HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 7228/2019

Kamlesh Kumar Meena S/o Ramji Lal Meena, Aged About 28 Years, R/o Village Aagar Hardeva Ki Dhani, Post Aagar, Tehsil Thanagazi, District Alwar (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary (Home), Govt. Secretariat, Jaipur.
2. The Inspector General Of Police, Poice Head Quarter, Rajasthan, Jaipur.
3. The Superintendent Of Police, Sriganganagar (Raj.).
4. Bhawani Shankar S/o Ramkumar Meena,, Belt No. 256 R/o Village Javali Ka Bad, Tehsil And Police Station Baswa, District Dausa (Raj.)

----Respondents

For Petitioner(s)	:	Mr. Surendra Singh Choudhary
For Respondent(s)	:	Mr. Kailash Choudhary, AGC for Mr. Manish Vyas, AAG

JUSTICE DINESH MEHTA

Judgment

10/02/2020

1. The petitioner has preferred the present writ petition for the following reliefs :

> *(i) That the impugned appointment order dated 27.09.2018 and the impugned action of the respondents in not selecting humble petitioner on the post of Constable despite being higher meritorious on the ground that he has availed relaxation in chest may kindly be declared illegal and arbitrary and quashed and set aside.*

(ii) The respondents may kindly be directed by issuing any appropriate writ, order of direction in the nature thereof :

(a) Respondents may kindly be directed to measure the chest of humble petitioner measured from AIMS, Jodhpur.

(b) to give appointment to humble petitioner on the post of Constable (Gen.) will all consequential benefits.

(iii) Any other appropriate order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of this case may kindly also be passed in favour of the petitioner."

2. The pertinent facts are that the petitioner, desirous of appointment on the post of Constable, pursuant to the advertisement dated 25.05.2018, submitted his application form as an ST Candidate.

3. The petitioner cleared written examination and took part in Physical Standard Test (PST). Petitioner secured 48.75 marks, whereas cut off marks for ST category for the District Jailsalmer were 43.75.

4. Backdrop of facts, which are necessary for the present purpose are that when the petitioner appeared for Physical Standard Test his chest measurement were 79.8 cm (normal) and 85.4 cm (expanded).

5. The advertisement required the following chest measurements in terms of Rule 14 of the Rajasthan Police Subordinate Service Rules, 1989 :

"Chest without expansion – 81 cm.

Chest after expansion – 86 cm."

6. The aforesaid parameters in relation to chest measurements contained a provision for relaxation of 5 cm in case of SC/ST candidate, with a further stipulation in para No.8 (viii) to the effect that in case sufficient number of candidates are not available in the category of SC/ST of Non-TSP area, a relaxation of 5 cm height and chest will be given. Said note enumerated in Clause No.8 (viii) reads as follows :

> "सीना बिना फुलाव – 79.8 सेमी
>
> सीना फुलाने पर – 85.4 सेमी"
> नोट – 1. यदि सामान्य क्षेत्र के लिए उपरोक्त वर्णित शारीरिक मापदण्डों के अनुसार अनुसूचित जाति/अनुसूचित जनजाति के अभ्यर्थी उपलब्ध नहीं होते हैं तो उन्हें ऊंचाई व सीने में 5 से.मी. की छूट देय होगी।

7. When the petitioner having secured more marks than the cut off did not find his name in the list of selected candidates, he sought requisite information under Right to Information Act, vide his application dated 29.09.2018. The petitioner was informed that that since he had been given relaxation of 5 cm in his chest measurement, he was not given appointment.

8. Mr. Surendra Singh, learned counsel for the petitioner contended that petitioner's Physical Stands Test particularly chest measurement was wrongly done.

9. Learned counsel relied upon a certificate dated 25.10.2018, issued by the Medical & Health Officer-II, Jaipur giving out following chest measurement :

> "Without expansion – 81 cm
>
> With expansion – 86 cm"

10. Inviting Court's attention towards said medical certificate, learned counsel contended that the petitioner's chest

measurement was meeting the requisite parameters and the measurement done by the respondents was not correct.

