

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

Date of Decision:22.9.2022

LPA 158 of 2021 (O&M)

State of Haryana and others

---Appellants

versus

Rohit

---Respondent

LPA 176 of 2021 (O&M)

State of Haryana and others

---Appellants

versus

Ajay Kumar

---Respondent

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

**Present: Ms. Shruti Jain Goel,DAG, Haryana
for the appellant(s)-State in both the appeals**

**Mr.Samrat Malik, Advocate
for the respondent(s) in both the appeals**

JAGMOHAN BANSAL, J.

1. The appellant-State of Haryana through instant appeals under Clause X of Letters Patent is seeking setting aside of common judgment dated 2.11.2020 passed by learned Single Judge in CWP Nos. 10347 of 2020 and 12514 of 2020 whereby learned Single Judge has allowed both the writ petitions and directed State of Haryana to issue appointment letter to writ-petitioners within a period of 30 days from the date of decision.

The learned Single Judge has adjudicated CWP Nos. 10347 and

12514 of 2020 by a common judgment because the issue involved in both petitions was common. For the sake of brevity and to avoid repetition, we borrow facts from LPA No. 158 of 2021 which are arising from CWP No. 10347 of 2020.

Facts:

2. The Haryana Staff Selection Commission advertised posts of Constables (General Duty) (SBC) in Haryana Police vide advertisement No. 8/2015. The respondent like other candidates applied for advertised post. He was allotted Registration/Roll No. 1001372296. The respondent was selected for the post of Constable and he was allotted 5th Battalion, HAP Madhuban, District Karnal. The Commandant of the 5th Battalion vide WAN No. 15563-82/OSI dated 30.8.2019 directed to inform respondent-writ petitioner to report in the Battalion on 31.8.2019 for verification of documents and medical examination. The respondent reported to the Commandant on 2.9.2019, however, he disappeared at the time of medical examination. The respondent again reported to the Battalion on 3.1.2020 i.e. after four months from his earlier reporting. The Battalion directed respondent for medical examination which was conducted on 6.1.2020 and he was declared medically fit by Medical Officer, Kurukshetra. The Battalion vide office Memo dated 9.1.2020 asked Superintendent of Police, Sonipat for character verification of the respondent. The Superintendent of Police, Sonipat vide letter dated 16.1.2020 sent character verification report of the respondent which was received in the Battalion on 21.2.2020.

The respondent vide communication dated 18.2.2020 requested Battalion to allow him to join duty as Constable. The Battalion referred the

matter to Director General of Police Haryana, Panchkula (for short 'DGP') for issuance of guidelines and the DGP in reply to letter of Battalion vide communication dated 12.6.2020 asked to take necessary action as per Government instructions dated 13.9.2019.

As afore-stated, the medical examination of respondent was conducted, character verification was prepared and thereafter communication took place between 5th Battalion, Karnal and office of DGP but no final decision was taken. The respondent feeling aggrieved from inaction of appellant, preferred Civil Writ Petition before this court which came up for consideration before learned Single Judge, who alongwith writ petition of Rohit (CWP-10347 of 2020) adjudicated writ petition of Ajay Kumar (CWP-12514 of 2020) it was held that no appointment letter was issued to writ-petitioners and in the absence of appointment letter, instructions dated 13.9.2019 did not come into play and could not deprive the writ-petitioners from their right of appointment.

Few facts which are different in the case of LPA 176 of 2021 are that the respondent first time appeared before Commandant in November' 2019 and at that point of time he was working as Warder in Jail Department, Delhi. He was asked to bring resignation and he came back with duly accepted resignation on 16.1.2020. The appellant vide order dated 30.7.2020 rejected claim of the respondent on the ground that he has appeared after 30 days and as per instructions dated 13.9.2019, his claim cannot be considered.

3. The appellant-State feeling aggrieved from judgment dated 2.11.2020 passed by learned Single Judge has preferred present appeal

before this Court.

