

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

**CWP No.6708 of 2020
Date of Decision : 29.10.2020**

Anju BalaPetitioner
Versus

State of Haryana and othersRespondents

CWP No.2426 of 2020 (O&M)

NeelamPetitioner
Versus

State of Haryana and othersRespondents

CWP No.11917 of 2020

Sarla Devi and othersPetitioners
Versus

State of Haryana and othersRespondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Aditya Yadav, Advocate
(in CWP No.6708 of 2020);
Mr. G.S. Gopera, Advocate
(in CWP No.2426 of 2020) and
Mr. Sahil Gupta, Advocate
(in CWP No.11917 of 2020)
for the Petitioner(s).

Mr. N.S. Behgal, Asstt. Advocate General, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

The Petitioners in these three Writ Petitions are Constables in the Haryana Police. They had all applied for inclusion in the Lower School Course of 2018 in the combined Male and Female Cadre under the General 62% category. The

cut-off figure of the marks for being considered for the Course was 108. But the Petitioners were not considered eligible as their aggregate in each individual case was below 108. Their grievance is that the marks awarded to them did not include the marks for the Computer Courses exceeding durations of 20 Weeks having undergone by them to which they were entitled to, in terms of Rule 13.7 (4)(II)(9) of the Punjab Police Rules, 1934, as applicable to them.

2. The Petitioner in CWP 6708/2020 had completed her Computer Course from the District Computer Training Centre Police Line Ambala City in 2014, while the Petitioners in the other two Writ Petitions had completed their 6 months Computer Courses which were conducted by Haryana State Electronics Development Corporation Ltd. (HARTRON), which is an Institute of the Haryana Government.

3. Claims of the Writ Petitioners have been controverted on behalf of the Respondents representing the State/Police Authorities of Haryana, whose contention is that the Petitioners were rightly not awarded any marks for the Computer Courses undergone by them in view of the Clarification in the WAN message as conveyed in Communication No. 8144/T-2 dated 13/06/2019 (Annexure P-6 in CWP No. 2426 of 2020) to the effect -

Sr. No.	Issue	Clarification/Guideline
1	Whether marks of 'Computer Course' conducted under HARTRON/Government/ other institutions are to be assigned for selection in List B-I for Lower School Course or otherwise? If yes, then clarify whether marks are to counted after converting hours into weeks or total duration of the course as said course is conducted one hours per day?	Only those courses that are conducted by the training institutions of either Haryana Police or Haryana Government should be considered for assigning marks for B-I purpose. Besides above, the courses conducted by Government of India, other State Government/Police, any central Police Organization, any other institution set-up by Public Sector undertaking of the Central/State Government and any public/private institution should also be considered, if a Police personnel is <u>deputed/selected</u> for said training course by the Training Branch of Haryana Police Headquarters/Govt. Of Haryana.

4. It is, however, an admitted position that earlier marks for the Computer Courses were included for the purpose of shortlisting the eligible Candidates for the Lower School Course, and a list of such Candidates has also been filed on behalf of the Petitioners in CWP No. 11917 of 2020, as Annexure P-12.

5. The relevant Rule 13.7 (4)(II)(9) of the Punjab Police Rules, 1934 relied upon by the Writ Petitioners is set down below –

“13.7 Selection of candidates for admission to courses at the Police Training College.
....(4) The assessment of service record will be done on the basis of education, training courses passed and

commendation certificate during the service. The marks assigned to these shall be as follows :-

(II) Course passed:

- (9) For training courses of duration exceeding 20 weeks. Maximum marks awarded for training programme underwent shall be 15. Only the training programmes passed by the candidates upto 31st December of the year preceding the year in which selection is made shall be taken into account while awarding marks..... 6 Marks

6. From a bare perusal of Item (9) above, it becomes clear that an additional 6 marks were to be awarded to the Candidates who had undergone any Computer/Training Course conducted by an approved authority of the Haryana Government or Police, and following the commitment in 2017 such additional marks were increased from 6 to 10, for any Computer/Training Course exceeding the duration of 20 weeks. But still these additional marks were not awarded to the present petitioners ostensibly on account of the Clarification given by way of the Communication/WAN message dated 13/06/2019, already referred to in Para No.3.

7. From their side, the Petitioners have contended that such WAN message is contrary to the relevant Rule 13.7 since it is settled law that there can be no clarification *de hors* the explicit rules, and the 'clarification' being highlighted on behalf of the respondents is actually a disguised attempt

to tinker with the Statutory Rules. Reliance of the Petitioners in this regard is on the Division Bench decision of this Court in the case of "**Constable Dharambir versus State of Haryana and others**" in CWP No. 13445 of 2006 **(2008 (4) SCT, 500)** wherein it was held -

"19. 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 scribing the minimum age. The right conferred on the employee under statutory Rules cannot be obliterated or taken away much less wiped 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.

20. 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."

8. The case of the Petitioners is fully covered by the aforesaid Division Bench decision, and this Court has no hesitation in concluding that the clarification communicated

vide No. 8144/T-2 dated 13/06/2019 (Annexure P-6 in CWP No. 2426 of 2020) cannot override the actual Statutory Rule 13.7, since it cannot be regarded as anything more than the observation of an Executive Authority, which by no means can do away with the requirement of awarding additional marks to concerned candidates in terms of Clause 9 to Rule 13.7 (4)(II) of the Punjab Police Rules, 1934.

9. All the three Writ Petitions are, therefore, allowed and the Respondent Authorities are now directed to include the admissible additional marks to which the Petitioners would be so entitled, for their having undergone the relevant Computer/Training Courses exceeding the duration of 20 weeks in terms of Rule 13.7 (4)(II)(9) of the Punjab Police Rules, 1934, for the purpose of considering their eligibility for the concerned Lower School Course 2018. In case any of the Petitioners crosses the Bench-mark of 108 Marks, such Petitioner be deputed/permitted to join the said Course immediately, if feasible, or otherwise for the very next similar Course to follow.

October 29, 2020
Dpr

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No