

Court No. - 34

Case :- WRIT - A No. - 18146 of 2019

Petitioner :- Jasvir Bansal And 16 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Anil Kumar Yadav, Shri Ashok Khare, Sr Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Anil Kumar Yadav, learned counsel for the petitioners and Sri R.S.Umrao, learned Standing Counsel for the State respondents.

2. Petitioners before this Court are aggrieved by the decision of the respondents recruitment and selection authority not inviting applicants for the physical efficiency test in the recruitment and selection proceedings held pursuant to notification issued on 29th December, 2015. Petitioners are claiming for consideration of their candidature within 5 per cent horizontal quota prescribed for the Home-guards against post of constable in Civil Police/ P.A.C. under the U.P. Police Constable and Head Constable Services Rules, 2015.

3. It is contended by learned Senior Advocate that as per relevant recruitment rules 15 times of the candidates would be called for against the total number of vacancies notified i.e. 30216 and 5 per cent of the post would come, however, only 47 candidates were called against horizontal reservation quota and the petitioners candidature was rejected on the ground that they did not reach to the last cutoff marks which was prescribed as 191.67 marks. He further argues that the quality point marks are on the basis of high school and intermediate mark sheet with 100 and 200 marks respectively and it was beyond scope and authority for recruitment body to have prescribed for cutoff marks at that stage. He submits that if the candidates against 5 per cent quota, may be horizontal reservation were called for, petitioners candidature would have been definitely considered.

4. *Per contra*, it is argued by Sri P.K.Srivastava, learned Additional Chief Standing Counsel assisted by Sri R.S.Umrao, learned Standing Counsel

appearing for the State respondents that cutoff marks are fixed on the basis of number of candidates to be called against total number of vacancies notified. It is argued that since 15 times of the candidates of the notified vacancies were to be called for, the cutoff marks is fixed without reference to any reservation, to shortlist the candidates in terms of 15 times of the notified vacancies. He submits that around 15 lacs candidates had applied and on the basis of quality point marks obtained by candidates as per their high school and intermediate mark sheet for all candidates 191.67 came to arrive as last cutoff, and so those who could not obtain above this could not be called, as 15 times criterion came to be fulfilled for next stage.

5. Sri P.K.Srivastava, further submits that in terms of relevant rules, cutoff marks are fixed on the basis of high school and intermediate mark-sheet for all the candidates irrespective of the category to which they belong and the reservation is applied only after merit list is prepared to allocate seats as per reservation quota and it is thereafter only horizontal reservation is made applicable. He submits that petitioners could not qualify at that shortlisting stage, so as to fall within the ratio of 1:15 for the posts notified, on the basis of which candidates were called for the next stage. Thus, petitioner cannot complain of any discrimination or any illegal procedure being adopted in the matter of selection and recruitment.

6. Having heard learned counsel for the parties and having perused the record including original records that have been produced before this Court pursuant to order of this Court previously issued, I find that in the process of selection and recruitment, respondents have followed the procedure prescribed under the relevant recruitment rules, namely, U.P. Police Constable and Head Constable Services Rules, 2015. Rule 15 (b,c,d and e) relevant to the issue is reproduced hereunder:

"15 (b) Merit List on the basis of 10th and 12th examination results- All such candidates whose application forms are found correct, shall be awarded marks on the basis of their 10th and 12th standard Board examination results, or qualification equivalent thereto, as provided under clause (8) of these rules. For awarding these marks, maximum of 100 marks will be awarded on the basis of 10th standard Board examination and maximum of 200 marks will be awarded on the basis of 12th standard Board examination. The marks such awarded to them will be counted up to second digit after decimal point and will be awarded as per following procedure-

(1) Marks awarded on the basis of 10th examination result percentage of marks obtained by the candidate in 10th standard Board or examination equivalent thereto.

(2) Marks awarded on the basis of 12th examination result = 2 x percentage of marks obtained by the candidate in 12th standard Board or examination equivalent thereto.

