

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

CWP No. 8360 of 2015 (O&M)

Reserved on: 8th July 2022

Pronounced on: 5th August, 2022

Jasvir Singh and another

... Petitioners

Versus

State of Punjab and others

... Respondents

Present: Mr. Bhavyadeep Walia, Advocate
for the petitioners.

Mr. Pawan Sharda, Sr. DAG Punjab.

JAISHREE THAKUR J.

1. The petitioners have approached this Court under Article 226/227 of the Constitution of India, seeking appointment as Male Constables in the Punjab Police as having participated in the selection process, pursuant to an advertisement issued inviting applications for filling up 1533 posts of Armed Police Cadre in the Constable Rank in Punjab Police.

2. The facts, as stated, are that the petitioners applied for being appointed as Constables for 121 posts, which were advertised for Ludhiana Urban under the General Category. As the application forms of the petitioners were in order, they were issued admit cards and called for physical measurement and physical fitness test. On 26th of May 2010, after having cleared the physical measurement and physical fitness test, petitioners were called for interview by the District Recruitment Board. In the final result that was declared on 20.08.2010, roll numbers of the

petitioners did not find mention. As the petitioners were confident of having acquired adequate marks for being selected, they approached this Court by way of filing Civil Writ Petition No.18164 of 2010 seeking to challenge the selection, which was dismissed as withdrawn with liberty to file a fresh petition with better particulars. Thereafter, petitioners sought a copy of the select list under the Right to Information Act, but as the same was not supplied, a reminder was issued. Another writ petition came to be filed i.e. Civil Writ Petition No. 17207 of 2011, which was again dismissed as withdrawn with liberty to file a fresh petition after obtaining necessary information under the RTI Act, as the merit position of the petitioners could not be made available to the Court. The petitioners thereafter filed a complaint before the State Information Commission and a copy of the select list was eventually supplied to them. Armed with the select list, the instant writ petition has been filed.

3. Mr. Walia, learned counsel appearing on behalf of the petitioners submits that the action of the respondents in denying appointment to petitioners is violative of the fundamental rights of the petitioners under Articles 14 and 16 of the Constitution of India. It is contended that the petitioners were fully eligible to be appointed for the post of Constable in the General Category as they had the necessary qualification to do so. It is contended that the petitioner No.1 was at serial No.160 in the merit list with 28.10 marks and Petitioner No.2 obtained 25.70 marks and was at serial No.231, therefore, they ought to have been offered appointment. It is argued that out of 121 vacancies which were earmarked for Ludhiana Urban, 50% of such vacancies were to be filled up

from the General Category and any vacancies filled up beyond the said 50%, would be unconstitutional. It is submitted that only 58 persons were offered appointment out of 121 posts, which would mean that reservation was more than 50% and thus, is unconstitutional.

4. Per contra, Mr. Sharda, learned counsel appearing on behalf of the State of Punjab would argue that appointment could not be offered to the petitioners as they did not fall in the merit list. It is submitted that candidates of the General Category, who had secured 30.35 to 30 marks, were kept in the waiting-list whereas petitioner No.1 secured 28.10 marks and petitioner No.2 secured 25.70 marks only. It is submitted that out of 121 vacancies to be filled up, 58 vacancies were from the General Category and only 6 persons were kept in the waiting-list. It is further submitted that only 6 persons were kept in the waiting-list of the General Category and the first candidate had secured 30.35 marks whereas the last secured 30 marks, therefore, the petitioners could not be brought on the waiting-list itself.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case and the law as cited.

6. The grievance of the petitioners is that being eligible, they should have been issued appointment letters. It is also a case set up that out of 121 post advertised for appointment to the posts of Constable, the State could not have earmarked only 58 posts for the General Category, which is less than 50%, making the action of the respondents unconstitutional.

7. Admittedly, both the petitioners had participated in the selection process and were declared unsuccessful. As per the merit list

prepared the petitioners did not have the necessary marks to be offered appointment and therefore, were not even put on the waiting-list. In such a situation, the petitioners could have no grievance. The argument raised that out of 1533 posts advertised, 121 were to be filled for Ludhiana Urban and therefore, 50% of 121 posts should have been earmarked for the General Category (meaning thereby, 60 posts should have been offered for the General Category), is an attractive argument, but cannot be considered at this stage. In the advertisement the percentage of reservation for various categories was detailed as to how the posts were to be filled. This is evident from the following relevant extract of the advertisement:

‘As per the government instructions issued from time to time 25% seats for scheduled caste/scheduled tribes, 12% seats for backward classes, 13% seats for ex-servicemen, 2% seats for dependents of police employees and 1% seats for dependents of freedom fighters are reserved.’

This fact was well within the knowledge of the petitioners when they applied and therefore, they are now estopped from raising this issue regarding excessive reservation. As of now all posts in the General Category have been filled up.

8. It is also argued that three persons have not joined and therefore, the said two posts can be offered to the petitioners herein, which would restore the balance of 50% posts being offered to the General Category. It is submitted that the petitioners who have been approaching the respondents time and time again can, therefore, be considered for appointment against two posts which are still lying vacant. Counsel for the petitioner would rely upon the judgment rendered in **Ashok Alias Somanna Gowada Versus State of Karnataka Reported in 1992 AIR**

(Supreme Court) 80 wherein appointment was directed to be given to the appellant by the Supreme Court, despite others having a higher merit. However, at this stage this argument is without merit as the petitioners had participated in the selection process with full knowledge that only 47% of the posts were to be given to the General Category. No infirmity in the selection process has been pointed out, as was in the case of **Ashok Alias Somanna Gowada (supra)** where the challenge was made to marks allocated for viva voce. There are other meritorious candidates, who appeared in the selection process and were not appointed but have accepted the selection process to be fair one. The petitioners could have objected that posts earmarked to the General Category are less than 50% of the total posts and therefore, is unconstitutional, but did not do so at the relevant time. Moreover, they did not even have the desired merit to have been kept in the waiting list. Therefore, only because they have been agitating for their claim, without being on the merit list/ waiting list, would not be a sufficient ground to allow the writ petition.

9. In view of the aforementioned facts and circumstances, this Court does not find any merit in the arguments raised by the counsel appearing for the petitioners and thus, the instant petition stands dismissed *sans* merit.

(JAISHREE THAKUR)
JUDGE

August 05, 2022
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No