

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.11224 of 2013 (O&M)

Reserved on: 20.09.2017

Date of decision: 04.10.2017

Naresh Kumar & others

....Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Pankaj Jain, Senior Advocate with
Ms. Seema Pasricha, Advocate for the petitioner
in CWP Nos.11224 and 20407 of 2013.

Mr. Pardeep Sehrawat, Advocate for
Mr. Vivek Goyal, Advocate for the petitioners
in CWP No.23442 of 2013.

Ms. Alka Chatrath, Advocate for the petitioners
in CWP Nos.23305 of 2013, 11633 of 2014 &
21285 of 2017.

Mr. S.S. Malik, Advocate for the petitioners
in CWP No.11348 of 2014.

Mr. Gaurav Mittal, Advocate for
Mr. Deepanshu Jain, Advocate for the petitioners
in CWP No.2170 of 2015.

Mr. J.P. Sharma, Advocate for the petitioner
in CWP No.16943 of 2016.

Mr. Ashwani Talwar, Advocate for the petitioner
in CWP No.27291 of 2013.

Ms. Bhagyashri, Advocate for
Mr. Naveen S. Bhardwaj, Advocate for the petitioners
in CWP No.17517 of 2017.

Mr. Vijay Kumar Sheoran, Advocate for the petitioners
in CWP Nos.6503 of 2016, 21076 and 21284 of 2017.

Mr. Balkar Singh, Advocate for the petitioners
in CWP Nos.10287 and 14499 of 2017.

Mr. Rajesh Dhankar, Advocate for the petitioners
in CWP Nos.20352 and 21242 of 2017.

Mr. Ashok Kumar Jindal, Advocate for
Mr. Anil Malik, Advocate for the petitioners

in CWP No.21095 of 2017.

Mr.Neeraj Kumar, Advocate, for the petitioners
in CWP-16401 & 17598-2015, 15512-2016, 20120 &
20917-2017.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. SANDHAWALIA, J.

The present judgment shall dispose of CWP Nos.11224, 20407, 27291, 23442, 23305 of 2013, CWP Nos.11348, 11633, 26111 of 2014, CWP Nos.16401, 2170, 17598 of 2015, CWP Nos.6503, 15512, 16943 of 2016 and CWP Nos.17517, 10287, 14499, 20120, 20352, 20917, 21076, 21095, 21242, 21284, 21285 of 2017. However, to dictate judgment, facts have been taken from CWP-11224-2013 titled *Naresh Kumar & others Vs. State of Haryana & others*.

Prayer in the present writ petition, filed under Article 226 of the Constitution of India, is for issuance of a writ in the nature of Mandamus, to permit the petitioners, who are 33 in number, to join services as Constables/Wireless Operators in Haryana Police/Haryana Armed Police, as allowed to other colleagues of the petitioners, in view of the orders passed on 21.11.2012 (Annexure P-41). The said order was passed, in pursuance to the directions issued on 15.02.2012, in CWP-11129-2006 titled *Satya Narayan & others Vs. State of Haryana*. Prayer is also made for quashing of the order issued on 06.07.2005 (Annexures P-5 to P-37) vide which the services of the petitioners have been dispensed with, without conducting an enquiry and without giving any proper opportunity of hearing.

The pivotal question, thus, as argued by counsels for the petitioners, revolves round whether the petitioners are identically situated as those petitioners in Sat Narain case (supra) and the earlier orders passed by the Division Bench in LPA-96-2009 titled ***Mohan Lal & others Vs. State of Haryana***, on 01.09.2009 (Annexure P-39). SLPs-28037-28044-2009 were filed by the State of Haryana against the said decision, which are still pending and initially, stay had been granted on 07.12.2009, which was vacated on 24.08.2011.

If the answer is found to be in the negative, the relief naturally cannot be granted to the petitioners and even otherwise, the petitions are barred by the principle of delay and laches, since their appointment orders which were rescinded in their case were passed in the year 2005, as noticed and the writ petitions came to be filed only in the year 2013 and thereafter.

The State, on the other hand, has relied upon the Division Bench judgment passed in CWP-248-2006 titled *Sanjay Kumar & others Vs. State of Haryana & others*, decided on 09.01.2006 (Annexure R-9) to submit that the case of the petitioners is covered by the said judgment which had also been upheld by the Apex Court on 12.05.2006 (Annexure R-10).

