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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 21.08.2023

Monu

...Petitioner

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Surender Pal, Advocate for the petitioner

Mr. Himanshu Malik, Advocate
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Articles 226/227 of the Constitution of India, is seeking setting aside of Medical Unfit Certificate dated 04.08.2021 (Annexure P-8) and Medical Unfit Certificate dated 05.08.2021 (Annexure P-9) whereby petitioner has been declared unfit on the ground that he is having tattoo on his right forearm.

2. The brief facts of the case which are necessary for the adjudication of the present petition are that the petitioner pursuant to Advertisement No.1 of 2017 applied for the post of Constable in I.T.B.P. The petitioner cleared all the steps including Physical Endurance Test/Physical Standard Test held on 24.01.2019, however, petitioner was declared unfit on the ground that he is having a tattoo on his right arm and as per advertisement a candidate cannot be selected who is having tattoo on his right arm.

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3. Mr. Surender Pal, learned counsel for the petitioner *inter alia* contends that tattoo is a curable defect and petitioner has got it removed by simple surgery, thus, he may not be denied selection especially when he has completed all the formalities and he is physically fit. He is not suffering from any ailment, thus, it would be unfair to deny benefit of appointment. The respondent-authorities have adopted pedantic and hyper-technical approach.

4. *Per contra*, Mr. Himanshu Malik, learned counsel for the respondents submits that there was specific condition in the advertisement, thus, there is no option left with the respondent-authorities. Removal of tattoo at later stage is no ground because it is not possible for the respondent-authorities to reconsider each and every case when in the advertisement it was specifically clarified that there should be no tattoo on right arm. He further submits that a Division Bench of Delhi High Court vide order dated 26.11.2021 passed in ***W.P.(C) No.12184 of 2021; Vikash Kumar Versus Director General, Indo Tibetan Border Police Force and Others*** (Annexure R-5) has dismissed identical petition on this very ground.

5. I have heard the arguments of learned counsels for the parties and have perused the record with their able assistance.

6. Paragraph 4.4(iv) of advertisement which is edifice of the present petition reads as:-

“(iv) Tattoos: -

(a) Content: Being a secular country, the religious sentiments of our countrymen are to be respected and thus, tattoos depicting religious symbol or figures and the name, as followed in Indian Army are to be permitted.

(b) Location: Tattoos marked on traditional sites of the body like inner aspect of forearm but only left forearm, being non saluting limb or dorsum of the hands are to be allowed.

(c) Size: Size must be less than $\frac{1}{4}$ of the particular part (Elbow or Hand) of the body.”

7. A Division Bench of Delhi High Court in *Vikash Kumar (supra)* has decided the identical issue. The Court has formed an opinion that in view of specific stipulation of disqualification of tattoo on the right arm, the petition cannot be allowed and authorities cannot be directed to consider claim of the petitioner. The relevant extracts of the said judgment read as under:-

“7. The petitioner admittedly has a tattoo on his right arm, which is the saluting arm. Consequently, the petitioner is not eligible as per Clause 4.4(iv)(b) of the Advertisement.

8. The petitioner’s reliance on the Indian Army policy is misconceived as the petitioner is seeking recruitment in ITBP and the advertisement on the basis of which he had applied contained the disqualification in Clause 4.4(iv). Having participated in the advertisement without demur the petitioner cannot challenge the said disqualification at this stage.

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9. *In any event, this Court is of the view that the stipulation of disqualification of tattoo on the right arm is a classification that is based on an intelligible differentia and the intelligible differentia has a rationale relation to the object sought to be achieved, namely, that the tattoo is visible while saluting. Consequently, the petitioner's candidature has been rightly rejected.*

10. *In view of the aforesaid, present writ petition along with pending application is dismissed."*

8. Respectfully following the aforesaid judgment of Delhi High Court, this court is of the considered opinion that present petition sans merit and deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

21.08.2023

Mohit Kumar

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*