

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

CWP No. 17548 of 2017

Reserved on: 12.10.2022

Pronounced on: 20.10.2022.

Sukhwinder Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

PRESENT: Mr. G. S. Bal Senior Advocate with
Mr. Dilshad S. Gill, Advocate
for the petitioners.

Mr. Mohit Kapoor, Addl. A.G., Punjab.

JAISHREE THAKUR J.

1. The present writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari seeking quashing of the order dated 21.07.2017 (Annexure P-14) whereby the petitioners have been directed to be reverted to Armed Battalion, further, seeking a writ in the nature of mandamus for directing the respondents to permit the petitioners to continue in the District Police.

2. In brief, facts of the case are that petitioner No. 1-Sukhwinder Singh and petitioner No.2-Jagsir Singh were appointed as Constables by way of direct recruitment in Indian Reserve Battalion on 01.03.2006 and allotted Constabulary No.7/IRB/718 and 7/IRB/325 respectively. Petitioners after getting No Objection Certificate from the Battalion applied for the post of Constables in District recruitment, in light of the advertisement dated 28.02.2010 (Annexure P-1). Both the Petitioners were recruited as Constables in District Police Cadre, Sangrur and allotted Constable Numbers

1856/SGR and 1870/SGR respectively. The age of petitioner No.1 at the time of recruitment was 25 years, 11 months and 28 days as on 01.01.2010 and the age of petitioner No.2 was 25 years, 11 months and 20 days as on 01.01.2010. One Constable Jagmeet Singh No. 7/524 also from the Reserve Battalion after getting NOC had applied for enrolment in District Police, Ludhiana. His application was rejected in Ludhiana District as he was over-age and as such he was not enrolled. Thereafter, he filed a CWP No. 1498 of 2011 claiming that the petitioners in the present case being similarly situated as him were selected and appointed in District Sangrur. The said writ petition was dismissed as withdrawn by this Hon'ble High Court on 21.11.2011.

3. Thereafter, Director General of Police, Punjab vide letter dated 01.07.2011 ordered repatriation of the petitioners to their parental units and the petitioners stood repatriated accordingly. Petitioners then filed a CWP No. 11378 of 2011 and the operation of order dated 01.07.2011 (Annexure P-5) was stayed by the High Court. Subsequently, CWP No.11378 of 2011 was allowed vide order dated 09.12.2015 (Annexure P-6) and the order dated 01.07.2011 (Annexure P-5) was set aside with liberty given to the respondents to take action, if necessary, against the petitioners by resorting to proper procedure. Thereafter, DGP Punjab referred the matter to SSP, Sangrur to take necessary action in compliance with the judgment dated 09.12.2015.

4. In compliance with these directions, SSP Sangrur passed an order dated 12.02.2016 holding that none of the petitioners either misrepresented or made a misstatement. Disciplinary action against the concerned officials, who checked the age limit has already been taken, vide Annexure P-16. Since these employees were not at fault, they were not liable to any departmental

action. Subsequently on 16.07.2016, show cause notices (Annexure P-9, P-10) were issued requiring the petitioners to explain as to why they should not be repatriated to IRB. Another CWP No.14456 of 2016 was filed by the petitioners for quashing the Show Cause Notices, which was dismissed as pre-mature on 23.07.2016. Thereafter, consequent upon the directions from the office of DGP, Punjab, petitioner No.1 Constable Sukhwinder Singh and petitioner No.2 Jagsir Singh were repatriated on 09.08.2017 from District Sangrur to their parent unit i.e. 7th Indian Reserve Battalion, Kapurthala vide order dated 09.08.2017. Hence, the instant writ petition.

5. Mr. G.S. Bal, Senior Advocate assisted by Mr. Dilshad S. Gill, Advocate appearing for the petitioners would submit that the service conditions of the petitioners are governed by the Punjab Police Rules, 1934 henceforth called 'the PP Rules, 1934' for short and the Punjab Civil Service Rules (General and Common Conditions of Service) Rules, 1994 henceforth called 'the PCS Rules, 1994' for short. Relying on the above mentioned rules, counsel for the petitioners would submit that by virtue of Rule 20 of PCS Rules 1994, the said rules shall have an overriding effect over all the other Rules regulating the recruitment and conditions of service of Group 'A', Group 'B' and Group 'C' posts. Rule 5 of PCS Rules, 1994 provides that the age limit for direct appointment is between 18 to 30 years and the proviso further provides that age limit for in-service candidates would be 45 years. Petitioners being 25 years, 11 months and 28/20 days and in service candidates, are within the said prescribed age limits and thus it cannot be said that they were overage at the time of their enrolment in District Police. It is submitted that the upper age limit for the said recruitment is to be fixed as 30

years in terms of the PCS Rule of 1994, whereas in the Advertisement (Annexure P-1) age prescribed for recruitment is 25 years. Petitioners specifically sought No Objection Certificate from their competent authorities for participating in the selection process of constables in District Police. Since, the petitioners did not conceal anything from the authorities; no fault can be attributed to them. It is also argued that in terms of the judgment rendered in CWP No 11378 of 2011, the petitioner's case was to be considered sympathetically, considering the fact that the petitioners already were in service, appointed as constable and serving as such. Therefore the impugned order dated 21.7.2017 repatriating the petitioners is unsustainable.

6. Per contra, Mr. Mohit Kapoor, Addl. A.G., Punjab submits that both the petitioners were over age by 11 months 28 days and 11 months 20 days respectively and they were inadvertently recruited as Constables in District Sangrur. It is submitted that since there was no provision in the advertisement for age relaxation, both the petitioners, being over age, could not be considered for recruitment and the concerned officials who were found to be responsible for considering the case of the petitioners, despite the fact that they were overage as per eligibility conditions, were suitably punished vide order dated 30.03.2015. In the additional affidavit dated 22.7.2022, it is submitted that as per the Standing Order 1/2010, the respondents have established the criteria and eligibility for appointment. The upper and lower age has been fixed as 18 and 25 years, as well as the educational qualification. Furthermore, there is no provision for age relaxation to government employees. It is also submitted that Rule 5 of the PCS Rules, 1994 are not

applicable since the PPR, 1934 provides a procedure for appointment and recruitment for constables.

7. In the rejoinder to the affidavit filed, it is submitted by the petitioners that the Standing Order 1/10, being executive instructions, cannot be relied upon as they are inconsistent with the PPR of 1934 and PCS Rules of 1994. It is further submitted that in all subsequent advertisements issued, the respondents have fixed the age limit as 28 years and therefore, even the Standing Orders have not been followed.

8. I have heard arguments of learned counsel for the parties and gone through the impugned order as well as other documents on the file.

9. The facts in brief, would spell out, that the petitioners who were initially appointed Constables by way of direct recruitment in Indian Reserve Battalion on 01.03.2006 and allotted Constabulary No. 7/IRB/718 and 7/IRB/325 respectively, applied for the post of Constables in District Police Cadre, in light of the advertisement dated 28.02.2010 (Annexure P-1), for which recruitment held in the year 2010. The Commandant gave the 'No Objection Certificate' to the petitioners to participate in the selection process. The petitioners were duly selected and issued constabulary numbers for the District Police. Having worked as such, they have now been repatriated by the impugned order on account of the fact that they were overage.

10. Rule 12.15 of the PPR, 1934 pertains to the age and physical standards of the recruits. The same is reproduced as under.

12.15 Recruits - age and physical standards of -

(1) Recruits shall be not more than 21 , or less than 18 years of age, at the time of enrolment, and shall have a minimum height of 5'-7" and normal chest measurement of 33", with expansion of 1 inches. These

physical standards shall not be relaxed without the general or special sanction of the Deputy Inspector-General. A general reduction of the standard may be allowed by Deputy Inspectors-General in the case of special castes or classes, which provide desirable recruits, but whose general height does not come up to that prescribed. In such cases a standard of chest measurement and general physique shall be fixed, which will permit the enlistment of strong and well-proportioned youths of the class in question.

2 The Inspector General may in special circumstances be recorded in writing, relax the upper age limit and the physical standards in the case of recruits.

11. Whereas, Rule 5 of PCS Rules, 1994 pertains to the age of a person to be appointed in Group 'A', Group 'B' and Group 'C' services in connection with the affairs of the State of Punjab. The said Rule is reproduced as under:-

5. Age. -

*(1) No person shall be recruited to the Service by direct appointment, if he is less than **eighteen years or is more than thirty years of age** in the case of non-technical posts and thirty-five years in the case of technical posts on the 1st day of January of the year immediately preceding the last date fixed for submission of applications by the Commission or the Board, as the case may be, **or unless he is within such range of minimum and maximum age limits as may be specifically fixed by the Government from time to time:***

Provided that where different lower and upper age limits have been specifically prescribed for posts in the Service Rules, these limits shall be made applicable for appointment to such posts:

Provided further that the upper age limit may be relaxed upto forty-five years in the case of persons already in the employment of the Punjab Government or any Board, Corporation, Commission or Authority under it, other State Government or the Government of India.

Provided further that in the case of candidates belonging to Scheduled Castes and other Backward Classes, the upper age limit shall be such as may be fixed by the Government from time to time.

(2) In the case of ex-servicemen, the upper age limit shall be as has been prescribed in the Punjab Recruitment of Ex-servicemen Rules, 1982, as amended from time to time.