After hearing detailed arguments of counsels for the parties, this Court is of the opinion that the reliance upon the counsels for the petitioners, as narrated above, is unjustified and arguments raised are not liable to be accepted. The argument raised by the State Counsel is

CWP-11224-2013 and other connected cases

weighty and worth consideration and therefore, the present writ petitions are liable to be dismissed, for the reasons given below, for which, a brief reference of the background is necessary.

The case of the petitioners, themselves, is that in pursuance to the advertisement dated 06.02.2004 (Annexure P-1) wherein 1400 posts were advertised, which were to be filled up in the 2 Battalions of Haryana State Industrial Security Force (HSISF) by the concerned Selection Boards, at selection centres at the Districts at Ambala, Gurugram, Hisar and for Female Constables, with the S.P., Haryana. Similarly, vide advertisement dated 10.07.2004 (Annexure P-2), another 250 Male Constables along with 1863 Temporary Constables (Male & Female) were to be filled up through direct recruitment for the different battalions of the HSISF by the concerned Selection Boards at the district levels. The petitioners were applicants against the said posts and had been duly selected after physical tests and appointment letters had been issued for the interview for the post of Constables and Belt Numbers had been allotted to them. It is their case that they were appointed in the Haryana Police and had joined in different districts and the copy of the passbook of Ram Dutt, petitioner No.31 (Annexure P-4), has been appended in support, which would clearly show that the appointment is with the Commandant, First Battalion, HSISF Bhondsi, Gurugram. This can be further verified from the appointment order dated 23.12.2004 (Annexure R-5) whereby petitioner No.1 was appointed with the said force with the 5th Battalion of the HSISF, Panchkula. Relevant part of

which reads as under:

“To,

The Governor of Haryana.

In consideration of the Governor of Haryana having agreed to appoint me as a Constable, I...Naresh Kumar.....son-daughter of....Sh. Balbir Singh V.P.O. Ban, P.S.Ladwa, Distt. 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;

APPENDIX 'C'

CERTIFICATE OF APPOINTMENT

HARYANA STATE INDUSTRIAL SECURITY FORCE
Mr./Ms....Naresh.....on/daughter...of Sh. Balbir Singh...is hereby appointed as Constable in the Haryana State Industrial Security Force under Act 24-HLA of 2003 w.e.f.....21/12/04. AN. He/she is allotted constabulary No....5/397. HSISF...and is vested the powers, functions and privileges of Constable of Haryana State Industrial Security Force.

Sd/-

Commandant

5th Bn. HSISF, Panchkula

Attested

Sd/-

Commandant

4th Bn.HAP Madhuban”

The HSISF was disbanded on 29.06.2005 (Annexure R-1), by repealing the Haryana State Industrial Security Force Act, 2003, which had been initially created by the proposal dated 04.01.2004 (Annexure R-2). By virtue of the disbandment and the Act being

repealed, appointments issued in favour of the petitioners dated 21.12.2004 were rescinded by the designated officer for the 5th Battalion of the HSISF (Annexure P-5). The order was to be non-stigmatic and the petitioners were free to appear for any future selection, as per their qualifications and eligibility. The same was challenged by similarly situated Constables before this Court and a direction was issued that a speaking order be passed. Resultantly, order dated 27.09.2005 came to be passed wherein it was noticed that the 2003 Act was never in force by the State Government and therefore, actions taken to constitute the HSISF were not justifiable, since the recruitment was made without framing any rules and no authorization had been given to the then DGP, to constitute Selection Boards, for making appointments. The sanction granted was conditional, which was not adhered to and accordingly, the posts had been illegally raised in spite of the fact that the Model Code of Conduct had come into force w.e.f. 17.12.2004. A loss of Rs.19,01,56,876/- had been incurred by the State Exchequer and Commission of Enquiry had been appointed under the Commission of Enquiry Act, 1992.

The decision dated 27.09.2005, thus, came to be challenged before the Division Bench in **Sanjay Kumar's case** (supra), which writ petition was dismissed on 09.01.2006 by holding that there was no requirement and need, as such, of the employment which had been gained by the similarly situated candidates and therefore, they had no such right to challenge the repealing of the Act. As noticed, the said

order has been upheld by the Apex Court wayback on 12.05.2006. The Commission which was appointed also gave an adverse opinion regarding the creation of the HSISF by framing the following terms of reference:

“(i) Whether the legislature was misled on the issue of demand and necessity for the creation Haryana State Industrial Security Force.

