



2023:DHC:7757



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

% **Date of order: 12th October, 2023**

+ **W.P. (C) 13486/2023, CM APPL. 53269/2023 & 53270/2023**

KAVI VAIDWAN & ORS. Petitioners

Through: **Mr. Anuj Aggarwal and Ms. Shreya Kukreti, Advocates.**

versus

DELHI SKILL AND ENTREPRENEURSHIP UNIVERSITY & ORS. Respondents

Through: **Mr. Shivendra Singh with Mr. Bikram Dwivedi, Advocates for R-1 and 2.**
Mr. Akshit Tyagi proxy for Mr. Naushad Ahmed Khan, Advocate for R-3 and 4.

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 petitioners seeking the following reliefs:-

- (i) *Issue an appropriate writ, order or direction thereby setting aside the impugned Notice No. F.12(91)/DSEU/H.R./2022/1006-1015 dated 26.10.2022 issued the Delhi Skill and Entrepreneurship University (DSEU), whereby the DSEU has cancelled Computer Based Recruitment Test (CBRT), as conducted on 14-15th July, 2022 for appointment on 48 vacancies of Junior Assistant/Office Assistant (Post Code-0111202101) advertised in Advertisement*



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dated 01.11.2021;

- (ii) *Issue an appropriate writ, order or direction thereby directing the respondents to continue the recruitment process in terms of the Result Notice dated 23.08.2022 and , consequently, appoint the petitioners on the post of Junior Assistant/Office Assistant (Post Code-0111202101) with all consequential benefits thereof, including seniority, back wages, continuity of services, etc.;*
- (iii) *Pass any such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice and in favour of the petitioners."*

2. The facts leading to the filing of the instant petition are recapitulated in brief herein:

- a. The Delhi Skill and Entrepreneurship University (hereinafter "DSEU") herein referred as respondents i.e., established under the rules and provisions governed by Government NCT of Delhi Act.
- b. The respondents had advertised a Vacancy Notice/Advertisement so far as promulgated their expectancy for an appointment on the post of Junior Assistant/Office Assistant to perform under their employment (hereinafter "respondents"). Further, by way of advertisement dated 1st November 2021, the respondents' university declared 42 vacancies for the afore-said post. The empanelled vacancies are indexed below:

Post Code	Name of the Post	Category of Post	Vacancy						
			EWS	UR	OBC	SC	ST	Total	PWD
0111202101	Junior Assistant/Office Assistant	DSEU Group 'C' (Ministerial)	3	19	11	6	3	42	2



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- c. The petitioners, being eligible candidates applied for the said position. The respondent by way of a Notice declared that they will conduct Computer Based Recruitment Test (hereinafter “CBRT”) for the afore-said post, and asserted the applicant to comply with the instructions stated thereto.
- d. Furthermore, the respondent affirmed that the recruitment process as per the scheme of CBRT examination had to be conducted in two tiers wherein, the 1st Tier will be executed in the manner of written examination.
- e. Subsequently, the candidates who had appeared and qualified in the afore-mentioned 1st Tier Examination will be shortlisted for Skill/Typing Test i.e., 2nd Tier.
- f. Thereafter, the respondents cancelled the CBRT that deemed to be conducted on a fixed month of March 2022, and guaranteed to re-conduct the CBRT. Later, the respondents *vide* Addendum increased the number of vacancies from 42 vacancies to 48 vacancies.
- g. Pursuant to which, new admit cards were issued to the petitioners, along with their roll numbers.
- h. Thereafter, on dated 26th July 2022 the Delhi Skill and Entrepreneurship University (hereinafter “DSEU”) herein referred as respondents declared the list of the candidates who were shortlisted for appearing in the Skill Test, operated/supervised at MRS Global Institute of Technology, Dwarka Metro Station Pillar No. 811, Delhi-110078.



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- i. In furtherance of CBRT examinations, the university (hereinafter 'respondents') had come to the findings and declared the outcome, thereto, the list of selected as well as waiting list of candidate.
 - j. Therefore, the petitioners being impugned of the notice passed on dated 26th October 2022 in favour of respondents, thereby cancelled the CBRT examination for recruitment on the post of Junior Assistant/Office Assistant.
 - k. The petitioners Nos. 2 to 4 had filed applications [CM No. 4052/2023 & CM No. 47513/2023] for impleadment in writ petition [WP (C) No. 15270/2022] before this Court filed by the petitioners Nos. 2 to 4.
 - l. Consequently, being aggrieved by the above stated impugned order, the petitioners have invoked the writ jurisdiction of this Court by way of the instant petition.
 - m. Learned counsel appearing on behalf of the petitioners submitted that the only a few cases of use of unfair means were detected at two centers and therefore, the DSEU's action of cancelling the entire examination is arbitrary and unreasonable, and also in violation of Articles 14 & 16 of the Constitution of India.
3. Learned counsel appearing on behalf of the petitioners submitted that the only a few cases of use of unfair means were detected at two centers and therefore, the DSEU's action of cancelling the entire examination is arbitrary and unreasonable, and also in violation of Articles 14 & 16 of the Constitution of India.



