

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-6154-2007 and connected cases
Date of decision: 13.02.2020

Constable Vijay Singh

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. S.K. Redhu, Advocate and
Mr. Rajesh Goyal, Advocate
for the petitioner(s).

Ms. Safia Gupta, AAG, Haryana.

GIRISH AGNIHOTRI, J. (Oral)

This order shall dispose of CWP Nos.6154, 6166, 7749 & 7755 of 2007, CWP No.2056 of 2008 and CWP No.15662 of 2013. For the sake of reference, facts are taken from CWP-6154-2007.

The present writ petition has been filed by the petitioner-Constable Vijay Singh *inter alia* praying for quashing of the select list dated 08.12.2003 (Annexure P-2).

Learned counsel for the petitioner based on the pleadings, submit that the petitioner was eligible under 35% quota and therefore, he seeks directions to the respondents to consider the petitioner for B-1 selection along with consequential benefits as per their seniority under 35% quota in view of the judgment dated 05.11.2004 (Annexure P-3), passed in ***CWP-7952-2004 titled as Naresh Kumar vs. State of Haryana and others*** and also judgment dated 22.10.2008, passed in ***CWP-1194-2005 titled as Balraj***

Singh and others vs. State of Haryana and others.

Learned counsel for the petitioner during his further submissions, has also relied upon another judgment dated 12.09.2017, passed in ***CWP-8958-2013 titled as EASI Satyawar vs. State of Haryana and others.***

This Court for the reasons mentioned hereinunder, deems it appropriate to **dispose of the present writ petitions** as it finds merit in the submissions made by learned counsel for the petitioner.

The brief facts which need to be noticed are that in the year 2001, as pleaded by the petitioner, Punjab Police Rules had been amended. As per the amended rules, 55% seats were reserved for B-1 on the basis of test and 35% seats were reserved for seniority-cum-fitness. He submits that in the present case, B-1 test was conducted 20.01.2002 by respondent No.4. He then submits that from January 2002 to 08.12.2003 neither any test was conducted nor any Constable was deputed in Lower School Course as there was a stay regarding declaration of result. He further submits that result was finally declared on 08.12.2003. The claim of the petitioners therefore is that their prayer could not be rejected merely on the ground that the petitioner could not get required merit in B-1 test held on 20.01.2002 in the year 2002-2003, when private respondent No.7 was brought on promotion list B-1 vide order dated 08.12.2003.

Notice of motion in this case was issued. Reply has been filed by Sh. K.K. Rao, IPS on behalf of respondents No.1 to 4. In Para 1 of the preliminary objection, the stand taken by the respondents is that chances of promotion as are not a condition of service, so amended rule can not be

challenged merely because it affects the chances of promotion of employee.

The stand of the State therefore is that in fact as per the amended rules, they were to secure 31 marks as per the DGP instructions of 2007. In this regard reference can be made to Annexure P-5 which is a Division Bench Judgment of this Court, passed on 14.05.2008 in ***CWP-1194-2005 titled as Hawa Singh vs. State of Haryana and others.*** In somewhat similar circumstances, this Court in **CWP-8958-2013**, passed the following order vide judgment/order dated 12.09.2017:-

“In the instant writ petition, petitioner has challenged the validity of the order dated 21.03.2013 (Annexure P-1) by which his claim under 35% quota for sending him to B-1 Course has been declined on the score that he did not fulfill the eligibility criteria so also he is over age for the next session (B-1 Course) for the year 2006.

Learned counsel for the petitioner pointed out Rule 13.7 of the Punjab Police Rules, 1934 (for short “1934 Rules”) which provides for mode of sending constable for Lower School Course. There were three sources. 55% of the seats allotted to a unit in the Lower School Course shall be filled in on the basis of a competitive examination, 35% on the basis of seniority-cum-fitness and 10% on the basis of consistent outstanding performance in job/obtaining Gold or Silver Medal in All India Police Games/Duty Meet/National Games or exceptional display of bravery during the course of performance of official duty. Petitioner's claim is under second category namely 35%. Method is on the basis of seniority-cum-fitness. Except seniority-cum-fitness nothing has been prescribed in the rules of recruitment of 1934 Rules. On the contrary, official respondents have issued an executive order prescribing certain procedure other than seniority-cumfitness like awarding of marks to the educational qualifications namely 10+2, BA-I, BA-II, BA-III and Post Graduation for various courses. Awarding of marks for the aforesaid educational qualification is not prescribed under

Rule 13.7 of 1934 Rules. Rejection of the petitioner's claim for sending him for Lower School Course is with reference to the award of marks for educational qualification which is contrary to the rules of recruitment. Since juniors to the petitioner have been sent for Lower School Course in the year 2005, at this distance of time, question of sending the petitioner for Lower School Course may not be correct. Due to default on the respondents in not following the 1934 Rules, petitioner be exempted from undergoing Lower School Course.

In view of the above facts and circumstances, impugned order dated 21.3.2013 (Annexure P-1) is set aside. The respondents are hereby directed to extend all service benefits on par with the petitioner's immediate junior who has been sent to Lower School Course in the year 2005. The above exercise shall be completed within a period of three months from today.

Petition stands allowed accordingly.”

Writ petitions are disposed of in the above terms.

(GIRISH AGNIHOTRI)
JUDGE

13.02.2020

anju rani

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No