Contention of the appellant

4. Learned counsel for the appellant vigorously contended that (i) Division Bench of this Court issued notice of motion on 10.2.2021 where it was noted that respondent-writ petitioner is seeking entry into a disciplined uniformed service, thus, delay on his part in adhering to the schedule needs examination; (ii) the respondent-writ petitioner appeared for medical examination, however, disappeared without informing the competent authority and all of a sudden came back after four months, thus, he has not adhered to the schedule of recruitment and cannot be allowed to join; (iii) the lapse on the part of respondent is incurable; (iv) there was a complete process of recruitment and as per prescribed process, the respondent-writ petitioner was supposed to undergo medical examination as well character verification; (v) appointment letter could be issued after completion of medical examination as well as character verification, thus, there was no question of appointment letter. The learned Single Judge has wrongly discarded instructions dated 13.9.2019; (vi) the authorities at different stages have invoked incorrect provisions and as per judgment of Hon'ble Supreme Court in **Ram Sunder Ram vs. Union of India, 2007 (13) SCC 255**, an order cannot be set aside just because an incorrect provision has been cited.

Contention of the respondent

5. Per contra, learned counsel for the respondent-writ petitioners supporting findings of learned Single Judge contended that arguments of appellant are contradictory. On the one hand, the appellant is contending

that appointment letter is issued after completion of medical examination and character verification and on the other hand is pleading that 30 days period, as prescribed in instructions dated 13.9.2019, was applicable in the case of respondent-writ petitioner. He further submitted that appellant has conducted medical examination in February' 2020 of various candidates who had finally been made to join, thus, appellant cannot contend that process of recruitment was completed much prior to medical examination of respondent.

6. We have considered the submissions of learned counsel for both the parties and perused the record.

7. The conceded position emerging from record is that respondent-writ petitioner pursuant to advertisement of Haryana Staff Selection Commission applied for the post of Constable. The Haryana Staff Selection Commission recommended name of the writ petitioner to DGP, Haryana and he was allotted 5th Battalion. The respondent did not get himself medically examined in the month of September' 2019. He appeared for medical examination on 2.9.2019, however, disappeared prior to examination. The respondent appeared for medical examination on 03.01.2020 and on the direction of 5th Battalion, Medical Officer, Kurukshetra conducted examination on 06.01.2020 and he was declared medically fit. Superintendent of Police, Sonipat conducted verification of credentials and forwarded his report to the 5th Battalion.

8. The dispute lies in a narrow compass. As per appellant, the respondent did not appear for medical examination and as per procedure prescribed under Rules 12.16 to 12.18 of Punjab Police Rules, 1934 as

applicable to State of Haryana (for short '1934 Rules') medical examination and verification of character and antecedents is an integral part of selection process. Appointment letter cannot be issued without completion of medical examination and character verification. The respondent did not appear for medical examination, thus, there was no compliance of 1934 Rules. There is no lapse on the part of appellant, thus, respondent could not be awarded for his lapse which is incurable. Government instructions dated 13.9.2019 and Rules 12.16 to 12.18 of 1934 Rules read as:

Instructions dated 13.9.2019

“2. The matter has been reconsidered by Government and in supersession of all the above instructions, the policy on fixation of minimum and maximum joining time on first or subsequent appointment through HSSC or HPSC or any other approved Recruitment Agency shall be as under:-

(i) In case of fresh appointment of a candidate he may be allowed the maximum period of 30 days to join his new appointment.

(ii) In case a candidate, who being already in service in a Private or Government Organization/ Department, is not able to join within 30 days or for bona-fide reasons, the competent authority may, where the administrative requirements permit, allow suitable extension of time which should not however exceed three months irrespective of duration of validity of waiting list.

(iii) For women candidates who are declared temporarily unfit on account of being pregnant, the joining time may be extended upto such period as is considered necessary provided not

beyond six months from the date of confinement.

(iv) If a candidate who is covered under (i), (ii) or (iii) above does not join duty within the period specified above, his/her selection made by the HSSC, HPSC or any other approved Recruitment Agency, will be deemed to have been cancelled without any further notice. Necessary provision in this regard should be made by the Appointing Authorities at the time of issuance of appointment letter.

(v) Whether the joining time is to be extended in public interest due to short supply of candidates i.e. Doctors, Engineers, etc. The case may be sent to General Administration Department for extension beyond the period specified above.”

Rules 12.16 to 12.18 of 1934 Rules

12.16 Procedure for direct recruitment:-

xxxx

xxx

(10) Result of Examination:-

(a) The names of successful candidates in the order of merit on the basis of aggregate marks achieved by the candidates in (Knowledge Test + Additional qualification + Miscellaneous) shall be arranged by the Haryana Staff Selection Commission equal to the total number of vacancies advertised for each category separately.

