



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 8951/2022

Neeraj Kumari Meena D/o Shri Ramraj Meena, Aged About 27
Years, R/o Pahadi, Tehsil Todabheem, District Karauli.

----Petitioner

Versus

1. State Of Rajasthan, Through The Director And Special Secretary, Home Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Director General Of Police, Police Headquarter, Jaipur.
3. The Inspector General Of Police (Recruitment And Promotion Board), Rajasthan, Jaipur.
4. The Superintendent Of Police, Pali, District Pali.

----Respondents

Connected With

1. S.B. Civil Writ Petition No. 8559/2022
2. S.B. Civil Writ Petition No. 8661/2022
3. S.B. Civil Writ Petition No. 8935/2022
4. S.B. Civil Writ Petition No. 8974/2022
5. S.B. Civil Writ Petition No. 9585/2022
6. S.B. Civil Writ Petition No. 9610/2022
7. S.B. Civil Writ Petition No. 9613/2022
8. S.B. Civil Writ Petition No. 9916/2022

For Petitioner(s) : Mr. Ram Dev Potalia.
Mr. Sikander Khan.

For Respondent(s) : Mr. Manish Vyas, AAG assisted by
Mr. Kailash Choudhary.
Mr. Anil Kumar Bissa, AGC

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Order

07/12/2023

1. Since all the instant petitions involve a common controversy though with marginal variation in the contextual facts, therefore, for the purposes of the present analogous adjudication, the facts and the prayer clauses are being taken from the above-numbered S.B. Civil Writ Petition No. 8951/2022, while treating the same as



a lead case; thus, the rival submissions of the parties and the observations of the Court, in the present order, would also be based, particularly, on the factual matrix of the lead case.

1.1 The prayer clauses read as under:-

"It is, therefore, humbly and respectfully prayed that this writ petition of the Petitioner may kindly be allowed:-

- a. By an appropriate writ, order or directions to the respondents, the impugned order dated 01.06.2022 and 21.06.2022 (Annexure-3 & 4) terminating the services of the petitioner from the post of Constable (GD) may kindly be quashed and set aside qua the petitioner;*
- b. The respondent may kindly be directed to continue the petitioner on the post of Constable (GD) held by him under the respondent with all consequential benefits;*
- c. Any other appropriate writ, order or direction, which this Hon'ble Court may deem just and proper in the facts and circumstances of the case, may kindly be passed in favour of the Petitioner.*
- d. Writ petition filed by the Petitioner may kindly be allowed with costs."*

2. Brief facts of the case, as placed before this Court by learned counsel of the petitioner, are that the respondents issued a advertisement No.1602 dated 04.12.2019 and thereafter, issued amended advertisement no.33 dated 18.01.2020 under the Rajasthan Police Subordinate Service Rules, 1989 inviting application for the posts of the Constable (GD) and Constable (Driver).

2.1. The petitioner applied for the post of Constable (GD) under Schedule Tribe (ST) category, and thereafter, the respondents conducted the examination for the posts in question and the petitioner cleared the written examination and physical standard



test and was declared successful; the name of the petitioner was included in the final selection list.

2.2. Thereafter, the respondents issued the appointment order dated 24.06.2021 to the petitioner and the petitioner joined her duty within the prescribed time. The respondents then issued the orders for training of the selected candidates, including the present petitioner, and she joined the training at Police Training Centre, Jhalawar. The petitioner after completing the training, again joined the duty on 03.06.2022 at Police Line, Pali.

2.3. Some of the persons challenged the examination for the post in question before this Hon'ble Court in *S.B. Civil Writ Petition No.6589/2021 (Harsh Ram Gehani Vs. State of Rajasthan & Ors.)* and the Hon'ble Court vide order dated 12.11.2021 directed constitution of the expert committee, and thereafter, the said committee, upon being so constituted, recommended changes in answer to some of the questions of the examination and for awarding bonus marks; accordingly, the Director General of Police vide order dated 31.01.2022 constituted the Review Board for holding review proceedings due to changes in marks of the candidates in the examination in question.

2.4. Thereafter, the Inspector General of Police, Udaipur Range conducted the review proceedings on 11.02.2022 wherein combined merit list, select list and category-wise select list were revised according to change in marks due to change of answers to some of the question.

2.5. Subsequently, the respondents vide order dated 01.06.2022 directed termination of the services of the candidates, who were ousted from select list due to change in marks because of the



aforsaid reasons. The respondents vide order dated 21.06.2022 terminated the services of the petitioner and other candidates from the post in question.

