

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

CWP No.21064 of 2011

Date of decision: 27.04.2015.

Kanwar Baljeet Singh

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. R.N. Sharma, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondents – State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 27.04.2011 (Annexure P-8) and order dated 08.07.2011 (Annexure P-10), whereby, the claim of the petitioner for allowing deemed/notional date of joining i.e., November 2004 has been rejected whereas other similarly situated candidates who were selected under the same advertisement have been allowed to join duties in the month of October/November 2004. A further prayer has also been made for directing the respondents to allow the deemed date of joining i.e.,

November 2004 along with all consequential benefits like seniority, pay fixation, deduction of GPF and other benefits admissible to him under the rules.

Briefly, the facts of the case as made out in the present petition are that total 740 posts of Constable were advertised for recruitment in India Reserve Battalion (hereinafter called as 'IRB') Gurgaon and GRP, Ambala. Out of total 324 vacancies advertised for Gurgaon, 145 vacancies were meant for general category. In response to the said advertisement, the petitioner applied for the said post and was allotted Registration No.1410. He was called for Physical Efficiency Test in July 2004 and was declared pass. Thereafter, he was interviewed in August, 2004. List of 145 candidates was recommended by the Selection Board and order for medical examination was also passed. After medical examination, the list of candidates, who were declared medically fit i.e., 145 candidates + 4% of notified vacancies was displayed for police verification by the unit concern. The petitioner was placed at Sr. No.2 in 7% of reserved, which was as per sub rule (18) of the Rule 12.16 of Punjab Police (Haryana Amendment) Rules, 1998 (hereinafter referred to as 'the Rules'). On medical examination, three candidates belonging to the general category, namely, Pardeep Kumar, Anil Kumar and Pardeep were declared as medically unfit. Thereafter, total 142 candidates were left in the selection list. The petitioner being at Sr. No.2 in reserve came into notified vacancies i.e., selection zone at Sr. No.144. Out of said list, eight candidates were rejected on the ground

of criminal antecedents and thereafter, total 134 candidates remained in the list. One more candidate, namely, Sandeep s/o Sh. Dilbag Singh, did not join as he was selected in Ambala. Meaning thereby, only 131 candidates remained in the list against total 145 notified vacancies.

Learned counsel for the petitioner submits that initially no appointment letter was issued to the petitioner because of General Assembly Elections in the State and thereafter also, no action was taken for issuance of appointment letter to the petitioner. Aggrieved by the said inaction, the petitioner filed CWP No.4191 of 2005. Candidates namely, Virender Singh, who was placed at Sr. No.3 and Ajay Kumar, who was placed at Sr. No.4 in the reserve list, were allowed to join their duties in compliance of order passed in CWP Nos.10379 and 9113 of 2005. Learned counsel further submits that the petitioner, who was at Sr. No.2 in the reserve list, was not appointed as his petition i.e., CWP No.4191 of 2005 was dismissed on 07.09.2006, which thereafter was challenged before Hon'ble the Apex Court by way of filing SLP and a direction was issued to respondents to issue appropriate orders and to consider the claim of the petitioner. In compliance of directions issued by Hon'ble the Apex Court on 13.08.2009, the petitioner was appointed on 11.09.2009. Learned counsel also submits that the petitioner was issued appointment with effect from 11.09.2009 whereas other candidates, who were lower in merit i.e., Virender Singh and Ajay Kumar, were given appointment with effect from 25.08.2006. The petitioner is

entitled to be appointed with effect from November 2004 i.e., the date from which the juniors in merit were allowed to join the duty. Learned counsel for the petitioner also submits that the claim of the petitioner has wrongly been rejected only on the ground that the petitioner has been assigned seniority on the basis of his date of appointment as Constable. It is also the argument of learned counsel for the petitioner that the selection of the petitioner was within notified vacancies but wrongly considered in the waiting list that too under Rule 12.16 of the Rules.

Learned State counsel submits that the name of the petitioner was placed at Sr. No.2 in the waiting list of general category candidates. Only the candidates of main list against notified vacancies were allotted constabulary numbers and were sent for medical examination and character verification. No candidate was appointed from the waiting list. Learned State counsel further submits that out of total advertised/notified posts of general category, 65 posts were for 1st IRB and there was no vacant post of general category in 2nd IRB. The name of the petitioner was in the waiting list and he was having no right to be appointed against the notified vacancies. The seniority is to be given from the date of joining and accordingly, all benefits have been given. The petitioner is not entitled to receive the benefits from the date of joining of other candidates against list of notified vacancies. The seniority of all Constables is maintained as per date of enrollment. As per Punjab Police Rules 12.16(22) (Haryana Amended), candidates shall be appointed as Constable as per the

notified vacancies for the concerned unit and in case, the candidates, who are left for want of vacancies in spite of the fact that they have been found medically fit and their character antecedents had been verified as good, shall be deemed to have not been selected. Learned State counsel also submits that the petitioner has been granted benefits of pay fixation, seniority and new pension scheme as per his entitlement.

Heard arguments of learned counsel for the petitioner as well as learned State counsel.

