

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 8824 of 2014(O&M)
Date of decision : May 29th , 2015

Dimple and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D. S. Patwalia, Senior Advocate with
Mr. Kanan Malik, Advocate
for the petitioners.

Mr. Hitesh Pandit, Additional Advocate
General, Haryana.

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

Amit Rawal, J.

Challenge in the present writ petition is to the order dated 30.4.2014 (Annexure P-10) whereby the Superintendent of Police Telecommunication, Haryana Panchkula in compliance of directions contained in the order dated 15.2.2012 passed in CWP No.11129 of 2006 and 2116 of 2007 an order dated 21.12.2012, whereby the petitioners have been taken back as Wireless Operators in Haryana Police Telecommunication Wing, had been withdrawn with immediate effect.

In pursuance to the advertisement dated 25.7.2004 (Annexure P-1) for filling up of 84 vacancies of Constables (Wireless

Operators) in Telecommunication Wing, Haryana Police, the petitioners submitted their application on the premise that they had fulfilled the requisite qualification for being selected, as one of the requisite qualification for being selected was the knowledge of English Typewriting as well as knowledge of Computer operation. The copy of the application form has been attached as Anneuxre P-2 (Colly) with heading '*Haryana Police Telecommunication Wing Constable/Wireless Operator*'. It has been stated that petitioners and other candidates selected, in pursuance to the advertisement dated 25.7.2004, were deputed with the Haryana State Industrial Security Force (hereinafter called as 'HSISF') vide order dated 6.7.2005 (Annexure P-3). The petitioners were terminated from their services on the ground that vide HSISF (Repeal) Act, 2005, the battalions of HSISF were disbanded. The aforementioned order was challenged by the colleagues of the petitioners through CWP No. 11129 of 2006 and 2116 of 2007 and this Court vide order dated 15.2.2012 allowed the writ petition by setting aside the termination order dated 6.7.2005.

Mr. D. S. Patwalia, learned Senior counsel appearing on behalf of the petitioners submits that though the petitioners were not party to the aforementioned writ petitions received PTM/SVG dated 23.11.2012 vide which the petitioners along with similarly situated persons were called for completion of formalities and therefore joined as Wireless Operators in the Telecommunication Wing.

In pursuance to the said communication vide order dated 21.12.2012 (Annexure P-6 Colly) both the petitioners were

reappointed as Constables (Wireless Operators) in the Telecommunication Wing of Haryana Police and were allotted Constabulary Nos. 501/C and 760/C respectively.

In pursuance to the order dated 20.12.2012 (Annexure P-6) the petitioners immediately started with the training process and at present, as well, are undergoing training at Madhuban.

It is pertinent to mention here that the petitioners have not attached the copy of the original appointment letters vide which they were stated to have been deputed with the HSISF.

The petitioners were served with a show cause notice dated 28.3.2014 (Annexure P-7 Colly) calling upon them that there is concealment of fact as they were infact appointed as Constables HSISF and not as Wireless Operators and therefore why their services could not be terminated.

The show cause notice was duly replied vide Annexure P-8. The petitioners stated to have challenged the aforementioned show cause notice by filing CWP No. 5061 of 2014 and this Court vide order dated 18.3.2014 disposed of the writ petition being pre mature and liberty was granted to the petitioners to approach this Court as and when any adverse order is passed against the petitioners.

Mr. D. S. Patwalia, learned Senior counsel has raised the following submissions, to demonstrate that the impugned order is not sustainable in the eyes of law and is illegal, arbitrary and being an act of aberration, much less without jurisdiction:-

i) Since the advertisement was for the post of Constable/Wireless Operators in the Telecommunication Wing of Haryana Police, there was no occasion, as to why the petitioners would have been selected by HSISF.

ii) The respondent has erroneously linked the case of the petitioner with CWP No. 248 of 2006 titled as Sanjay Kumar and others Vs. State of Haryana and others which dealt with the Constable of HSISF.

iii) Once similarly situated colleagues of the petitioners have already been granted the benefit by this Court which was made the basis for re-appointment of the petitioners cannot be allowed to volte face. The case of the petitioner is similar to the petitioners who had filed CWP No. 11129 of 2006 and 2116 of 2007.

iv) The constables who were re-appointed along with the petitioners are continuing on the said post, the action of the respondent to single out the petitioners is completely illegal, arbitrary and discriminatory, much less, depicts an act of pre-determination, for imputing punishment of termination of service.

