No.13731/2018, decided on 27.11.2018] was referred to and its reasoning adopted largely. The learned Single Judge also, independently considered the Commissioner's report and was of the opinion that the track conditions were not up to the mark. He, therefore, directed a re-test. Some of the writ petitioners/respondents have now been declared successful in the second merit list.

9. This Court, in the judgment in State of Rajasthan v Revant Ram Meghwal [DBSAW 124/2019, decided on 31-07-2019] reversed the judgment of the Single Judge, directing a re-test of candidates, who had complained that the conditions at the time of the PET were poor and their failure was attributed to muddy conditions at the stadium where the PET took place. The Court followed a previous ruling in Shravan Kumar Choudhary vs. State of Rajasthan & Ors. [D.B. Special Appeal (Writ) No.154/2019, decided on 22.05.2019], which had dealt with these issues and also highlighted that granting the re-test, upon the Court's re-appreciation of the circumstances, would amount to creation of two different

criteria for the same set of candidates. The candidates who were selected - howsoever insignificant in number and those who accepted their results, (but were unsuccessful) had run the race (and competed in the PET) on the basis of the weather conditions prevailing at the date and time designated for the test. On the other hand, granting the benefit of re-test would mean allowing the individuals to approach the Court who were unsuccessful in the PET another opportunity where better or more ideal conditions are made available in which they are allowed to qualify. This cannot be countenanced as it is contrary to the principles underlying Article 14 of the Constitution of India. The Court, in *Revant Ram* (supra) observed as follows:

"Granting the facility of a re- test to these candidates who approached the court, in the opinion of the court would mean at one stroke denying similar treatment to others who have no grievance, and more importantly creating an entirely different set of circumstances, from the one under which the rest of the candidates participated, including those who successfully cleared the PET.."

10. Following the Division Bench ruling in *Revant Ram* (supra), *Shravan Kumar* (supra) and *Dharmendra Singh Gocher vs. State of Rajasthan & Ors.* [D.B. Special Appeal Writ No. 310/2019, decided on 27.05.2019 at Jaipur Bench], this Court is of the opinion that the present appeal too has to be allowed. The impugned order of the learned Single Judge is accordingly, set aside. All pending applications are disposed of.