(ii) What circumstances prevailed upon the Government to hurriedly go through the recruitment of Haryana State Industrial Security Force even without notifying the commencement of the Haryana State Industrial Security Force Act, 2003.

(iii) Whether any financial loss has been caused to that State Exchequer due to acts of omission and commission. If so, the persons responsible for the same.

(iv) Whether any extraneous factors have played role in the selection/recruitment of the candidates of Haryana State Industrial Security Force, if so, persons responsible for the same.”

While deciding the terms of reference issue No. (i), it was held that there was no occasion to cause the legislature to have a false impression or belief and there was no misleading, as such, on the issue of demand and necessity for the creation of the posts. However, on issue No. (ii), it was held that it was a clear example of hurry by which the process had been gone through and therefore, on the absence of any demand and the mandatory requirements of the Act being not satisfied the party in power had gone in for the recruitment process as a pre-poll sop. Similarly, under issue No. (iii), three persons were held responsible for the financial loss caused to the State Exchequer due to

CWP-11224-2013 and other connected cases

the omissions and commissions, who were identified as the then Chief Minister, Shri Om Parkash Chautala, Shri Sampat Singh, the then Finance Minister and Shri M.S.Malik, the then Director General of Police. Regarding issue No. (iv), it was held that there was no extraneous factor, as such, for playing any role in the recruitment of the HSISF. The issue was long settled qua the petitioners once the SLP, as such, had been dismissed against the Division Bench judgment and the petitioners had chosen not to raise the issue.

However, vide advertisement dated 07.08.2004, 80 posts of Sub-Inspectors (Male & Female), for Haryana Police including Indian Reserve Battalions and HSISF were sought to be recruited, as per the requisition dated 04.08.2004. The process was carried out through the Haryana Services Selection Commission. The procedure was, accordingly, followed and appointment letters were issued and the appointments of the said candidates were rescinded, on account of the disbandment of the Force. The matter was challenged before the Learned Single Judge, wherein, only 7 writ petitioners were held entitled for reinstatement, on account of the fact that they had resigned from regular Government service, for applying for the jobs. In appeal, the Division Bench in **Mohan Lal's case** (supra) distinguished the appointments made by holding that the appellants were never appointed with the posts with the disbanded HSISF but were appointed to the Police Force and the posts had been duly advertised and appointments had been made as Sub-Inspectors in the Police. Therefore, the appeals

were allowed by taking note that the appellants were being reinstated without financial benefits but were given continuity of service. The judgment in **Sanjay Kumar's case** (supra) was, accordingly, distinguished. The operative part of the finding, as such, of the Division Bench, reads as under:

“16. Coming now to the judgments relied upon by learned counsel for the State, we hold that no doubt it was a matter of administrative policy to create or abolish posts, the said judgments are not applicable to the present case. Even if HSISF was disbanded, the appointment and selection of the appellants was not for the said posts. We are not concerned with the validity of decision of the authority regarding the said posts but to the termination of the appellants who were never appointed to the said posts but to the police force. As regards judgments dealing with the question of there being no right to posts which were not advertised, the posts in question were duly advertised and appointment of the appellants was against the advertised posts. The judgments are, thus, distinguishable.”

As noticed, it is not the case of the petitioners that they were appointed under the said advertisement dated 07.08.2004, which was through the Haryana Staff Selection Commission and therefore, they cannot seek any such parity with the said judgment.

The said judgment was, thereafter, followed in another set of advertisement in the case of **Satya Narayan** (supra) on 15.02.2012 (Annexure P-40), which pertains to the selection made of the Constables/Wireless Operators (Male & Female) vide advertisement dated 25.07.2004, which was for 84 posts of temporary Constables/

Wireless Operators, as per the details given in the Telecommunication Wing of Haryana Police. The recruitment process for the said advertisement was to start on 09.08.2004 at Police Lines, Panchkula and the application forms were to be submitted by the personnel's who were seeking appointment and had been selected. Their services were dispensed with, on the ground that the HSISF had been repealed. The same was challenged and the writ petitions, which were allowed on the same reasoning that the advertisement was not for HSISF and the issue was covered by the judgment rendered in **Mohan Lal's case** (supra). While enforcing the said orders, order dated 21.11.2012 (Annexure P-41) came to be passed wherein Constables who were recruited as Wireless Operators were asked to complete formalities for joining in the Telecommunication Wing of the Police Department. On this order, a fresh round of litigation has been started by the erstwhile members of the HSISF, whereby alleged fresh cause of action has been raised by them.