The notifying of 740 posts of Constables by way of an advertisement is not disputed. It is also not disputed that the petitioner was declared 'pass' in Physical Efficiency Test and was also interviewed. After medical examination, a list of total 145 candidates + 4% of notified vacancies was displayed for police verification. It is also not disputed that three candidates, namely, Pardeep Kumar, Anil Kumar and Pardeep were declared medically unfit and total 142 candidates remained in the list. Out of total 142 candidates, eight candidates were not having good antecedents and as such, 134 candidates remained in the list. Two candidates, namely, Virender Singh and Ajay Kumar filed CWP Nos.10379 and 9113 of 2005 and they were appointed as per directions issued by this Court. The petitioner has also filed CWP No.4191 of 2005, which was dismissed on 07.09.2006. Said order was challenged before Hon'ble the Apex Court by way of filing SLP No.6921 of 2007 and the petitioner was given appointment on 11.09.2009.

The claim of the petitioner is that he is entitled for the benefits of deemed date of appointment from the date his juniors have been appointed i.e., 25.08.2006. The petitioner was selected under Rule 12.16 of the Rules. Sub Rules 18, 21 and 22 are also relevant for the issue in dispute and the same are reproduced as under: -

“12.16 : - Procedure for recruitment: -

(1) All vacancies in the rank of Constable shall be filled up by direct recruitment out of which 3% may be filled up from outstanding sports persons.

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(16) All the candidates who are declared qualified in the physically efficiency test shall be interviewed by the Selection Board to judge their suitability for a Police job. The maximum marks for interview/personality test shall be 15 only. The marks secured in interview by the candidates shall also be entered in the Physical Efficiency Test Register.

(17) On completion of the interview/personality test all the candidates who had qualified the physical efficiency test and had appeared for the personality test will be arranged as per their inter-se merit on the basis of the marks secured by them in the physical efficiency test and interview. Separate merit lists shall be prepared for the general candidates, candidates belonging to the Backward Classes, candidates belonging to SCs/STs and to Ex-services men category.

(18) From the lists so prepared names of as many candidates as there are vacancies plus

reserve of 7% thereof shall be recommended by the Selection Board to the unit for which the selection had been made for medical examination.

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(21) However, out of the candidate who are declared medically fit, only the candidates as per the notified vacancies plus a reserve of 4% shall be taken up for police verification by the unit concerned.

Explanations : Unit consisted district Police/Battalion Headquarters.

(22) Candidates shall be appointed as constables as per the notified vacancies for the concerned unit and the candidates who are left for want of vacancies even though they have been found medically fit and their character had also been verified as good, shall be deemed to have not been selected finally and there shall be no waiting list.”

As per sub rule 18, on completion of Physical Efficiency Test and Personality Test, a list of as many candidates is to be prepared of notified vacancies plus a reserve of 7% of the notified vacancies.

Sub Rule 21 provides that out of candidates, who have been declared medically fit, a list of candidates was to be prepared as per notified vacancies plus a reserve of 4% of notified vacancies for police verification.

Sub Rule 22 provides that appointments is to be made as per the notified vacancies and the candidates, who have been left out

for want of vacancies, in spite of the fact that they have been found to be medically fit and their character has also been found good but they are not deemed to be selected finally and as per rule, no waiting list is to be prepared. Meaning thereby, after medical fitness, the list of the candidates is to be prepared as per notified vacancies plus a reserve of 4% of the notified vacancies. Cases of all such candidates are to be sent for police verification and appointments are to be made as per notified vacancies.

In the present case, the name of the petitioner was kept at Sr. No.2 under 7% i.e., reserved of total percentage and was recommended for medical fitness. Three candidates were declared medically unfit and as such, name of the petitioner came in the zone of selected candidates under the notified vacancies i.e., at Sr. No.144 in the 145 notified vacancies. Thereafter, after character verification candidature of eight candidates was rejected and name of the petitioner came at Sr. No.136.

The facts as mentioned above, clearly shows that the name of the petitioner is well within the category of notified vacancies. Other selected candidates were allowed to join duty in October/November/December 2004. The petitioner could not be allowed to join because of dismissal of his writ petition. Even some of the candidates, who were lower in merit, were allowed to join and have been assigned the seniority over and above the petitioner. When three candidates were declared medically unfit, the name of the petitioner shifted to Sr. No.143 against 145 notified vacancies. One

candidate, namely, Sandeep did not join from the selected list and name of the petitioner came at Sr. No.142 against 145 notified vacancies. It is also apparent that there were total 145 notified vacancies and name of the petitioner was at Sr. No.142. The petitioner was given appointment in compliance of the order passed by Hon'ble the Apex Court in SLP and a statement was also made before Hon'ble the Apex Court.

In view of the facts as mentioned above and the submissions made by learned counsel for the petitioner, there is merit in the contentions raised by learned counsel for the petitioner and as such, the present writ petition deserves to be allowed. Impugned orders dated 27.04.2011 (Annexure P-8) and 08.07.2011 (Annexure P-10) are set-aside.

The petitioner is held entitled for the benefit of deemed date of appointment from the date persons junior to him in merit have been appointed. Accordingly, the respondents are directed to grant consequential benefits to the petitioner within a period of six months from the date of receipt of certified copy of this order.

27.04.2015
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(DAYA CHAUDHARY)
JUDGE