(3) In the case of appointment on compassionate grounds on priority basis, the upper age limit shall be such as may be specifically fixed by the Government from time to time.

(4) In the case of appointment of a War-hero, who has been discharged from defence services or paramilitary forces on account of disability suffered by him or his widow or dependent member of his family, the upper age limit shall be such as may be specifically fixed by the Government from time to time.

12. The entire thrust of the argument of the learned senior counsel for the petitioners is that Rule 5 of PCS Rules, 1994 pertains to the age of a person to be appointed in Group 'A', Group 'B' and Group 'C' services in connection with the affairs of the State of Punjab, and therefore the petitioners who had applied for appointment as Constables in the District Police Cadre which is a Group 'C' post, should have the maximum age, which is fixed at 30 years. In case the maximum age is taken to be 30 years, the petitioners would not have been declared overage. It is also submitted that there is a provision for relaxation in the upper age limit, which may be relaxed upto forty-five years in the case of persons already in the employment of the Punjab Government or any Board, Corporation, Commission or Authority under it, other State Government or the Government of India.

13. Unfortunately this argument is not attractive as appointment to the Punjab Police is governed by the PPR 1934, where the eligibility criteria has been enumerated regarding age of the candidate and the physical

measurements. In fact as per Rule 12.15 the minimum age is 18 years and the maximum age is 21, whereas in the present advertisement, the maximum age had been fixed at 25 years. The advertisement in question invited applications for direct recruitment of male candidates for filling up 1214 posts in the District Police Cadre in the rank of Constable. The eligibility criteria specified was the educational qualification as well as the age. As per the advertisement, Clause 4(b) pertained to the lower and upper age limit for recruitment. The same reads as: *“the lower and upper age limit for recruitment will be 18 and 25 years respectively. The cut-off date will be 01.01.2010. The relaxation in upper age limit for the candidates of scheduled castes/scheduled tribes and backward classes will be given as per government instructions. The relaxation in upper age limit for the ex-servicemen will be for the period they served in Armed Forces last 3 years. However, the period between re-employment and discharge from the defense services will not be more than 24 months (2 years).”*

14. The petitioners herein, who were serving as constables with the Indian Reserve Battalion, chose to apply directly under the advertisement for recruitment of constables. The plea that No Objection Certificate had been issued by the Commandant would be of no consequence, since the petitioners have not been treated as in-service candidates. In fact the advertisement, as published inviting applications for direct recruitment, had not provided for giving of benefit of age relaxation to in-service applicants, as was provided for in respect of candidates of scheduled castes/scheduled tribes, backward classes and ex-serviceman. It is entirely in the domain of the employer to fix

the age limit and relaxation of the same for the purpose of recruitment, and age relaxation cannot be demanded as a matter of right.

15. In the opinion of the Court, PCS Rules, 1994 is not in conflict with Rule 12.15 of the PPR 1934. The argument that the upper age has to be considered in terms of Rule 5 of PCS Rules of 1994 as 30 years and in-service candidates would be entitled to age relaxation is not sustainable. Rule 5 of Rules of 1994 pertaining to age has to be read in two parts i.e.

- i) No person shall be recruited to the Service by direct appointment, if he is less than eighteen years or is more than thirty years of age in the case of non-technical posts and thirty-five years in the case of technical posts:
- ii) Or unless he is within such a range of minimum and maximum age limits as may be **specifically fixed by the Government** from time to time.”

16. The advertisement has clearly given the upper age limit as 25 years which is in consonance with the Standing Order 1 of 2010 dated 25.2.2010. It is true that the PPR 1934 provide for the upper age limit as 21 years but the Standing Order provided for the upper age limit as 25 years. No benefit can be given to the argument raised that the Standing Order is an executive instruction and cannot override rules, since there is no challenge to the same and the petitioners would not have any benefit in any case if the upper limit is still further reduced. Moreover, Rule 5 PCS Rules, 1994 itself envisages appointment “*within such range of minimum and maximum age limits as may be specifically fixed by the Government from time to time.*” The Government in its wisdom has fixed the upper age limit as 25 years for the advertisement.

17. Rule 5 of the PCS Rules of 1994 stood amended on 24.5.2010 and a provision has been added which would clarify the position further. The proviso to the amended rule is as under:-

“Provided that where different lower and upper age limits have been specifically prescribed for posts in Service Rules, these limits shall be made applicable for appointment to such posts.”

18. Consequently, this writ petition is dismissed holding that the petitioners were over age at the time of their selection and there was no provision for relaxation in age for in service candidates seeking appointment pursuant to advertisement issued for direct recruitment.

(JAISHREE THAKUR)
JUDGE

October 20, 2022
Pankaj*

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