

Union Of India vs Mahendra Singh on 25 July, 2022

Author: Hemant Gupta

Bench: Vikram Nath, Hemant Gupta

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4807 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 19886 OF 2019)

UNION OF INDIA & ORS.

.....APPELL

VERSUS

MAHENDRA SINGH

.....RESPONDENT (

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the Division Bench of the High Court of Allahabad whereby appeal filed by the appellants was dismissed. Such appeal was directed against an order passed by the learned Single Bench of the High Court, wherein, an order dated 27.1.2017 passed by the appellants was quashed and thus, consequently, the candidature of the respondent 1 was to be considered and accepted by the appellants.

2. The Employment Notice No. 1/2011 was published to fill up 11952 posts of Constables in the Railway Protection Force². The process of selection comprised of written examination consisting of 120 multiple choice objection type questions of one mark each and of 90 minutes duration. The candidates had to obtain at least 35% marks 17:28:19 IST Reason:

1 For short, the 'writ petitioner' 2 For short, the 'RPF' (30% in the case of Scheduled Caste and Scheduled Tribe candidates) in the written examination for being considered for other Test such as Physical Efficiency Test 3. Para 8 Clause B of the Advertisement gives the requirement of an application form and also that the said application should be filled up by the candidates in their own handwriting, in Hindi or English only. The applications were required to be accompanied by a self-attested matriculation certificate as proof of educational qualification and age. The relevant conditions read as under:

“8. xxx xxx B. Application form' a) The format of the application form is given in Annexure 'A'. Application forms can be downloaded from the official website of Indian Railways (www.indianrailways.gov.in) or taken from the Employment News or from this advertisement and submitted on A-4 size bond paper, using one side only and sent to the Nodal Chief Security Commissioner corresponding to the language chosen for the Question Paper. Only one application need be sent.

The addresses of the Nodal Chief Security Commissioners, the details of the person in whose favour the Draft/IPO shall be drawn and the place where payable are given below. The languages for the question paper are also shown against each Nodal Chief Security Commissioner for the convenience of the applicants.

Group No.	Address of the Nodal Chief Security Commissioner	Draft/IPO drawn in favour of	Place where Payable	Languages for question paper
1	The Chief Security Commissioner, North Eastern Railway, Post Box Number-2 Head Post Office, Gorakhpur, Uttar Pradesh.	The Financial Advisor and Chief Accounts Officer, North Eastern Railway.	Gorakhpur , UP	Hindi, English, Urdu, Punjabi, Gujarati.

3 For short, the 'PET'

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(e) Applications should be filled by the candidates in their own handwriting, in Hindi or English only. Left Hand thumb impression in the case of Male applicants and Right-Hand thumb impression in case of Female applicants shall be affixed in the box given at the bottom of the application. Applications signed in capital letters/spaced-out letters will be treated as invalid. Applications with correction or overwriting or smudged thumb impression may be rejected.

xx xx xx 9 (e) Impersonation, if any, detected at any stage of the recruitment, may result in initiating criminal cases against the applicant and the impersonator as well as canceling the candidature of the applicant.”

3. The writ petitioner belongs to Other Backward Class category and has filled up his application form along with Indian Postal Order dated 5.3.2011 in English. His signatures are in English consisting of two letters “M” and “S”. Such application form is accompanied with a self-attested marksheet of high school examination and other certificates. All such documents are self-attested and signed in Hindi.

4. The writ petitioner appeared for the written test on 23.6.2013 where he wrote the paragraph in Hindi on the OMR sheet, though in the application form, he had written it in English. He signed in Hindi then. Subsequently, when the writ petitioner appeared for the PET on 7.3.2014, he again signed as “M S”.

5. The appellants obtained the opinion of the Government Examiner of Questioned Documents⁴ on 2.9.2014. The expert's opinion was that 4 For short, the ‘GEQD’ the signatures on the OMR sheet and on the xerox copies of the certificates are by one and the same person. It was also opined that it is not possible to express any opinion in respect of para written in Hindi in the OMR sheet and in English in the application form.

