

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.17646, 17647, 20755, 17367 & 17368 of 2011

V.Haribramman	Petitioner in W.P.No.17646 of 2011
Navin Kumar Sharma	Petitioner in W.P.No.17647 of 2011
N.Balakrishnan	Petitioner in W.P.No.20755 of 2011
Rajsekhar.B.Korwar	Petitioner in W.P.No.17367 of 2011
R.Rajkumar	Petitioner in W.P.No.17368 of 2011

Vs

1. Union of India,
Rep. by its Secretary,
Ministry of Home Affairs,
New Delhi
 2. The Director General,
Central Industrial Security Force,
CGO Complex, New Delhi.
 3. The Deputy Inspector General (Personal),
Central Industrial Security Force,
CGO Complex, New Delhi.
 4. The Deputy Inspector General,
CISF, Ministry of Home Affairs,
D Block Rajaji Salai,
Besant Nagar, Chennai - 600 090
 5. The Senior Commandant,
Central Industrial Security Force,
4th NDRF BN, Arakkonam ..Respondents in
W.P.Nos.17646, 17647, 17367 & 17368 of 2011
-
1. The Union of India,
Represented by its Secretary to the Government,
Department of Home Affairs,
New Delhi
 2. The Director General,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi 110 003

3. The Deputy Inspector General /
Chairman SI/Exe, LDCE 2010
Central Industrial Security Force
CGO Complex, Lodhi Road,
New Delhi 110 003

4. The Deputy Inspector General/Pers,
Central Industrial Security Force,
CGO Complex, Lodhi Road,
New Delhi 110 003

5. The Assistant Commandant/Adm,
Central Industrial Security Force,
CISF Unit, NLC, Neyveli

..Respondents in
W.P.No.20755 of 2011

Prayer in W.P.Nos.17646 & 17647 of 2011:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to furnish the copies of the written examination papers of the petitioners vide roll Nos.3125 & 3150 conducted on 19.09.2010 in pursuant to original notification in Lak-E-32017/(2)/6/Rectt-2010-Vol.I/209 dated 18.01.2010 on the file of the third respondent.

Prayer in W.P.No.20755 of 2011: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the Impugned order passed by the 5th respondent dated 11.07.2011 in his Office Memorandum No.E-32017 (1)/SI/Exe (LDCE-11)/Adm.II/2011-3784 and quash the same in so far as item No.1 is concerned and to direct the respondents to provide Xerox copies of the answer papers and to revalue the paper-II for the examination conducted for LDCE-2010 and to include the name of the petitioner in the merit list.

Prayer in W.P.Nos.17367 & 17368 of 2011:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to furnish the copies of the written examination papers of the petitioners vide roll Nos.3245 & 3152 conducted on 19.09.2010 in pursuant to original notification in Lak-E-32017/(2)/6/Rectt-2010-Vol.I/201 dated 18.01.2010 on the file of the third respondent.

For Petitioners : Mr.R.Thiyagarajan
in W.P.Nos.17646, 17647, 17367 & 17368 of 2011
For Petitioner : Mr.A.S.Mujibur Rahman
in W.P.No.20755 of 2011

For Respondents 1 to 5 : Mr.S.Namo Narayanan,
in W.P.Nos.17646 & 17647 of 2011 Central Government
Senior Panel Counsel

For Respondents 1 to 5
in W.P.No.20755 of 2011

: Mr.B.Ramaratnam,
Central Government
Standing Counsel

For Respondents 1 to 5
in W.P.Nos.17367 & 17368 of 2011

: Mrs.S.Meenakumari
Central Government
Standing Counsel

COMMON ORDER

The cause of action for all these writ petitions, having arisen out of the same recruitment examination and relief sought for by the all petitioners being the same against the same respondents, so also similar question of law and facts being involved in all these five writ petitions, all are heard together and disposed of by this common order on consent of the parties.

2. It appears that all these five petitioners while working as Constable in the Central Industrial Security Force (CISF in short) in Unit 4th NDRF BN, Arakkonam under the fourth respondent, the respondent No.2 came out with an advertisement on 18.01.2010 to fill up certain number of post of Sub Inspector (Executive) in CISF through Limited Competitive Examination (in short LDCE). The petitioners who were eligible to sit in such examination, applied through proper channel for such post. Pursuant to their such application, they were put to physical test. Thereafter, they wrote the examination. According to the petitioner, even if the petitioners had wrote the examinations well but to their shock and surprise in the result of the written examination published, their roll numbers did not find place and as such they were declares failed. Then, they made application for re-evaluation of their answer sheet and being on unsuccessful, they applied the fourth respondent for supply of the copy of the answer papers written by them for their verification as they apprehend, the same was not evaluated at all or not evaluated properly. However, the same having not been acceded to, they came to file these writ petitions challenging such action of the respondent to be illegal and arbitrary, seeking the relief of supply of the copies of their answer sheets.