11. Learned counsel relied upon a judgment dated 13.09.2018 passed by this Court in *SB Civil Writ Petition No.13662/2018 : Vikesh Jajra Vs. State of Rajasthan & Ors : SB Civil Writ Petition No.13662/2018*, and submitted that there is an apparent error in petitioner's chest measurement and hence, the respondents be directed to constitute a Medical Board and get the petitioner's chest measured once again.

12. Mr. Kailash Choudhary, learned counsel for the respondents, submitted that this Court, vide order darted 26.09.2019, required the respondents to inform as to whether the petitioner was informed about the relaxation being granted to him at the time of Physical Standard Test and as to whether any vacancy exists in petitioner's category.

13. An additional affidavit has been filed by the respondents indicating therein that after carrying out the Physical Standard Test, each of the candidates including the petitioner was informed about the measurement and their signatures were obtained on the sheet. A photo-stat copy (Annex.R/1) of the same has been placed on record, which shows petitioner has acknowledged his chest measurement as 79.8 and 85.4 normal and expanded respectively. It has also been asserted that there are no vacant seats in the District Jailsalmer.

14. It was argued by the learned counsel for the respondents that petitioner's candidature was not rejected in Physical Standard Test, at the first place and a relaxation of 5 cm was given; as he was entitled to relaxation. However, after carrying out Physical Standard Test of all the candidates of petitioner's (ST) category, as

requisite number of candidates were meeting the required physical standards, petitioner's case was not considered for appointment. He added that true it is that cut off of ST Category was 43.75, however, the last selected candidate did meet the requisite parameters/standards of chest measurement. As such, he was given precedence over the petitioner and all other ST candidates, whose chest measurement failed to meet the requisite parameters.

15. Heard and considered.

16. Upon perusal of the material available on record, particularly the additional affidavit filed by the respondents, it is clear that no sooner did the petitioner undergo the Physical Standard Test, than he was informed about his measurements and his signatures were obtained on the sheet. As such, there is no room for doubt that the petitioner was not aware about the result of his chest measurement i.e. 79.8 and 85.4 cm, which were short of the bar of physical standard parameters.

17. In case, the petitioner felt dissatisfied of the result of PST done on 18.02.2019, he ought to have preferred an appeal after paying the applicable fee; which admittedly has not been done by the petitioner.

18. Mr. Surendra Singh, learned counsel for the petitioner, explaining the delay in approaching the Court submitted that the petitioner preferred a writ petition at Jaipur (being SB Civil Writ Petition No.25205/2018 : Kamlesh Kumar Meena Vs. State of Rajasthan & Ors.) in the month of November, 2018, the same was later transferred by Jaipur Bench of this Court vide order dated 09.05.2019 to the Principal Seat.

19. The petitioner's request for fresh Physical Standard Test at this juncture, cannot be entertained as much water has flown under the bridge in the river.

20. The petitioner's Physical Standard Test was carried in September, 2018 and about 18 months' time have since elapsed. The chest measurements are likely to vary at this stage. That apart, it is too late in the day to order for fresh Physical Standard Test for the petitioner, particularly when there is no vacancy left with the respondents.

21. Relaxation of 5 cm in Physical Standards is not a relaxation as a matter of right. Such relaxation is to be provided in case requisite number of candidates in SC/ST category are not available. The respondents have rightly not declared the petitioner 'Fail' in PST, as by that time they were not sure as to whether sufficient number of candidates meeting the requirement will be available or not. Such being the position, they treated the petitioner as successful, while giving him relaxation of 5 centimeter. But the same does not create any right in petitioner's favour and he cannot claim right to be appointed.

22. This Court does not find any error in the respondents' decision in rejecting petitioner's candidature, particularly when required number of ST candidates, who were meeting the parameters fixed for physical standards, were available.

23. The petitioner having failed to meet the requisite parameters cannot claim priority over the candidates, who were able to meet the parameters sought for Physical Standard Test, merely because the petitioner was able to secure more marks than the cut off.

24. This Court does not find any substance and force in the present petition, for which, it is, hereby, dismissed.

25. The stay application is also dismissed.

(DINESH MEHTA),J

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RAJASTHAN HIGH COURT

सत्यमेव जयते