

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

CWP No.15515 of 2013

Date of Decision: 27.04.2015

Jagsir Kaur

....Petitioner

Versus

The State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present:- Mr. Namit Kumar, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present petition has been filed for issuance of a writ in the nature of *mandamus* directing the respondents to depute the petitioner to undergo training of Lower School Course after including her name in List-B under 35% category as per amendment dated 28.06.2001 in Punjab Police Rules, 1934 and to consider the case of the petitioner for promotion to the post of Lady Head Constable from the date her junior has been promoted along with all the consequential benefits.

Briefly, the facts of the case as made out in the petition, are that the petitioner was enrolled as Constable on 16.08.2001. She belongs to BC(A) category. As per the case of the petitioner, she was not considered for deputing to the Lower School Course in the year, 2010 after

including her name in List B-1 under 35% category. As per amendment in Punjab Police Rules, 1934 (here-in-after referred to as 'Rules'), 55% seats have been reserved on the basis of performance test, whereas, 35% seats have been reserved on the basis of seniority-cum-fitness and 10% seats have been reserved on the basis of consistent outstanding performance on the basis of obtaining gold/silver medal in All India Police games or exceptional display of bravery during course of performance of duty in the job. The petitioner is claiming for considering her case in 35% category, which is meant for seniority-cum-fitness as her performance has been outstanding and she has got medals at All India level. It is also the claim of the petitioner that she was the only eligible candidate to be considered against 35% quota, whereas, one Smt. Sharda, who is junior to the petitioner, has also been deputed to the Lower School Course.

Learned counsel for the petitioner submits that some similarly situated constables, who were not deputed in the year 2004-05, filed various writ petitions before this Court, which were allowed on 28.08.2008 and in one writ petition bearing **CWP No.1194 of 2005**, the following directions were issued by the Division Bench of this Court :-

“ In view of the facts mentioned above, these writ petitions are allowed in the same terms as in **Naresh Kumar's** case (supra). The respondents are directed to depute the petitioner(s) to the Lower School Course, which will commence after the pronouncement of judgment in this case. However, the petitioner shall be deemed to have qualified the Lower School Course from the date when other constables have qualified, whose names were approved to undergo Lower School Course vide select list Annexure P/2. It is made clear that if by getting retrospective date of passing the Lower School Course, the petitioner became eligible for promotion, then he will get only deemed benefits

without getting any actual financial benefits, in view of principle of 'no work no pay', as laid down by their Lordships of the Hon'ble Supreme Court in ***Union of India and another vs Tarsem Lal and others (2006), 10 Supreme Court Cases 145.***"

Learned counsel for the petitioner submits that the case of present petitioner is squarely covered by decision in ***CWP No.1194 of 2005*** titled as ***Hawa Singh vs State of Haryana and others*** as well as judgment passed in ***CWP No.2847 of 2010*** titled as ***EHK Naushad Khan vs State of Haryana and others*** decided on ***19.08.2011***.

Learned counsel for the respondent-State submits that the case of present petitioner was considered in the list 'B-1' against 35% quota, which is meant for *seniority-cum-fitness* for the year 2011, 2012 and 2013 but she was not found eligible as she has scored only 25, 27 and 29 marks, respectively during the said period. He further submits that so far as the case of so-called junior of the petitioner, namely, Sharda is concerned, she got 35 marks during the selection process for the year 2011 and she was considered for promotion under rule 13.7 of the Punjab Police Rules 1934. Learned State counsel also submits that the petitioner, herein, cannot be considered as she was not fulfilling the criteria of *seniority-cum-fitness*. He also submits that in view of the judgment in ***Naresh Kumar vs State of Haryana*** passed in ***CWP No.7952 of 2004***, it has been decided to fix the bench mark for fitness under 35% seniority-cum-fitness quota and the assessment of service record was to be made on the basis of education, training courses passed, commendation certificates and length of service etc. as provided under Rule 13.7 of the Punjab Police Rules 1934. As per said judgment, all the candidates who obtained minimum 31 marks or more were deemed to be found fit for selection of B-1 seats against 35% quota.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

The petitioner is claiming for inclusion of her name in List-B under 35% category. Admittedly, as per amendment dated 28.06.2001 in the 'Rules', 55% seats have been reserved for inclusion of names of Constable in list B-1 on the basis of performance test, 35% seats have been reserved on the basis of seniority-cum-fitness, whereas, 10% seats are to be considered on the basis of consistent outstanding performance in job in obtaining gold/silver medal in All India Police Games etc. or exceptional display of bravery during the course of performance of duty. The claim of the petitioner, as made out in the petition, is that one junior constable, namely, Sharda, has been deputed to the Lower School Course as her date of enlistment is 26.02.2002 but the case of present petitioner has not been considered in spite of issuing legal notice as well as making representation. It is also not disputed that the petitioner was enlisted in Police Department as Lady Constable on 16.08.2001. The petitioner secured 25, 27 and 29 marks during the year 2011, 2012 and 2013, respectively and she was found ineligible as bench mark for fitness has been fixed as minimum 31 marks.

In view of the judgment passed in **Naresh Kumar's** case (supra), the minimum bench marks are necessary for satisfying the eligibility on the basis of seniority-cum-merit. Hence, minimum 31 marks or more are required against 35% quota. The petitioner did not secure 31 marks but secured 25 marks in the year 2011, 27 marks in the year 2012 and 29 marks in the year 2013. After passing of the said judgment, a Gazette Notification dated 26.08.2001 was also issued by Government of Haryana. The said notification was circulated by the Director General of Police, Haryana vide his Office No.1600-37/T-2 dated 13.02.2007 for

making selection of candidates for the list B-1 under 35% quota.

In view of the said notification and judgment passed in ***Naresh Kumar's*** case (supra), the petitioner was not fulfilling the criteria and thus, she could not be considered. Moreover, the *inter-se* merit is not necessary when a criteria has been made out for assessing the candidates and requirement of minimum marks has been provided.

Accordingly, there is no merit in the contention raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

27.04.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE