

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15098 of 2017

Date of Decision: November 16, 2017

Ravi Kant

...Petitioner

Versus

State of Haryana and others

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Atul Yadav, Advocate, for the petitioner.
Mr. R.K. Doon, AAG, Haryana.

Amol Rattan Singh, J. (Oral)

Learned counsel for the respondent-State submits that in terms of the directions given by this Court vide its order dated 03.08.2017, the Haryana Staff Selection Commission has recommended the case of the petitioner for appointment as a Constable, to the Director General of Police, Haryana, vide its letter dated 09.11.2017, a copy of which has been produced in Court by the learned State counsel.

He further submits that vide a communication from the office of the Director General of Police, Haryana, to the office of the Inspector General, Haryana Armed Police, Madhuban, dated 13.11.2017, a copy of which has also been produced in Court, a direction has been issued that the petitioner be allotted a constabulary number, subject to the final outcome of the present writ petition, i.e. CWP no.15098 of 2017, subject further, naturally, to his medical examination, verification of character and antecedents etc., in terms of the statutory rules.

Mr. Doon, learned State counsel, further submits that as a

matter of fact, the aforesaid communication has been issued not because the State is conceding the petition but only in terms of the aforesaid order of this Court dated 03.08.2017.

That order is reproduced hereinunder:-

“Pursuant to the notice issued on 26.7.2017, learned State counsel, in fact, reiterates what was contended by learned counsel for the petitioner on the last date of hearing, to the effect that the petitioner applied for the post of a Constable as a candidate under the Backward Classes (Block 'B') category, because of a certificate to that effect issued by the Tehsildar, Rewari, a copy of which is annexed as Annexure P-5.

It is further submitted that now the Tehsildar has corrected the mistake and has issued a certificate, Annexure P-9, showing that the petitioner, who is of the 'Kumhar' caste, would fall within Block 'A' of the Backward Classes category.

The contention of learned counsel for the respondents to the effect that because the petitioner had applied in a wrong category, he could not be considered under the Backward Class (Block 'A') category, is rejected because when the authority of the respondent State itself, i.e. respondent no.4 herein (Tehsildar, Rewari), issued a certificate under a wrong category to the petitioner, he (the petitioner) cannot be faulted for the same.

The marks obtained by the petitioner in the selection process have been produced in Court today by learned State counsel in a sealed cover, which has been opened, showing that the petitioners' candidature against sr.no.12887 of the list, has been rejected but with detailed marks obtained by him given as follows:-

Sr. No.	Roll No.	Candidate name Father name	Category DOB	PST Marks	Written Marks	PMT Marks	Higher Qualification	NCC	Interview Marks	G. Total mark 100
12887	100148 8450	Ravi Kant Umrav Singh	BCB 14/04/19 90	10	39.45	10	0	0	2	Reject ed

The total of the aforesaid marks therefore comes to 61.45.

Learned State counsel, on instructions, has submitted that the last candidate selected in the Backward Class (Block 'A') category, has

obtained 58.20 marks.

Obviously, the petitioner would come within the list of selected candidates and the respondents are therefore directed to immediately issue appointment orders to him, but at this stage the last selected candidate already having been appointed and stated to be undergoing the recruits training course, (as confirmed by the learned State counsel again on instructions), shall not be removed from such service, till the next date of hearing at least. The said candidate is stated to be Jitender son of Satnarayan, (Roll no.1001441472, r/o # 141, Mandir Colony, Dhand, Tehsil Pundri, District Kaithal), who is ordered to be impleaded as respondent no.5 in the present petition.

Notice be issued to the newly added respondent, with such notice to be served upon him through respondent no.2, i.e. the office of the Director General of Police, Haryana, (the said respondent no.5 being now a regularly recruited police Constable undergoing the recruits training course at Madhuban).

The notice to be issued, shall be returnable on 10.11.2017.

A gazetted officer from the concerned wing/department in the office of the Director General of Police, would file an affidavit, obviously based on the records, as to the number of vacancies existing in the cadre of Constables in the State, within Block 'A' of the Backward Classes category.

The selection record be resealed and returned to learned State counsel.

A copy of this order be given to learned State counsel, under the signatures of the Special Secretary of this Court.”

Thus, as already recorded in the order of 03.08.2017, upon the result of the selection qua the petitioner having been produced in Court on that date, in a sealed cover, by the learned State counsel, it was seen that the petitioner has secured 61.45 marks, with the last selected candidate in the BC-A category having obtained 58.20 marks.

Very obviously, it was not the fault of the petitioner that despite belonging to the 'Kumhar' caste, which actually falls within Block 'A' of the Backward Classes category (and not Block 'B'), he was issued a certificate by the Tehsildar, that he belongs to Block 'B' in that category. In Block 'A' he has obtained marks well above the last selected candidate, and therefore would have a right to be selected and cannot be denied appointment simply because the Tehsildar/Magistrate concerned issued him a wrong certificate (Annexure P-5). The factum of the certificate being erroneous is not denied by the respondents.

Consequently, this petition is allowed and the respondents are directed to continue with the process of appointment of the petitioner, as a Constable, subject to, of course, verification of his certificates and antecedents etc., as per statutory rules.

Though respondent no.5, Jitender son of Satnarayan, resident of # 141, Mandir Colony, Dhand, Tehsil Pundir, District Kaithal, having been served through the respondent-State, has still chosen not to appear, however, since it is seen that in the affidavit of Sh. Hamid Akhtar, IPS, Superintendent of Police, PHQ, Haryana, Panchkula, dated 09.11.2017, it is stated that there are 700 posts of Male Constables (General Duty) still lying vacant in the BC-A category itself, I do not see any reason to oust respondent no.5, he having been duly given an appointment letter after selection, in June/July this year.

No doubt, the appointment of respondent no.5 after the

appointment of the petitioner would be on one post beyond those advertised, but as already stated herein above, it not being fault of the petitioner that he was not selected at the time when he should have been selected in the correct category, and it obviously not being the fault of respondent no.5 that he was issued an appointment letter about 4/5 months ago, in the opinion of this Court, it would be unfair to oust him from service at this stage.

Consequently, he would also be allowed to continue against one of the existing vacancies.

The petitioner would be placed in seniority as per his order of merit in the select list, and shall be treated to be in service from the date that his immediate junior was issued an appointment letter. Though he would not be entitled to actual arrears of salary, but all other benefits, including ACP scales, annual increments, pension etc., would flow to him treating him to have been in service since that date of appointment.

However, this order having been passed in the peculiar circumstances of this case, it shall not be considered as a precedent for the future, as regards filling up a vacancy beyond the number of advertised posts.

November 16, 2017
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(**Amol Rattan Singh**)
Judge

Whether speaking/reasoned: Yes
Whether reportable: Yes