

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 5394 of 2018 (O&M)
Date of decision:07.03.2018

Devender and others

.... Petitioners

Versus

State of Haryana and Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. R.K. Malik, Senior Advocate with
Ms. Rimple Sohi Kadyan, Advocate for the petitioners.

B.S. Walia, J.

[1] Challenge in this writ petition is to the validity of Rule 12.16 (10) (f) of the Punjab Police Rules, 1934 (hereinafter referred to as 'the Rules) to the extent it stipulates that unfilled vacancies on account of rejection of a candidate on medical grounds or character and antecedents verification or otherwise would be filled up in the next recruitment.

[2] Challenge is also to reply dated 22.08.2017 (Annexure P-7) in response to legal notice dated 03.08.2017 informing that merit position for the posts of Male Constables (General Duty) against Advertisement No.8/2015 under Category No.1 was decided as per the amended Punjab Service Rules and further that there would be no waiting list.

[3] Brief facts of the case leading to the filing of the writ petition are that petitioner Nos.1 to 3 and 5 applied for the post of Male Constables (General Duty) as advertised vide Advertisement No.8/2015 while petitioner No.4 applied under the Reserved Category. The said petitioners qualified the written test conducted by respondent No.3. Respondent No.3 vide notice dated 23.06.2017 published the final result of the selected candidates who secured marks upto 65.50 in General Category and 54.60 in Reserved Category. Petitioner Nos.1 to 3 and 5 also secured 65.50 marks in General Category while petitioner No.4 secured 54.60 marks in Reserved Category but they were not shown in the final merit list for want of vacancies, as the candidates of their respective category had already been given offer of appointment as per merit determined as per Rules. The petitioners on learning that some of the selected candidates who were offered appointment had not joined for one reason or the other; besides, about 15 selected candidates had been declared medically unfit, served pre-demand notices dated 03.08.2017 and 04.09.2017 (Annexures P-5 and P-6, respectively) requesting that they be offered appointment to the post of Male Constable (General Duty). In response thereto, respondent No.3 vide letter dated 22.08.2017 (Annexure P-7) informed the petitioners that there was no waiting list, therefore, they could not be given appointment. Petitioners have challenged the action of the respondents in not offering appointment to them despite selected candidates not having joined on the ground that being next in the merit list, they were entitled to get appointment as advertised vacancies were required to be filled up; besides, it was settled law that on account of non-joining of the selected candidates, the candidates next in merit were to be offered appointment.

[4] Earlier CWP No.21051 of 2017 was filed by the petitioners but fresh writ petition was allowed to be filed to challenge Rule 12.16 (10) (f) of the Rules. Rule 12.16 (10) (f) of the Rules (as applicable to the State of Haryana) is reproduced as under:-

“12.16 Procedure for direct recruitment, -

(10) **Result of Examination :-**

(a) to (e) xxx xxx

(f) The appointing authorities shall ensure medical fitness and verification of characters and antecedents before appointment. Vacancies advertised, if any, remaining unfilled because of rejection of candidates on medical grounds or character and antecedents verification or otherwise shall be considered in next recruitment.”

[5] Learned counsel for the petitioners contended that the Rules stipulating that unfilled vacancies on account of rejection of candidates on medical grounds or character and antecedents verification or otherwise would be filled up in the next recruitment was legally unsustainable for if all candidates who had been selected, refused to join or were declared medically unfit or their character and antecedents were not found in order then the stipulation providing for filling up the posts from the next recruitment by re-advertising the posts instead of filling up the posts from the candidates next in order of merit, was on the face of it arbitrary and unreasonable. Secondly, the Rule was discriminatory as in other Wings of the Police Department there was no such condition and as per instructions issued by the Government of Haryana if the candidates selected as per the original

list did not accept the offer then the posts were to be filled up from the waiting list.

