

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

CWP No.15409 of 2014

Date of Decision: 17.12.2016

Lachhman Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(2) ***CWP No.853 of 2015***

Harchand Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(3) ***CWP No.26235 of 2016***

Gurvir SinghPetitioner

Versus

State of Punjab and othersRespondents

(4) ***CWP No.26120 of 2016***

Gurjinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(5) ***CWP No.26234 of 2016***

Sourav Kumar and anotherPetitioners

Versus

State of Punjab and othersRespondents

(6) ***CWP No.26164 of 2016***

Satnam SinghPetitioner

Versus

State of Punjab and othersRespondents

(7) ***CWP No.25859 of 2016***

Dilpreet SinghPetitioner

Versus

State of Punjab and othersRespondents

(8) ***CWP No.21591 of 2015***

Kanwaljit SinghPetitioner

Versus

State of Punjab and anotherRespondents

(9) ***CWP No.1402 of 2016***

Manjinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(10) ***CWP No.14852 of 2016***

Maninder Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

(11) ***CWP No.15662 of 2016***

Harcharan Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

(12) *CWP No.7765 of 2015*

Vikram Kumar and othersPetitioners

Versus

State of Punjab and anotherRespondents

(13) *CWP No.16375 of 2015*

Baljinder SinghPetitioner

Versus

State of Punjab and anotherRespondents

(14) *CWP No.19647 of 2016*

Ranjeet Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(15) *CWP No.19755 of 2016*

Kuldeep Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(16) *CWP No.17737 of 2016*

Jugraj Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(17) *CWP No.17957 of 2016*

Tejinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(18) ***CWP No.19223 of 2016***

Buta Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(19) ***CWP No.19434 of 2016***

Bikramjeet SinghPetitioner

Versus

State of Punjab and othersRespondents

(20) ***CWP No.21646 of 2016***

Harpreet Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

(21) ***CWP No.22850 of 2016***

Sanjeev Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

(22) ***CWP No.23449 of 2016***

Jasvir KaurPetitioner

Versus

State of Punjab and othersRespondents

(23) ***CWP No.23731 of 2016***

Baltej Singh and anotherPetitioners

Versus

State of Punjab and others

....Respondents

(24)

CWP No.23811 of 2016

Randeep Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

(25)

CWP No.23853 of 2016

Baljinder Singh and others

....Petitioners

Versus

State of Punjab and others

....Respondents

(26)

CWP No.23488 of 2016

Amrik Singh and others

....Petitioners

Versus

State of Punjab and others

....Respondents

(27)

CWP No.25583 of 2016

Manpreet Kaur

....Petitioner

Versus

State of Punjab and others

....Respondents

(28)

CWP No.12278 of 2016

Krishan Singh and others

....Petitioners

Versus

State of Punjab and others

....Respondents

(29)

CWP No.10436 of 2016

Sandeep Kumar and othersPetitioners

Versus

State of Punjab and othersRespondents

(30) ***CWP No.26405 of 2015***

Daljinder SinghPetitioner

Versus

State of Punjab and othersRespondents

(31) ***CWP No.25625 of 2015***

Jatinder SinghPetitioner

Versus

State of Punjab and othersRespondents
(32) ***CWP No.18789 of 2014***

Shiv Ram and othersPetitioners

Versus

State of Punjab and othersRespondents

(33) ***CWP No.9000 of 2016***

Ashni Kumar and anotherPetitioners

Versus

State of Punjab and othersRespondents

(34) ***CWP No.1146 of 2016***

Varinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(35) ***CWP No.20488 of 2015***

Manjeet Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(36) ***CWP No.20630 of 2015***

Charanjit Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

(37) ***CWP No.19943 of 2015***

Harshvinder Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

(38) ***CWP No.16443 of 2015***

Sandeep KumarPetitioner

Versus

State of Punjab and othersRespondents

(39) ***CWP No.17322 of 2015***

Jaswinder Kaur and othersPetitioners

Versus

State of Punjab and othersRespondents

(40) ***CWP No.16197 of 2015***

Manpreet SinghPetitioner

Versus

State of Punjab and othersRespondents

(41) *CWP No.19535 of 2014*

Hira Lal and othersPetitioners

Versus

State of Punjab and othersRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Kannan Malik, Advocate
for the petitioners in
C.W.P. No.15409 of 2014.

