

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

CWP No.22314 of 2015

Date of decision:16.10 2015

Avtar Singh

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. RS Bajaj, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The petitioner's father was an Assistant Sub Inspector of Police who died in harness on August 11, 2012. The petitioner staked claim to compassionate appointment on the death of his father, a Government employee. He possesses the qualification of 10+2 and says he is eligible for appointment as a Constable in Punjab Police. Initially, the case of the petitioner was recommended for appointment on compassionate grounds but that met failure at the stage of consideration before the State Government where it was discovered that he did not possess the height required for appointment as Constable in the police department. He was 5' 4 -1/4" while the required height was 5'-7". He was short by 2-3/4". It is not disputed that Director General of Police, Punjab has power to relax 2" from the standard height in exceptional cases. The Director General of Police exercised that power in favour of the petitioner, but still he was short by 3/4". The petitioner has been

conveyed the order dated November 10, 2014 from the Government of Punjab, Home Affairs & Justice Department (Home-3 Branch) addressed to the Director General of Police, Punjab, Chandigarh, rejecting the proposal sent from the field recommending appointment of the petitioner as Constable in the District Police on compassionate ground as the case was not covered under the 'Instructions' and the competent authority has decided to reject the same.

Mr. Bajaj submits that it is not clear as to what 'Instructions' are being referred to in the impugned order and he has been unable to lay hands on any instructions reflecting the ground of rejection adverted to in the impugned order dated November 5, 2014 endorsed on November 28, 2014 and duly forwarded to the petitioner. Since the document was in translation I asked to Mr. Bajaj to read out the document in the vernacular from where it is found that the word “hidayat” has been used while referring to the “instructions”. The word 'hidayat' has covers larger ground then instructions do as are known to service law which trace their origin to Article 162 of the Constitution of India since the executive power of the State extend to legislative power.

The question really is whether a writ of mandamus can be issued to the State to ignore or relax recruitment rules of Constables when the petitioner is short of the required standard by 3/4” even after the DGP, Punjab has exercised his maximum discretion. In such a situation the court cannot lend its helping hand and declare the petitioner eligible to hold the post of Constable. This would be overstepping boundaries of policy making which lies in executive domain otherwise the court will be exceeding jurisdiction and making policy which is not in its business. It

is equally well settled that the writ court cannot issue a direction to an authority to exercise its discretion in a particular manner even beyond the permissible limits. This Court cannot, therefore, issue a direction as sought for in the writ petition in the garb of tinkering or changing policy of recruitment based on rules and instructions or the “hidayat” of the Government on its personal notions of what is fair and proper. The rules are inviolable. The court cannot exercise discretion to further dilute the maximum discretion allowed to the DGP, Punjab by law. No ground for interference is made out for a direction to consider offering appointment to the petitioner as a constable on compassionate grounds. The petition is misconceived as expects far too much from the court to give.

For the foregoing reasons, there is no substance in writ petition and the same is ordered to be dismissed in limine.

However this order will not preclude the Government/ Police department to consider the case of the petitioner for appointment on compassionate grounds to a post which does not require any minimum standard of height.

16.10.2015
monika

(RAJIV NARAIN RAINA)
JUDGE