(b) In case two or more candidates have the same aggregate score, the order of merit shall be determined by the higher score achieved in the Knowledge Test.

(c) Whereas two or more candidates have the same aggregate score as well as the same score in Knowledge Test also, the order of merit shall be guided by the age of the candidate, i.e. the oldest being placed higher than

the younger ones.

(d) Further where two or more candidates have the same aggregate score as well as the same score in Knowledge Test and their date of birth is also same, the order of merit shall be in favour of the candidate having higher educational qualification.

(e) The Haryana Staff Selection Commission shall recommend the names of successful candidates equal to the total number of vacancies requisitioned in each category, separately to the Director General of Police for enrolment. The list of candidates so recommended shall also be put on the official websites of Haryana Staff Selection Commission and Haryana Police.

(f) The appointing authorities shall ensure medical fitness and verification of characters and antecedents before appointment. Vacancies advertised, if any, remaining unfilled because of rejection of candidates on medical grounds or character and antecedents verification or otherwise shall be considered in next recruitment.

12.17 Recruits Medical Examination.- *Candidates who are finally recommended for appointment as constable shall be got medically examined by the Civil Surgeon. A certificate, in the prescribed form (10.64), signed by the Civil Surgeon personally, is an essential qualification for enrolment. The examination by the Civil Surgeon will be conducted in accordance with instructions issued by the Health Department and he will test the eye sight, speech and hearing of the candidate, his freedom from physical defects, organic or contagious disease or any other defect or tendency likely to render him unfit, and his age. The conditions of police service make it necessary that the medical examination of candidates should be strict. Candidates shall be rejected for any disease or defect*

which is likely to render them unfit for the active duties of police officer.

12.18 Verification of character and antecedents:-

(1) The appointing authority shall send the verification forms of candidates recommended for appointment by the Haryana Staff Selection Commission to the district police and Criminal Investigation Department with a copy to the District Magistrate for the verification of character and antecedents, as per Form No. 12.18 and Government instructions issued from time to time on the subject.

xxxx

xxxx.”

9. We have gone through reply filed by the appellant to writ petition as well order dated 30.7.2020 passed by Commandant, 4th Battalion H.A.P., Madhuban in the case of Ajay Kumar (LPA-176/2021). We find that stand of the appellant before learned Single Judge as well while passing order dated 30.7.2020 was that as per Government instructions dated 13.9.2019, a period beyond 30 days cannot be granted to a candidate for joining. The respondent-writ petitioner did not join within 30 days, thus, he is not entitled to join as Constable. The appellant before this Court has tried to make out a new case by agitating that 1934 Rules are applicable to State of Haryana and as per Rules 12.16 to 12.18, medical examination as well verification of character & antecedents is indispensable. Appointment letter cannot be issued without completion of process of medical examination and verification of character, thus, there is gross lapse and negligence on the part of respondent which makes him ineligible to the post. Learned counsel vehemently contended that while filing reply to writ petition and passing order dated 30.7.2020, the appellant has wrongly cited instructions dated

13.9.2019 whereas correct rules applicable are 1934 Rules. She contended that as per judgment of Hon'ble Supreme Court in **Ram Sunder Ram (supra)**, an order cannot be set aside or benefit cannot be granted to a person just because a wrong provision has been invoked.

10. Indubitably, the appellant before learned Single Judge as well while passing order dated 30.7.2020 relied upon instructions dated 13.9.2019. Learned Single Judge noticed instructions dated 13.9.2019 and passed impugned order. We have scrutinized Rules 12.16 to 12.18 of 1934 Rules as well instructions dated 13.9.2019. We find that rules prescribe procedure of recruitment and appointment of police officials. As per rules cited by learned counsel for the appellant, medical examination and character verification is indispensable. Appointment letter cannot be issued unless and until there is medical examination and character verification of the candidate. As per instructions dated 13.9.2019, a candidate is bound to join within 30 days from the date of appointment letter.

