



2023:DHC:8299



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

% **Date of order: 30th October, 2023**

+ **W.P.(C) 3185/2023 & CM APPL. 12433/2023**

RASID KHAN AND ORS

..... Petitioners

Through: Mr. Neeraj Gupta and Mr. Vivek
Kumar Yadav, Advocates

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Vineet Dhanda, CGSC with Mr.
Shubham, G.P. for UOI

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

- “i. To quash and set aside the impugned Notice dated 22.02.2023 passed by the Respondents illegally and unconstitutionally in the end of natural justice.*
- ii. To Direct the Respondent No.2 to issue Joining Letter to the Petitioner for the post of Assistant.*
- iii. To pass any other order/s as deem fit and proper in the facts and circumstances of the case.”*

2. The respondent no. 2, i.e., Food Safety and Standards Authority of India issued advertisement dated 30th September 2021, for recruitment of

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 20.11.2023
12:56:21

W.P.(C) 3185/2023

Page 1 of 8



various posts on a pan India basis including one of Assistant where the clause 6, serial no. 10 of the said advertisement mentioned about 33 vacancies.

3. As per the aforesaid advertisement, the candidates applying for the post of Assistant were required to possess a Bachelor's degree from a recognized university. The advertisement also contained the schedule for the online recruitment, which was to commence from 13th October 2021 and the last date for the same was 12th November 2021.

4. In pursuance of advertisement dated 30th September 2021, the respondent no.2 issued notice dated 3rd June 2022, bearing No. F. No. HR-12013/11/2021-HR-FSSAI, whereby, the number of vacancies for the post of Assistant were revised from 33 to 37.

5. Further, upon being issued an E-admit card, the petitioner appeared for the examination of the said post on 31st March 2022, subsequent to which the declaration of attendance summary was published by the respondent on 20th April 2022.

6. On 6th July 2022, the respondent no.2 published the result notice -2 against advertisement no. DR-04/202, whereby the cut-off marks for unreserved category were declared as 440.

7. *Vide* notice dated 28th July 2022, the respondent directed the shortlisted candidates for the post of Assistant, to submit all necessary documents for verification. The said verification was to be wound up between 1st August 2022 and 10th August 2022. Upon completion of the document verification, offer letters were to be issued to the selected



candidates.

8. Thereafter, the respondent no.2, *vide* notice dated 22nd February 2023, cancelled the CBT examination result for the post of Assistant, citing certain irregularities in the conduction of the said examination.

9. Aggrieved by the cancellation of the examination, the petitioners have preferred the present petition.

10. Learned counsel appearing on behalf of the petitioners submitted that the impugned notice/order passed by the concerned authority is contrary to the principles of natural justice.

11. It is submitted that the petitioners, who appeared for the examination, were declared qualified. It is also submitted that based on the averments made in paragraph 18 of the counter affidavit that no reasons were assigned for cancellation of the said examination, and the same has been done on the basis of Clause 18 of the Advertisement dated 30th September 2021.

12. It is further submitted that as per the guidelines issued in the advertisement dated 30th September 2021, the respondent-Food Safety and Standard Authority of India (FSSAI) is again conducting the examination for the post of Assistant again on 3rd November 2023,

13. *Per contra*, learned counsel appearing on behalf of the respondent no. 2, i.e., FSSAI vehemently opposed the instant petition and submitted that as per the order dated 6th October 2023, the committee report has been brought by Mr. Pradeep Kumar, Asst. Director, FSSAI (Recruitment). The committee report has been placed before this Court, however, the report being confidential in nature could not be placed on record.



14. It is submitted that as per the Office Order bearing no. 04/2022 dated 7th November 2022, the Department of FSSAI has constituted a Committee of three members for examining the issue related to the conduct of the computer based examination for the post of Assistant for making a conclusive recommendation and directed that the recommendation may be given within 15 days. The said Committee was headed by the Director of the FSSAI, Director of NTA, Ministry of Health and Family Welfare. After conclusion of the enquiry, the Committee submitted the report to Chief Executive Officer of the FSSAI. As per the Report, the Committee has found certain irregularities in the examination and recommended for re-examination for the said post.

15. Therefore, it is submitted that instant petition, being devoid of any merits, is liable to be dismissed.

16. Heard learned counsel for the parties and perused the record.

17. It is the case of the petitioners that the respondent/FSSAI published an advertisement dated 30th September 2023, thereby, inviting applications for the post of Assistant. Further, the respondent/FSSAI conducted the examination for the said post on 31st March 2022. Subsequently, the result was declared, whereby, the petitioners had duly qualified for the post of Assistant, however, the respondent/FSSAI cancelled the result published of the examination dated 31st March 2022.

18. The principle surrounding irregularities in conduction of examinations has been discussed by various Courts. The Hon'ble Supreme Court in a catena of cases has dealt with situations wherein an examination has been



cancelled due to certain irregularities. In case titled ***Sachin Kumar & Ors vs. Delhi Subordinate Service Selection Board (DSSSB) and Ors.,(2021) 4 SCC 631***, the Hon'ble Supreme Court observed that cases wherein serious irregularities are detected, the State or its agencies are authorised to cancel the examination process. The Hon'ble Supreme Court in their judgment titled ***Sachin Kumar & Ors (Supra)*** held as follows:

“F. The position in law

35. In deciding this batch of SLPs, we need not reinvent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of malpractices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such



a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrongdoers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.”



19. In the aforesaid case, the Hon'ble Supreme Court observed that even though the Courts have been dealing with issues related to examination process being vitiated, it is imperative for the Courts to analyse whether such irregularities have taken place at a methodological level which can corrupt the entire examination process. Furthermore, the Hon'ble Court also held that there are instances where the process loses its credibility and validity because it approaches or enters the realm of fraud. This is one end of the spectrum when the authority conducting the exam or convening the selection process determines that due to intervening circumstances or events, the procedure has lost its validity and there is no choice but to cancel it entirely.

20. It is a well settled principle of law that the selection process cannot be tainted. Maintaining the sanctity of the selection process is of utmost importance while conducting an examination of any kind. Any tampering with the same, might result in suffering caused to the candidates who participated with honesty, however, there may be certain situations wherein the nature of the irregularities may be varied making it impossible to determine the number of candidates involved in the said irregularity.

21. This Court has perused the Committee Report which has been placed before this Court and the same has been returned to the officer concerned present during the course of hearing before this Court.

22. Bearing in mind the contents of the said Report as well as the fact and scenarios, this Court does not find any reasons to pass any writ or order or direction as prayed in the instant petition.

23. Accordingly, the instant petition, being devoid of any merits, stands



2023:DHC:8299



dismissed along with pending applications, if any.

24. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 30, 2023

gs/ds/av

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 20.11.2023
12:56:21

W.P.(C) 3185/2023

Page 8 of 8