6. Since the writ petitioner was not appointed, though he had obtained 73.32 marks against the cut-off of 58.5 marks in the OBC category, he filed a writ petition before the High Court of Allahabad. An order was passed by the High Court on 19.10.2016 wherein the matter was remitted to the appellants to reconsider the entire issue, including thumb impression and finger prints that have taken place at various stages of the examination. An opportunity was given to the writ petitioner to make a fresh application which shall be heard by the Chief Security Commissioner. The candidature of the writ petitioner was rejected on 27.1.2017 by the Competent Authority, inter alia, on the following grounds:

“In compliance to the order of the Hon'ble High Court, the dossier concerned to the petitioner, was scanned and the petitioner was also shown the same. The record signature and handwriting of the petitioner on the following documents have been examined by the Government Examiner of Questioned Documents: -

1. Q-1 & Q-1/1 = Signature and Hand writing made on OMR

2. Q-2 = Signature made on PET proforma

3. Q-3 & Q-3/1 = Signature and Hand writing made on Application form

4. S-1 to S-7 = Signature made at the time of viva-voce As per the expert opinion signature/handwriting made on the documents marked as Q-1 and 5-1 to 5-7 are same, but signature/handwriting made on the documents marked as Q-2 & Q-3 are different from the signature/handwriting made on the documents marked as Q-1 and S-1 to S-7. So far as signature/hand writing made on the record marked Q-1/1 and Q-3/1 are concerned, the signature/hand writing made on these documents were checked intensively and on comparing the above mark with signature/handwriting made on the records, it was found that the petitioner has filled in his application in English version and on the OMR sheet he has used Hindi version to record his writing which is violation of the instruction, given in para-3 of OMR sheet. In para-3 of the OMR sheet it had been instructed that the same language should be used to write on OMR sheet in own writing, which had been adopted to filled in the application form. The matching of writing of the petitioner failed due to mistake of

the petitioner himself since he used two languages. Similarly, the matching of the signatures failed, since the petitioner did his signature on the application form in English whereas on the OMR Sheet in Hindi, which is fault of the petitioner. The petitioner was clarified by showing this difference. As such, the petitioner could not produce any solid base to disagree with the opinion of the expert.”

7. The writ petitioner again filed a writ petition challenging the decision of the Competent Authority. Said decision was set aside by the learned Single Bench of the High Court on 20.2.2019. The said order was affirmed by the Division Bench of the High Court vide the order impugned in the present appeal.

8. The requirement to write a paragraph in the application form was to compare the handwriting of the candidate in the event of any dispute of identity which may arise as to whether the same person has appeared for the written examination who had filled up the application form. The High Court has basically relied upon the fact that from the opinion of the handwriting expert, there is no proof of charge of impersonation. However, it was held that the application form had been filled up in the year 2011 whereas the examination took place in the year 2013, therefore, the writ petitioner had filled up Column No. 3 of the OMR sheet in Hindi inadvertently on account of time gap between the filling up of the application form and the examination.

9. The question required to be examined herein is to the effect of violation of the condition provided in the advertisement that the application has to be in the language for which the candidates want to attempt the question paper, and what is the effect of using different language in the application form than the OMR sheet.

10. Ms. Madhavi Divan, learned ASG has argued that the use of different language in the application form than what is used in the OMR sheet by itself entails rejection of the candidature. Ms. Divan has referred to a judgment reported as *State of Tamil Nadu & Ors. v. G. Hemalathaa & Anr.*⁵. On the other hand, Mr. Prashant Bhushan, learned counsel for the writ petitioner argued that use of a different language is only an irregularity, though it is admitted that the purpose of using the same language is to avoid impersonation and to ascertain the genuineness of the candidate. Mr. Bhushan has referred to judgments in *Ajay Kumar Mishra v. Union of India & Ors.*⁶, *Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board & Anr.*⁷ and *Avtar Singh v. Union of India & Ors.*⁸.