Mr. Hitesh Pandit, Additional Advocate General Haryana, while rebutting aforementioned submissions submits that the petitioners were never selected for Wireless Telecommunication Operator, but were selected, for the post of Constable Wireless Operator HSISF, General Category District Yamunanagar. In order to demonstrate he has referred to the list of candidates selected on Wireless Telecommunication in HSISF general category which has been attached at Annexure R-1 and R-7 and on perusal of the list

Annexure R-7 the name of both the petitioners is figuring as much as Rajesh Kumar was appointed as Constable in 'B' category and Dimple d/o Jagdish Chander against the General category and while referring to the list, learned counsel for the State in rebuttal made the following submissions:-

i) That from the perusal of the appointment letters issued to the petitioners, it clearly envisage that the petitioners were appointed in the HSISF General duty and Constable Dimple was allotted Constabulary No. 3/278 vide certificate of appointment dated 17.12.2004 and even the petitioners have executed a form 'A' agreement wherein it is also clearly indicated that they were appointed in HSISF for a period of not less than 10 years and since the Act has been repealed and HSISF has been disbanded, therefore, their services were no longer required, were accordingly dispensed with w.e.f. 29.6.2005. Even the identity cards, copy of which has been attached at Annexure R-3, also show that they were appointed with HSISF.

ii) After the petitioners were re-appointed vide order dated 20.12.2012 an enquiry officer was appointed. The fact finding enquiry was got conducted through Rajinder Singh DSP. As per enquiry report, it surfaced, that in the list of selected candidates prepared by the recruitment board headed by Smt. Mamta Singh, the then SP/Panchkula, the names of the petitioners do not stand in the list whereas, name of Rajesh Kumar stand in the list of selected candidates prepared by the recruitment board headed by Rajinder Singh and name of lady constable stood in the list of selected

candidates prepared by Sanjay Bhatia, the then SP Panipat. since the identity cards issued to both the petitioners for recruitment purpose indicate that they have been recruited by the Board constituted for the purpose under the Board and the ex-constables HSISF were selected for retaking in service on the basis of the list sent by the Commandant 4th BN HAP, Madhuban in which the name of these two ex-constables Rajesh Kumar s/o Mange Ram and Dimple d/o Jagdish Chander was erroneously included. Hence, the mistake was committed at the 4th BN HAP. Copy of the finding report is Annexure R-4.

iii) After giving an opportunity of hearing by the Superintendent of Police, Telecommunication, Haryana the services of the petitioners were dispensed with, for the reason, that even during the personal hearing they admitted that they were not selected by the Police Recruitment Board at Panchkula. He further submitted, that the plea that the advertisement was only for Wireless Operators, in this context, he submitted that the clarification was made vide letter dated 9.8.2004 wherein the Superintendent of Police Selection Board, Panchkula clarified that recruitment of Constables/Wireless Operators was meant for HSISF and not for Telecommunication Wing. Copy of the same is attached as Annexure R-5.

iv) Thus the petitioners were never recruited against the vacancies of Wireless Operators in HSISF.

I have heard learned counsel for the parties and appraised the paper book.

The letter dated 9.8.2004 (Annexure R-5) leaves no manner of doubt that the recruitment of Constables/Wireless Operators 68 male and 16 female was for HSISF Force only and not for Telecommunication Wing of Haryana Police. The same reads thus:-

“Most Immediate
Out Today

From

The Director General of Police,
Haryana.

To

Mamta Singh, IPS,
Superintendent of Police-cum-Chairman,
Selection Board,
Panchkula,

No. 16082/E (II)- I dated Panchkula, the 9.8.2004

Subject:- Recruitment of 84 Constables/Wireless Operators (68 Male and 16 Female) in Telecommunication Wing of Haryana Police.

Memo

Continuation this office memo No. 15701/E (II)-I dated 3.8.2004, on the subject noted above.

It is clarified that recruitment of Constables/Wireless operator (68 Male and 16 Female) are being recruited for Haryana State Industrial Security Force only and not for Telecommunication Wing of Haryana Police. This clarification may be displayed on various notice boards in Police Lines, Panchkula and in the premises of office of SP/Panchkula for the information of all candidates who have applied for the post of Constables/Wireless Operator (male and

female) against notified 84 posts advertised by the department. Also send compliance report to PHQ.

*Sd/-
(Govind Ram)
Administrative Officer,
for Director General of Police,
Haryana.”*

Even the appointment letters and copy of the agreement though, have not been attached but during the course of the hearing the record pertaining their appointment letters and execution of the agreement Appendix 'A' was kept by this Court and on perusal of the aforementioned documents, it is irresistibly concluded, that the petitioners were appointed for a period of 10 years in HSISF. The contents of the same are extracted as under:-

APPENDIX 'A'

FORM OF AGREEMENT

To

The Government of Haryana.

In consideration of the Governor of Haryana having agreed to appoint me as a constable, I Dimpal daughter of Sh. Jagdish Chander, hereby agree and undertake to

- (i) Serve in the Haryana State Industrial Security Force for a period of not less than ten years with effect from the date of my appointment in the force;*
- (ii) Carry out all duties entrusted to me and all lawful orders given to me by my superior in rank;*
- (iii) Refund all the cost of training imparted to me in the force or sum equal to three months pay and allowance whichever is more in the event of tendering my resignation from the force for reasons other than accepting a job elsewhere for which cadre clearance has been given during the period of my initial training of thereafter during the period of ten years from the*

date of joining Haryana State Industrial Security Force; and

(iv) If, after ten years I desire to resign, I will submit my request in writing and will not withdraw my duties until I am duly retired.

