

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

CM No.366 of 2019 in/and
CWP No.560 of 2007
Date of decision: 06.11.2019

Anand Parkash

.... Petitioner

Versus

State of Haryana and Ors.

.... Respondents

Before: Hon’ble Mr. Justice B.S. Walia.

Present : Mr. Manjeet Singh, Advocate for the applicant/petitioner.
 Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.

[1] Plea in the application is that the claim in the writ petition is covered by decision dated 10.09.2008 in CWP No.13445 of 2006 in case titled as Constable Dharambir vs State of Haryana. Accordingly, prayer is for decision in terms thereof. With the consent of learned counsel for the parties, the main case is taken up for hearing today itself.

[2] Prayer in the petition is for the issuance of a writ of Certiorari for quashing instructions, Annexure P/7 dated 13.10.2005 clarifying amendment to Rule 13.7 of the Punjab Police Rules, 1934 (Haryana Amendment Rules 2001) (hereinafter referred to as ‘the PPR’) as made vide Annexure P/2 dated 28.06.2001 as also order, Annexure P/4 dated 13.06.2006 issued pursuant thereto. Further prayer is for the issuance of a writ of Mandamus for directing respondent Nos.1 to 3 to consider the claim of the petitioner for inclusion of his name in List B-1 for Lower School

year 2003-2004 as per the provisions of Rule 13.7 of the PPR, Annexure P/2 dated 28.06.2001.

[3] Brief facts of the case are that the petitioner, whose date of birth is 05.05.1972 and who is a graduate, was selected and appointed as Constable in the Haryana Police on 06.11.1991 where after he qualified the Basic Training Course conducted from 24.08.1992 to 23.02.1993. Petitioner also successfully completed the Driving and Mechanic Course conducted from 15.09.1993 to 01.01.1994. In addition thereto, the petitioner was awarded 17 commendation certificates including three commendation certificates Class-II by the Deputy Inspector General of Police CID, Haryana all with cash rewards of Rs.200/- each, Annexure P/1 (colly.)

[4] Amendment to Rule 13.7 of the PPR, made vide Annexure P/2 dated 28.06.2001, stipulated criteria for admission of names of Constables in List B-1 for promotion to the post of Head Constable with 55% of the seats to be filled up on the basis of competitive examination, 35% of the seats to be filled up on the basis of seniority-cum-fitness by allocation of marks on the basis of length of service, educational qualifications, training courses passed and commendation certificates awarded while remaining 10% seats were to be filled up on the basis of outstanding performance in Sports and showing acts of exceptional bravery during the course of performance of duty. All Constables, below the age of 35 years having completed 5 years of service as on the 1st day of January of the year in which the selection was to be made were eligible to appear in the competitive examination for admission of their names in List B-1 while all Constables, irrespective of their educational qualifications were eligible for inclusion of their names in List B-1 on the basis of seniority-cum-merit if they were below the age of 40

years and had completed 5 years of service as on the 1st day of January of the year in which selection was to be made.

[5] Claim of the petitioner is that on account of date of birth 05.05.1972 and having been recruited as Constable in Haryana Police on 06.11.1991 and completed five years of service as such on 05.11.1991, he was eligible for inclusion of his name in List B-1 for the post available after 01.01.1997, consequentially, appeared in the competitive examination for inclusion of name in the list of Constables eligible for List B-1 in the year 2002 approximately at the age of 30 years but could not secure place in the merit list, therefore, his name was not included in List B-1 on the basis of the competitive examination. Plea of the petitioner is that he was entitled to be considered under Rule 13.7 (ii) of the PPR as he had completed five years of service and was below the age of 40 years on the 1st day of January in which the selection was being made but his claim was not considered on the pretext that quota of 55% and 35% were not mutually inclusive and as such he could not be considered under 35% quota in case he had appeared in competitive examination and failed under 55% quota.

[6] That it is further claimed by the petitioner that he appeared in the competitive examination in the years 2003 and 2004 but could not qualify in the same under the 55% quota, therefore his name was not considered for inclusion of his name in List B-1 on said basis despite the DGP, Haryana having clarified vide letters, Annexures P/5 and P/6 dated 24.09.2004 and 17.12.2004 that candidates who had appeared in the competitive examination under 55% quota but had failed to make the grade therein could be considered under the 35% quota on the basis of seniority-cum-merit. However, the clarifications, Annexures P/5 and P/6 dated

instructions, Annexure P/7 dated 13.10.2005 and clarifying that candidates below the age of 35 years could complete against 55% seats only whereas candidates below 40 years and above 35 years were exempted from B-1 test and they would be considered on the basis of seniority-cum-merit against 35% seats only and further that candidates who had crossed 35 years of age would become ineligible to apply against 55% seats and could apply against 35% seats only on the basis of seniority-cum-merit.

[7] The petitioner submitted representation, Annexure P/3 dated 25.11.2005 praying for seniority on the basis of seniority-cum-merit under 35% quota. However, the DGP, Haryana vide order Annexure P/4 dated 13.06.2006 rejected the representation, Annexure P/3 dated 25.11.2005 on the ground that both the categories i.e. 55% and 35% quota were mutually exclusive, as such, the petitioner was not entitled for consideration under the 35% quota for seniority-cum-merit in view of instructions dated 17.12.2004 having been withdrawn vide order Annexure P/7 dated 13.10.2005. Thereafter, the petitioner served legal notice, Annexure P/8 dated 07.11.2006 but the claim in the same was rejected vide reply, Annexure P/9 dated 09.12.2006 on the ground that instructions, Annexures P/5 and P/6 dated 24.09.2004 and 17.12.2004 had been withdrawn, as such the petitioner was not entitled to be considered under the 35% quota as he was under the age of 35 years as on 20.01.2002, 17.11.2003 and 17.01.2004.

