

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

CWP No. 23900 of 2012 (O&M)
Date of decision : March 10, 2017

Karambir and others,

..... Petitioners

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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

Ms. Shruti Jain Goyal, AAG Haryana

Mr. Rajesh Lamba, Advocate
for respondent No.39.

Mr. Sanjeev Kodan, Advocate
for respondent No.210.

Ajay Tewari, J (Oral)

The petitioners have challenged the selection of private respondents as Constables.

Brief facts are that in response to the advertisement dated 8.8.2008 for filling up 5456 posts of Constables, the petitioners applied for the posts meant for Rewari Centre. It has been averred that the petitioners were given less marks in the Physical Efficiency Test/interview, though they fulfilled all the requirements, and ineligible candidates were selected. They have levelled allegations of mala fide against the member/s of the selection committee.

Counsel for the petitioners has argued that 47 candidates had been declared failed in the physical efficiency test but they were again called for the same. As per him, there is no power to do so under the rules. From the record, it is clear that these 47 candidates had filed an appeal to the higher authority stating that they had been wrongly failed in the physical efficiency test and on a consideration of that appeal, the IG, South Range, had granted them one more opportunity to participate in the said test. On the second occasion, they passed the test. Moreover, the advertisement, Annexure P-2 itself stipulated that those candidates who were dis-satisfied with the decision of the selection committee regarding physical measurements and physical efficiency test could file an appeal within three days.

Counsel for the petitioners has further argued that this provision in the advertisement, Annexure P-2, is de hors the rules. In the first place, this condition is a salutary condition because it is common knowledge that many times allegations are made that the selection committee has wrongly measured the height, chest etc. and has wrongly failed the deserving candidates and that is why the provision of the appeal was provided and was applicable to all the persons and it cannot be held to be illegal. Moreover, it would have been a different matter if the petitioners had challenged this stipulation before applying for the job but now after having applied for the job and having undertaken the selection process, it would not lie in their mouth to now challenge this provision.

In my opinion, the fact that the provision of appeal which was provided was not prescribed in the rules would not by itself make it illegal. It is trite to say that rules can never be truly comprehensive and any gap can

be provided for by executive instructions subject to the condition that the same are not illegal. In the circumstances of the case, no fault can be found with the action of the respondents in providing for the provision of appeal.

Counsel for the petitioners has next argued that the petitioners were given unreasonably low marks in the interview. In my opinion, this bald assertion cannot be acted upon without there being any material on record. Consequently, finding on merit in this writ petition the same is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

March 10, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No