3. The respondents have filed the reply affidavit with the averment that since the examination was conducted by an independent body, the respondent had no role to play in the examination and on the basis of the results supplied by such body, the petitioners were declared unsuccessful as they had not secured the qualifying marks, so also there being no provision for revaluation the same was not made and also there being no rule and regulation for providing copies of such answer sheets

and the examination conducting body had not been made party, the writ petition filed by the petitioners seeking direction to supply the copies of their answer sheets, are devoid of merits.

4. During the course of hearing, the learned counsel appearing for the petitioners submits that the scheme of examination was changed in the midst of the recruitment process which is impermissible inasmuch as some of the tests which were there in the first paper were taken to the second paper without prior notice to the petitioners. The same caused prejudice to the petitioners. Therefore on the said ground alone, the process of recruitment is vitiated. Hence, the entire recruitment examination be quashed and the respondent be directed to conduct the examination afresh according to the scheme as indicated before commencement of the recruitment process. In alternative, since the petitioners claim prejudice they may be allowed to write the examination afresh and basing on their such tests, their fitness be judged. Otherwise also, the petitioners apprehending that their answer sheets were not evaluated properly, the same may be directed to be re-evaluated, in alternative, the respondent be directed to supply their answer sheets.

5. Responding to the same, the learned counsel appearing for the CISF, submits that the petitioners in these writ petitions had neither pleaded nor prayed challenging the process of recruitment on the ground of change of the rule of the game in the midst of the recruitment process. However, though it is admitted that the scheme of the written examination as indicated earlier was changed by the respondent but the same was for the advantage of all the candidates and much before the written examination, the same was intimated through the controlling officers of all the eligible constables who had participated in the said examination. No one had made grievance before writing of such examination. In such premises, after writing their examinations and becoming unsuccessful, it is not open to the petitioners to challenge the recruitment process on the said ground. Law in this regard is well settled. Hence, the aforesaid contention raised by the counsel for the petitioner be rejected, submits the counsel for the respondent. In regard to the prayer made for re-evaluation is concerned, it is submitted that there being no rule for re-evaluation but only re-addition, the same was denied to the petitioners. So far as the supply of the answer sheets is concerned the same is also impermissible for the reason that there is no rule to supply the same as well as the respondent CISF is not the examination conducting body. The examination conducting body has not been made a party. In the absence of such examination conducting body, the writ petition seeking the relief is liable to be dismissed for non joinder of the necessary party. Hence, it is submitted by the learned counsel for the respondent CISF that the writ petitions

are liable to be dismissed. However, the learned counsel for the respondent on the direction of the Court had produced the certified copy of the mark sheets of the candidates who were declared successful including the petitioners for perusal of the Court in a sealed cover.

6. In rejoinder, the learned counsel appearing for the petitioners submits that even if it is not pleaded and prayed that the that the recruitment process was bad for change of rule in the midst of the game but the same being not disputed fact and in law it is impermissible to change the rule in the midst of the game, this Court is not bereft of power while exercising jurisdiction under Article 226 of the Constitution of India to grant the relief prayed for on the said ground inasmuch as this Court has enough jurisdiction under Article 226 of the Constitution of India to mould the relief even if not prayed for. Hence, the contention advanced challenging the contention raised by the writ petitioners in this regard by the respondents is without any substance. So far as non joinder of necessary party is concerned, it being never disclosed to the petitioners that another independent body is conducting the examination and the name of the body before the examination nor in the reply affidavit, the contention raised challenging the prayer to supply the answer sheets on the ground of non joinder of the examination conducting body, is also without substance, submits the counsel for the petitioners.

7. From the facts and also the contention raised, the following questions have arisen for determination in the writ petitions:

(i) Whether the petitioners can challenge the process of recruitment after writing their examinations on the ground that the rule of the game was changed, even if there is no pleading to that respect in the writ petitions.

(ii) Whether the petitioners are entitled to re-evaluation of their answer sheets.

(iii) Whether the petitioners are entitled to the copy of their evaluated answer sheets.

8. As it appears the petitioners in these writ petitions had not pleaded that the process of recruitment was vitiated for change of the rule of game in the midst of the selection process. No doubt in the absence of such pleading, it appears that the respondent could not answer specifically to meet such argument. But, during the course of argument, it was not disputed that the scheme of examination as indicated earlier was changed, and the same was before the candidates took up the written examination. The petitioners though made contention that the same was without notice but the respondent submits that the same was notified before the examination through the Controlling Officers of the candidates. The petitioners had not