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4. It is further submitted that only three persons were been alleged of unfair mean practice by way of FIR lodged. Therefore, it is not difficult to segregate *bonafide* candidates from the dishonest ones. Resultantly, it accounted to be violation of Article 14 & 16 of the Constitution of India.

5. It is contented by the petitioners that, the principle of natural justice had been infringed against them *vide* Impugned Order dated 26th October 2022. Additionally, the respondents had not served any show cause notice prior to cancellation of the CBRT. Thereupon, it expedites the grave injustice on part of petitioners, and liable to be dismissed.

6. Learned counsel embarking upon the petitioners' appointment on the post of Junior Assistant/Office Assistant, asserted that, the respondents illegally, arbitrarily, capriciously *vide* Impugned Notice dated 26th October 2022 had undermined their apprehensions in line with the afore-said appointment on the certain posts.

7. It is also, submitted by the petitioner that, intentionally and with ulterior motives the respondents *de novo* cancelled the CBRT allocations. Accordingly, the entire examination process that had to be regulated was cancelled thereto, as far as such illegal countermanded by way of respondents' interference is entirely bad in law.

8. It is therefore submitted that the impugned notice dated 26th October 2022 is in violation of Article 14 & 16 of the Constitution of India and is liable to be set aside.

9. *Per Contra*, the learned counsel appearing on behalf of the



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respondents vehemently opposed the instant petitions together with the averments submitted by the petitioners, and asserted that at the outset the same is non-maintainable, hence, liable to be dismissed.

10. Learned counsel appearing on the behalf of the respondent submitted that, the respondent has cancelled the exam based on the basis that there were incidents of unfair means used at two exam centres and FIR has been lodged in this regard. Pursuant to the filing of the writ petition, the investigation was in process, due to such circumstances the respondent had to cancel the exam.

11. It is submitted that prayers (i) and (ii) of this instant petition cannot be granted in view of the law laid down by the Hon'ble Supreme Court in its judgment titled ***Sachin Kumar & Ors vs. Delhi Subordinate Service Selection Board (DSSSB) and Ors., (2021) 4 SCC 631***, whereby it was held that in the event of large scale malpractices in the course of the examination process, the State or an agency of the State are entitled to cancel the said examination.

12. It is submitted that setting aside of impugned notice dated 26th October 2022, is not justified as the decision-making process is not arbitrary and has been arrived at after due application of mind and with the purpose of preserving the sanctity of the recruitment process.

13. It is further submitted that the candidates i.e., petitioners herein cannot claim violation of the Fundamental Right of equality if the authority cancels the recruitment due to irregularities or unfair means detected in the recruitment process.



14. Heard the parties and perused the record.

15. It is the case of the petitioners that *vide* notice dated 1st November 2021, DSEU invited applications for the post of Junior/Office Assistant and the recruitment process of the same was to be conducted in two tiers i.e., a written examination followed by a CBRT and the candidates who cleared the CBRT would further have to appear in a Skill/Typing Test. The petitioners appeared for the CBRT and the same was cancelled twice and subsequently rescheduled by DSEU due to malpractices detected in the recruitment process. The third time the CBRT was conducted, the petitioners were short listed for the skill test and subsequently selected for the post of Junior/Office Assistant, however, the CBRT was cancelled for the third time *vide* impugned notice dated 26th October 2022, due to certain malpractices allegedly being detected in the examination process.

16. It is contended by the petitioners that the impugned notice was arbitrary and unjustified, and the DSEU's action of cancelling the entire examination is unreasonable and therefore, is in violation of Articles 14&16 of the Constitution of India.

17. The issue before this Court is whether or not DSEU's action of cancelling the examination was justified in lieu of the fact that there were certain irregularities and malpractices detected during the examination process.

