

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.5588 of 2005
Date of decision : 29.04.2015

Suresh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Yogesh Chaudhary, Advocate with
Mr. G.S. Gopera, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is that the petitioner has approached this Court for the issuance of writ in the nature of mandamus directing the respondents to consider and appoint him as constable in Hissar range against the vacancies earmarked for the candidates from science stream.

It is a matter of record that in the year 2003 i.e. on 15.03.2003 an advertisement was published in the newspaper whereby application for recruitment of temporary constables, 2000 in number was sought, which was to be submitted by 14.04.2003. As per the advertisement, in all ranges,

seat of 125 for filling up the post of Constables with science background was reserved. The Director General of Police, Haryana, Chandigarh issued instructions for recruitment of 1500 male constables in Haryana Police (Annexure P-2), vide which selection of the candidates for the post of constables was to be made by the Board strictly according to the allotted seats.

That as per the advertisement, out of 375 posts of general duty male constable in each of the 4 ranges i.e. Ambala, Gurgaon, Hissar and Rohtak, 125 posts in each range were to be filled up from amongst the candidates belonging to the science background. As per the corrigendum dated 28.03.2003 (Annexure P-3), it was clarified that the total number of constables to be recruited was 1500 out of which 500 seats were to be offered to the candidates from science background and in addition to the 1500 general duty male constable there were 500 additional vacancies of the lady constables 200, sportsmen constables 150, Buglers constables 50 and Wireless Operators 100 i.e. a total to 2000 posts of constables were sought to be filled up i.e. 1500 general duty (including 500, with science background) and 500 additional posts consisting of lady constables, sportsman etc.

The petitioner is stated to have applied in the Hissar range under the category of Science Background vide Annexure P-4. It has been stated that petitioner passed the physical test and was also called for interview and ultimately 28 candidates were selected in the science stream. 22 being in the general category and 2 each in SC-B category, BC-A and B category. The list of 28 candidates has been annexed as Annexure P-5. It

has been stated that the vacancies for the candidates having the science background still exists. It has been stated that to fill up the remaining 100 posts out of 125 posts, steps were taken to fill up the same from amongst the candidates belonging to Arts Background whereas all the 125 vacancies were made available for the candidates with the science background in each range and in totality in all of the four ranges.

An advertisement dated 06.08.2004 was again published in the newspapers, whereby the posts of constable from science stream which were not filled up were re-advertised. It was made clear that candidates who had applied earlier need not to apply afresh. It is clear indication that the posts/vacancies were in existence. Against the advertisement dated 15.03.2003, about 7 petitioners filed a Writ Petition bearing No. 19746 of 2003, on the premise that they had applied and submitted the application for appointment as constable with science background in Rohtak range and 163 candidates in the science background including the aforementioned petitioner appeared for the selection in the Rohtak Range and only 99 shortlisted candidates were being fit for the recruitment and the said petitioner was amongst 99 shortlisted candidates and since there were 125 posts kept for filling up the post of constable with science background, all the petitioners expected the appointment as constable to that category but for the reason best known only 24 candidates with science background were selected.

In response to the aforementioned pending writ petition, the Administrative Officer on behalf of Director General of Police, Haryana vide letter dated 17.08.2004 addressed to the S.P. Rohtak gave the reference

of aforementioned writ petition & decided to offer them appointment in the Haryana Armed Police Battalion (HIAP Bns). In view of the said letter, the Writ Petition was rendered infructuous vide order dated 17.08.2004. Copy of the said letter has been annexed as Annexure A-2 and the copy of the order dated 17.08.2004 as Annexure A-3. The contents of the letter and the order are extracted hereinbelow:-

“From

*The Director General of Police
Haryana*

To

SP/RTK

No.16806/E(II)-I dated 17 Aug., 2004(.) CWP No.19746/2003 titled Pawan Kumar & others Vs. State of Haryana has been filed by petitioner Pawan Kumar and six other petitioners (.) An affidavit has been filed in this office that if all petitioners are offered appointment for the post of Const. with Science background, they are willing to withdraw said CWP (.) In view of said affidavit, it has been decided to offer them said appointment in HAP Bns. In existing vacancies (.) Please sent their complete papers direct to IG/HAP, MBN. For allotting constabulary number after observing codel formalities of medical examination and verification of character & antecedents (.) Please send compliance report expeditiously (.)

Sd/-

(Govind Ram)

Administrative Officer,

For Director General of Police, Haryana

CWP No.19746 of 2003

*Present:- Mr. PS Patwalia, Senior Advocate with
Mr. TPS Chawla, Advocate for
the petitioners.*

Mr. Ritu Bahri, DAG, Haryana.

Learned counsel appearing for the petitioners submits that in view of the letter handed over to him by his client today in Court, he has instructions not to press this petition. Letter is taken on record.

