

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

CWP No.25988 of 2018 (O&M)

Date of Decision.13.09.2022

Rajesh Kumar and another

...Petitioners

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Jagjeet Beniwal, Advocate
for the petitioners.

Mr. Tapan Kumar Yadav, DAG, Haryana.

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JAISHREE THAKUR J. (ORAL)

C.M. No.16897-CWP-2019

Application is allowed.

Annexures P-3 and P-4 are taken on record, subject to all just
exceptions.

CWP No.25988 of 2018

The petitioners herein seek a writ in the nature of mandamus to
direct the respondents to grant third chance to the petitioners for clearing
their written examination in the subject of Indian Penal Code so that they
can clear the Lower School Course.

In brief, the facts are that the petitioners were recruited as
Constables on 01.08.2007 and 08.05.2008 respectively and were deputed
for Lower School Course on the basis of seniority-cum-fitness under 35%
quota as provided under Rule 13.7 of the Punjab Police Rules, 1934
(hereinafter referred to as 1934 Rules), as applicable to the State of
Haryana. The petitioners herein had been deputed for the Lower School
Course in Batch No.61. The petitioners were not able to clear the written

examination in the subject of Indian Penal Code. The respondents again after a span of 20 days called the petitioners to take the test, which was conducted on 16.09.2016 and therefore, due to shortage of time petitioners again remained unsuccessful in clearing the subject of Indian Penal Code.

Learned counsel appearing on behalf of the petitioners would contend that the said examination was conducted on 16.09.2016 in complete and utter disregard to Chapter V of the Standing Order dated 25.10.2012 wherein it has been provided that the examination will be conducted and training will be imparted upto 25% duration of the training period and therefore, sufficient time was not given to the petitioners to undertake their second attempt for clearing the subject of IPC. It is argued that in fact the second examination has been held within a period of 20 days and since there is non compliance of provisions of Chapter V of the Standing Order, the petitioners be given one more opportunity to clear the said examination.

The writ petition stands contested as written statement has been filed in which it is categorically submitted that there is no provision for giving third chance to any candidate as alleged by the petitioners. It is also submitted that as per para 5.2 of the Standing Order, it is clearly mentioned that the final examination in indoor subjects as well as outdoor subjects shall be held at the end of the courses, as per the date sheet approved by Director, HPA. In case, a trainee fails in indoor examination, such a trainee will be called for re-examination and will have to undertake only such paper in which he/she has failed as a trainee. It is argued that two chances were given to the petitioners herein and having failed to clear the said examination, they cannot be granted third chance.

I have heard learned counsel for the parties and have also

perused the paper book as well as the standing order on the functioning of Haryana Police Academy, Madhuban, which standing orders pertain to admission, staff and their functioning, classes to be conducted, method of training and the syllabus as prescribed from time to time. Chapter V of the Standing Order pertains to examinations to be held. As per para 5.2 of Chapter V, final examination in indoor subjects as well as outdoor subjects shall be held at the end of courses as per the date sheet approved by the Director, HPA. Para 5.2 of the Standing Orders clearly spell out that if a trainee fails in indoor examination and is called for re-examination, he/she will have to take only the paper in which he/she has failed. Further, in case a trainee fails in any of the outdoor subject, he/she shall be re-examined in the failed subject after further undergoing training as prescribed by the Director, HPA. The trainee, who fails in any indoor/outdoor subject shall be put through additional training as prescribed above. Such additional training may be upto 25% duration of the training period. It is further stipulated that any candidate, who fails for the second time in any training, shall not be given any additional chance to appear in any re-examination and shall be returned to his/her parent unit.

The question that arises, would be whether the petitioners have been denied adequate time to re-appear and would para 5.2 of the Standing Order be read to mean that a trainee, who has failed in indoor examination will have to undergo further training for a period as prescribed by the Director, HPA before undertaking the examination. It would be apt to reproduce relevant part of para 5.2 of the Standing Orders:-

“If a trainee fails in indoor examination and is called for re-examination, he/she will have to take only the paper(s)

in which he/she has failed. Such trainee will have to undergo further training for a period as prescribed by Director, HPA before undertaking the re-examination. In case a trainee fails in any of the outdoor subject(s), he/she shall be re-examined in the failed subject(s) after further undergoing training as prescribed by Director, HPA. Trainees who fail in any indoor/outdoor subject shall be put through additional training as prescribed above. Such additional training may be upto twenty five percent duration of training period. On passing the failed indoor/outdoor subject(s) as the case may be in re-examination, the remarks obtained in supplementary examination shall be deemed to be zero and the name of the trainee shall be accordingly placed in the inter-se seniority of the batch, so that the original merit list is not disturbed.”

In the opinion of the Court, Para 5.2 of the Standing Order is not happily worded, since it specifies that a trainee will have to re-appear in a paper in which he/she has failed and will also have to undergo further training for a period as prescribed by the Director, HPA before undertaking the examination. The trainees, who fail in indoor or outdoor subjects, shall be put through additional training, which training may be upto 25% duration of the training period. A reading of the said para does not clarify the situations in case the Director, HPA does not prescribe any further training. In case, he does not do so, can the examination still be held? Even the line “*such additional training may be upto 25% duration of the training period*” is ambiguous and not specific.

This Court is not inclined to agree to the argument raised by the

petitioners that they were given only 20 days time to appear for the second time in the examination in violation of para 5.2 of the Standing Order, as the said para only specifies that the training may be upto 25% duration of the training period, which leaves it to the discretion of the Director, HPA to fix the said period before undertaking the re-examination. The petitioners herein were given three weeks time to re-appear in the said examination and they willingly undertook the said examination without a murmur and it is only after the same was not cleared, they agitated their claim. In any case para 5.2 is clear that if a trainee fails for the second time, there can be no additional chance given to appear in any re-examination and shall be returned to his/her parent unit.

In view of the aforementioned facts and circumstances, there is no merit in the prayer sought by the petitioners. Consequently, the instant writ petition stands dismissed being devoid of merit.

(JAISHREE THAKUR)
JUDGE

September 13, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No