

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

**CWP No.14390 of 2017
Date of decision: 10.08.2017**

Jagsir Singh and others

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate
for the petitioners.

Ms. Anu Chatrath Kapur, Addl. A.G., Punjab and
Mr. H.S. Sethi, Addl. A.G., Punjab
for the respondents.

Daya Chaudhary, J.

Petitioners have approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of public notice dated 04.06.2017 (Annexure P-8) as well as the provisional merit list (Annexure P-9), vide which, the respondents have called upon candidates for interview for selection to the post of warders and matrons without considering the candidature of the petitioners, which is contrary to ratio of judgment dated 17.12.2016 passed by this Court in CWP No.15409 of 2014 titled as 'Lachhman Singh and others vs. State of Punjab and others' and other connected matters. A further prayer has also been made for direction to the respondents to prepare a fresh merit list strictly in compliance of

directions issued by this Court in the aforesaid judgment.

Briefly, the facts of the case as made out in the present writ petition are that the Punjab Prison Department issued an advertisement dated 12.10.2011, vide which, applications were invited for recruitment to various posts including 527 posts of warders. As per terms and conditions of the advertisement, the requisite educational qualifications for applying to said posts were that the candidates must have passed 8th class with Punjabi as one of the subject and preference was to be given to the candidates having higher qualifications. The minimum height required was 5' 6" and the minimum size of chest required was 32". The age limit was prescribed between 18-37 years. The selection was to be made on the basis of merit of physical test and written test for the post of warders. Thereafter, a corrigendum was issued stating that for the post of Warders, Matrons and Car/Jeep Riders, the recruitment process would not include written test and the pattern as followed by the Police Department for recruitment to the post of Constables was adopted. Meaning thereby, the criteria of selection was changed and the recruitment was to be done only on the basis of educational requirement and physical measurement. The selection was cancelled as certain irregularities were noticed during selection process. It was also mentioned in the cancellation order that there was a proposal for amendment of the Rules. Notice cancelling selection process was challenged by way of filing CWP No.15409 of 2014 and other connected cases before this Court, which were allowed vide order dated 17.12.2016 and cancellation order published in the newspaper was set-aside. A

direction was also issued to the respondents to consider the claim of the petitioners if they fulfilled the requirement of physical test by adopting the criteria as mentioned in the advertisement and prepare a fresh merit list. It was also mentioned that in case, the petitioners were found to be eligible as per criteria as mentioned in the advertisement and corrigendum, they be considered for appointment against the vacancies, which were lying vacant.

Pursuant to said judgment, the respondent-department issued call letters to all the candidates, who applied in pursuance of advertisement dated 12.10.2011. Thereafter, some of the candidates filed COCP No.1081 of 2017 on the ground that the respondents were directed only to consider the claim of the petitioners, who filed the writ petitions but all the candidates have been called for interview. Notice in the contempt petition was issued and the same is still pending. Against said judgment dated 17.12.2016, no appeal was filed and as such, the same had attained finality.

Learned senior counsel appearing for the petitioners submits that the action of the respondent-State in calling all the candidates to participate in selection process is in complete violation of directions issued in judgment dated 17.12.2016. Learned counsel further submits that the directions issued in the judgment bearing CWP No.15409 of 2014 were applicable to the case of the petitioners only. Learned counsel also submits that the provisional merit list and the subsequent notice dated 04.06.2017 are in violation of advertisement/standing orders as well as judgment dated 17.12.2016 which was interpreted wrongly. The public notice has been issued in general whereas the claim of the petitioners was required to be

considered only. Learned senior counsel for the petitioners has also relied upon judgments rendered by Hon'ble the Apex Court in *State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.*, 2015 (1) SCC 347, *The Divisional Controller, K.S.R.T.C. vs. Mahadeva Shetty*, 2003(7) SCC 197, *Amarendra Komalam & Anr. vs. Usha Sinha & Anr.*, 2005 (11) SCC 251, *State of Haryana vs. Ranbir alias Rana*, 2006(5) SCC 167 as well as judgment rendered by the Meghalaya High Court in *Giashuddin Ahmed and Ors. vs. State of Meghalaya and Ors.*, 2015(13) SCT 35 in support of his contentions.

Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioners and submits that from the relief sought by the petitioners, it shows that the main prayer in the petition is only for quashing of public notice informing the cancellation of the recruitment process and for issuance of directions for completion of the recruitment process. Petitioners never made any prayer for getting themselves appointed. It has wrongly been mentioned in the writ petition that judgment dated 17.12.2016 is a judgment in personam and is not in rem. Learned State counsel further submits that the process of recruitment for the posts of Warders and Matrons has already been initiated as per judgment of this Court by preparation of fresh merit list. Sub-committees were constituted for this purpose, which were headed by concerned SSPs and including the concerned Superintendent Jail, District Sports Officer, District Welfare Officer and District Sainik Welfare Officer, for undertaking the work of rechecking of physical measurements and educational

qualifications of candidates, who have cleared the physical efficiency test in compliance of judgment dated 17.12.2016. In all the districts, the work of re-measurement and checking of education qualifications of the applicants, who had originally cleared the Physical Efficiency Test in 2011 has been completed. Total 1817 male candidates and 95 female candidates were found provisionally eligible for interviews. Thereafter, process of interview has been initiated since 12.06.2017. Learned State counsel has also relied upon judgments rendered by Hon'ble the Apex Court in ***Priya B.M. vs. Kerala Public Service Commission and Ors., 2017 (2) SCT 704, Dr. (Mrs. Santosh Kumari vs. Union of India, 1995(1) SCT 527, State of Uttar Pradesh and others vs. Ashok Kumar Nigam, (2013) 3 Supreme Court Cases 372, Director of Settlements, A.P. and others vs. M.R. Apparao and another, AIR 2002 Supreme Court 1598, Supreme Court Monitoring Committee vs. Mussoorie Dehradun Dev. Aty. and others, AIR 2002 Supreme Court 2876 and Kailash Chand Sharma etc. etc. vs. State of Rajasthan and others, AIR 2002 Supreme Court 2877*** in support of her contentions.

Heard arguments of learned counsel for the parties and have also perused the impugned order/notice as well as other documents available on the file.

Facts relating to issuance of advertisement, terms and conditions of the advertisement, cancellation of selection process, filing of writ petition and judgment dated 17.12.2016 passed by this Court in CWP No.15409 of 2014 and other connected matters are not disputed.

The only grievance of the petitioners in the present writ

petition is that judgment dated 17.12.2016 is qua to them only and not qua all candidates. Petitioners, who have approached this Court by way of filing CWP No.15409 of 2014 and other connected writ petitions, are only entitled to be considered and not other candidates.

As per stand of respondent-State, the selection process was cancelled as certain irregularities were found during selection process. A direction was issued to consider the claim of the petitioners in case, they fulfilled the requirement of physical test by considering the criteria as mentioned in the advertisement and corrigendum. There was no direction to consider the petitioners only but to consider all the eligible candidates in view of terms and conditions of the advertisement and corrigendum issued by the respondent-State.

It appears that both the parties are interpreting judgment dated 17.12.2016 in their own manner. CWP No.15409 and other connected matters were filed by some of the candidates with the grievance that the whole process of selection has been cancelled on the ground of irregularities and many of the candidates were going to be over aged and some of them have already become overage. There were no specific allegations against the petitioners. Simply by mentioning that in an inquiry, certain irregularities were noticed, it was decided to cancel the whole process of selection.

The irregularities were noticed by the Court also in the original record during hearing of the case. It was found that marks were granted to some of the candidates, who were matric or 10+2 only but they were shown to be possessing higher qualification. The record was with respondent

authorities but how this manipulations were done, was not inquired. By considering these facts, it was found that the action of the respondents in cancelling the whole selection process was not based on any reasoning. The candidates had not only suffered irreparable loss but had waited for years together. On completion of selection process, a notice was published in the newspaper stating that the selection process had been cancelled but nothing was mentioned in the cancellation notice that the manipulation was there on the part of the petitioners/candidates. By considering those factors, the writ petitions were allowed and impugned notice of cancellation of selection dated 05.06.2011 was quashed. The respondents were directed to reconsider the claim of the petitioners and other candidates, if they fulfilled the requirements of physical test as per criteria mentioned in the advertisement and corrigendum. The respondents were also directed to prepare a fresh merit list after rechecking the documents of all candidates.

This was not the spirit of judgment dated 17.12.2016 that only the claim of the petitioners was to be considered. The fresh merit list was required to be prepared by considering the criteria mentioned in the advertisement and corrigendum and for that fresh exercise was to be done.

The judgments relied upon by learned counsel for the petitioners are not applicable in the present case as in **Arvind Kumar Srivastava's case (supra)**. In said case, the order of cancellation of appointment was challenged after nine years. The issue was to extend the benefit of judgment to other similarly situated persons, who did not approach the Court well in time. Undisputedly, the issue was that some of

the candidates, who did not approach the Court earlier but finding others successful, have approached the Court for the same relief, could not be held entitled and it is not applicable to the present case.

In the present case, the whole of the selection process has been cancelled and the direction has been issued to prepare fresh merit list as per terms and conditions of the advertisement and corrigendum. In case the petitioners are found to be entitled as per criteria, they be considered. It is also clarified that in case, the petitioners are in zone of consideration by considering their respective educational qualifications and physical test, they have a right to be considered but in case, they do not reach to the stage, they cannot claim their selection as a matter of right. To clarify the ambiguity which has arisen between the parties or other candidates, the merit list of all the candidates mentioning their marks in the physical test, educational qualifications and interview be displayed/published so that the candidates are well aware about their respective merit prepared by the respondents.

The writ petition is disposed of accordingly.

10.08.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No