We find no contradiction between rules as well instructions. The rules prescribe procedure prior to issuance of appointment letter whereas instructions come into play post appointment letter. As soon as appointment letter is issued, a candidate is bound to join within 30 days unless period is extended by competent authority. No period has been prescribed for conducting medical examination and character verification. In the absence of any period prescribed for completing formality of medical examination and character verification, it would amount to re-writing the rules, if we hold that respondent was bound to get himself medically examined in September' 2019 and he became ineligible for the post as soon

as he failed to get himself medically examined by the date fixed by authorities. It is the appellant who conducted the medical examination in January' 2020. It is also the appellant who conducted character verification of the respondent. Counsel for respondent drew our attention to the fact that medical examination of a few candidates was conducted in February' 2020 and they have joined the service. Faced with the situation, the learned counsel for appellant submitted that examination of few candidates who were in the waiting list was conducted in February' 2020. The examination of candidates in February' 2020 indicates that process of appointment qua advertisement was not completed by February' 2020.

11. The rules cited by learned State counsel before us as well learned Single Judge simply prescribe procedure prior to issuance of appointment letter. No period is stipulated in the afore-cited rules. The appellant conducted medical examination and thereafter verification of character and antecedents was conducted. The selection process did not conclude prior to medical examination and character verification. Medical examination of few candidates in February' 2020 indicates that selection process was still in progress and seats were still lying vacant. As no period has been prescribed under Rules 12.16 to 12.18 of 1934 Rules and period prescribed in instructions dated 13.9.2019 is applicable post issuance of appointment letter. We find that no prejudice had been caused to appellant and there would be great injustice if respondent is deprived from opportunity of appointment to the post of Constable. We are not oblivious of the fact that there is mass level unemployment in the country and it is very difficult to get job, specially a government job. The respondent

fulfilled all the criterias including medical fitness and character verification, thus, there seems to be no reason to deny the benefit of appointment to the respondent.

12. Before parting with the judgment, we deem it appropriate to examine applicability of judgment of Hon'ble Supreme Court in **Ram Sunder Ram (supra)** because learned State counsel assiduously relied upon aforesaid judgment and insisted to reverse the order of learned Single Judge on the basis of cited judgment.

In **Ram Sunder Ram (supra)**, the Hon'ble Supreme Court has held that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. Para 20 of the aforesaid judgment reads as:-

20. As noticed above, the appellant had shown cause vide reply dated 13.08.1991 (Annexure P6) to the show cause notice dated 03.07.1991 (Annexure P5) issued to him by respondent No.5. The competent authority considered the reply of the appellant in right perspective and found the same not satisfactory. Therefore, on 09.09.1991, the competent authority passed the order of discharge (Annexure P7) of the appellant from the army service with immediate effect in exercise of the power under [Section 20](#) of the Army Act. It appears that the competent authority has wrongly quoted [Section 20](#) in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under [Section 22](#) of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a

wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre & Ors. (2004) 12 SCC 278].”

A Constitution Bench of Hon’ble Supreme Court in **Union of India v. Tulsiram Patel, (1985) 3 SCC 398** has also adverted with similar issue as agitated by Ld. State counsel. The Supreme Court has held:

125. Some of the orders impugned before us refer only to one or the other of the three clauses of the second proviso to Article 311(2) for dispensing with an inquiry without referring to the relevant service rule, some refer both to a clause of the second proviso and the relevant service rule, while the others refer only to the relevant service rule without making any mention of the particular clause of the second proviso which has been applied. The question is whether the omission to mention the particular clause of the second proviso or the relevant service rule makes any difference.

126. As pointed out earlier, the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules while the source of his power to dispense with the disciplinary inquiry is derived from the second proviso to Article 311(2). There cannot be an exercise of a power unless such power exists in law. If such power does not exist in law, the purported exercise of it would be an exercise of a non-existent power and would be void. The exercise of a power is, therefore, always referable to the source of such power and must be considered in conjunction with it. The Court's attention in Challappancase [(1976) 3 SCC 190 : 1976 SCC (L&S) 398 : (1976) 1 SCR 783] was not drawn to this

