

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No. 488 of 2022 (O&M)

Date of Decision: 04.07.2022

Lakhwinder Singh and anotherAppellants.

versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Dr. Rau P.S.Girwar, Advocate, for the appellants.
Mr. Avinit Avasthi, Assistant Advocate General, Punjab.

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

Learned counsel for the parties submit that identical bunch of appeals against the same judgment i.e. LPA No. 961 of 2021 ***Gurcharan Singh and others vs. State of Punjab and others*** and other connected matters have been dismissed by a co-ordinate Bench of this Court vide order dated 16.05.2022 and the present appeal is also covered by the said judgment. The order passed in LPA No. 961 of 2021 and other connected matters dated 16.05.2022 by a co-ordinate Bench of this Court is in the following terms:-

“The present set of appeals are directed against the order dated 05.07.2021 of the learned Single Judge whereby certain directions have been issued that the measurement of height of the candidates would be carried out in view of the judgment in CWP No.23875-2016 titled as *Sonu Singh vs. State of Haryana and others*, decided on 21.11.2016. The writ petitioners were to be notified of the date, time and venue for remeasurement of height and those who opted for remeasurement, the exercise for their remeasurement of height and the resultant changes concerning the concerned petitioners in selection was to be completed within a period of one month. Candidates who had already undergone remeasurement test during the pendency of proceedings would be given benefit thereof on account of remeasurement. The already selected candidates on the bottom

of the list in the said category would have to make way for him, in case there was no vacancy available. The same read as under:-

- i) The criteria of selection as per the original advertisement read with the standing order, is upheld and the petitioners' challenge thereto is rejected. Dispensing with the interviews for the post of Constable being Group-C which is in tune with the guidelines issued by the Government of India and the policy decision of the State Government dispensing with the interview is also upheld.
- ii) The grievance of the petitioners qua measurement of height would be mitigated by the State by carrying out one time re-measurement of their height in terms of judgment rendered by this Court in Sonu Singh's case, *ibid*. It is so ordered accordingly.
- iii) All the petitioners be notified of the date, time and venue for remeasurement of height through email/ text message as well on the website of the department. Those who opt for remeasurement, the exercise for their remeasurement of height and the resultant changes concerning the concerned petitioners in selection shall be completed within the next one month.
- iv) If any of the concerned aggrieved petitioners is/are selected, he/they be issued letters of appointment within the next two months. Candidates who have already undergone remeasurement test during pendency of proceedings would be given benefit thereof, if any, in accordance with remeasured height.
- v) If upon re-measurement of height, any petitioner comes above the previously selected candidate in the respective category viz. General or otherwise, in that event the already selected candidate on the bottom of list in the said category shall have to make way for him, in case there is no vacancy available. Needless to say that in case vacancies still exists, then the newly selected candidate shall be accommodated in accordance with his merit.
- vi) A writ of mandamus is issued to the State of Punjab that henceforth it shall ensure that the guidelines, contained in Sonu Singh's case, *ibid* are made mandatory in every

recruitment to be carried out in Punjab Police and other departments where height is one of the criteria for selection.

vii) All other cases wherein additional issues, other than the challenge to criteria as per advertisement read with standing order and measurement of height, are being de-tagged vide a separate order to be reheard on their individual merits, only to the extent the issues raised therein have not been dealt with in this judgment.”

The contentions raised by the counsels while dealing with as many as 209 writ petitions were dealt with by the learned Single Judge who was dealing with the advertisement issued on 31.05.2016 for recruitment of 7416 Constables (male/female) in District Police cadre and Armed Police cadre. A perusal of the said advertisement would go on to show that the selection of male and female constables in the district police cadre and armed police cadre was to be made on the basis of the option given by the candidate and the merit position for the State wise combined merit list, would be derived from the marks obtained by him/her in the Physical Measurement Test, 10+2 marks and interview-cum-Personality test. As per Clause 20(vii) of the said advertisement also, the candidates had been advised to go through the guidelines/instructions for filling up the application form as well as the Standing order of the office of Director General of Police vide no. # 1 of 2016, which was the governing document for the recruitment process of the year 2016 of Constables in the Punjab Police. As per Clause 10 of the said advertisement, there was to be a Interview-cum-Personality Test which was of the 4 marks. The Interview-cum-Personality Test Board would assess the suitability of each candidate. The documents would be scrutinized at the time of Interview-cum-Personality Test as per the said Clause.

