



\$~39

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

+ **LPA 766/2023 & CM APPL. 61149/2023**

NEHA GOLA

..... Appellant

Through: Mr. Shashwat Sarin, Mr. Lokesh Kumar and Mr. Varun Chopra, Advocates.

versus

COMMISISONER OF POLICE AND ANR.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mrs. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms.Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

%

Date of Decision: 28th November, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present appeal has been filed challenging the Order dated 17th November, 2023 passed by the learned Single Judge in *W.P.(C) 14878/2023*. By way of the impugned Order, the prayer of the appellant to set aside the decision of the respondents regarding non issuance of the Admit Card for Delhi Police Examination – 2023, was rejected.

2. The appellant had applied for the post of Constable (Executive) (Female) pursuant to an advertisement dated 01st September, 2023 for examination of Constable (Executive).



3. On 30th October, 2023, the respondent no.2/ Staff Selection Committee (SSC) issued a notice notifying the Schedule for examinations for the post of Constable (Executive) from 14th November, 2023 to 03rd December, 2023. It was further intimated by the respondent no.2 that the Admit Cards for the examinations would be released on 05th November, 2023. However, the appellant was not issued her Admit Card.

4. It is the case on behalf of the appellant that around 12th /13th November, 2023, she was informed by the concerned officials of respondent no.2 that there was a problem with respect to the dimensions of the photograph uploaded by the appellant with the Registration Form. Subsequently, the appellant filed a complaint/representation dated 13th November, 2023 with the Office of Regional Director, SSC (Northern Region), requesting permission to make corrections in her Registration Form.

5. Since the request of the appellant was not acceded to, the appellant filed writ petition being *W.P.(C) 14878/2023* praying for directions to the respondents for issuing Admit Card to the appellant for Delhi Police Examination-2023. Upon dismissal of the writ petition by the learned Single Judge, the present appeal has been filed.

6. On behalf of the appellant, it is submitted that the non-issuance of appellant's Admit Card is erroneous and is reflective of a clear lapse in the statutory responsibility of respondent no.2. The appellant was neither intimated at any point of time that there was a problem with the photograph uploaded by her nor was there any such message sent to her on her candidate user account on the respondent no. 2's official website. The appellant was informed about this irregularity after the registration period was complete



and after the Admit Cards for other candidates had already been issued.

7. It is further contended that the photograph which the appellant had uploaded along with her application form, is absolutely clear and proves beyond doubt the identity of the appellant. The objective of uploading a photograph is to ascertain identity of a candidate. The rejection of the candidature of a candidate on the ground that the photograph of the appellant was small and therefore, not acceptable, is arbitrary as well as unreasonable.

8. Per contra, on behalf of the respondents, it is submitted that the impugned Order passed by the learned Single Judge is justified.

9. Having heard learned counsel for the parties and having perused the record, this Court notes that the advertisement dated 01st September, 2023 issued by the respondent no.2/SSC categorically stated that the candidates are required to upload scanned color passport sized photograph of dimension about 3.5 cm (width) X 4.5 cm (height). Therefore, uploading of a photograph of a different size by the appellant other than the size as stipulated, was rightly rejected by the respondents. Clause 21(7) and 21(8) of the Advertisement dated 01st September, 2023 issued by respondent no.2, reads as under:

“21. Important Instructions to candidates:

XXX XXX XXX

7. *Applications with blurred/illegible Photograph/Signature will be rejected summarily.*

8. *In the online application form, candidates are required to upload the scanned colour passport size photograph in JPEG format (20 KB to 50 KB). The photograph should not be more than three months old. Image dimension of the photograph should be about 3.5 cm (width) x 4.5 cm (height). The photograph should be without cap, spectacles and frontal view of the face should be visible. If the*



proper photograph is not uploaded by a candidate, his candidature will be cancelled. Specimen of photographs which are acceptable/ not acceptable is given at Annexure-IIB. Applications with blurred/ illegible Photograph/ Signature will be rejected summarily.

XXX XXX XXX”

10. Perusal of the documents on record makes it evident that a period of 2 days was available to the candidates to enable them to correct/modify online application parameters, wherein the candidates were allowed to re-submit applications after making requisite corrections/changes. Further, there was a clear instruction to the candidates that no change/correction/modification in the online application will be allowed after submission of the corrected/final Online Application Form or expiry of the period for correction. Thus, Clause 21 (9) and Clause 21 (10) of the aforesaid advertisement reads as under:

“21. Important Instructions to candidates:

XXX XXX XXX

9. After the closing date for receipt of online applications, the Commission will provide a period of 2 days to enable candidates to correct/ modify online application parameters, wherein candidates will be allowed to re-submit applications after making requisite corrections/ changes in the one-time registration/ online application data as per their requirement. This facility can be availed by online payment of stipulated correction charges as per details given at **Para-10** of the Notice of Examination. Latest modified application will be treated as the valid one and the previous application(s) submitted by such candidates for the examination will be ignored.

10. Before submission of the corrected/final online application as the case may be, candidates must check that they have filled correct details in each field of the form. After submission of the corrected/final online application form OR expiry of the period of ‘Window for Application Form Correction’, no change/ correction/ modification will be allowed under any circumstances. Requests received in this regard in any form like Post, Fax, Email, by hand, etc. shall not be entertained by the Commission and will be summarily rejected.