[6] We have considered the submissions of learned counsel for the petitioners but for the reasons recorded hereunder are unable to agree with the same. Although it has been mentioned in the list of dates and events that posts of Male Constables (General Duty) against Advertisement No.8/2015 were advertised in the year 2015-17, yet the advertisement has not been attached. On query, it was informed that advertisement was of August 2015. A perusal of Rule 12.16 of the Rules reveals that the same was substituted by Haryana Government Notification No.S.O. 133/HA-25/2008/S.92/2015 dated 18.06.2015. Rule 12.16 (10) (e) and (f) of the Rules ibid are reproduced as under:-

“12.16 Procedure for direct recruitment, -

(10) Result of Examination:-

(a) to (d) xxx xxx

(e) The Haryana Staff Selection Commission shall recommend the names of successful candidates equal to the total number of vacancies requisitioned in each category, separately to the Director General of Police for enrolment. The list of candidates so recommended shall also be put on the official websites of Haryana Staff Selection Commission and Haryana Police. There shall be no waiting list.

(f) The appointing authorities shall ensure medical fitness and verification of characters and antecedents before appointment. Vacancies

advertised, if any, remaining unfilled because of rejection of candidates on medical grounds or character and antecedents verification or otherwise shall be considered in next recruitment.”

A perusal thereof shows that Rule 12.16 (10) (e) of the Rules provides that there shall be no waiting list while Rule 12.16 (10) (f) of the Rules provides that advertised vacancies remaining unfilled because of rejection of candidates on medical grounds or character and antecedent verification or otherwise would be considered in the next recruitment.

[7] Once the Rules applicable categorically provide that there would be no waiting list prepared in respect of the successful candidates and further that vacancies advertised, if any, remaining unfilled because of rejection of candidates on medical grounds or character and antecedent verification or otherwise would be filled up in next recruitment then it is not open to the petitioners to insist that vacancies remaining unfilled on account of unfitness of a candidate on medical ground or otherwise be filled up from the candidate next in order of merit.

[8] The aforementioned Rules have a sound basis, as the practice of filling up unfilled vacancies from candidates next in order of merit may result in depriving candidates who become eligible for competing for such vacancies in future and who could not appear in the examination earlier for one reason or the other. If the list of successful candidates in a particular examination is to operate as inexhaustible for appointments, the same may result in fresh examination not being conducted for years altogether and the list as prepared once being utilised to fill up the requirement as and when required. Relevant extract of the decision of Hon’ble the Supreme Court in

Surinder Singh v. State of Punjab, 1997 (8) SCC 488 is reproduced as under:-

“A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency, the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting

list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.”

[9] Even otherwise, once the advertisement specifically provided that no waiting list would be prepared and the Rules as applicable stipulate that no waiting list would be prepared and the vacancies remaining unfilled for medical reasons or any other ground would not be filled up from the same selection but from the next selection then no fault can be found with the action of the respondents. If the petitioners were aggrieved with the aforementioned Rules/relevant clause in the Advertisement to the above extent then the same ought to have been challenged by them prior to participation in the selection process. However, on the conditions being unpalatable to them on account of the petitioners not being offered appointment as per the aforesaid Rules/conditions in the Advertisement, it is not open to them to turn around and challenge the aforementioned Rules/conditions in the Advertisement. In **Union of India and others v. S. Vinodh Kumar and others, (2007) 8 SCC 100** it was held that it is well-settled law that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein would not be entitled to questioning the same subsequently. Likewise, in **K.H. Siraj v. High Court of Kerala and others, (2006) 6 SCC 395** it was held that candidates who participated in the interview with knowledge that for selection it was necessary to secure prescribed minimum marks, on being unsuccessful in the interview could not turn around and challenge the said provisions of minimum marks on the ground that the same was improper as they would be estopped from raising a challenge on the aforesaid ground. Besides, if the

merit, thereby compromising standards. Hence, the Rule has nexus with the object sought to be achieved i.e. merit.

[10] In view of the position as noted above, we find no ground to strike down the validity of the Rules or the action of the respondents in taking up the stand in Annexure P-7 rejecting the claim of the petitioners in view of the Rules applicable.

[11] Accordingly, finding no merit in the writ petition, the same is dismissed in limine.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

07.03.2018
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- 1. Whether speaking/reasoned : Yes/No.
- 2. Whether reportable : Yes/No.