settled position in law and hence the error committed by it in considering Rule 14 of the Railway Servants Rules by itself and without taking into account the second proviso to Article 311(2). It is also well settled that where a source of power exists, the exercise of such power is referable only to that source and not to some other source under which were that power exercised, the exercise of such power would be invalid and without jurisdiction. Similarly, if a source of power exists by reading together two provisions, whether statutory or constitutional, and the order refers to only one of them, the validity of the order should be upheld by construing it as an order passed under both those provisions. Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where the source of such power exists. (See Dr Ram Manohar Lohia v. State of Bihar [AIR 1966 SC 740 : (1966) 1 SCR 709, 721 : 1966 Cri LJ 608] and Municipal Corporation of the City of Ahmedabad v. Ben Hiraben Manilal [(1983) 2 SCC 422 : (1983) 2 SCR 676, 681]). The omission to mention in the impugned orders the relevant clause of the second proviso or the relevant service rule will not, therefore, have the effect of invalidating the orders and the orders must be read as having been made under the applicable clause of the second proviso to Article 311(2) read with the relevant service rule. It may be mentioned that in none of the matters before us has it been contended that the disciplinary authority which passed the impugned order was not competent to do so.”

We find that above cited judgments are not applicable in the present case. No order was passed in one case though in another case order

has been passed invoking instructions dated 13.9.2019. In the present case, in the CWP as well reply of appellant-State reliance was placed upon instructions dated 13.9.2009 and 1934 Rules. The pleaded case of appellant is that Rules 12.16 to 12.18 of 1934 Rules were required to be cited whereas instructions dated 13.9.2019 had been wrongly cited.

We, on scrutiny of rules and instructions, have already found that rules operate prior to issuance of appointment letter whereas instructions come into play post appointment letter. Thus, it is immaterial that Rules were not cited in the order dated 30.7.2020 passed in the case of one respondent. We further find that Rules 12.17 to 12.19 were reproduced in the writ petition and have been duly adverted by appellant-State in para 5 of the reply in CWP No. 12514 of 2020, thus, it would be travesty of justice if we hold that 1934 Rules were not cited before learned Single Judge and appellant at that stage was ignorant about those rules. Therefore, it is not a case of invoking of incorrect provision. The above cited judgment is applicable where an order is passed or an action is initiated, invoking incorrect provision though there is a source of power. In the case in hand, there is no dispute qua existence of Rules and their application, however, we find that Rules are applicable prior to issuance of appointment letter and do not prescribe any time limit. It would be cavil that learned Single Judge has passed order without considering 1934 Rules or appellant was unaware about these rules. Thus, reliance placed upon afore-cited judgment is totally misplaced.

13. There is another facet of the argument raised by learned State counsel. Hon'ble Supreme Court in **Mohinder Singh Gill v. Chief Election**

Commr., (1978) 1 SCC 405 at page 417 has held that authority cannot plead beyond the order under challenge. The Supreme Court has held:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

Following above cited judgment in **Mohinder Singh Gill (Supra)**, the Hon’ble Supreme Court in a little recent judgment in **OPTO Circuits (India) Ltd. v. Axis Bank, (2021) 6 SCC 707 at page 715**, has held:

12. The action sought to be sustained should be with reference to the contents of the impugned

order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court. This has been succinctly laid down by this Court in Mohinder Singh Gill v. Chief Election Commr. [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] as follows : (SCC p. 417, para 8)

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police v. Gordhandas Bhanji, 1951 SCC 1088] : (SCC p. 1095, para 9)

‘9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.’

Orders are not like old wine becoming better as they grow older.”

In fact, in the instant case such contention of having exercised power under Section 102 CrPC has not been put forth even in the counter-affidavit, either in this appeal or before the High Court and has only been the

attempted ingenuity of the learned Additional Solicitor General. Such contention, therefore, cannot be accepted. In fact, in the objection statement filed before the High Court much emphasis has been laid on the power available under the PMLA and the same being exercised though without specifically referring to the power available under Section 17 of the PMLA.”

Though, we have found and held that Police Rules cited by Ld. State Counsel do not stipulate time period thus cannot advance case of the State, yet in view of above cited judgments of Hon'ble Supreme Court, there is no substance in the argument of the Appellant. In the impugned order, not only particular instructions were invoked but also the contents, tone and tenor of impugned order fell within four corner of instructions, therefore, it is fallacy on the part of State to argue that wrong provision was referred to.

14. In view of our above findings, we find that appeals of State are bereft of merits and deserve to be dismissed. Accordingly, both the appeals are dismissed.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

22.9.2022
PARAMJIT

Whether speaking/reasoned: Yes

Whether reportable : Yes