

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

CWP-16507-2021 (O&M)
Reserved on: 28.09.2021
Date of decision: 21.12.2021

Constable Shiva No.1404/JAL (Rural)

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner.

Mr. Ayush Sarna, Assistant AG, Punjab.

GIRISH AGNIHOTRI, J.

On 08.09.2021, this Court had passed the following order:-

“(1) The petitioner, inter alia, seeks a mandamus directing the respondents to include his name in the order dated 20.08.2021 (P6) vide which 24 Instructors of PRTC, Jahan Khelan has been selected to complete the lower school course.

(2) Learned counsel submits that the petitioner was initially appointed as Constable on 17.12.2015. He was thereafter retained at the PRTC Jahan Khelan as Drill Instructor. Learned counsel has referred to the memo dated 25.04.2018 (P1) wherein the petitioner was stated to have failed in the paper (PT). This was the result of the Basic Drill Instructors Course conducted from 01.10.2017 to 17.03.2018 at Phillaur. He has further referred to the memo dated 08.02.2019 wherein the petitioner's name figures at Sr.No.5. Vide this memo, the Commandant had passed the

order stating that the Constables mentioned therein have come to the said Centre after completing Drill Instructors Course from Phillaur as per the dates given therein. Learned counsel submits that the respondents ought to have taken 23.03.2018 as the date w.e.f. which he has been discharging his duties as Drill Instructor. From this date, he would complete 3 years of minimum requirement as per Rule 19.22 of the Punjab Police Rules, for being eligible to be deputed to the lower school course.

(3) Learned State counsel however, has made reference to Rule 19.22 of the Rules ibid to submit that the petitioner did not fulfill the minimum requirement of 3-year service. He submits that the 3-year service would be counted w.e.f. 15.02.2019 when he had actually passed the exam (which the petitioner had failed as per the result dated 25.04.2018).

(4) Considering the urgency involved in the matter to the effect that the petitioner is claiming that he be deputed to the lower school course, which has commenced from 25.08.2021, the respondents are granted one opportunity to explain as to under which provision of law, such an interpretation can be given to the effect that the candidate ought to have first passed the exam which is essential for being qualified for the Basic Drill Instructors Course. It shall also be clarified that under which provision the Department can insist that 3-year period shall only be counted w.e.f. the date when the petitioner passed the course.

(5) Post again on 22.09.2021. ”

In response thereto, an additional affidavit of Shri Harjit Singh, PPS, Deputy Superintendent of Police, PRTC, Jahan Khelan, District Hoshiarpur, has been filed on behalf of respondents No.1 to 5 and the same

is taken on record.

This Court, in view of the facts and grounds noticed hereunder accepts the pleas taken by the petitioner.

Learned counsel for the petitioner, based on the pleadings in the petition, submits that the petitioner's father had died on 24.12.2007 due to heart attack, during the service. The petitioner was given appointment on compassionate grounds vide order dated 17.12.2015. As per the counsel for the petitioner, immediately after the appointment of the petitioner as Constable, he was deputed for basic training course of approximately nine months as per the Rule 19.20 of the Punjab Police Rules 1934.

As per learned counsel for the petitioner, under Rule 19.22 of Punjab Police Rules, the Principal of Police Training College may retain for service at the college, any Head Constable or Constable deputed from Districts for training under Rule 19.20. The specific case of the petitioner is that the petitioner, on account of his good performance, was retained for service at the college. In para 5 of the petition, it has been pleaded that after taking willingness from the petitioner, he was deputed for 'Drill Instructor Course' which was from 01.10.2017 to 17.03.2018. Vide order dated 25.04.2018 (Annexure P-1), result of petitioner along with six others of 'Basic Drill Instructors Course', was declared. As per learned counsel for the petitioner, against the name of the petitioner though it has been mentioned as 'FAIL(PT)' yet, it actually means that he was to re-appear in one paper of PT. It is the case of the petitioner that the petitioner had actually suffered an arm injury, due to which, he could not take the physical

training (PT) paper. He re-appeared in the said paper and passed the same as per order dated 15.02.2019 (Annexure P-3).