In view of the above, this petition has been rendered infructuous and is dismissed as such.

Sd/- (Swatanter Kumar)

Judge

Sd/- (Mehtab S. Gill)

Judge”

17.8.2004

Since the State has not been filed written statement but filed reply to the application seeking fixation of actual date of hearing. In the said reply, State admitted the factum of issuing the appointment letters to the candidates who had applied for the appointment of Constables with Science Background in Rohtak range. The contents of the Para No.3 & 4 of the reply are extracted hereinbelow:-

“3. That the contents of para No.3 of the application are admitted as a matter of record that the petitioner in the present writ petition and the petitioners in CWP No.19746 of 2003, had applied for appointment against the posts of constable with science background in the pursuance of advertisement dated 15.03.2003. In reply to rest of the contents, it is submitted that as per advertisement dated 15.03.2003 (Annexure P-1) total 1500 male candidates including 125 candidates with science background were to be recruited.

4. That the contents of para No.4 of the application are admitted to the extent of filing of CWP No.19746 of 2003 titled as Pawan Kumar Vs. State of Haryana, DGP Haryana letter dated 17.08.2004 and

order dated 17.08.2004 passed by this Hon'ble Court. Rest of the contents are wrong and hence denied. The detailed reply mentioned in preliminary submissions is reiterated to avoid repetition."

In Paragraph No.5, it has been stated that the petitioner was placed at Sr. No.51 in the merit list prepared by the District Police Hissar but only 22 candidates in general category from Science Background were appointed but no explanation has been given with regard to the remaining vacancies of 103.

Mr. Yogesh Chaudhary, learned counsel for the petitioner contends that even the candidates with lower marks have been appointed in Rohtak Range as two of the petitioners in CWP No. 19743 of 2006 were lower in merit as they have secured 17 marks whereas petitioner has secured 18 marks. The specific averments made in the rejoinder to reply reads as under:-

"5. That in reply to para No.5 of the application it is submitted that the petitioner was placed at Sr. No.51 in the merit list prepared by District Police Hisar but only 22 candidates in General Category from science background were appointed and thus the petitioner could not be appointed. It is pertinent to mention here that the petitioner had obtained only 18 marks whereas the last appointed candidate in the general category mentioned at Sr. No.22 of the merit list had obtained 30 marks. Whereas as given in Annexure A-4 two candidates who are having 17 marks have been appointed in Rohtak Range. It is pertinent to mention here that the merit list of all the four ranges was separate. Therefore, no injustice had been done with the petitioner. Whose name was sent in Hisar District"

Mr. Hitesh Pandit, learned counsel appearing on behalf of State submits that the case of the petitioner for appointment as constable in Hissar Range is not on similar lines with those petitioners who had submitted their application for appointment as constable with science background in Rohtak Range.

I have heard learned counsel for the parties and appraised the paper book. No explanation has come forth to the contents of letter dated 17.08.2004 (Annexure A-2) extracted Supra. Since the petitioner is similarly situated and at par the candidates who had applied for appointment as constable with the science background in Rohtak range. There will be no difference between Hissar and Rohtak range. The fact remains that there are four ranges in District Haryana and in all four range, 2000 posts of Constable were required to be filled up with single advertisement i.e. 15.03.2003 Annexure P-1 and thus, respondent State cannot be permitted to create a classification within the classification.

Since the similar situated candidates have been given appointment letters in Rohtak range who had also stood in the merit list, the case of petitioner is also on the same footings as the petitioner also stood at Sr. No.51 in the merit list. It is a matter of record that the candidates with lower marks i.e. 17 marks had also issued appointment letters in Rohtak range and the case of the petitioner is thus on the better footing as he had secured 18 marks.

It was expected on behalf of the State to act with some kind of responsibility in the process of selection of the candidates for filling up the posts of Constables with Science Background but it appears that authorities

have not exercised any responsibility and appointment have been made in a most repugnant and abberative manner. Since the number of posts (with science background) were/are available and the petitioner's name was at serial No.51, no explanation has come-forth in not issuing the appointment letter to the petitioner and only stand taken in the reply that the persons who were being given appointment in Rohtak range are not similarly situated candidates who had submitted their application in Hissar range.

Thus, the impugned action of the State squarely falls within the realm of judicial review while exercising the powers under Article 226 of the Constitution of India.

While exercising such powers, I deem it appropriate by issuing direction to the respondent to issue appointment letter to the petitioner who had submitted his application having a science background.

While giving the appointment letter, the authorities shall also consider to grant him all the consequential benefits, if permissible.

It is expected that State would take the necessary steps within a period of three months from the date of receipt of certified copy of the order.

With the aforementioned directions, the present writ petition is allowed.

29.04.2015

pawan

**(AMIT RAWAL)
JUDGE**