3. Learned counsel for the petitioner submits that the respondents before taking the impugned action did not given any proper opportunity of hearing to the petitioner, and the respondents did not even follow the proper procedure before passing the termination order in question, therefore, the impugned action of the respondents is violative of the principles of natural justice as well as suffers from arbitrariness.

3.1. Learned counsel further submits that after the appointment was accorded to the petitioner by the respondents on account of her merit position in the select list and the petitioner also completed her training period of the post in question, the respondents revised results and cut off marks and passed the impugned orders, which is not justified in law.

3.2. Learned counsel also submits that at the time of selection of the petitioner on the post in question, she was not found to have committed any fraud or misrepresentation, and thus, on this count also, the impugned action of the respondents is not justified in law. It was further submitted that the petitioner was continuously working on the post in question for about two and a half years.

3.3. Learned counsel further submits that the petitioner was appointed as per the merit list and all procedure including the documents verification were duly completed. There is nothing on the part of the petitioner, which could show any concealment or misrepresentation of material facts. Therefore, as per learned



counsel, on that count also, the impugned action of the respondents is not sustainable in the eye of law.

3.4. Learned counsel further submits that the respondents revised the result of the examination in question and the cut off marks were also revised by the respondents at a very belated stage, and thereafter, on the sole basis of the revised result, the services of the petitioner were terminated, which is not permissible in law.

3.5. In support of his submissions, learned counsel relied upon the following judgments:

(a) Rajesh Kumar & Ors. Etc. Vs State of Bihar & Ors. Etc. (Civil Appeal Nos. 2525-2516 of 2013, and other connected matters decided on 13.03.2013) by the Hon'ble Apex Court;

(b) Anmol Kumar Tiwari & Ors. Vs The State of Jharkhand & Ors. (Civil Appeal No. 429-430 of 2021, and other connected matters decided on 18.02.2021) by the Hon'ble Apex Court;

(c) Shyam Kumar Sharma & Ors. Vs The State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 22546/2018, and other connected matters decided on 03.01.2022) by a Coordinate Bench of this Hon'ble Court at Jaipur Bench.

4. On the other hand, learned counsel appearing on behalf of the respondents, while opposing the aforesaid submissions made on behalf of the petitioners, submits that as per the recommendations of the aforementioned expert committee, answers to some of the questions of the written examination were changed, and thereafter, the Director General of Police vide order dated 31.01.2022 constituted the review board for holding review



proceedings due to change in marks of the candidates in accordance with Rule 23 (a) of the Rules of 1989.

4.1. Learned counsel further submits that in the revised merit list, the name of the petitioner did not figure for selection on the post in question and the marks of the petitioner were lesser than the cut off marks so prescribed, and therefore, the petitioner does not have any right to remain in service.

4.2. Learned counsel also submits that due to revision in marks, new candidates figured in the select list and in order to give appointment to those meritorious candidates, it was necessary to remove the petitioners from service, because all the advertised posts were already filled, and for such accommodation, the impugned action has been taken by the respondents, which is justified in law.

4.3. Learned counsel further submits that the respondents have proceeded in accordance with the order of the Hon'ble Court and took all the necessary steps while following the due procedure, and therefore, in such situation, there was no need to give any notice or opportunity of hearing to the petitioners because after review proceedings, their marks fell short of the cut off. Therefore, as per learned counsel, the entire action of the respondents is justified in law.

5. Heard learned counsel for the parties as well as perused the record of the case alongwith the judgments cited at the Bar.

6. This Court observes that the respondents issued the aforementioned advertisement inviting applications for the posts of Constable (GD) and Constable (Driver). The petitioners are eligible for the said post and the same was applied by them under



the respective categories. Thereafter, the respondents conducted the examination for the posts in question and the petitioners cleared the written examination and physical standard test and were declared successful and the name of the petitioners was included in the final selection list.

6.1. Thereafter, the respondents issued the appointment orders to the respective petitioners and the petitioners joined their duty within the prescribed time, and then the petitioners were sent for training and after completion of the training, they again joined the duties in their respective place of posting, as ordered by the respondents. Subsequently, the respondents constituted the expert committee in compliance of the order passed by this Hon'ble Court in the aforementioned round of litigation and as per the report of the committee, the respondents vide impugned orders revised the cut off list and terminated the services of the petitioners because they were ousted from the revised selection list due to change in the cut off marks.