Importantly, this was result for the Drill Instructors Course, which was w.e.f. 01.04.2018, but qua the petitioner, it was mentioned that he is of previous batch, who could not qualify this paper on term ending March 2018 and was called to re-appear in the subject, in which, he was declared 'pass'.

The specific case of the petitioner is that the Principal of the Police Training College, is empowered to admit Drill Instructors and three other categories of officials directly into the **Lower School Course** in the Police Training College, Phillaur after they have served for a minimum period of three years in any one or more of all the three police training institutions.

Learned counsel has then made reference to the order dated 20.08.2021 (Annexure P-6). A perusal of the same would show that the Commandant-cum-Deputy Director, Punjab Police Academy, Phillaur, had indicated therein that quota of 75 seats goes to the Drill Instructors and three other similarly placed categories. It was further mentioned that accordingly Commando Training Center, Bahadurgarh, Patiala, have to nominate the officials for Lower School Course under Rule 19.22 of Punjab Police Rules. It is then submitted that in place of 75, only 57 instructors were deputed. From the petitioners Center i.e. PRTC, Jahan Khelan, 24 persons were nominated/selected to be deputed for Lower School Course. However, the grievance of the petitioner is that the name of the petitioner

did not figure.

In para 9 of the additional affidavit filed on behalf of the respondents, *inter alia* the stand taken by the respondents is that the petitioner was not selected as he did not serve for a minimum period of three years. In other words, the respondents are calculating the three years, as argued by learned counsel for the respondent, from the date of passing the re-appear exam, which appears to be February 2019 (when the result of the petitioner to have passed the re-appear exam, was declared).

This Court, for the facts noticed and reasons recorded hereunder, is inclined to accept the submissions made by learned counsel for the petitioner. Firstly, it is the own case of the respondents, as evident from the order dated 08.02.2019 (Annexure P-2) that the petitioner had been treated to be working as Drill Staff w.e.f. 23.03.2018. If three years are calculated from 23.03.2018, on 22.03.2021 the petitioner had completed three years of service. Secondly, this Court is inclined to accept the plea of the petitioner because if reference is made to Rule 19.22 and 19.23, as reproduced hereunder, it would clearly show that there is no requirement of the rule to make a mandatory requirement to only count three years of service after passing of the re-appear exam. The above said rule reads as under:-

.....“19.22 Drill and Physical training at the Police Training School -(1)-The Principal, Police Training College, may retain for service at the College any Head Constable or Constable deputed from districts for training under rule 19.20. Without the approval of the Inspector-General no drill or physical training instructor may be retained

for service at the College for more than three years at a time, there being an interval of at least one year before he is again so employed. The Principal, Police Training College, Phillaur, is empowered to admit Drill Instructors, Physical Training Instructors, Riding Instructors and Driving Instructors posted at the Police Training College, Phillaur, Recruits Training Centre, Jahankhelan and Recruits Training Centre, Bahadurgarh directly into the lower school course, in the Police Training College, Phillaur, after they have served for a minimum period of three years in any one or more of the aforementioned three Police Training Institutions, provided they are sufficiently educated and their service in these institutions has been satisfactory.

(2) All promotions of drill and physical training instructors made at the school shall be temporary and all such men shall revert to their substantive ranks on return to their districts. Drill Instructors returned from the Phillaur Drill Staff should not be employed, even temporarily, as Drill Instructors in districts without the sanction of Range Deputy Inspectors- General of Police.

(3) All lower subordinates employed as drill and physical training instructors at the Police Training School shall be shown on the promotion lists A, B or C of their districts as "Seconded to the Police Training School." They shall be considered equally with other men of their districts for promotion. For this purpose the Principal, Police Training School, will furnish an annual report in form 19.22(3) on all drill and physical training instructors to the Superintendents of the district concerned. In the case of upper subordinates confirmed as such, these reports shall be submitted to the Deputy Inspector-General of the range from which the men were deputed to the Police Training School for inclusion in their personal files.

