

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 21303 of 2013

Date of Decision : April 08, 2016

Vinod Kumar and another Petitioners

vs.

State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Namit Kumar, Advocate
for the petitioners.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioners seeks quashing of advertisement dated 01.08.2012 (Annexure P-5) to the extent of it making physically handicapped persons ineligible. A direction is also sought to be issued to the respondents to appoint the petitioners as Jail Warders or any other equivalent post.

After hearing learned counsel for the parties and perusal of the record with their assistance, the relevant facts, which have emerged are that through an advertisement issued in the year 1995, 703 posts of Constables were advertised, in pursuance to which, the petitioners, amongst others,

applied for consideration of their candidature. After the selection process, 1600 persons including the petitioners were appointed. However, on a challenge made to the entire selection through **C. W. P. No. 13942 of 1995**, through an order of this Court dated 16.02.1996, the same was set aside. The aforesaid order of this Court was challenged through a Special Leave Petition (SLP) before the Apex Court, which was dismissed through order dated 17.01.2001 and as a result thereof, the services of all the 1600 appointees including the petitioners were terminated.

The Constables, whose services had been terminated then represented to the Government for being adjusted/accommodated against any other post and apparently, on their representation, the Government made amendments to the Punjab Jails Department State Service (Class-III Executive) Rules, 1963 (hereinafter referred to as – the Rules) making them eligible to be appointed as Jail Warders. As per the amended eligibility, the impugned advertisement was issued, through which, applications were invited for appointment of Jail Warders. It is the common case of the parties that in the selection held, in pursuance to the impugned advertisement, many of the terminated Constables were appointed, but so far as the petitioners are concerned, since prior to the issuance of the impugned advertisement, they had incurred 82% and 100% disability and the impugned advertisement debarred physically handicapped persons from being considered, they were not considered for appointment. It is in these circumstances that the petitioners have filed the present petition for the reliefs, as referred to earlier.

Learned counsel for the petitioners submitted that many of the other Constables, whose services had been terminated along with the petitioners, had been adjusted through the impugned advertisement after amendment to the Rules, which was tailor-made for them and only for the reason that in the meanwhile, the petitioners had incurred physical disability, they cannot be discriminated. It was further submitted that if the petitioners could not be appointed on the posts of Jail Warders, they should be accommodated on some other posts. Learned counsel further cited the examples of other persons, who, even with certain physical disabilities, had been appointed through the impugned advertisement and thus, prayed for parity.

The aforesaid submissions made by the learned counsel for the petitioners cannot be accepted. The petitioners had earlier been selected as Constables but their selections, having been found to be illegal, were ordered to be set aside by a Division Bench of this Court, which order was also upheld by the Apex Court. In pursuance thereto, the services of the petitioners were dispensed with as their appointments, which were result of a tainted selection process, were void ab initio.

Since the services of the petitioners had been terminated after the same had been held to be illegal by this Court as also the Apex Court, on such termination of their services, they had no right in law or otherwise to claim adjustment against any other post under the Government. Nonetheless, it is borne out from the record that on representation made by similarly situated Constables, whose services had also been terminated

along with the petitioners, the Government apparently taking a lenient and populist view, made certain amendments to the 1963 Rules, making the aforesaid category of persons eligible to apply for the post of Jail Warder. On the strength of the amendments made, an advertisement was issued. It is true that some of the candidates, whose services were terminated along with the petitioners and who had applied in pursuance to the aforesaid advertisement, after undergoing the selection process, were appointed as Jail Warders, but since the post in question was of Jail Warder, the advertisement clearly barred applications by physically handicapped persons. Since the petitioners, in the meanwhile, had incurred physical disability to the extent of 82% and 100% respectively, they could not apply for the post of Jail Warder. Considering that the post in question was of Jail Warder, who is required to maintain vigil within a jail, I find no illegality in the advertisement, which barred applications by physically handicapped persons. It is unfortunate that the petitioners had incurred physical disability before they could make applications in pursuance to the impugned advertisement, but such sympathy, which I may have for them, cannot be ordered to be translated into a right.

The prayer of the petitioners for being accommodated on any other post also cannot be accepted as they have no such right. As observed earlier, the services of the petitioners had been terminated on the basis of orders by this Court, which were also upheld by the Apex Court, wherein it was found that the selections, which formed the basis of appointment of the petitioners, were tainted. Thus, their appointments were void ab initio and

on the termination of their services in the circumstances as noticed above, they have no right to claim appointment, much less adjustment on any other post under the Government. It is true that the Government, taking a lenient and populist view, by way of amendment in the 1963 Rules, gave a chance to the terminated Constables like the petitioners to secure employment, but incidentally, even after the amendment in the eligibility clause of the 1963 Rules, the petitioners did not meet the required eligibility criteria.

The instances given by the petitioners of persons, who were physically disabled and had been appointed show that their disabilities were minor in nature, with which the respondents thought that they could be able to perform their functions as Jail Warders. In contra-distinction, the extent of disability of the petitioners is 82% and 100% and with such disabilities, it is virtually impossible for the petitioners to discharge their duties as Jail Warders. Thus, on this ground, the plea of discrimination would not be available to the petitioners.

In view of the above, finding no merit in this writ petition, the same is hereby ordered to be dismissed with no order as to costs.

(DEEPAK SIBAL)
JUDGE

April 08, 2016
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