
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.21339 of 2012

Date of decision: 27.1.2016

Bhupinder Singh and others

...Petitioners

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Gulshan Sharma, Advocate for the petitioners.

Mr. H.S.Sethi, Addl. Advocate General, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioners seek a writ in the nature of mandamus directing the respondents to allow them to join their duties as Constables in the Information Technology Wing in the Punjab Police. The relief is claimed on the ground that they have cleared all the written, physical and medical tests prescribed by the department.

The case of the petitioners is that 100 posts of Constables in Information Technology (Operators/Computer Operators in Punjab Police Information Technology and Telecommunication Wing) were advertised and applications were invited from 5.3.2011 to 4.4.2011 as per advertisement Annexure P/1. The petitioners sat in the written test, physical test and interview and they have cleared all the three stages for selection but are not being appointed.

In the written statement, the defence taken by the State was that 82 successful candidates from the merit list of provisionally selected candidates had reported for joining and they all were issued appointment on 25.11.2011. The petitioners were qualified in the waiting list (Annexure R/2) which was issued on 30.6.2011 and was valid for one year or till next

recruitment whichever was earlier. The petitioners have been placed at serial numbers 5,6,4,1,18 and 3 respectively. The letters for medical examination were only provisional and not a commitment in regard to the appointment or its context in future. It was accordingly pleaded that on account of Model Code of Conduct which came into operation from 24.12.2011 to 9.3.2012 due to the State Assembly election in the Punjab, the process could not be completed. The appointment letters could not be issued to the candidates selected in wait list in accordance with para No.7 (g) of the standing order 1/2011 (Annexure R/1) as well as para no.6(ii) of the advertisement as the wait list had expired after a period of one year. Therefore, the petitioners could not claim appointments as a matter of right.

From perusal of the above pleadings, one aspect would be clear that is only on account of imposition of the Model Code of Conduct, the petitioners have been denied the appointments. It is not denied that the vacancies had been filled up by the candidates and there were no vacancies on the basis of which wait list could not be operated. A coordinate Bench of this Court on 8.9.2014 in **Civil Writ Petition No.21195 of 2012-Amandeep Singh Vs. State of Punjab** has noticed that wait list was to remain alive upto 30.6.2012 and the Model Code of Conduct came to an end on 9.3.2012 the why the appointment letters were not issued to the petitioners within intervening three months i.e. till June, 2012 and directed the respondents to file a better affidavit. The order dated 8.9.2014 reads as under:-

“As many as 82 posts out of 100 advertised have been filled up but petitioners in CWP no. 21339 of 2012 are all candidates who are in the waiting list and were medically examined but before the appointment letters could be issued, the Model code of conduct was imposed which came in existence on 24.12.2011, and

continued upto 9.3.2012. The waiting list was declared alongwith the result on 30.6.2011 and according to the case of the respondents it has remained alive till 30.6.12 i.e upto the period of one year.

The solitary reason given for denying appointment to the petitioners is imposition of model code of conduct and extinguishing of waiting list in June, 2012.

It is not understandable if code of conduct came to an end on 9.3.2012 then why the appointment letters were not issued to the petitioners within intervening three months i.e. till June 2012. The Court would have ordinarily proceeded against person who has filed this affidavit and imposed exemplary costs for more than one reason. Apart from reasoning given and noticed above a prayer has been made that a better affidavit be permitted to be filed. The Court deprecates such a practice and construes it to be an obstruction in the course of justice. If an affidavit is filed in response to the petition it is always expected to be a complete reply in itself and the respondents cannot be permitted to react atleast on facts once the proceedings are being heard. It may be noticed that such a prayer has been made after the respondents were confronted with such uncomfortable question. Before the Court proceeds against respondents who have filed affidavit in this regard, an opportunity is granted to the learned counsel for the respondents to seek clarificatory instructions.

List again on 16.10.2014.”

In spite of the said order having been passed more than a year back, the State has taken no further step to comply with the said order and to explain as to why the appointments were not issued in spite of the fact that the wait list remained alive for three months after the Model Code of Conduct came to an end.

In the connected writ petition bearing CWP No.21195 of 2012, the candidate who was within the list of selected candidate was denied the relief of appointment letter on the ground of some discrepancy in his medical certificate. The State itself in its written statement has admitted in

paragraph no. 6 that provisional appointment letter was issued to the said candidate on 29.10.2013 (Annexure R/3) after the expiry of the wait list also.

Accordingly, this Court is of the opinion that the petitioners are entitled for appointments as Constables keeping in view the fact that the advertised posts have not been filled up due to inaction on the part of the State. Reliance can be placed upon the judgment of a three Judge Bench of the Apex Court in **Shankarsan Dash Vs. Union of India 1991(2) SCR 567** wherein similar direction was issued that until it can be shown that there was a valid reason for not filling up the vacancies, candidates could not be discriminated against. The relevant para reads as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in **State of Haryana v. Subhash Chander Marwaha, (1974)1 SCR 165, Miss Neelima Shangla v. State of Haryana, (1986)4 SCC 268, or Jitendra Kumar and others v. State of Punjab and others, (1985)1 SCR 899.**”

Accordingly, the present writ petition is allowed. Respondent

no.3 is directed to consider the case of the for appointment letters as Constables in the Information Technology Wing within a period of two months from the date of receipt of a certified copy of this order.

January 27, 2016
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(G.S.SANDHAWALIA)
Judge