XXX XXX XXX”



11. Reading of the aforesaid Clause clearly shows that the window for making corrections in the Application Form was open from 03rd October, 2023 till 04th October, 2023. However, despite clear and explicit instructions, the appellant failed to upload photograph of the correct description and dimension. Further, despite the fact that sufficient opportunities were available to the appellant, she failed to avail the same. It is crystal clear that sufficient measures were taken and implemented by the respondents to ensure that the candidates appearing for the examination, filled their Application Form in terms of the requirements prescribed by the Examination Authority.

12. It is also to be noted that at the time of filling her Application Form, the appellant also submitted a Declaration to the following effect:

"1. I HAVE READ THE NOTICE OF THE EXAMINATION, AND ACCEPT ALL THE TERMS & CONDITIONS OF THE NOTICE OF THE EXAMINATION.

2. I HEREBY DECLARE THAT ALL STATEMENTS MADE IN THIS APPLICATION ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT IN THE EVENT OF ANY INFORMATION BEING FOUND SUPPRESSED/FALSE OR INCORRECT AT ANY STAGE OR INELIGIBILITY BEING DETECTED BEFORE OR AFTER THE EXAMINATION, MY CANDIDATURE/APPOINTMENT IS LIABLE TO BE CANCELLED. I AM WILLING TO SERVE ANYWHERE IN INDIA.

... .. "

13. Perusal of the aforesaid clearly shows that the appellant had declared in categorical terms that she had read the notice of the examination and accepted all the terms and conditions of the notice of the examination. She further declared that in the event of any information being found suppressed or incorrect or ineligibility being detected, her candidature was liable to be



cancelled.

14. The learned Single Judge has rightly observed that the process of recruitment involves a high degree of expertise and it is not appropriate for courts to substitute their judgment for that of the concerned authority in-charge for recruiting. Thus, the learned Single Judge has held as follows:

*“45. This Court is also of the view that the process of recruitment involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of the concerned authority in-charge for recruiting. The law on the scope and extent of the judicial review of a recruitment process in context with the facts of the instant matter, and results thereof may be understood by referring to the observations made by the Hon’ble Supreme Court in the matter of **Divya v. Union of India, 2023 SCC OnLine SC 1305**. The relevant extract has been reproduced as under:*

*“50. It is also very well settled that if there are relevant rules which prescribe the date on which the eligibility should be possessed, those rules will prevail. In the absence of rules or any other date prescribed in the prospectus/advertisement for determining the eligibility, there is a judicial chorus holding that it would be the last date for submission of the application.(See *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp(3) SCC 168]; *Bhupinderpal Singh v. State of Punjab* [(2000) 5 SCC 262]; *Ashok Kumar Sonkar v. Union of India* [(2007) 4 SCC 54].*

x x x

*82. The rules clearly mandate and as has been held in the case of *Gaurav Singh (supra)*, any mistake/omission/negligence cannot be condoned so as to extend the deadline for production of the documents. Neither the Office Memorandum nor the rules in question can be construed as directory. They prescribe clearly the eligibility criterion and the date before which the certificate should be possessed and the date before which the certificate should be submitted. They also prescribe the consequence for the omission. As the old ditty goes for a want of a horseshoe nail, kingdoms have been lost. Here we are dealing with crucial documents determining eligibility. The petitioners who did not possess the valid documentation determining their eligibility, before the prescribed cut-off date, cannot complain, if their claim for categorization as EWS was rejected.*

x x x



84. It will be noticed that UPSC has considered these omissions as trivial and as not going to the root of the eligibility, unlike in the case of the petitioners herein. In *Ajay Kumar Mishra v. Union of India* 2016 SCC OnLine Del 6563, *Indira Banerjee, J.* (as *Her Ladyship* then was) speaking for the Division Bench of the Delhi High Court felicitously put the issue about the examining body's right to decide as to which errors are material and which are inessential and trivial. We do nothing more except to extract paras 6, 7 & 9 from the said judgment:—

“6. There can be no doubt that a candidate applying for a government job, or for that matter, any job should fill in the application form carefully. No candidate can claim any vested right to rectification of arrears in an application. Union Public Service Commission and the State Public Service Commissions deal with lacs of applications, which are received pursuant to an advertisement. Such applications are required to be processed within a short time. A candidate, who is not short-listed and/or not allowed to participate in the selection process by reason of his own laches in making careless mistakes, cannot claim any right to be allowed to participate in the selection process.

7. It is for the body conducting the selection process to decide whether mistakes should be allowed to be rectified, if so, whether they should be rectified within any specific time and what are the mistakes which can be allowed to be rectified and other similar questions. However, in view of the mandate of Articles 14 to 16 of the Constitution of India, there should be no discrimination or arbitrariness in deciding these questions. All candidates applying for the particular post/posts should be treated equally.

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.”.....”

46. Upon analysis of the observations made in the foregoing paragraphs, this Court is of the view it is not within the domain of the



Courts, exercising the extraordinary powers, to enter into the merits of a recruitment process, a task prerogative of the concerned authority in-charge of the recruitment process. The Courts while exercising the power of judicial review cannot step into the shoes of the authority in-charge or assume an appellate role to examine the various aspects of recruitment.
... ..”

15. In view of the aforesaid detailed discussion, this Court finds no infirmity with the impugned Order passed by the learned Single Judge. The present appeal is accordingly dismissed along with the pending application.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 28, 2023

au