Mr. H.C. Arora, Advocate
for the petitioner(s) in
C.W.P. No.18789 of 2014.

Mr. Ajaiveer Singh, Advocate
for the petitioner (s) in
C.W.P. Nos. 16197,17322 of 2015 and 1146 of 2016.

Mr. Lalit Singla, Advocate
for the petitioner(s) in
C.W.P. Nos. 16375 and 21591 of 2015.

Mr. Nikhil Anand, Advocate
for the petitioner (s) in
C.W.P. No. 9000 of 2016.

Mr. Loveneet Thakur, Advocate
for the petitioner (s) in
C.W.P. No. 14852 of 2016.

Mr. Rajesh Bhateja, Advocate
for the petitioner (s) in
C.W.P. Nos. 20630 of 2015 and 15662 of 2016.

Mr. HPS Bhinder, Advocate
for the petitioner (s) in
***C.W.P. Nos. 25625 of 2015, 19223, 19434, 25583
and 25859 of 2016.***

Mr. Janak Singh Bhinder, Advocate
for the petitioner(s) in
C.W.P. No.26164 of 2016.

Mr. Dhawaljeet Dutta, Advocate
for the petitioner (s) in
C.W.P. No. 26405 of 2015.

Mr. S.K. Sandhir, Advocate
for the petitioner (s) in
C.W.P. No. 1402 of 2016.

Mr. Sandeep Sharma, Advocate
for the petitioner (s) in
C.W.P. No. 10436 of 2016.

Mr. B.S. Ichhewal, Advocate
for the petitioner (s) in
C.W.P. Nos. 12278, 17737, 17957 and 22850 of 2016.

Mr. G.S. Samra, Advocate
for the petitioner(s) in
C.W.P. Nos.19647 and 19755 of 2016.

Mr. Naveen Sharma, Advocate
for the petitioner(s) in
C.W.P. No.23488 of 2016.

Mr. Digvijay Nagpal, Advocate
for the petitioner(s) in
C.W.P. No.23731 of 2016.

Mr. Hakam Singh, Advocate
for Mr. P.S. Jammu, Advocate
for the petitioner(s) in
C.W.P. No.23811 of 2016.

Mr. Sunil Garg, Advocate
for the petitioner(s) in
C.W.P. No.23853 of 2016.

Mr. Jatin Salwan, Advocate
for the petitioner(s) in
C.W.P. No.853 of 2014

Ms. Ravinder Kaur Manaise, Advocate
for the petitioner(s) in
C.W.P. No.19535 of 2014.

Mr. Mohit Garg, Advocate
for the petitioner in
CWP No.26235 of 2016.

Ms. Jyotika, Advocate

for Mr. H.P.S. Ishar, Advocate
for the petitioner(s) in
C.W.P. No.16443 of 2015.

Mr. Dinesh Sharma, Advocate
for the petitioner(s) in
C.W.P. No.26120 and 23449 of 2016.

Mr. Naveen Bawa, Advocate
for the petitioner(s) in
C.W.P. No.26234 of 2016.

Mr. M.L. Saini, Advocate
for the petitioner(s) in
C.W.P. No.21646 of 2016.

None for the petitioner(s) in
CWP Nos.7765 and 20488 of 2015.

Mr. Param Preet Singh Brar, Advocate
for the petitioners in
CWP No.19943 of 2015.

Mr. T.N. Sarup, Addl. A.G., Punjab
for the State.

DAYA CHAUDHARY, J.

By this judgment of mine, 41 writ petitions bearing CWP Nos. 15409, 19535, 18789 of 2014, 16197, 17322, 16443, 19943, 20630, 20488, 25625, 26405, 7765, 16375, 853, 21591 of 2015, 1146, 9000, 10436, 12278, 1402, 14852, 15662, 19647, 19755, 17737, 17957, 19223, 19434, 21646, 22850, 23449, 23731, 23811, 23853, 23488, 25583, 25859, 26120, 26164, 26234 and 26235 of 2016 shall be disposed of as common questions of law and facts are involved therein. However, the facts are being extracted from **CWP No. 15409 of 2014**. There are total 180 petitioners in all the cases and they have approached this Court by way of filing the present writ petitions under Articles 226/227 of the Constitution of India