If any examination Board, awards grades in place of marks to the candidates, in above mentioned 10th and 12th examination, then Board shall proceed only after taking information from concerned examination Board, regarding marks to be awarded equivalent to corresponding grades. Candidates shall be awarded total marks on the basis of sum total of marks awarded to them on the basis of 10th class examination results and marks awarded to them on the basis of 12th class examination results, as above. All candidates will be awarded total marks as per sum total of marks awarded as above, out of a maximum of 300 marks and a list in the order of merit will be prepared on the basis of these total awarded marks. **Out of the merit list such prepared, candidates equal to 15 times the number of total vacancies, on the basis of merit shall be called for Physical Efficiency Test. If more than one candidates are found on the marks obtained by the last candidate in the merit list then all such candidates shall be considered eligible for Physical Efficiency Test.**

(c) Physical Efficiency Test.- All Candidates declared eligible in the merit list under clause (b) shall be required to participate in Physical Efficiency Test which shall be of 200 marks. The procedure for conducting the Physical Efficiency Test shall be as prescribed in Appendix 1.

(d) Scrutiny of Documents & Physical Standard Test-The scrutiny of documents & Physical Standard Test of candidates selected under clause (c) mentioned above shall be done according to Appendix 2. In case any document is found to be manipulated, inaccurate or forged during the scrutiny or at anytime after the scrutiny, the candidature of the applicant will be cancelled at the discretion on the Board or the Appointing authority as the case may be. (e) Selection and Final Merit List. From amongst the candidates found successful after

Physical Standards Test and scrutiny of documents under clause (d), the Board shall prepare, as per the vacancies, a select list of each category of candidates, on the basis of sum total of, marks awarded to each candidate on the basis of 10th and 12th examination results as per clause (b) and marks obtained by him in physical efficiency test as per clause (c), keeping in view the reservation policy and send it with recommendation to the head of the department subject to character verification, medical examination and 10th and 12th examination mark sheet verification. No waiting list shall be prepared by the Board. List of all candidates with marks obtained by each candidate shall be uploaded on its website by the Board. The Head of the Department shall after his approval forward the list sent by the Board to the

concerned Authority for further action.

Note. If two or more than two candidates obtain equal marks then the merit list shall be decided according to the following procedure-

(1) If marks of two or more candidates are equal then candidate obtaining higher marks, as per total marks awarded in clause (b), will be given preference.

(2) If two or more candidates are equal even after this the candidates who have the preferential qualification (in the same order as stated in Rule 9) will be given preference. Candidate having more than one preferential qualification shall get the benefit of only one preferential qualification.

(3) Even then if two or more candidates have equal marks then candidate older in age shall be given preference.

(4) If despite the aforementioned more than one candidate are equal, then preference to such candidate shall be determined according to the order in English Alphabets of their names mentioned in High School Certificate."

(emphasis added)

7. From a bare reading of the aforesaid rules, it is quite explicit that shortlisting is adopted at first stage for all the candidates irrespective of categories of reservation and cutoff is fixed to achieve ratio of 1:15 for the purposes of next stage, which is called Physical Efficiency Test (for short PET). The merit list is prepared finally after the PET is held and it is at that stage reservation is applied. This is also the stand taken in the instructions and it is apparent from the records produced before the Court as well. The record shows that those candidates, who could not match or score above the last cutoff 191.67 at the stage of shortlisting, were ousted from the zone of consideration. The petitioners plea is only to the effect that quota prescribed for Home-guards which is 5 percent of the vacancies, if attracted and if had been taken care of, they would have been called. This plea of the petitioners for that stage is misplaced as going by the rules they having scored less than 191.67 marks, could not have expected a call for PET. The rules are very specific that for all categories of candidates the shortlisting criterion will be high school and intermediate marks and since candidates for overall notified vacancies have to be called in the ratio of 1:15 for next stage namely PET, last candidate who would fall at 15th stage as to the number of vacancies, his marks would be last cutoff marks.

8. From the perusal of the original records, it is apparent that total number of

vacancies were 23,200 for constable in Civil Police and 5,716 for constable in PAC. The petitioners quality point marks that they have been able to score, ranged between 143.40 to 167.53, so nobody neared 191.67 figure, which was cutoff marks for a candidate to qualify for Physical Efficiency Test (PET) in the ratio of 1:15. Learned counsel for the petitioner though has sought to urge that rules are discriminatory but the rules are not under challenge before this Court.

9. In view of above, writ petition lacks merit and is accordingly dismissed with no order as to cost.

Order Date :- 17.10.2023

Sanjeev