The grouse as such of the candidates was that subsequently amendment had been made in the Standing order whereby interview has been dispensed with. The date of the amendment is stated to be 26.09.2016. This was the primary grievance as such of the candidates that in view of the said amendment since the interview was done away, it amounted to changing the rules of the game when the game had started. News item dated 30.09.2016 was accordingly published, which reads as under:-

“No interview or Personality Test will be conducted for the posts of Punjab Police Constables.

Chandigarh, 29 September ()- Punjab Police has specify that no Interview or Personality Test will be conducted for the recruitment of 7359 Constables in District Police cadre & Armed Police cadre. According to Chariman, Central Recruitment Board, the selection of applicants will be made only on the basis of their total marks obtained i.e. marks obtained in height measurement and marks obtained in 10+2 examination and will be selected accordingly. These instructions are issued by Director General of Police, Punjab on 26 September. According to Government bodies this clarification has given to stop any favoritism.”

On the basis of said advertisement, the result was finalized and declared on 01.10.2016 leading to set of writ petitions and various interim orders were passed by different learned Single Judges i.e. on 06.12.2016, 17.05.2017, 04.12.2017, 05.02.2018, 12.02.2018 and 25.04.2018. Since there was also dispute that the height of the candidates was wrongly measured, a direction had been issued on 25.04.2018 for remeasurement as such including that of selected ones. Necessary compliance report/affidavit dated 06.03.2018 was also filed by the Assistant Inspector General of Police, Punjab including other similar compliance report/affidavits dated 20.12.2017. The said compliance report/affidavits brought to the notice that height of 9 candidates had been remeasured by the Board of Doctors of Government Multi Specialty Hospital, Sector 16, Chandigarh and three of them were found entitled to selection on merit and they were to be offered appointment. The said order was also challenged by the State by filing a Review Application i.e. RA-155-2018, which was dismissed on 02.07.2018 and then a Intra Court Appeal (LPA-1263-2018) was filed. The matter was also stayed by the Coordinate Bench and eventually remitted to the learned Single Judge on 19.03.2021 by noticing that the general directions had been given for remeasurement of all candidates including selected ones and the

said order be kept in abeyance till the decision of the writ petition. The said order reads as under:-

“At the time notice was issued in the instant LPA, by way of interim order dated 10.9.2018, operation of order of learned Single Bench was stayed. We have proposed the counsel that the matter needs to be relegated to learned Single Judge for final decision of the writ petition in question. They have no objection to this.

Certain applications have been moved for impleadment. Same be also put up before learned Single Bench. It is evident that by virtue of the impugned order, general directions have been given for re-measurement of all candidates including selected ones. Said order be kept in abeyance till the decision of the writ petition.

As all the counsel are satisfied with the aforesaid order, we dispose off the matter in the above terms.”

Challenge was also raised to the criteria which was laid down of the Standing Order wherein in cases of two candidates securing equal marks, certain criteria was to be adopted which reads as under:-

- “(a) In the event of the candidates having equal marks, the candidate senior in age shall be put higher in the Merit.
- (b) In the event of the candidates having equal marks and having same date of birth, then their relative merit shall be prepared on the basis of percentage of marks obtained in the 10+2 examination and the candidate having higher percentage of marks in the 10+2 examination, shall be placed higher in the Merit.
- (c) In the even of the candidates having equal marks, same date of birth, same percentage of marks in the 10+2 examination, then their relative merit shall be prepared in the descending order of the Roll numbers assigned to the candidates.

Keeping in view the above facts, the learned Single Judge while delving deep into the issue, came to the conclusion that it was not for this Court to determine whether interview was to be required or not. The matter was related to job of Police Constable and the competent authority had to decide the educational qualification and other requirements and formula to determine the merit. It was accordingly left to the wisdom of the competent authorities since the criteria as such had already been prescribed in the advertisement as to how the marks was to be awarded on the basis of physical measurement test and the educational qualification including performance in the 10+2 board examination.