for issuance of a writ in the nature of Certiorari for quashing the impugned notice dated 5.6.2014 (Annexure P-3) published in the Daily Newspaper 'Jag Bani' whereby the decision taken by the respondents for cancellation of selection to the posts of Warders in pursuance of advertisement No. 2 of 2011 dated 12.10.2011 (Annexure P-1) was conveyed. A further prayer has also been made for quashing of the minutes of meeting dated 23.12.2013 communicated to the petitioners under the Right to Information Act vide letter dated 10.7.2014 whereby a decision was taken by the respondents to cancel the recruitment process.

Briefly, the facts of the case, as mentioned in the present writ petition, are that in pursuance of advertisement dated 12.10.2011, total 527 posts of Warders in the Punjab Prisons Department were advertised. As per terms and conditions of the advertisement, the candidates applying for the posts should have been 8th passed with Punjabi and preference was to be given to the candidates having higher qualification. As per advertisement, 5' 6" was the minimum required height and 32" was the minimum required chest size. The age limit was provided between 18 to 37 years. The selection was to be made on the basis of merit of the physical test and the written test. The petitioners finding themselves eligible applied for said posts. Thereafter, a corrigendum was issued stating that for the post of Warders, Matron and Jeep Drivers, the recruitment process would not include the written test on the pattern of recruitment done in the Police Department for the post of Constable, meaning thereby, the criteria of selection was changed and the recruitment was to be done only on the basis of educational qualifications and physical measurements. The physical examination of the petitioners and other candidates was held on

various dates. Petitioners were not called for interview and their result of physical examination was also not declared. Thereafter, petitioners sought information under the RTI Act to know the fate of the selection in pursuance of advertisement dated 12.10.2011. It was conveyed to them that the selection process had been cancelled due to administrative reasons. It was also conveyed by way of letter dated 10.7.2014 i.e. the information sought by one of the petitioner under the RTI Act that a decision was taken on 12.7.2013 in the meeting which was presided over by the Chief Minister of Punjab and Secretary (Home) to cancel the process of selection due to certain irregularities. It was also stated that the basic qualification for the post of Warders should be 10+2 and age limit should be from 18 to 25 years and there was a proposal also for amendment in the Rules. The impugned notice cancelling the selection process has been challenged in all writ petitions.

Learned counsel for the petitioners submits that the action of the respondents is wholly arbitrary and illegal and the criteria mentioned in the advertisement which was applied with conscious decision has been changed without specifying any irregularity. The whole of the process of selection has been cancelled on a frivolous ground of irregularity and no relaxation is being given to the petitioners and other candidates in their age and qualifications. The petitioners have now become overage. The qualification has also been upgraded and no provision for participation of the candidates like the petitioners has been provided. Learned counsel also submits that some of the candidates including the petitioners have passed 10+2 examination and some of them are even graduates and post graduates but still they have not been given any relaxation. Learned

counsel also submits that the vacancies still exist and are to be governed by the old rules, as has been held in various judgments of this Court as well as of Hon'ble the Supreme Court that old vacancies are to be governed by the old rules. At the end, learned counsel for the petitioners submits that selection relates to the advertisement issued in the year 2011 and has been cancelled in the year 2013. The petitioners appeared in the physical test and their respective merit was to be considered but process of selection has been cancelled without any sufficient reasons, due to which they would suffer an irreparable loss.

In response to notice of motion, the reply on behalf of respondents No. 1 to 4 has been filed and the same is on record. Learned State counsel submits that the Selection Committee was constituted and a senior officer of the rank of Deputy Inspector General of Police inquired into the relevant record and found irregularities in the recruitment process at different levels and thereafter on the basis of inquiry report, it was recommended to cancel the process of recruitment and to initiate the selection process afresh. Learned State counsel submits that mere consideration of the petitioners by the Selection Committee does not give any right to the petitioners for appointment.

Heard arguments of learned counsel for the petitioners as well as learned State counsel. I have also perused the documents available on the file.

