

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

CWP No.8293 of 2016 (O&M)

Date of decision:24.08.2016

Bhoop Singh

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Aditya Yadav, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

CM No.10099 of 2016:

Application is allowed as prayed for. Documents at Annexures P-11 and P-12 (colly) are taken on record.

Application is disposed of.

Main case:

The instant petition has been filed assailing an order dated 26.02.2016 at Annexure P-9 passed by the Director General (Prisons), Haryana vide which claim of the petitioner to consider him for appointment against a vacant post of Jail Warder in the S.C. category has been declined.

Facts that emerge from pleadings on record are that an advertisement dated 01.08.2012 (Annexure P-1) was issued inviting applications for recruitment to the post of Jail Warders. Petitioner, who belongs to the S.C. category had submitted his application for the post in question. The selection process envisaged a physical measurement test at the very outset. Candidates who belong to the General Category were called upon to appear for the physical measurement test on 30.10.2012 and candidates from the reserved category were to appear on 31.10.2012 and

which was postponed on account of administrative reasons to 05.11.2012. Apparently, call letters were sent to all the candidates including the petitioner. Candidates, who remained absent from such physical measurement test were granted one more opportunity to appear on 09.11.2012.

The duly constituted Selection Committee finalized the process of recruitment on 11.04.2013 and in pursuance to which appointment letters were issued. Petitioner's name did not figure in the select list for the precise reason that he did not appear for physical measurement test on 05.11.2012 as also subsequently on 09.11.2012.

The entire case set out by learned counsel appearing for the petitioner is that the petitioner had met with an accident on 05.10.2012 and on account of which he remained hospitalized for a period of one month i.e. upto 04.11.2012 in a private hospital at Jaipur, State of Rajasthan. It is also contended that such information supported by the medical certificates were brought to the notice of the concerned authority immediately. It is argued that it was on account of circumstances which were beyond the control of the petitioner that he could not appear in the physical measurement test and as such, the petitioner is vested with a right in equity to be considered for appointment against one of the post that has remained vacant in relation to recruitment process initiated in the light of the advertisement dated 01.08.2012.

Having heard learned counsel for the petitioner at length, this Court is of the considered view that no intervention in the matter is called for.

Undoubtedly, the petitioner had earlier approached this Court

by filing CWP No.22294 of 2015 and which was disposed of on 04.11.2015 with a direction to the respondent/authorities to take a final view on the legal notice dated 25.07.2015 that had been served on behalf of the petitioner. It is in purported compliance of the directions issued by this Court that the impugned order dated 26.02.2016 at Annexure P-9 has been passed by the Director General (Prisons), Haryana.

Perusal of the impugned order would reveal that even prior in point of time, a speaking order dated 24.11.2015 had already been passed by the Deputy Inspector General, Haryana, Armed Police, Madhuban-cum-Member Recruitment Committee, Jail Warder, Haryana. Such order has also been appended and placed on record at Annexure P-10.

A conjoint reading of the orders at Annexures P-9 and P-10, whereby claim of the petitioner has been rejected would clearly reveal that call letters had been issued to the petitioner for appearing in the physical measurement test. Such factual position is not disputed by the counsel for the petitioner even during the course of hearing today. It may be unfortunate that the petitioner had suffered an accident and could not appear in the physical measurement test on 31.10.2012 as also on 05.11.2012, yet there is considerable delay on the part of the petitioner as regards having agitated his grievance and claim. After having brought to the notice of the concerned authorities as regards his accident suffered on 05.10.2012, duly supported by medical certificates, the petitioner chose to remain quite for a period of almost 2 ½ years. He thereafter woke up and got a justice demand notice served upon the respondent/authorities only on 25.07.2015 (Annexure P-7) and which was responded to by passing an order dated 24.11.2015 at Annexure P-10. The selection process already stood concluded in the month

of April, 2013. Such delay on the part of the petitioner would have to be construed as fatal to his claim.

It is further observed that merely because the petitioner had approached this Court by filing CWP No.22294 of 2015 and which had been disposed of on 04.11.2015 directing the respondent/authorities to take a final decision on the legal notice, the same does not mean that this Court had condoned the delay aspect.

Even if posts are lying vacant, it would be the prerogative of the employer to initiate a process of recruitment afresh strictly in accordance with law and by adopting a fair procedure and in which an eligible candidate would be given a chance to apply. As and when such a situation arises, the petitioner would also be afforded a chance for consideration provided he fulfills all the eligibility conditions.

No infirmity, as such, is found in the impugned order dated 26.02.2016 (Annexure P-9).

The writ petition is dismissed.

24.08.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | No |