5 (2020) 19 SCC 430 6 2016 SCC OnLine Del 6553 7 (2016) 4 SCC 754 8 (2016) 8 SCC 471

11. We have heard learned counsel for the parties and find the judgments referred to by Ms. Divan and Mr. Bhushan are not applicable to the facts of the present case. In *G. Hemalathaa*, the condition that usage of whitener, sketch pens, pencil, colour

pencils, multi-colour pens would lead to invalidation of the answer book. In these circumstances, it was held that violation of such mandatory conditions by the candidate disentitles for declaration of her result for appointment to the post of Civil Judge. The judgment in Ajay Kumar Mishra of the Delhi High Court arises out of the fact of cancellation of the candidature on account of furnishing incorrect information about the actual date of birth of the writ petitioner. In Ram Kumar Gijroya, the candidate had submitted his certificate of being belonging to Other Backward Class after the last date of submission of the application. Avtar Singh is a case where there was suppression of material information regarding the criminal cases in which the candidate may be involved. Thus, all these cases are on their own facts, not involving similar issue as arising in the present appeal.

12. In the present case, more than 11,000 posts were advertised for filling up of the posts of Constables in the RPF. Though the number of candidates who appeared in response to such advertisement is not available, but generally, it is a matter of common experience that candidates much more than the posts advertised are the aspirants for such posts. The condition that language in the application form shall be used for the purposes of OMR examination is for the reason that in case any dispute arises in respect of identity of the candidate, the same can be verified from the two handwritings. Still further, the question papers are required to be set up in the languages other than Hindi and English as well. The applications in different languages were to be sent to different Nodal Officers in Gorakhpur, Kolkata, Bhubaneswar and Chennai. Still further, the OMR answer sheet is bilingual, in Hindi and English, but it would be in some other language if a candidate has chosen a language other than English or Hindi.

13. The sole reasoning given by the Division Bench of the High Court of time gap between the filling up of the application form and the examination, and hence inadvertent filling up of OMR sheet in Hindi by the writ petitioner is based on surmises and conjectures. Once the writ petitioner has filled the application form in English, having also signed in English, it cannot be said to be an inadvertent mistake when he has written the para in Hindi. Such writing in different language violates the instruction clearly mentioned in the advertisement.

14. The argument of Mr. Bhushan that use of different language is not followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone.

This was enunciated by Privy Council in the Nazir Ahmad v. King- Emperor⁹, wherein it was held that “that where a power is given to do a certain thing in a certain way the thing must be done in that

way or not at all. Other methods of performance are necessarily forbidden.”

15. A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad & Ors.¹⁰, held as under:

“17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935-

36) 63 IA 372 : AIR 1936 PC 253 (II)] , Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098] , State of U.P. v. Singhara Singh [AIR 1964 SC 358 :

(1964) 1 SCWR 57] .) An election petition under the rules could only have been presented in the open court up to 16-5-

1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”

16. The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors.¹¹ wherein this Court held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....” 9 1936 SCC OnLine PC 41 10 (1999) 8 SCC 266 11 (2015) 13 SCC 722

17. Similarly, this Court in Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal & Ors.¹² and OPTO Circuit India Limited v. Axis Bank & Ors.¹³ has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review.

18. Since the writ petitioner has used different language for filling up of the application form and the OMR answer book, therefore, his candidature was rightly rejected by the appellants.

19. Therefore, the order passed by the High Court cannot be sustained in law, the same is set aside. The writ petition is dismissed. Consequently, the appeal is allowed.

.....J. (HEMANT GUPTA)J. (VIKRAM NATH)
NEW DELHI;

JULY 25, 2022.

12 (2020) 13 SCC 234 13 (2021) 6 SCC 707