Another aspect which weighed with the learned Single Judge was that the writ petitioners as such had taken part in the selection process and all of them had been placed at the same pedestal and therefore, no prejudice had been caused to them by dispensing with the interview process. Rather, a finding had been rightly recorded that awarding of 4 marks for the interview and personality test was rightly done away and, therefore, even if there was a change in the method of the selection process, it would not prejudice any set of candidates. It is settled principle that the candidates have a right of consideration but cannot hold out as such that a certain methodology has to be followed once having taken part in the recruitment process, and if the same does not favour any set of aspirants.

The grouse of the appellants is that certain candidates' height had been wrongly measured and had not been given the appointment was also taken into consideration by noticing that there was enough material on record to show that there was an error in the measurement of height. Out of 76 candidates remeasured, 31 candidates had been found in variance. It was in such circumstances, the directions were issued that the writ petitioners who were aggrieved as such, their height be remeasured and benefit as such, if any, be given to them and selection list be redrawn by taking out the already selected candidate from the bottom list. It is not disputed that in pursuance of the same, necessary exercise had been done. It is also not disputed that the review application filed by the State and by the unsuccessful candidates had been dismissed on 02.12.2021.

The Additional Director, Administration, CPO, Punjab has also filed an affidavit dated 28.03.2022 in compliance of the last order wherein it was mentioned that after the review application was dismissed. A public notice dated 13.12.2021 was issued wherein list of 167 aggrieved petitioners was uploaded on the official website of the department. Accordingly, the petitioners who were aggrieved regarding their remeasurement of height were informed which was to take place on 17.12.2021 at PAP Ground, Jalandhar by Digital Stadiometer. Similar exercise was done on 18.01.2022 at Parade Ground, Sector-5, Panchkula. Out of 167 aggrieved petitioners, 122 petitioners had come present at PAP ground, Jalandhar for remeasurement of their height and similarly 5 petitioners had come present at Parade Ground, Sector-5 Panchkula. Height of 20 petitioners stood increased and out of them, only 11 petitioners came within the selection zone on account of the revised list. Keeping in view the same, merit list was revised and those who had come within the selection zone were to be allocated to District Police cadre or Armed Police cadre as per their merit.

It is, thus, apparent that the grouse of the writ petitioners regarding the remeasurement had been adequately redressed by the learned Single Judge and also so by the State. The argument as such of the counsels that in the event of two candidates securing equal marks in case of ties, benefit be given to senior in age is not justified. The same is provided as per Clause 6 which has been reproduced above of the Standing Order and which also finds mention in the advertisement.

It is settled principle that the candidates are bound by the terms of the advertisement which in further referred to the Standing Order and therefore, there was no possibility of any discrimination with any candidate after having participated in the recruitment process. It is also settled principle that once the candidates had participated in the selection process and taken a chance, they cannot challenge the selection process at a subsequent point of time having failed to make the cut.

In **Ashok Kumar & another Vs. State of Bihar & others, (2017) 4 SCC 357**, the three Judge Bench of the Apex Court approved the Division Bench order of the Patna High Court which had set aside the order of the Single Judge who had interfered in the selection process. It was noticed that the

objection to the selection process could not be taken by the appellants only on account of the fact that they were unsuccessful and after having participated in the selection process, the challenge could not be permitted and is impermissible. In the present case, as noticed, the challenge in the writ petitions was to the various portions of the advertisement of 2016 as to how the marks were to be divided of 10+2 which had been provided in the advertisement itself and to Clause 5.3 of the standing order No.1 which itself provide the break-up of the marks to be awarded. The candidates had thus apparently taken part in the process of selection whereby marks have been prescribed up to 15 for +2 and up to 15 for Matriculation and were further divided between the percentage the candidate would have to obtain and the necessary representation had also been moved on that account. Similarly, challenge had been made to the merit-list whereby age preference had been given and not to accord the same to the higher aged candidates which has already been provided in the standing orders. There was never any challenge raised to the action of the respondents advertising the doing away of the interview or the personality test on 30.09.2016. Only when the result was declared on 26.10.2016, the writ petitions have been filed in December, 2016. Thus, the said principle would be fully applicable on all squares.