The publication of advertisement, requisite qualifications and other criteria for selection to the posts of Warders are not disputed. It is also not disputed that the petitioners were possessing the educational qualifications as required in the advertisement and some of them were

having higher qualifications also. As per advertisement, one should have passed eighth class with Punjabi and preference was to be given to the candidates having higher qualifications. The physical measurement i.e. minimum 5' 6" height and minimum 32" chest was required. The age limit as provided in the advertisement was between 18 to 37 years. It was also mentioned that apart from physical test, a written test was to be conducted. During process, a corrigendum was issued by way of public notice in the Newspaper publishing therein that the recruitment process would not include the written test on the pattern of recruitment done in the Police Department for the post of Constable. The criteria for selection to the post of Warder was on the basis of educational qualifications and the physical test/measurement. The physical examination of the petitioners and other candidates had already taken place. The petitioners, on the basis of information sought under RTI, came to know that process of selection had been cancelled. The reason for cancellation of selection process has been stated to be on the basis of certain irregularities occurred in the process. It has been proposed that the qualification should be 10+2 and age limit should be between 18 to 25 years. It has also been stated in the written statement that an inquiry was conducted by the inquiry officer and certain irregularities were noticed and because of that reason, it was decided to cancel the whole process of selection and to initiate the fresh selection process.

The service conditions of Warders are governed by the Punjab Jails Department State Service (Class-III Executive) Rules, 1963 (hereinafter called as 'the 1963 Rules'). Rule 8 of the 1963 Rules provides a condition for direct appointment that no person shall be eligible for

direct appointment unless he possesses the educational qualifications as prescribed in Appendix 'A' of 1963 Rules apart from physical standard as provided under this Rule. Rule 17 of the 1963 Rules provides powers of relaxation, according to which, where the Government is satisfied that operation of any of these Rules regulating the conditions of service causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner. Meaning thereby, the State Government has the power of relaxation in case the same causes undue hardship. In the present case, no sound ground is mentioned while cancelling the process of selection. As per advertisement, there is shortage of Warders in the respondent-State as 527 posts out of total 927 posts of Warders were advertised, meaning thereby, more than 50% posts are lying vacant. As per information sought under the RTI Act on 4.7.2014, 845 posts of Warders in the Prison Department are lying vacant in the respondent-State, still the respondent-State has cancelled the selection process on the ground that more qualified candidates are required whereas number of candidates are having 10+2 qualification and even graduation and post graduation. They have been left in lurch by keeping them waiting for almost four years and even after completion of selection process they have been informed that the selection in pursuance of advertisement stands cancelled. Not only some of the petitioners will be overage but they would not be in a position to get chance to apply for the same post again being overage. The vacancies are still lying vacant. The Rules were amended at the time of cancellation of selection process. It is a settled proposition of law that old vacancies are

to be filled up by old Rules only.

During pendency of the case, original record of the selection was ordered to be produced before this Court but whole of the record could not be produced being voluminous but some relevant record was shown. On perusal of the record, it shows that marks of higher qualifications were given to some of the candidates who are Matric or 10+2 pass. A list was also prepared reflecting their actual qualification. Some of the candidates who are 10+2 pass have been shown to have passed MA/MBA/M.Sc./M.C.A./ MBBS/MPED/BDS. Some of the candidates had been shown to be possessing B.A/B.Sc/B.Com./MA/MSc. and C.A. degrees whereas they are actually Matric or 10+2 pass. It was also submitted by learned State counsel that an inquiry has been initiated against the officers/officials who are the members of the Selection Committee by issuing notices to show cause as to why disciplinary proceedings be not initiated against them. The petitioners, who were the candidates, are not aware as to why they have been deprived of their rights without any reason. It has also not been brought on record or addressed during arguments whether manipulation of the marks was on the part of the candidates or they were at fault in any manner. Even up to now, the Competent Authority has not taken any decision as to what course is to be adopted qua petitioners and other similarly situated candidates. Respondent-State was directed to file status report regarding policy decision vide order dated 11.8.2016. Subsequently, the status-report was filed but it has not been mentioned therein also as to what action has been taken against the erring officers/officials. Simply it was mentioned that there were certain glaring irregularities in the recruitment process and, therefore, it has been decided