7. This Court further observes that the petitioners were working on the posts in question and the interim orders are operating in the present writ petitions; the interim order dated 24.06.2022 passed in the lead case is reproduced as hereunder:-

"Learned counsel for the petitioner has submitted that the petitioner was appointed on the post of Constable pursuant to the Advertisement dated 04.12.2019. The petitioner has already been awarded appointment order and in pursuance to the same, has also been provided training at Police Training Centre Jhalawar and completed her training on 22.05.2022. Learned counsel further submitted that without following principles of natural justice and without affording any opportunity of hearing, the respondents



vide order impugned dated 21.06.2022 have removed the petitioner from the service.

Counsel relied upon an interim order passed in an identical matter **Alpesh Bariya v. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.8661/2022)**.

In view of the submissions made, issue notice. Issue notice of the stay petition also.

Notices need not be issued as Mr. Manish Vyas, AAG has put in appearance on behalf of all the respondents.

Meanwhile and till next date, effect and operation of the impugned order dated 21.06.2022 (Annex.-4) qua the petitioner shall remain stayed.

List the matter on 20.07.2022."

8. At this juncture, this Court considers it appropriate to reproduce the relevant portion of the judgment rendered by the Hon'ble Apex Court in case of **Vikas Pratap Singh & Ors. Vs State of Chhattisgar & Ors. (2013) 14 SCC 494**, as hereunder:-

"21. Shri Rao would submit that the case of these appellants requires sympathetic consideration by this Court, since the appointment of appellants on the basis of a properly conducted competitive examination cannot be said to have been affected by any malpractice or other extraneous consideration or misrepresentation on their part. The ouster of 26 appellants from service after having successfully undergone training and serving the respondent State for more than three years now would cause undue hardship to them and ruin their lives and careers. He would further submit that an irretrievable loss in terms of life and livelihood would be caused to eight appellants amongst them who have now become overaged and have also lost the opportunity to appear in the subsequent examinations. He would place reliance upon the decision of this Court in *Rajesh Kumar v. State of Bihar* [(2013) 4 SCC 690 : (2013) 2 SCC (L&S) 359 : (2013) 3 Scale 393] wherein this Court has directed the respondent State to re-evaluate the answer scripts



on the basis of correct model answers key and sympathetically considered the case of such candidates who, after having being appointed in terms of erroneous evaluation and having served the State for considerable length of time, would not find place in the fresh merit list drawn after re-evaluation and directed the respondent State against ousting of such candidates and further that they be placed at the bottom of the fresh merit list.

22. The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or mala fide. (See *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766], *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1] and *Union of India v. M. Bhaskaran* [1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94] .) It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardising the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment (see *Vinodan T. v. University of Calicut* [(2002) 4 SCC 726 : 2002 SCC (L&S) 606] ; *State of U.P. v. Neeraj Awasthi* [(2006) 1 SCC 667 : 2006 SCC (L&S) 190]).

27. Admittedly, in the instant case the error committed by the respondent Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the





case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

28. In our considered view, **the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.**

29. Accordingly, we direct the respondent State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation”.

9. This Court also considers it appropriate to reproduce the relevant portion of the judgment rendered by the Hon’ble Apex Court in case of ***Anmol Kumar Tiwari (Supra)***, as hereunder:-

“9. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the Writ Petitioners. **The High Court directed reinstatement of the Writ Petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the Writ Petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the Writ Petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the Writ Petitioners ought to be considered for reinstatement without affecting the rights**



of other candidates who were already selected. A similar situation arose in **Vikas Pratap Singh's case (supra)**, where this Court considered that the Appellants-therein were appointed due to an error committed by the Respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the Appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the Appellants-therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the Writ Petitioners are similarly situated to the Appellants in **Vikas Pratap Singh's case (supra)**, **we are in agreement with the High Court that the Writ Petitioners are entitled to the relief granted.** **Moreover, though on pain of Contempt, the Writ Petitioners have been reinstated and are working at present.**

10. This Court also considers it appropriate to reproduce the relevant portion of the judgment rendered by the Hon'ble Apex Court in the case of **Rajesh Kumar & Ors. Vs. State of Bihar & Ors., (2013) 4 SCC 690**, as hereunder:

"20. That brings us to the submission by Mr. Rao that while re-evaluation is a good option not only to do justice to those who may have suffered on account of an erroneous key being applied to the process but also to writ petitioners, Respondents 6 to 18 in the matter of allocating to them their rightful place in the merit list. Such evaluation need not necessarily result in the ouster of the appellants should they be found to fall below the 'cut-off' mark in the merit list. Mr. Rao gave two reasons in support of that submission. Firstly, he contended that the appellants are not responsible for the error committed by the parties in the matter of evaluation of the answer scripts. The position may have been different if the appellants were guilty of any





fraud, misrepresentation or malpractice that would have deprived them of any sympathy from the Court or justified their ouster. Secondly, he contended that the appellants have served the State efficiently and without any complaint for nearly seven years now and most of them, if not all, may have become overage for fresh recruitment within the State or outside the State. They have also lost the opportunity to appear in the subsequent examination held in the year 2007. Their ouster from service after their employment on the basis of a properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation will cause hardship to them and ruin their careers and lives. The experience gained by these appellants over the years would also, according to Mr. Rao, go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long time. Mr. Rao, therefore, prayed for a suitable direction that while re-evaluation can determine the inter se position of the writ petitioners and the appellants in these appeals, the result of such re-evaluation may not lead to their ouster from service, if they fell below the cut off line. 21. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments





on that basis according to *their inter se position on the merit list*”.

11. This Court further observes that the petitioners appeared in the examination in question being fully eligible for the same; the respondents declared the results, as per which the petitioners were falling in the merit list as they have secured the prescribed cut off marks, as issued by the respondents. This Court also observes that the respondents themselves after due verification of the qualification of the petitioner for the posts in question and other relevant documents of the petitioners, issued appointment orders to the petitioners and sent the petitioner for the requisite training; after completion of the said training, the petitioners joined the duties at their respective place of posting.

11.1 This Court further observes that from the aforesaid entire exercise, it is clear that the petitioners did not commit any fraud, mischief, misrepresentation or concealment of the material facts for getting the appointment or employment in question, and thus, no fault can be attributed to the petitioners in connection with the recruitment process in question.

12. This Court also observes that this Hon'ble Court at Jaipur Bench, in the aforesaid writ petition no. 6589/2021, directed the respondents to constitute an Expert Committee for resolving the dispute regarding the answer to certain questions of the examination in question, whereupon the respondents as per the recommendations of the said Committee, revised the cut-off and the consequential result, wherein the name of the petitioners did not figure.



13. Though ordinarily, this Court is not inclined to make any interference in the exercise, as involved herein, but at the same time, looking into the peculiar factual matrix of the case, which reflects that the impugned exercise has been done and action has been taken by the respondents, at quite a belated stage, this Court is of the opinion that the impugned action of termination of services is not sustainable in the eye of law, more particularly, when the petitioners have no fault in the entire scenario, and the impugned action has been taken without following the principles of natural justice, and thus, the impugned action of the respondents is not justified in law.

14. This Court further observes that even though evaluation of the answers to the question of the examination does come within the domain of the respondents, but the stage at which the impugned termination orders have been passed, reflects nothing but an arbitrary action on part of the respondents, which in the peculiar factual matrix of the case, is not sustainable in the eye of law, more particularly, when the petitioner were appointed on the posts in question after following the due procedure as prescribed for the recruitment process in question.

15. This Court also observes that the petitioners appeared in the examination in question with bona fide belief and there was no misconduct on the part of the petitioners, and the respondents themselves duly appointed them as per the marks obtained by the petitioners in the examination in question, which clearly reflects that they were falling in the earlier merit list. Therefore, at a belated stage, they cannot be ousted from the employment by



depriving them of their legitimate right to continue as an employee, on the basis of the faulty exercise so conducted by the respondents.

16. This Court further observes that the petitioners were working on the post in question for more than 2 years, and it is a settled proposition of law, as per the afore-quoted judgments, that once the persons are selected and appointed as per the merit list and there is no **fraud, mischief, misrepresentation or mala fide on their part**, as is with the petitioners in the present case, then their continuous services cannot be terminated only on the ground of revision in cut off marks, whereby they were sought to be ousted from the employment in question, that too at a quite belated stage, and thus, the petitioners are suitable to hold the posts in question.

17. Thus, in light of the aforementioned observations as well as in view of the afore-quoted precedent laws and looking into the factual matrix of the present case, the present petitions are **allowed** and the **impugned orders dated 21.06.2022 & 01.06.2022 (CW No.8951/2022), 01.06.2022 & 02.06.2022 (CW No.8559/2022), 08.06.2022 (CW No.8661/2022), 21.06.2022 (CW No.8935/2022), 21.06.2022 (CW No.8974/2022), 05.07.2022 (CW No.9585/2022), 05.07.2022 (CW No.9610/2022), 05.07.2022 (CW No.9613/2022) and 12.07.2022 (CW No.9916/2022) are hereby quashed and set aside**. The respondents are accordingly directed to pass appropriate orders for the continuance of the petitioners on their respective post i.e.



Constable (GD)/Constable (Driver), with all consequential benefits.

All pending applications stand disposed of.

(DR.PUSHPENDRA SINGH BHATI),J

skant/-