18. The learned counsel appearing on behalf of the respondent cited judgment titled ***Sachin Kumar & Ors (Supra)***, whereby, the Hon'ble Supreme Court adverted to the above-stated principle by stating that in



cases, wherein, serious irregularities are detected, the State or its agencies are authorised to cancel the examination process altogether.

19. 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.”

20. In aforesaid judgment, the Hon’ble Supreme Court observed that even though the Courts have been dealing with issues related to examination process being vitiated, it has now become imperative to analyze whether such irregularities have taken place at a methodological level so as to corrupt the examination process. There are instances where the process loses



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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.

21. 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 participate in such examination process 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.

22. The above stated principles surrounding malpractices/irregularities have been discussed in a catena of judgments of the Hon'ble Supreme Court and High Courts. The Bombay High Court in case titled ***Sonali Shivram Dupare v. Thane District Central Coop. Bank, 2023 SCC OnLine Bom 58***, held as follows:

“C. CONSEQUENCES OF IRREGULARITIES: —

23. *15. Coming to the last issue, in view of our findings that the recruitment process itself was irregular, should the entire examination or selection process conducted be cancelled or only of all those candidates, in whose case malpractice could have been committed have to be cancelled. Answer to that we find in the judgment of the Apex Court in Gohil*



Vishvaraj Hanubhai v. State of Gujarat, (2017) 13 SCC 621 : 2017 Mah LJ OnLine (S.C.) 135. In that case, Scrutiny of the answer sheets (OMR) revealed that there were glaring aberrations which provided prima facie proof of the occurrence of large scale tampering of the examination process. One of the issue that came up for consideration was whether the entire examination process should be cancelled or only of those class who had resorted to malpractice. The Apex Court came to the conclusion that the entire examination process should be cancelled and that would not be violative of Article 14 of the Constitution of India, since all candidates would get opportunity to participate in fresh examination process. Paragraphs 21 to 30 of the said judgment read as under:

- “21. Purity of the examination process - whether such examination process pertains to assessment of the academic accomplishment or suitability of candidates for employment under the State - is an unquestionable requirement of the rationality of any examination process. Rationality is an indispensable, aspect of public administration under our Constitution. The authority of the State to take appropriate measures to maintain the purity of any examination process is unquestionable. It is too well settled a principle of law in list of the various earlier decisions of this Court that where there are allegations of the occurrence of large scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination. [81 This Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some reasonable material to indicate that the examination process is vitiated. They are also not obliged to seek proof of each and every fact which vitiated the examination process.*
- 22. Coming to the case on hand, there were allegations of large scale tampering with the examination process. Scrutiny of the*



answer sheets (OMR) revealed that there were glaring aberrations which provide prima facie proof of the occurrence of a large scale tampering of the examination process. Denvins power to the State from taking appropriate remedial actions in such circumstances on the ground that the State did not establish the truth of those allegations in accordance with the rules of evidence relevant for the proof of facts in a Court of law (either in a criminal or a civil proceeding), would neither be consistent with the demands of larger public interest nor would be conducive to the efficiency of administration. No binding precedent is brought to our notice which compels us to hold otherwise. Therefore, the 1st submission is rejected... ”

24. In light of the above discussion, this Court is of the considerable view that it is regrettable that the candidates appearing for such competitive examinations pertaining to recruitment have to resort to such methods in order to succeed in such examinations and as a result of the same innocent and sincere students become victims of such disorderly conduct of their colleagues. Such situations do not leave the State or its agencies with any other option but to cancel the examination altogether.

25. It is observed that it becomes extremely difficult for the agencies conducting such examinations to determine and identify exactly how many students have engaged in such malpractices and irregularities.

26. In the present case the CBRT, a computer-based examination was tampered with, which is evident by the two FIRs filed by DSEU, following which the examination had to be cancelled three times. The very integrity of the entire selection process was compromised and DSEU could not determine the extent to which the entire process was compromised and hence, had to resort to cancelling the entire examination process, in order to protect the sanctity of the recruitment process.

27. The entire facts and circumstances have been taken into consideration



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and in view of the same, it is hereby, held that the petitioner has failed to put forth such propositions that would warrant the interference of this Court under its writ jurisdiction.

28. In view of the above discussions of facts and law, this Court is of the opinion that a writ of mandamus or any other writ cannot be issued in this instant petition, as DSEU was well within its authority when it canceled the examination process, in order to maintain the sanctity of the same.

29. Based on the aforementioned discussions, this writ petition is accordingly, dismissed.

30. Pending applications, if any, also stand dismissed.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 12, 2023

pa/db

Click here to check corrigendum, if any