

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9061 OF 2017

Sangharsh Tukaram Lonekar ...Petitioner

Versus

Union of India and another. ...Respondents

• • • •

Mr. Anupam Chattopadhyay for the Petitioner.

Mr. Neel Helekar a/w Mr. P. Khosla for the Respondent.

• • • •

**CORAM : NARESH H. PATIL AND
Z.A. HAQ, JJ.**

11th AUGUST, 2017.

P.C.:

1. Heard the learned Counsel appearing for the parties.
2. Rule. Rule made returnable forthwith by consent of the parties.
3. The Petitioner participated in the selection process against an advertisement issued on 9th January, 2016 by the Respondents to the post of Sub-Inspectors in CISF. The Petitioner appeared in the written examination and got through the written examination. Thereafter, the Petitioner was subjected to medical tests. After undergoing the test, the medical officer opined that the Petitioner was '**unfit**' on two grounds mentioned in the certificate annexed at Exhibit A-3. According to the medical officer, it was found that

there were tattoo marks of size about 4 x 5 Cms. over front of left forearm and 29 x 4.5 Cms. over right arm. On request of the Petitioner, the result of the medical examination was reviewed by the panel of experts. They found Petitioner to be '**unfit**'. According to the team of experts they noticed tattoo on the front of the left forearm and tattoo mark on right arm. The tattoo was visible both on right arm and left forearm and the size of the tattoo was also more than 1/4th of the particular part of the body. The consequences of the opinion expressed by the panel on 14th July, 2017 is that the Petitioner would not be permitted to participate in the further process; nor the Petitioner will be included in the select list, in case. At this stage, the Petitioner approached this Court.

4. The learned Counsel appearing for the Petitioner submits that the Respondent had issued an advertisement for recruitment to the post of Sub-Inspector in CISF for the current year 2017, wherein Note III, it was mentioned as under:

“It is noticed that during medical examination, the candidates having 'tattoos' in various parts of their body are appearing for medical examination. In this regard, ministry of Home Affairs vide its letters No.I-45020/7/2012/Pers-II dated 12.01.2017 and 30-01-2017 issued the following guidelines regarding candidates having tattoos applying for SI in Delhi Police, CAPFs and CISF examination:-

(a) **Content:** Being a secular country, the religious sentiments of our countrymen are to be respected and thus, tattoos depicting religious symbol or figures and the name, as followed in Indian Army are to be permitted.

(b) **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.

(c) **Size:** *Size must be less than ¼ of the particular part (Elbow or Hand) of the body.*

The above clause is not applicable in respect of Sub-Inspector in Delhi Police for the present.”

The Counsel further submits that, under the relevant advertisement against which the Petitioner applied, no such condition was imposed. Therefore, the Counsel submits that, the respondents shall not be permitted to apply conditions of recruitment retrospectively and debar the Petitioner from consideration. In the alternative, the Counsel submitted that the Petitioner is making efforts to erase the tattoo mark from his right and left hands. He had already undergone two sittings of laser treatment, by which he could get the mark removed to the extent of 60%. Counsel placed on record the certificate issued by Dr. Sunil Deshmukh to that effect.

5. The learned Counsel for the Respondent submits that, the Respondent would select suitable candidates in accordance with the recruitment Rules/Conditions which are mentioned in the advertisement notice for the year 2016. The Counsel placed reliance on clause 14 of the advertisement dated 9th January, 2016 which reads as under:

“14. IMPORTANT

Success in the examination confers no right to appointment unless government is satisfied after such enquiry as may be considered necessary that the candidate is suitable in all

respects of appointment to service/post.

The candidates applying for the examination should ensure that they fulfill all the eligibility conditions for admission to the examination. Their admission at all the stages of examination will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If, on verification, at any time before or after the written examination and skill test, it is found that they do not fulfill any of the eligibility conditions, their candidature for the examination will be cancelled by the Commission.

Candidates, who are appointed on the basis of this examination, shall be on probation for a period of two years and during the period of probation, the candidates would be required to undergo such training and pass such examinations as prescribed by the Controlling Authority. On successful completion of the period of probation, the candidates shall, if considered fit for permanent appointment, be confirmed to their post by the Controlling Authority.”

6. The Counsel for the Respondents fairly submits that, in respect of tattoo marks, Rules were not incorporated in the recruitment notice issued in the year 2016, but as a disciplined force and law enforcing agency, the Respondent shall be at liberty to consider and select the candidates who are suitable for the posts.

7. We have considered the submissions advanced by the parties. The Counsel for the Petitioner submits that, on 15th August, 2017 list of candidates is going to be published. From the record, we do not find that a reference to “tattoo marks” is mentioned in the notice issued in respect of the recruitment for the year 2016, but such a provision relating to tattoo marks on the body of the

candidate finds place in the recruitment notice of the year 2017. At the same time, we hasten to add that the Respondent would be selecting candidates for law enforcing agency / disciplined force. The only issue placed before us as to whether the Petitioner may be debarred from the consideration only on the ground that having two tattoo marks on right and left hands, in the absence of any such condition. At the same time, the Counsel for the Petitioner has also placed on record certificate issued by the Dr. Sunil Deshmukh under whose supervision, the Petitioner claims to have got “tattoo marks” removed to the extent of 60%. The Counsel submits that the Petitioner undertakes to make efforts to continue to avail of such medical treatment under the supervision of experts for getting tattoo marks removed so that he satisfies all the conditions and presents himself as a suitable candidate. During the course of argument, on instructions of the Petitioner, who is present in the Court, the Counsel submits that an appropriate undertaking would be submitted to the respondents to this effect.

8. In this view of the matter, we find it appropriate to allow the Petitioner to participate in the further process of the selection.

ORDER

(A) The Writ Petition is allowed.

(B) The medical opinion declaring the Petitioner as **UNFIT** is quashed and set aside.

(C) The Petitioner shall not be treated as unfit for participating

in the selection process under the advertisement dated 9th January, 2019 (Exhibit 'A-1').

(D) The Respondents to take an appropriate decision in respect of the final selection of the Petitioner after completion of the selection process.

9. Rule made absolute in the above terms.

10. Parties to act upon the authenticated copy of this order.

(Z.A. HAQ, J)

(NARESH H. PATIL, J)