



2023:DHG:7212



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

% **Date of order :14th September, 2023**

+ **W.P.(C) 15270/2022 and CM APPL. Nos.4738/2022, 4052/2023,
47401/2023 and 47513/2023**

PREETI BHARDWAJ & ORS. Petitioners

**Through: Mr.Anuj Aggarwal, Advocate
(through VC)**

versus

**DELHI SKILL AND ENTREPRENEURSHIP UNIVERSITY &
ORS.. Respondents**

**Through: Mr.Shivendra Singh and
Mr.BikramDwivedi, Advocates for R-
1 and R-2
Ms.Laavanya Kaushik, Advocate for
Ms.Avnish Ahlawat, SC for GNCTD**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SING

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India seeks the following prayers:

“(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

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conducted on 14-15th July, 2022 for appointment on 48 vacancies of Junior Assistant/Office Assistant (Post Code-0111202101) advertised in Advertisement dated O 1.11.2021;
(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) Allow the present writ petition with costs and litigation expenses in favour of the petitioners; and
(iv) 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 relevant facts of the present petition is recapitulated as follows:
- a) The Delhi Skill and Entrepreneurship University (hereinafter "DSEU") issued an advertisement dated 1st November 2021, thereby, inviting applications for the post of Junior Assistant/Office Assistant. A total of 42 vacancies were advertised and the closing date for submitting the online application form was fixed for 20th December 2021.
 - b) The scheme of the exam was to be conducted in two tiers i.e., a written examination and a Computer Based Recruitment Test (hereinafter "CBRT"). Upon clearing the same, the petitioners would be short listed for the Skill/Typing Test.
 - c) Thereafter, *vide* notice dated 10th March 2022, issued by DSEU, it communicated that the CBRT is to be held on 21st March 2022



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subsequent to which admit cards were issued to the petitioners who participated in the said exam.

- d) *Vide* notice dated 26th April 2022, DSEU cancelled the CRBT which was conducted on 21st March 2022 and subsequently *vide* notice dated 17th June 2022, DSEU declared that the CRBT would be conducted on 14th & 15th July 2022, following which fresh admit cards were issued but the roll numbers of the petitioners remained the same as before.
- e) DSEU declared the list of candidates who were shortlisted for the Skill Test, which included the present petitioners. The Skill/Typing Test was conducted by DSEU on 7th August 2022 and the petitioners participated in the same.
- f) DSEU declared the list of the selected as well as waitlisted candidates by issuing a notice dated 23rd August 2022, and a total of 48 candidates were selected, and 156 were wait listed. The petitioners were selected for the appointment to the post of Junior Assistant/Office Assistant.
- g) Subsequently, *vide* notice dated 26th October 2022 (hereinafter impugned notice), DSEU cancelled the CBRT which was conducted on 14th & 15th July 2022.
- h) Two FIRs bearing No.0090 dated 14th July 2022 and 0044 dated 27th July 2022, were lodged on behalf of DSEU by way of which it is clear that only three persons were allegedly suspected of cheating which makes it evident that there was no mass cheating.
- i) The petitioners made a representation and served a legal notice upon DSEU on 1st November 2022, however, no response was



received by the petitioners and being aggrieved by the inaction on behalf of the respondent, and the impugned notice dated 26th October 2022, whereby DSEU cancelled the CBRT which was conducted on 14th & 15th July 2022, the petitioners have preferred the instant petition.

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.
4. It is submitted that two FIRs bearing No.0090 dated 14th July 2022 and 0044 dated 27th July 2022 were registered by DSEU by way of which it is clear that only three persons were allegedly suspected of cheating which makes it evident that there was no mass cheating.
5. It is further submitted that the petitioners have a vested right of being considered for appointment on the post of Junior Assistant/Office Assistant on being selected for appointment by DSEU.
6. It is submitted that the impugned notice dated 26th October 2022 is in violation of principles of natural justice as no opportunity to be heard was afforded to the petitioners before cancelling the CRBT.
7. It is submitted that *vide* notice dated 14th October 2022, DSEU invited tenders for making contractual appointments for the post of Junior Assistant/Office Assistant for period of six months, instead of making regular appointments for the same post and the same is illegal and in



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violation of S.25T &U read with S.2(ra) of the Industrial Disputes Act,1947.

8. It is further submitted that the advertisement dated 1st November 2022, was issued with respect to four posts i.e., Junior Assistant/Office Assistant, Senior Assistant, Program Officer/ASO and Officer Superintendent, however, the CBRT has been cancelled by DSEU only for the post of Junior Assistant/Office Assistant

9. Learned counsel appearing on behalf of the petitioners for strengthening his arguments relied on cases titled ***Union of India Vs. Rajesh P. U., (2003) 7 SCC 285, Inderpreet Singh Kahlon Vs. State of Punjab, (2006) 11 SCC 356 and Joginder Pal Vs. State of Punjab, (2014) 6 SCC 644.***

10. 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.

11. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the arguments advanced on behalf of the petitioners submitting that *vide* order dated 10th November 2022, this Court had issued a notice , thereby, restraining DSEU from taking steps to conduct a fresh CBRT for filling up the posts of Junior Assistant which is the subject matter of the impugned notice dated 26th October 2022 and the same has been complied with by DSEU.

12. 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***



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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.

13. 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.

14. 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. The said irregularities are evident from the two FIRs registered bearing No.0090 dated 14th July 2022 and 0044 dated 27th July 2022, investigation of the same is still underway.

15. It is submitted that more than 90% of the candidates in the said recruitment process belong to one geographical location, which is highly unusual and casts a doubt of the integrity of the recruitment process.

16. It is submitted that the Hon'ble Supreme Court in case titled *Tanvi Sabharwal v. CBSE, (2015) 6 SCC 573*, observed that continuing with a tainted recruitment process would amount to not supporting the cause of the candidates who participate in the process with integrity.

17. It is submitted that the judgments relied upon by the petitioners are not applicable in the present case since none of them deal with a Computer Based Test. Further, there have been several instances, wherein, a vitiated



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computer-based test was cancelled; one such instance being wherein, the Rajasthan Police cancelled the entire test, upon receiving information of computer hacking.

18. It is, therefore, submitted that the impugned notice is not arbitrary and unjustified, and the present petition is liable to be dismissed.

19. Heard the parties and perused the record.

20. 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.

21. 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.

22. 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.

23. Learned Counsel appearing on behalf of the petitioners have cited judgments titled *Union of India Vs. Rajesh P. U.*, (2003) 7 SCC 285, *Inderpreet Singh Kahlon Vs. State of Punjab*, (2006) 11 SCC 356 and *Joginder Pal Vs. State of Punjab*, (2014) 6 SCC 644, whereby, it was held that in case of mass cheating or certain irregularities, the entire examination should not be cancelled as the same would lead to the suffering of honest and sincere candidates. However, 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.

24. 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.”

25. By way of case titled **Sachin Kumar & Ors (Supra)**, 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 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.

26. 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.

27. 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: —

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...*
28. In light of the above discussion, this Court is of the considerable view that it is regrettable that the candidates appearing for such competitive



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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.

29. 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.

30. 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.

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

32. 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.

33. Based on the aforementioned discussions, this writ petition is



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accordingly, dismissed.

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

35. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 14, 2023

SV/DS/RYP

Click here to check corrigendum, if any

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