19.23. Selection of drill and physical training instructors for Police Training School. - Drill and physical training instructors trained at the Police Training School will, on

passing their courses, be included in a list to be maintained by the Principal, Police Training School. This list will show their qualifications, and remarks as to whether they are considered fit for employment as instructors at the school shall be added by the Principal. On vacancies occurring on the staff in consequence of rule 19.22 above, these shall be filled by selection from successful students of the drill instructors class or from the list maintained under this rule.”

It is a matter of fact that the petitioner had actually undergone 'Drill Instructors Course' w.e.f. 01.10.2017 to 17.03.2018. It is also not disputed that he had passed the training and other papers successfully except one paper in physical training in which he had to re-appear on account of his injury in his arm. It is also not disputed that w.e.f. 23.03.2018, vide order dated 08.02.2019 (Annexure P-2), the petitioner was treated to be posted in Drill Staff w.e.f. 23.03.2018. Therefore, the plea of the respondents that three years are to be counted after passing of the re-appear paper, is not acceptable. The respondents cannot add words like 'after passing of the re-appear exam' to be added in the Rule, whereas the intention of the Rule Framers is apparent to only require service of three years. Thirdly, this Court finds force in the submissions of learned counsel for the petitioner that both, on equity and in terms of legal right, the petitioner deserved to be considered by the Competent Authority to be deputed for Lower School Course. In this regard, if reference is made to order dated 20.08.2021 (Annexure P-6), it would show that officials at Sr.Nos.16 to 20, were similarly placed and two of them were below the

petitioner in the common order dated 08.02.2019, when they were posted as Drill Staff. Therefore, this Court finds that the petitioner who was at Sr. No.5, also had a right to be considered and deputed for the Lower School Course, specially when persons at Sr. Nos.6 & 7 in Annexure P-2, were also deputed for the course. It also needs to be mention that against 75 seats, only 57 Instructors have been deputed and therefore there are still vacant seats against which the petitioner can be deputed.

In view of the above, the writ petition is **allowed**. The respondents are directed to immediately allow the petitioner to join the Lower School Course which is stated to be still in progress in pursuance to order dated 20.08.2021 (Annexure P-6). Liberty is granted to the respondents to pass such other order qua the requirement of completion of complete training by the petitioner [as during pendency of the writ petition, the petitioner may have lost some time in joining the course.]

Ordered accordingly.

(GIRISH AGNIHOTRI)
JUDGE

21.12.2021
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Whether speaking/ reasoned:
Whether Reportable:

Yes/No
Yes/No

CWP-16507-2021 (O&M)

SHIVA V/S STATE OF PUNJAB AND OTHERS

Present: Mr. Kamaldip Singh Sidhu, Advocate for the petitioner.
Mr. Ayush Sarna, AAG, Punjab.

On 28.09.2021, arguments were heard and judgment was reserved by the then Hon'ble Mr. Justice Girish Agnihotri.

As per office note dated 12.11.2021, matter was earlier listed for pronouncement of judgment on 01.10.2021 but the then Hon'ble Justice Girish Agnihotri did not hold the Court on said date and demitted office thereafter.

Duly signed judgment passed by the then Hon'ble Mr. Justice Girish Agnihotri could not be pronounced due to the reason recorded above.

The matter has now been listed before this Court in terms of Sub Clause (3) of Rule 5 of Chapter 4-G of the High Court Rules and Orders, Volume V. The same is reproduced as under:-

“5 (1) xxx xxx xxx

(2) xxx xxx xxx

(3) *Where a case is heard by a Judge sitting alone and judgment is reserved, his judgment may, in his absence, be pronounced by any other Judge.”*

In view of the above, judgment is pronounced today and the instant petition is allowed vide separate detailed reasons recorded by the then Hon'ble Mr. Justice Girish Agnihotri.

The order be read as part of detailed judgment of even date.

This order shall also dispose of CM No.12790 of 2021.

(B.S. Walia)
Judge

21.12.2021

‘Amit’