to cancel the said selection process due to amendment in the Rules. No where it is mentioned in the status report as to how the irregularities were noticed and how the decision to cancel the selection process was taken. Even nothing has been mentioned in the status report as well as in the arguments as to what was the necessity for amending the Rules that too at the time of final selection and even after filing of this writ petition. Thereafter, the respondent-State was directed to file a detailed affidavit to explain as to how the Committee reached to the conclusion that irregularities in large scale were there and what was the method adopted by the Committee. It was also directed to mention in the affidavit as to whether it was practicable to sort out tainted and untainted candidates and as to what action has been taken against the officers/officials who were taking part in conducting the process of selection. In the affidavit filed by the respondent-State in pursuance of order dated 30.09.2016 passed by this Court, it has been mentioned that different Committees were constituted to scrutinize the list of candidates prepared by the Chairman of the Departmental Selection Committee. A report was submitted to the respondent-State pointing out the discrepancies wherein it has been mentioned that there was no fairness in the recruitment process. It has been mentioned that the educational qualifications of the candidates were found to be less than the one shown to have been reflected in the list and the marks were given for higher qualifications and merit was prepared. There were discrepancies in measuring of the height also. In the report, it is found that the entire recruitment process is faulty due to discrepancies in physical measurement and also in awarding of marks for the qualifications which was even not possessed by the candidates. In some of the cases, pencil was

used for preparation of the result sheet instead of pen or ball pen.

After hearing the arguments of learned counsel for the respondents and on perusal of the record available on the file as well as status reports filed from time to time, it has transpired that the irregularities were there in awarding the marks as in some of the cases, marks have been awarded to the candidates for the qualification which they were not even possessing. The measurement of the height has been done in such a manner and more marks have been awarded for which they were not entitled on the basis of actual measurement of height and chest. Nothing has come in the report as to whether any lapse was there on the part of the petitioners or other candidates. The irregularities and manipulations have been committed by the members of the Selection Committee but nowhere it has come in the inquiry report that such irregularities were committed for some extraneous reasons or with ulterior motive. There is no allegation against the petitioners and other candidates that they have played any role in showing higher qualifications in the application form or supplied fake documents due to which more marks were awarded to them by the Members of the Selection Committee. The selection was to be made only on the basis of physical measurement and by considering the minimum educational qualifications. The record was with the respondents and there was no occasion with the petitioners or other candidates to temper with the marks or to show higher qualifications. How the marks were awarded for higher qualification when application forms were filled up by the candidates but those documents were not taken into consideration while awarding the marks by the Members of the Selection Committee. The inquiry report is baseless as no fact finding report has been submitted. Simply it has been

mentioned that certain irregularities had occurred and marks have been awarded wrongly. Even the efforts have not been made by the Members of the Committee to separate the list of candidates where manipulations were there and where manipulations were not there. It is not necessary that candidates were to be selected only on having the minimum qualifications but some reasonable criteria should have been adopted by the Selection Committee keeping in view the requirement of the job of Warders or to find out the best and suitable candidates. The action of the respondents in cancelling the whole selection process is not based on any reasoning. The petitioners have not only suffered for an irreparable loss but have also faced agony of waiting for years also. On completion of their selection process, simply a notice was published in the newspaper that the selection process has been cancelled due to administrative reasons.

Accordingly, I am of the considered view that the writ petitions bearing CWP Nos. 15409, 19535, 18789 of 2014, 16197, 17322, 16443, 19943, 20630, 20488, 25625, 26405, 7765, 16375, 853, 21591 of 2015, 1146, 9000, 10436, 12278, 1402, 14852, 15662, 19647, 19755, 17737, 17957, 19223, 19434, 21646, 22850, 23449, 23731, 23811, 23853, 23488, 25583, 25859, 26120, 26164, 26234 and 26235 of 2016 deserve to be allowed and impugned notice dated 5.6.2011 (Annexure P-3) vide which the selection process was cancelled is hereby quashed.

However, the respondents are directed to consider the claim of the petitioners and fulfil the requirement of physical test by adopting the criteria as per advertisement and prepare a fresh merit list. In case, they are found to be eligible by considering the criteria as mentioned in the advertisement and corrigendum, they be considered for appointment

against the vacancies which are lying vacant. The necessary exercise be done within a period of four months from the date of receipt of certified copy of the order.

17.12.2016
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes