

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

**CWP-22976-2015 (O&M)
Date of decision-16.07.2019**

Chamkaur Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Balwinder Singh, Advocate,
for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for issuance of a direction to the respondents to reconsider the claim of the petitioner for enlistment as a Constable in view of his already being a Matriculate at the time of submission of application for appointment on compassionate grounds.

The father of the petitioner, a Head Constable with the respondent-Department, died in harness on 24.08.2007. The mother of the petitioner swore an affidavit dated 10.09.2007 that in place of her deceased-husband, the post of Constable be given to the petitioner under Priority Listing Instructions (on compassionate grounds). The petitioner had completed his matriculation in the year 1993. The respondents declined to enlist the petitioner as a Constable on the ground that the educational

qualification for recruitment as a Constable had been raised from Matriculate to 10+2 and the petitioner had completed his matriculation in the third division, therefore his case is to be considered for Class IV post (contingent paid post). In the meantime, the petitioner passed his 10+2 examination in August, 2009 and submitted an application dated 15.06.2010 for enlistment as Constable. The respondents again declined his claim on the ground that the petitioner had done his matriculation in the year 1993, and the 10+2 in the year 2009, thus, there was a gap in the acquiring of education. Thereafter, vide office order dated 26.10.2010 (Annexure P-15), the petitioner was issued appointment as Safai Sewak, which is a Class IV contingent paid post. On 02.02.2011, the petitioner joined the services as such.

It is contended that the consideration for appointment as Constable has been declined to the petitioner on the ground that the petitioner had passed his 10+2 examination in the year 2009, subsequent to the date of application. Further he was 33 years of age, which was six year more than the prescribed age. The precise grouse of the petitioner is that many similarly situated applicants who had not even passed their matriculation examination, had been enlisted as Constables, whereas, the petitioner has been discriminated against.

On the other hand, learned State counsel submits that the minimum qualification for the post of Constable prior to 12.10.2006 was matriculation, which was subsequently raised to 10+2 vide letter dated 12.10.2006. The mother of the petitioner submitted an application on

10.09.2007 for appointment of the petitioner under Priority List Instructions. At that time, the qualification of the petitioner was matriculation in third division. The petitioner passed 10+2 in the year 2009, when he was 33 years of age, whereas, the prescribed age for the post of Constable (Scheduled Caste Category) was 18 to 30 years at the relevant time. Therefore, he was appointed as Safai Sewak vide order dated 26.10.2010 (Annexure P-15) which appointment the petitioner accepted without any protest. Thus, he is estopped from raising claim for the post of Constable.

Heard.

The petitioner has been denied appointment to the post of Constable primarily on the ground that he being a matriculate at the time of making the application did not possess the requisite qualification of 10+2 pass. However, it is to be noted that the petitioner had attained qualification of 10+2 at the time when his case was considered for the post of Safai Sewak.

During the course of hearing, learned counsel for the petitioner furnished a list of 4925 candidates and it was stated that as many as 1774 candidates out of the said list were matriculate and had been enlisted as Constables between the date of death of the father of the petitioner upto 17.10.2014. Further, as many as 209 candidates were under-matric. The list being bulky, the petitioner was directed to place on record a smaller list. In pursuance thereof, a random list of 68 candidates was circulated, which was taken on record as Mark 'A'. Out of the said 68 candidates, 9 are IX standard pass, 21 are Middle standard pass, 3 are VII standard pass and

1 each are VI and V standard pass. As far as the age is concerned, more than 40 candidates are above 33 years of age, 23 are above 40 years of age and at least 4 are above 50 years of age.

In rebuttal, short reply by way of affidavit of the Assistant Commandant, 3rd India Reserve Battalion, Ludhiana, dated 16.07.2019 has been filed appending therewith a list of those 68 candidates enlisted as Constables with qualification as matriculation of below after 12.10.2006 when qualification was updated to 10+2 along with the justifications as Annexure R-3. A perusal of the said list affirms the stand taken by the petitioner that many candidates having equivalent or lesser qualification than that of the petitioner at the relevant time, have been enlisted as Constables at different times, whereas, the petitioner has been discriminated against. In column of 9 of the said list i.e. 'reason for appointment', it is reflected that either the candidates were Ex Servicemen or SPOs or their cases were considered under the Priority List Instructions. It is relevant to note that the case of the petitioner also falls under the Priority List Instructions. He was 10+2 as on the date when he was appointed as Safai Sewak, i.e. he was entitled to be listed as a Constable on the relevant date as far as qualification is concerned. The age of several candidates had been relaxed and there was no reason to deny this benefit to the petitioner.

As regards the stand taken by the respondents that the petitioner once having accepted the appointment as Safai Sewak cannot now claim a higher post is also misplaced inasmuch as it is a case of discrimination against him and he had to survive no other option at that time but to accept

the appointment on a Class IV post.

Unfortunately, the State has not been able to draw any distinction between case of the petitioner and the candidates who have been enlisted as Constables having lesser qualification than 10+2, to justify their stand. It is a settled principle that the State does not have any power to discriminate between persons similarly situated. Hon'ble the Kerala High Court, in ***V. Punnam Thomas Vs. State of Kerala, AIR 1969 Kerala 91***, observed as under:-

“The Government is not and should not be as free as individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

Thus, from the above narrated facts and circumstances, this Court has no hesitation to hold that the respondents have violated the petitioner's fundamental right of equality before law as guaranteed to him under Articles 14 and 16 of the Constitution of India. They have acted in a discriminatory manner against the petitioner and the same needs to be rectified.

In view of the above discussion, the present writ petition is allowed with costs of Rupees twenty five thousand, to be remitted to the

petitioner forthwith. The respondents are directed to enlist the petitioner as a Constable within a period of six weeks from the date of receipt of a certified copy of this judgment.

(JITENDRA CHAUHAN)
JUDGE

16.07.2019
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No