

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

WRIT PETITION No. 11972 of 2022

BETWEEN:-

**SHAILESH KUMAR TIWARI S/O SHRI
SURENDRA PRASAD TIWARI, AGED ABOUT
27 YEARS, OCCUPATION : UNEMPLOYED,
R/O VILLAGE AND PO TIWANI, TEHSIL-
MANGAWAN, DISTRICT- REWA (M.P.)**

.....PETITIONER

(BY SHRI N.S. RUPRAH, ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, HOME
DEPARTMENT, GOVERNMENT OF M.P.,
MANTRALAYA, VALLABH BHAWAN,
DISTRICT- BHOPAL (M.P.)**
- 2. DIRECTOR GENERAL OF POLICE, POLICE
HEADQUARTER, DISTRICT- BHOPAL (M.P.)**
- 3. PROFESSIONAL EXAMINATION BOARD,
"CHAYAN BHAWAN THROUGH
CHAIRMAN, MAIN ROAD NO.1, CHINAR
PARK (EAST), DISTRICT- BHOPAL (M.P.)**

.....RESPONDENTS

**(BY SHRI NAVIN DUBEY - GOVERNMENT ADVOCATE FOR STATE
AND SHRI RAHUL DIWAKER WITH SHRI AMAN GUPTA FOR
RESPONDENT NO.3)**

Reserved on : 29.09.2022

Pronounced on : 30.01.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

This petition under Article 226 of the Constitution of India is filed seeking following reliefs :-

“(a) Directing the respondents to give another chance to the petitioner to appear in the physical proficiency test which should be held in better and humane conditions and definitely in the morning or in the evening.

(b) This Hon’ble Court be further pleased to pass such other orders as it may deem fit under the circumstances of the case.”

2. Learned counsel for rival parties are heard on the question of admission so also final disposal.

3. Learned counsel for petitioner Shri N.S. Ruprah submits that petitioner armed with a Post Graduate Degree in Science applied for appointment to the post of Constable in M.P. Police for which advertisement was issued on 25.11.2020. It is urged that petitioner successfully appeared in written examination held online on 09.05.2022.

3.1. The petitioner was thus declared qualified vide Annexure P/1 for being subjected to a physical test which included running for 800 metres race 2 minutes and 45 seconds. It is further urged that the said race was held on 09.05.2022 for which petitioner appeared at 06:30 a.m., but was made to wait for two hours in queue under the sun whereafter the candidates were made to run in various batches.

3.2. The petitioner's turn came at 12:00 Noon. It is submitted that by this time, due to exposure to extreme heat, petitioner though finished the race but came third clocking a timing of 2 minutes 51 seconds and thus was declared fail.

3.3 Learned counsel for petitioner has drawn attention of this Court to the fact that recruiting agency had rescheduled a subsequent similar test held on 11.05.2022 to begin from 05:30 a.m. instead of 06:30 a.m. due to heat wave. It is also informed that the same recruiting agency postponed the subsequent similar tests upto 06.06.2022 due to inclement weather.

3.4 In the aforesaid factual background, it is submitted that inhumane conditions of extreme heat to which petitioner was subjected to on 09.05.2022 considerably depleted his stamina and therefore, dissuaded him from qualifying.

3.5 As such, prayer is made for affording another chance to petitioner to participate in the said physical test.

4. *Per contra*, learned counsel for respondents opposed the petition by submitting that relevant Rules governing the field, holding of physical test cannot be tinkered with as they have been framed after due consideration of all the relevant factors. More so, it is submitted that the Relevant Rules prescribing for only one chance to run has not been challenged. It is also submitted that power of judicial review cannot be exercised to interfere with the process of recruitment in public service merely because of certain factors which appear to be disadvantageous to petitioner alone. It is further submitted that hundreds of other candidates also participated, several of whom qualified.

5. The relevant Amended Rules which are annexed as Annexure R/2 dated 06.06.2016 are reproduced hereinbelow :-

“नोट :-

1. आरक्षक (जी0डी0)/प्रधान आरक्षक (कम्प्यूटर)/सहा0 उप निरीक्षक (कम्प्यूटर) के पद हेतु पुरुष/महिला, भूतपूर्व सैनिक एवं होमगार्ड सैनिक के उम्मीदवारों को समस्त तीन विधाओं में उत्तीर्ण होना अनिवार्य है।
2. आरक्षक (ट्रेड) के उम्मीदवारों को मात्र 800 मीटर की दौड़ कराई जावेगी, जिसमें उम्मीदवारों को उत्तीर्ण होना अनिवार्य है।
3. 800 मीटर दौड़ हेतु एक अवसर तथा लम्बी कूद एवं गोला फेंक हेतु 3 अवसर प्रदान किये जायेंगे।
4. भूतपूर्व सैनिक एवं होमगार्ड सैनिक पदों के वे उम्मीदवार जो आरक्षक (ट्रेड) पदों हेतु आवेदन करेंगे, उन्हें एक मात्र विधा 800 मीटर दौड़-3 मिनट 15 सैकेण्ड में उत्तीर्ण करना अनिवार्य होगा।
5. 800 मीटर की दौड़ में क्वालीफाई करने वाले उम्मीदवारों को ही लम्बी कूद और गोला फेंक में सम्मिलित किया जावेगा।”

6.1 The aforesaid Amended Rule subject to which physical test was held on 09.05.2022 expressly provides that for participating in 800 metres race, only one chance can be availed.

6.2 It is not disputed that petitioner has not assailed the said Rules which more or less are in the shape of executive instructions, but in the absence of any statutory provision, the instructions govern the field.

6.3 True it is that the weather on the date when the race was held, was inclement, but that by itself cannot impel this Court to exercise its power of judicial review in favour of petitioner. The reason is not far to see. The physical test is conducted to primarily assess the stamina, physical strength and endurance of the candidate. Such tests when conducted for induction into uniformed services are held with the object of selecting the candidate possessing the best stamina, physical strength and endurance. Thus, to achieve this object, it is essential to render these tests to be arduous. This may ostensibly sound a little hard and insensitive but there is no other way to achieve the goal of selecting the strongest among the eligible for induction into the Uniformed Force of Police.

6.4 The Executive Instructions which govern the field provide for only one chance to qualify in the race. Thus, if the prayer of petitioner in the absence of challenge to the said provision is acceded to, then it can lead to opening of Pandora's Box inviting a flood of litigation from all those candidates who may have found it difficult to perform under

inclement circumstances. Moreso, acceding to the prayer of petitions would result in granting relief purely on compassion and sympathy.

9. Learned counsel for petitioner has placed reliance on a decision of Apex Court reported in *2004 SCC OnLine Cal 26 (Shri Sunirmal Chatterjee Vs. The Hon'ble High Court of Calcutta and others)*, which in the considered opinion of this Court is of no avail to petitioner since it relates to selection to the Post of Superintendent in High Court/District Court of Government Department in West Bengal but not to a uniformed service.

10. In the conspectus of above discussion, this Court is unable to assist the petitioner. Accordingly, petition stands **dismissed**. No Cost.

(SHEEL NAGU)
JUDGE