brought to the notice of this Court that no such notification was made prior to the written examination nor he has pleaded the same specifically. In such premises, this Court is of the view that the contention raised that the scheme of the examination was changed without notifying them appears to be without any substance. This was an LDCE. It is the specific case of the respondent that the aforesaid change in the scheme after the advertisement, was made but well ahead of the written examination. They have also produced the notification circulated to all the Controlling Officers for appraisal of the candidates. The same is well ahead of the written examination. The petitioners knowing well the same wrote the examinations without any grievance with regard to the change of scheme of examination and waited till the publication of the result. It is only when they became unsuccessful, they challenged the process of recruitment on that ground that too during argument. In such premises, they are estopped from challenging the process of recruitment on that ground. Law in this regard has been well settled in a catena of decisions by the Apex Court many years before. Reliance in this regard can be placed in certain decisions of the Apex Court, such as in the case of G.Sarana Vs. University of Lucknow and Others reported in (1976) 3 SCC 585, (ii) Madanlal Vs. State of Jammu and Kashmir & Others reported in (1995) 3 SCC 486 and Manish Kumar Shahi Vs. State of Bihar & Others reported in (2010) 12 SCC 576, wherein the Apex Court have held that unsuccessful participant cannot turn around and challenge the selection process after participating in it without any challenge. In view of the aforesaid settled proportion of law, this Court though not bereft of jurisdiction to entertain certain plea without pleading in exercise of writ jurisdiction and also mould the relief prayed for but the contention raised challenging the process of recruitment on the said ground cannot be accepted. Hence the same has been raised to be rejected and accordingly stands rejected.

9. Now coming to the question of revaluation of the answer sheets, as it appears to this Court there is no provision of revaluation of answer sheets. Hence, such a relief is not available to the petitioner moreso when the aforesaid is also not the prayer in the writ petitions also. The Apex Court in the case of Himachal Pradesh Public Service Commissioner Vs. Mukesh Tagore reported in (2010) 6 SCC 759, taking note of a number of decisions rendered by the Hon'ble Apex Court, in this regard held that 'thus the law on the subject emerges to the fact that in the absence of any provision under the statute or statutory rules / regulation the, Court should not generally direct for revaluation'. In view of such law laid down by the Hon'ble Apex Court, the petitioners are not entitled to the relief sought for in this regard.

10. Now coming to the prayer made in the writ petitions with regard to providing the answer sheets, eventhough objections have been made for the same but in view of the law laid down in the case of Central Board of Secondary Education & another Vs. Aditya Bandopadhyay & Others, by the Hon'ble Supreme Court in Civil Appeal No.6454 of 2011, this Court is of the view that the petitioners are entitled to the relief sought for. In the case of Central Board of Secondary Education & another (Supra), the Supreme Court has held that the examinee had right under the Right to Information Act to know the manner in which answers have been evaluated and what manner he has been awarded with the marks. It appears that in these cases, the scheme of examination indicates that unless a person qualifies in the first paper his second paper shall not be evaluated. From the marks submitted it appears to this Court that all the petitioners except Rajsekhar.B.Korwar, the petitioner in W.P.No.17367 of 2011, have passed in the first paper and as such their second papers were evaluated and marks were awarded. However, they have failed in the second paper. But so far as the petitioner in W.P.No.17367 of 2011, namely Rajsekhar.B.Korwar is concerned, in the first paper not secured the qualified marks, hence the second paper was not evaluated. Therefore, this Court is of the view that the candidates are entitled to copy of their answer sheets which were evaluated. But objection has been made with the contention that the respondent being not the examination conducting body and the examination conduction body is not a party such a direction cannot be issued. Needless to say that examination was conducted pursuant to the notification made by the second respondent. The second respondent had never indicated the written examination shall be conducted by any particular body. Even in the reply affidavit, the respondent had not disclosed which body conducted the written examination or to whom they had entrusted the same. It is the respondent who had entrusted the conduct of the examination to a body namely Staff Selection Commission as told during the hearing of these writ petitions. The aforesaid being an internal arrangement not disclosed to the petitioner, the petitioner as such cannot be denied of the relief of supply of the copy of the evaluated answer sheets on the ground of non joinder of necessary party, moreso when the said Staff Selection Commission also cannot be said to be a necessary party inasmuch as the aforesaid relief, if granted no way visits the said Staff Selection Commission adversely. However, this Court had not directed the preservation of the answer sheets. Under Right to Information Act, a person is entitled to information that came into existence twenty year before the date of seeking such information. But the same does not cast an obligation on the part of the body / authority to preserve the information for twenty years notwithstanding any rule to destroy the same prior to the aforesaid period. In such

premises, this Court directs that if the answer sheets are not liable for destruction under any rule pursuant to which the same has been destroyed the petitioners be provided with the answer sheets by the fourth respondent obtaining the same from the examination conducting body within a period of six weeks from the receipt of the copy of this Order. However, the petitioner shall on being called to deposit the necessary cost to obtain such information as directed in this regard, by the fourth respondent within the period stipulated therein.

11. With the aforesaid order, the writ petitions stand disposed of being allowed. However, in the circumstances there shall be no order as to costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
Union of India,
Ministry of Home Affairs,
New Delhi
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Central Industrial Security Force,
CGO Complex, New Delhi.
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New Delhi 110 003

+4 Ccs to Ms.S. Meena Kumari, Advocate sr 58960, 58961, 58963,
58964

+4 Ccs to Mr.R. Thiyagarajan, advocate sr 58910, 58911, 58913,
58914.

+1 CC to Mr.B.Ramaratnam, Advocate sr 58675 (27/11/2018)

W.P.Nos.17646, 17647, 20755, 17367 & 17368 of 2011

VD(CO)
SP(08/11/2018)