The further argument raised by Mr. Pardeep Virk, Advocate in LPA-756-2021 is that some candidates had wrongly given the benefit of height is also without any basis. It is to be noticed that neither any of the private candidates were arrayed as a party nor any malafide has been alleged in the present set of appeals or any official has been impleaded as private respondent to show that the decision to do away with the interview as such was wrong or it provided benefit to certain category of the candidates. The State once having taken a decision to determine the merit by referring to the education qualification, physical test and physical standards and to do away with interview process was applying a universal principle to one and all.

It is also settled principle that Courts should be slow to interfere in the opinion of the experts until there is some malafides alleged against the Selection Committee and it is not for this Court to sit as an Appellate Court on the selection process unless there is substantial material to show that the

selection was tainted or was done with the purpose to select certain set of persons. Reliance can accordingly be placed upon the judgment passed by the Apex Court in **Sanjeesh Babu K. Vs. N.K.Santhosh & others, (2012) 12 SCC 106** and **Anand Yadav & others Vs. State of Uttar Pradesh & others, 2020 AIR (SC) 5383**. Such allegations were never made and even otherwise once the interview was done away with, chances of making any such allegations have got frittered away.

The rules of the game principle is also not applicable as held in **K.Manjusree Vs. State of Andhra Pradesh & another, 2008 (2) SCT 6**, wherein the Apex Court had applied the said principle. It was noticed that the criteria of minimum marks for interview had been fixed which was never adopted by the Andhra Pradesh High Court and the introduction of the minimum marks for interview after the entire selection process had been completed would amount to changing the rules of the game after the game has been played. It was accordingly held that if the same had to be done, it should be done before the commencement of the selection process. In the said case, the appellant's name was mentioned in the first selection list and on account of the minimum marks for interview not having been prescribed but since the norm had been changed subsequently, she had been ousted and resultantly, her appeal was allowed. In the present case, no such list was prepared and neither any interview was held on the basis of which the appellants can show that any prejudice had been caused by doing away with the interview and it would be applicable to one and all and therefore, the said principle would not come into play.

It is not for the candidates to determine how the selection process is to be carried out. It is to be left to the wisdom of the competent authorities and therefore, the learned Single Judge was well justified in holding that it was the policy decision of the State Government in dispensing with the interview. The necessary directions issued with regard to remeasurement of height was to protect the interest of certain candidates in particular as noticed above. The candidates who had undergone remeasurement test have been given the benefit in accordance with the remeasured height by revising the list as directed by the learned Single Judge.

Regarding the grouse of some of the candidates who had been initially declared successful but on account of the

directions of remeasurement being passed vide interim orders, have now been moved out of the zone of consideration. The relief is not liable to be granted to them since on the very first date i.e. 06.12.2016, the order had been passed that selection and appointment of Constables shall be subject to the decision of the writ petition. The said order reads as under:

“Ms. Sudeepti Sharma, DAG, Punjab has put in appearance on behalf of the respondents/State and prays for time to file reply. Service is complete. Adjourned to 22.03.2017. In the meanwhile, the selection and appointment of the Constables against advertised posts vide Advt. No. 01/2016, dated 31.05.2016, shall be subject to the decision of the writ petition.”

Thus, for the said persons who are appointed were well aware of the pendency of the writ petition and now cannot turn around and say that they were not heard at the time of the writ petition. The writ petitions remained pending before the learned Single Judge and various interim orders were passed and eventually it was only decided on 05.07.2021 and they had ample opportunity to join the proceedings but chose not to do so. Thus they cannot now turn around and say that any order has been passed on their back.

We, thus, do not find any illegality or infirmity with the order passed by the learned Single Judge which would persuade us to interfere in a well reasoned order. In such circumstances, there is no merit in the present set of appeals. The same are dismissed.”

As stated and as prayed by learned counsel for the parties, the present appeal is also dismissed in terms of the judgment passed by a Coordinate Bench of this Court dated 16.05.2022 in LPA No. 961 of 2021 and other connected matters.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.07.2022

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√