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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 6th July, 2018*

+ W.P.(C) 6905/2018 & CM APPL 26174/2018 (stay)

MANOJ KUMAR YADAV Petitioner
Through : Ms.Garima Sachdeva, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through : Mrs.Bharathi Raju, CGSC for R-1 to 3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. This is a writ petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash the impugned order dated 28.5.2018 passed by respondent no.3 whereby the candidature of the petitioner for the post of Constable (Crew) in the Border Security Force Water Wing has been cancelled. The petitioner also seeks a writ of mandamus thereby directing respondents no.1 to 3 to appoint the petitioner as Constable (Crew) pursuant to his selection.
2. The brief facts of the case are that an advertisement was published in the Employment News on 28.8.2016 whereby applications were invited for various Group 'B' and 'C' posts including for the post of Constable (Crew). The petitioner submitted his application for the post of Constable (Crew). The petitioner was called upon to appear in the written examination and upon completing the first phase i.e.

written examination he was called for the second phase examination i.e. documentation, PST/PET Trade Test on 18.12.2016. The petitioner also appeared for a medical and review examination on 6/10.02.2018 and 06.06.2017, respectively. The petitioner was initially declared unfit on 10.2.2017 on the ground of his suffering from hypertension. On an appeal filed by the petitioner against the order, he was found medically fit in the review medical board held on 6.6.2018. However, the petitioner was served with a Show Cause Notice dated 30.1.2018 proposing to cancel his candidature on the ground that as per the remarks given by the issuing authority on 27.7.2017 the swimming certificate dated 20.7.2017 submitted by him during the course of recruitment process was found to be fake.

3. It is the case of the petitioner that the petitioner approached respondent no.4/Tisha Swimming Pool and Resta, and obtained a letter/certificate dated 7.2.2018, addressed to respondent no.3, stating that the petitioner had attended swimming classes from 1.3.2016 to 10.7.2016 and could swim in deep water as well. In response to the Show Cause Notice, the petitioner in his reply dated 7.2.2018 submitted that all his documents including swimming certificate were genuine and prayed that an appointment letter be issued to him.
4. The petitioner is aggrieved by the communication/impugned order dated 28.5.2018 by which his reply was rejected being devoid of merit and also on the ground that the swimming certificate was found to be fake and consequently his candidature was rejected. The petitioner again received a confirmation from the Institute but since respondents

no.1 to 3 did not consider his requests favourably he was forced to file the present writ petition.

5. Learned counsel for the petitioner submits that the impugned order has been passed without any application of mind and on the presumption that the swimming certificate issued by respondent no.4 was fake without taking into consideration the subsequent letters dated 5.2.2018 and 7.6.2018 issued by the same institute. It is, thus, contended that the impugned order is liable to be quashed and the petitioner is entitled to appointment as a Constable (Crew).
6. Ms.Bharathi Raju, learned counsel appearing on behalf of respondents no.1 to 3, enters appearance on an advance copy and submits that the present writ petition is misconceived and a gross abuse of the process of the Court and, thus, the same is liable to be dismissed with costs.
7. Ms.Bharathi further submits that the petitioner had made an application for appointment as a Constable (Crew) in the Border Security Force Water Wing. The petitioner had also submitted an experience certificate from respondent no.4 institute. Respondents no.1 to 3 had sought verification from respondent no.4, upon which the following response was received:

“Reg. No.....

Date 27.7.2018

To
Incharge
Special Field Vigilance Team
SHQ BSF, Jaisalmer (N) Raj.

Sub.: Verification of experience certificate of swimming.

Reply for Refer your letter no.Vig/SHQ-HSMR(N)/2017/932 on dated 26 July, 2017.

Sir,

It is submitted that Mr.Manoj Kumar Yadav S/o Sh. Bal Mukuand Yadav, Vill-Dheepur, Post-Harshora, The.-Bansur, Distt-Alwar (Raj.) Pin-301412 has not any experience certificate issued by t his institution for any subject.

Proprietor

[Tej Pal Yadav]”

8. Learned counsel for respondent nos.1 to 3 further submits that based on the response received from respondent no.4, wherein it was categorically stated that no such experience certificate was issued by the institute to the petitioner, a Show Cause Notice was issued to the petitioner.
9. Ms.Bharathi further submits that the second certificate was produced by him, however, upon examination, the same did not repose any confidence for the reason that the same was handwritten on a photocopy of the letter head of the institute. Counsel, thus, contends that the petitioner has submitted a fake swimming certificate and he has approached this Court with unclean hands.
10. We have heard learned counsel for the parties, considered their rival submissions and have also examined the documents placed on record including the letter dated 27.7.2017 issued by respondent no.4. The basic facts, which have been detailed, hereinabove are not in dispute except that the petitioner has relied upon a certificate dated 28.7.2016 issued by respondent no.4. Upon receipt of the certificate respondents

no.1 to 3 had sought verification from respondent no.4 but in clear terms respondent no.4 had denied having issued any such certificate to the petitioner, which is evident from the letter dated 27.7.2018 issued by respondent no.4, which is reproduced at para 7 above.

11. We have also examined subsequent certificate and found the same to be handwritten on a letter head, which is a photocopy of the letter head of respondent no.4. The photocopy is evident from the fact that the colour of the paper is almost black. In the subsequent certificate surprisingly there is no mention of the earlier certificate or any explanation for denying having issued any certificate earlier.
12. For the reasons aforestated, we find no infirmity in the impugned order dated 28.5.2018. We also find no grounds to entertain the present writ petition and the application and the same are accordingly dismissed.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

JULY 06, 2018

msr