Note: The terms "Pay and allowances" used in clause (iii) above means the useful pay and allowances received by him during the period of three months immediately prior to the date of his resignation.

Strike out whichever is not applicable

Witness.

<i>Signature.....</i>	<i>Signature of employee.....</i>
<i>Designation.....</i>	<i>Designation</i>
<i>Date.....</i>	<i>Date</i>
<i>Place.....</i>	<i>Place</i>

ACCEPTED

For and on behalf of the Governor of Haryana

APPENDIX 'C'

CERTIFICATE OF APPOINTMENT

***HARYANA STATE INDUSTRIAL SECURITY
FORCE***

Ms. Dimpal daughter of Sh. Jagdish Chander hereby appointed as Constable in the Haryana State Industrial Security Force under Act 24-HLA of 2003 w.e.f. 17.12.2004 AN. He / She is allotted constabulary No. 3/278 HSISF and is vested with the powers, functions and privileges of Constable of the Haryana State Industrial Security Force.

Commandant,

3rd Bn, HSISF, Sonipat.

Form of agreement and certificate of appointment of
Rajesh Kumar:-

APPENDIX 'A'

FORM OF AGREEMENT

To

The Government of Haryana.

In consideration of the Governor of Haryana having agreed to appoint me as a constable, I Rajesh Kumar Ranga son of Sh. Mange Ram Ranga, V. Munda Khera, P.O. Jyotisar (Kurukshetra) hereby agree and undertake to

- I. Serve in the Haryana State Industrial Security Force for a period of not less than ten years with effect from the date of my appointment in the force;*
- II. Carry out all duties entrusted to me and all lawful orders given to me by my superior in rank;*
- III. Refund all the cost of training imparted to me in the force or sum equal to three months pay and allowance whichever is more in the event of tendering my resignation from the force for reasons other than accepting a job elsewhere for which cadre clearance has been given during the period of my initial training of thereafter during the period of ten years from the date of joining Haryana State Industrial Security Force; and*
- IV. If, after ten years I desire to resign, I will submit my request in writing and will not withdraw my duties until I am duly retired.*

Note: The terms "Pay and allowances" used in clause (iii) above means the useful pay and allowances received by him during the period of three months immediately prior to the date of his resignation.

Strike out whichever is not applicable

Witness.

Signature..... Signature of employee.....

Designation..... Designation
Date..... .Date
Place Place

APPENDIX 'C'
CERTIFICATE OF APPOINTMENT
HARYANA STATE INDUSTRIAL SECURITY FORCE

Mr. Rajesh Kumar son of Sh. Mange Ram hereby appointed as Temp. Constable in the Haryana State Industrial Security Force under Act 24-HLA of 2003 w.e.f. 21.12.2004 A.N. He / She is allotted constabulary No. 5/401 HSISF and is vested with the powers, functions and privileges of Constable of the Haryana State Industrial Security Force.

Commandant,
5th Bn, HSISF, Panchkula.
21.12.2004”

The petitioners have intentionally not attached the copy of appointment letters , much less the agreement and in the absence of appointment letter were able to obtain interim orders. The petitioners cannot be said to have been appointed as Constables/Wireless Operators in the year 2004 in HSISF but were appointed as General Duty in HSISF, vide Annexure R-7 and their case is not similar to the petitioners in CWP No. 11129 of 2006 and 2116 of 2007. It deals with recruitment Centre, Panipat and Yamunanagar in General Duty as Constable against 1863 vacancies of Constables in HSISF which fact is evident from the list Annexures R-7 and R-8. The plea, that in pursuance to the directions, the petitioners were taken back into service, therefore action of the

respondent in issuing show cause notice and dispensing with their services is not sustainable, lies flat on their face, in view of the Appendix 'A', agreement and appointment letters. Rather, it has been found that the petitioners intentionally concealed the aforementioned facts, from their counsel, much less, did not divulge the information and the writ petition has been filed on basis of the information provided. Though, it is a settled law that the person who approaches the Court with unclean hands and conceals the facts should be thrown out of Court, and I intended to impose costs, but the fact remains that their services have already been dispensed with, therefore, I refrain myself to address the issue of costs.

In view of what has been observed above, there is no merit in the writ petition for the reason, the petitioners have been appointed/recruited in Police recruitment of Panipat and Yamuna Nagar in General Duty as Constable against the vacancies in HSISF. The action of the respondents is legal and justified and does not call for any interference much less, and does not come within the realm of judicial review while exercising powers under Article 226 of the Constitution.

Accordingly, the writ petition is dismissed.

(AMIT RAWAL)
JUDGE

May 29th , 2015
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