[8] Learned counsel for the petitioner has relied upon the decision of a Division Bench of this Court in CWP No.13445 of 2006 in case titled as Constable Dharambir vs State of Haryana and Ors in the context of the following question :-

“Can a Constable, who has participated in the competitive test (B-1 test) for including his name in List

B-1 of selected Constables for admission to Lower School Course under the 55% quota on the basis of merit as per Rule 13.7 (2) (i) of the Punjab Police Rules, claim consideration and selection under the 35% quota on the basis of seniority-cum-merit as per Rule 13.7 (2) (ii) also, if he is eligible under both the categories?”

[9] The question as referred to above was answered by Hon’ble the Division Bench as under :-

“Rule 13.7 (2)(i) aims at constables, who are below the age of 35 years while Rule 13.7 (ii) aims at constables, who are under the age of 40 years. A conjoint reading of both the sub rules would show that only the upper age limit has been prescribed under the rules and no minimum age has been prescribed either under sub Rule 2(i) or sub Rule 2 (ii), which means that if a constable fulfils the requirement of the upper age and the other qualifications prescribed under the respective category as per sub Rule 2, there is no bar to his consideration under each of them. Meaning thereby, a constable, who is eligible in one category under Rule 13.7 (2) (i) can also be considered in the other category under Rule 13.7 (2) (ii) of the Punjab Police Rules, as there is no bifurcation between the rules as far as the eligibility is concerned with regard to the minimum age as none is prescribed.

The minimum age if prescribed by way of executive instructions would go against the interest of the Constables, who are otherwise eligible under the statutory Rules. Rule 13.7 (2) (ii) confers a right which a Constable attains on the basis of his seniority in the service. As and when his turn comes based on the seniority a right to consideration devolves on him. This right on the basis of his seniority

cannot be deprived on the basis of executive instructions. This would be in contravention to the statutory rules and, therefore, not sustainable.

What the respondents have sought to do in the instant case is to amend the rules by executive instructions, which is not permissible in law. In case, a minimum age is required to be prescribed, then the rules need to be amended incorporating such change. The executive instructions can supplement the rules but they cannot go contrary to the rules and cannot violate the spirit and purpose of the statutory rules by prescribing the minimum age. The right conferred on the employee under the statutory Rules cannot be obliterated or taken away much less wiped off by the executive instructions. It is settled principle of law that by executive instructions there can be no amendment of statutory Rules. It is no more res integra that instructions can neither override the Rules nor can they be contrary to them. In case there is any conflict between the rules and the instructions, the latter has to make way to the former.

The employee cannot be deprived of his right to be considered for promotion, so conferred upon him, under the Punjab Police Rules by mere issuance of executive instructions. If the statutory rules provide for and confers on an employee right to consideration for promotion and further provides for a qualification, which the employee possesses as per the rules, that right of consideration cannot be curtailed so as to deprive him of his statutory right merely on issuance of executive instructions, which is contrary to the statutory Rules.

In the light of the above discussion, the memo No.13745-82/T-2 dated 11.10.2005 of Director General of Police, Haryana (Annexure R-2) cannot be sustained to the extent it states that all three categories cannot claim benefit of each other and that category-I (55% quota) cannot claim benefit in category-II (35% quota) as the same is contrary to the statutory rules and is thus quashed to this limited extent.

What emerges from the above discussions is that a constable who has completed 5 years of service on the 1st day of January of the year in which the selection is made, is under the age of 35 years and is eligible for consideration and selection for including his name in List B-I of selected constables for admission to Lower School Course under the 55% quota on the basis of merit as per Rule 13.7 (2)(i) of the Punjab Police Rules, 1934 and having participated in the competitive test (B-1 test) and failed or was unable to get enlistment due to lower merit can also claim consideration and selection under the 35% quota on the basis of seniority-cum-merit as per Rule 13.7 (2)(ii), if he is eligible under both the categories.

The question is answered accordingly.

The petition is allowed and the petitioner is held entitled to be considered under the quota of 35% fixed for consideration on seniority-cum-merit. Since his juniors i.e. respondents No.6 to 11 stand already deputed to the Lower School Course, respondents are directed to depute the petitioner to the First Lower School Course, which will commence after the pronouncement of the instant order. The petitioner shall be treated as having qualified the Lower School

Course as if he had been deputed to the Lower School Course for which the instant writ petition was filed.

Disposed of accordingly.”

[10] The petitioner having failed in getting his name included in List B-I of selected constables for admission to Lower School Course under the 55% quota on the basis of merit as per Rule 13.7 (2)(i) of the Punjab Police Rules, 1934 in the year 2002 could claim consideration and selection under the 35% quota on the basis of seniority-cum-merit as per Rule 13.7 (2)(ii), as he was below the age of 40 years besides had completed 5 years of service as on said date. Learned Sr. DAG has not been able to show disentitlement of the petitioner to consideration in terms of decision of Hon'ble, the Division Bench of this Court in CWP No.13445/ 2006 in case titled as Constable Dharambir vs State of Haryana and Ors. Accordingly, in the light of the position as noted above impugned order, Annexure P/4 dated 13.06.2006 is quashed. Respondents shall consider the name of the petitioner for inclusion in List B-I of selected constables for admission to Lower School Course under 35 % quota on the basis of seniority-cum-merit with effect from the due date in terms of Rule 13.7(2)(ii) of the PPR and take such further action as may be warranted in the facts of the case in terms of the decision in Dharambir's case (supra) within three months from date of receipt of certified copy of order.

[11] Writ petition allowed in the aforementioned terms.

06.11.2019
amit

(B.S. Walia)
Judge

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| 1. Whether speaking/reasoned : | Yes/No. |
| 2. Whether reportable : | Yes/No. |