In view of the State Litigation Policy, two more persons, namely, Rajesh Kumar and Dimple were amongst 15 other non-petitioners who were also taken back on the same basis, on 20.12.2012. On account of their being taken back, CWP-23305-2013 titled *Raj Pal & others Vs. State of Haryana & others*, CWP-20402-2013 titled *Gian Singh and others Vs. State of Haryana & others*, came to be filed, seeking similar relief. Resultantly, a fact finding enquiry was ordered that the 2 persons had never been selected as Wireless Operators and

were wrongly included in the list. Rather, they were selected candidates of General Duty from District Panipat and Yamunanagar and they had concealed this fact and accordingly, the order dated 20.12.2012, taking them back in service, was withdrawn by the Superintendent of Police (Telecommunication) on 30.04.2014 (Annexure R-11). Similarly, appointment order of Smt. Dimple was also withdrawn vide order of even date, as it was found that she was also recruited by the Police Recruitment Board at Panipat and not at Panchkula. The said persons challenged the above orders dated 30.04.2014 by filing CWP-8824-2014, alleging that they were recruited in pursuance of the advertisement dated 25.07.2004. It was, accordingly, noticed that the said persons had not been appointed as Wireless Operators in the year 2004 with the HSISF, but were appointed as General Duty and their cases were not similar to **Satya Narayan's and Rohtash's cases** (supra) as they had been recruited against the vacancies in Panipat and Yamunanagar in General Duty and rather they had concealed these facts. Resultantly, the order of their dismissal from service, was upheld. The review was also dismissed on 16.03.2016.

Thus, it is apparent that the earlier litigation in **Mohan Lal's case** (supra) pertain to the advertisement dated 07.08.2004 which pertain to the posts of Sub-Inspectors and the process was through the Staff Selection Commission. Similarly, the second judgment was pertaining to the advertisement dated 25.07.2004, which pertained to Wireless Operators. In the present case, the advertisement are for

different posts dated 06.02.2004 and 10.07.2004, which were to be done by the recruitment centres set up by the DGP at the District level and therefore, there is no such similarity of the post of which the petitioners can claim parity in the case of **Satya Narayan** (supra). The disbandment dated 29.06.2005 of the Force is also not under challenge, on the basis of which the appointment letters were rescinded and the said disbandment has already been upheld by the Division Bench and by the Apex Court on 09.01.2006 and 12.05.2006, respectively, as noticed above.

It has also been rightly pointed out by the counsel for the State that similar writ petitions were also filed at a belated stage in the year 2002, bearing CWP-22455-2012 titled *Rajesh Vs. State of Haryana & others* and CWP-25957-2012 titled *Krishan Kumar & others Vs. State of Haryana & others*, which were dismissed on 04.11.2004 (Annexure R-9) and 16.01.2015 (Annexure R-10), respectively (attached with the file of CWP-17598-2015). In the said case also, the delay had been sought to be overcome by challenging the order of rescinding passed in the year 2006, on account of a decision of the legal notice, which was passed in September, 2012 and reliance had also been placed upon the judgment in **Satya Narayan's case** (supra). Resultantly, while placing reliance upon the judgment of the Apex Court in *State of Uttranchal & another Vs. Sri Shiv Charan Singh Bhandari & others 2013 (6) SLR 629* and *Bharat Sanchar Nigam Ltd. Vs. Ghanshyam Dass & others (2011) 4 SCC 374*, the writ petitions

CWP-11224-2013 and other connected cases

were dismissed on the ground of delay and laches. The said principle would also apply to the present petitioners also. The cause of action from 21.11.2012, thus, cannot be helpful to the petitioners, in any case, since those persons were differently situated and not part of the same recruitment process as the petitioners.

The argument raised that persons who are part of the disbanded Force are being given preference for the posts of SPOs vide advertisement dated 21.11.2012, does not cut much ice with this Court, since the State is giving some preference to the erstwhile members of the disbanded Force who never questioned the disbandment. They cannot, now, at this stage, raise challenge to the disbandment process which has already been upheld by the Division Bench till the Apex Court, after a period of almost a decade.

Accordingly, finding no merit in the present writ petitions, the same are, hereby, dismissed.

04.10.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes