

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP-2560-2021(O&M)

Date of decision : January 28, 2022

Harchand Singh and others

... Petitioners

Versus

Atish Chandra and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Nitin Sachdeva, Advocate for the petitioners.

Mr. Chetan Mittal, Senior Advocate with
Mr. Sunish Bindlish, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

This petition has been filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 alleging violation of the directions contained in the order dated 28.2.2019 passed in CWP-20928-2017 titled as 'Harchand Singh and others Versus Food Corporation of India and another', order dated 28.2.2019 passed in LPA-930-2018 titled as 'Bishan Lal and others Versus Food Corporation of India and others' and the directions contained in the judgment of Hon'ble the Supreme Court in 'Steel Authority of India Limited Versus National Union Water Front Workers' (2001) 7 SCC 1.

The petitioners were employed as Security Guards in the Food Corporation of India in District Sangrur through Contractors. The dates of their appointment as Security Guards have been detailed in Annexure P4. It is stated that a number of persons were similarly employed as Watchmen at various Depots of the Food Corporation of India. They were also engaged

as contract labour through the Contractor. They served as such for number of years. The appointment letters used to be issued by the Contractor who used to endorse copies to the Assistant Manager of the FCI Depot where the watchman was engaged. On the basis of attendance record maintained by the Contractor, the payment used to be released by the FCI to the Contractor who then disbursed it to the contract labour.

After the enactment of Contract Labour (Regulation and Abolition) Act, 1970 (for short “CLRA Act”), the Central Government issued Notification dated 9.12.1976 under Section 10 thereof, whereby, employment of contract labour for watching of buildings in respect of establishments with regard to which the Central Government was the 'appropriate Government' was prohibited. Some colleagues of the petitioners filed CWP-4695-1999 titled as 'Sunil Kumar and others Versus FCI and others' for issuance of directions to the FCI to treat them as regular employees of FCI and not to terminate their services. The said writ petition was disposed of vide judgment and order dated 2.8.2002 with a direction that the petitioners would be entitled to relief in the light of the observations of the judgment of Hon'ble the Supreme Court in Steel Authority of India Limited's case (supra).

The petitioners, who are similarly situated as the petitioners in CWP-4695-1999, filed CWP-10445-2001 titled 'Harchand Singh and others Versus FCI and others' praying for quashing the action of respondents in terminating their services and employing Home Guards and SPOs from the Punjab Police against the posts of Security Guards where the petitioners were earlier working. This petition was disposed of vide order dated

21.2.2003 in terms of the decision in CWP-4695-1999. It is thereby contended that the petitioners were also entitled to consideration in the light of the observations of Hon'ble the Supreme Court in the case of *Steel Authority of India Limited* (supra).

The Food Corporation of India, Regional Office Punjab, Chandigarh published a Recruitment Notice No.01/2017/Punjab, inviting on-line applications for 864 posts of Watchmen in various Depots in the State of Punjab. The petitioners filed CWP-20928-2017 challenging the recruitment notice. Their primary grievance was against Clause No.9 (i), (iv), (v) under the Heading ELIGIBILITY CRITERIA FOR ERSTWHILE CONTRACTUAL SECURITY GUARDS of the said notice and Clause 1 (i) (ii) of SELECTION PROCESS specified in the notice whereby a written examination and Physical Endurance Test was made compulsory even for the erstwhile contractual Security Guards and they were not granted any relaxation/exemption in respect of passing the written examination and Physical Endurance Test. CWP-20928-2017 was heard alongwith LPA-930-2018. In the course of the hearing of the cases on 6.2.2019, the Division Bench observed that prima facie the impugned advertisement prescribing conditions and the criteria of selection appeared to be designed to deny benefit to the contract labour which had been extended to them by the decision of Hon'ble the Supreme Court in *Steel Authority of India Limited* (supra). As the respondents showed no inclination to modify the impugned conditions the personal appearance of the Managing Director of the FCI alongwith the General Managers of the FCI in States of Punjab and Haryana was directed. Later, an affidavit on behalf of the FCI was filed,

wherein, it was stated that it has been decided to withdraw the Recruitment Notice 01/2017. It was undertaken that the issue of relaxation would be re-examined in compliance with the judgment of Hon'ble the Supreme Court in the case of *Steel Authority of India Limited* (supra). CWP-20928-2017 and LPA-930-2018 were disposed of in the light of the affidavit.

A fresh Recruitment Notice No.01/2021/Punjab has now been issued for the recruitment of watchmen. It is averred that the same conditions as in the Recruitment Notice No.01/2017/Punjab which was withdrawn, have been incorporated therein.

The contention of Mr. Narwana, Ld. Senior Counsel for the petitioners is that as the conditions in the fresh recruitment notice are the same as the conditions in the earlier recruitment notice which was withdrawn to re-examine the issue to the extent of relaxation in compliance of the judgment in Hon'ble Supreme Court in *Steel Authority of India's* case, the respondents are liable to be proceeded against for contempt.

Before proceeding further, it would be necessary to reproduce the operative part of the order of this Court passed in LPA-930-2018 and CWP-20928-2017 :-

“LPA-930-2018

An application duly supported by an affidavit has been filed on behalf of FCI, Punjab, wherein it has been stated that the competent authority i.e., General Manager (R) Punjab Region, has taken a decision to withdraw the Recruitment Notice No.1/2017 which is subject matter of challenge in the writ petition and to re-examine the issue to the extent of relaxation as claimed in the present LPA and bunch of writ petitions in compliance of the judgment passed by the Hon'ble

Supreme Court in Steel Authoirty of India Ltd. Versus National Union Water Front Workers, 2001 (7) SCC 1.

The same stand is being taken by FCI, Haryana by filing a similar application duly supported by an affidavit.

In the wake of the decision taken by FCI, Punjab and Haryana Regions, referred to above, no cause of action survives to the appellants/petitioners in the matter. Since the advertisement itself has been decided to be withdrawn, the observations made by the learned Single Judge in the judgment impugned in the LPA pale into insignificance, and all the questions arising herein shall remain open to be adjudicated in appropriate proceedings at a relevant stage.

Needless to observe that the Food Corporation of India shall re-examine the issue and initiate the process of recruitment as expeditiously as possible. Learned counsel for the FCI, Punjab and Haryana Regions, on the basis of the instructions received from the respective General Managers, who are present in the Court, have made a statement before us that the entire process shall be completed within a period of six months.

It is made clear that as and when the fresh advertisement is issued, all those who had made applications under the previous advertisement shall be eligible to make fresh applications, if they so desire, and their applications shall not be rejected on the ground of having become overage.

With the aforesaid directions and observations, the LPA and all the writ petitions stand finally disposed of.”

“CWP-20928-2017

This writ petition stands disposed of in terms of our detailed order passed today in LPA-930-2018 titled as 'Bishan Lal and others Versus Food Corporation of India and others'.”

It would also be necessary to reproduce the relevant part of judgment of Hon'ble the Supreme Court [para 125 (6)] in the case of Steel Authority of India Limited. which is being relied on by Mr. Narwana:-

“(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

The relevant conditions of the Recruitment Notice No.01/2017/Punjab which the petitioners had assailed in CWP-20928-2017 are as under :-

- “9. ELIGIBILITY CRITERIA FOR ERSTWHILE CONTRACTUAL SECURITY GUARDS
 - I. Maximum age for General Category erstwhile Contractual Security Guards shall be 54 years as on 31.3.2018* i.e. the probable date of completion of entire recruitment process so that the candidates belonging to reserve category may be confirmed to the post after service of one year, which is prerequisite for confirmation to the post as per FCI rules.
xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx
 - IV. The minimum qualification is 5th pass for erstwhile contractual security guards.
 - V. The erstwhile contractual security guards to produce I. Card or Salary Slip as a proof of having worked with FCI as contractual security guards. Besides they shall have to submit Affidavit as suggested by the Joint Committee of FCI Punjab and Haryana Regions.
 - vi. xxxxxxxxxxxxxxxxxxxx

Selection Process

I. PATTERN OF WRITTEN TEST

Written Examination Paper (Duration – 90 Minutes).
The Written test will be comprised of 120 Multiple Choice Questions from General Knowledge, Current Affairs, Reasoning, English Language and Numerical Ability.

Note -

- All questions will carry 1 mark each. There will be no negative marking.
- The Question Papers for written test will be trilingual i.e. in English, Hindi and Punjabi. ”

“II. PATTERN OF PHYSICAL ENDURANCE TEST (QUALIFYING PURPOSE) :

Physical Endurance Test							
RUNNING							
Gender	Distance (in Meters)	Qualifying parameters in minutes as per age					
		18 – 30 years	30-35 years	35-40 years	40-45 years	45-50 years	50 years and above
Male Candidates	1000 m	330 sec.	370 sec.	409 sec.	440 sec.	471 sec.	497 sec.
Female Candidates	800 m	255 sec.	300 sec.	345 sec.	390 sec.	435 sec.	480 sec.
Long Jump (Qualifying in three attempts)							
Gender	Agewise break up and distance in meters	Qualifying parameters in minutes as per age					
		18 – 30 years	30-35 years	35-40 years	40-45 years	45-50 years	50 years and above
Male Candidates		3.95 m	3.80 m	3.65 m	3.50 m	3.35 m	3.20 m
Female Candidates		2.74 m	2.60 m	2.45 m	2.30 m	2.15 m	2.00 m
High Jump (Qualifying in three attempts)							
Gender	Agewise break up and distance in meters	Qualifying parameters in minutes as per age					
		18 – 30 years	30-35 years	35-40 years	40-45 years	45-50 years	50 years and above
Male Candidates		1.14 m	1.10 m	1.05 m	1.00 m	0.95 m	0.90 m
Female Candidates		0.90 m	0.85 m	0.80 m	0.75 m	0.70 m	0.65 m

Note -

- FCI reserves the right to introduce additional phase of written examination/screening test in compelling circumstances for screened candidates on the basis of performance in written test and decision regarding calling such number of candidates shall be decided by FCI only.
- The number of candidates will be shortlisted for PET in the ratiion of 1:3 and will be informed about the venue of PET through website www.fcipunjabapply.com. The candidates are advised to keep visiting the website regularly.
- The PET is of qualifying nature only.
- The final merit list will be prepared on the basis of written test subject to qualifying the physical endurance test. Only those candidates who are qualified in the Physical Endurance Test will be considered for final selection.
- Fitness certificate from the Registered Civil Surgeon alongwith eye/vision test

has to be brought by the shortlisted candidate at the time of attending Physical Endurance Test (PET) without which the candidates shall not be allowed to participate into the PET. However once again the Eye/Visual Test will be conducted by FCI also to check the veracity and authenticity of Fitness Certificate for finally selected candidates. Physical Endurance Test for PWD/PH is exempted.

- III. The qualifying marks for written test will be 40%. The candidates who do not acquire 40% marks in written test will be disqualified. However, the candidates belonging to erstwhile contractual Security Guards worked with FCI upto 22.8.2002 will be treated qualified if they acquire 30% marks in written test.
- IV. In case the requisite numbers of Candidates are not available to fill up the vacancies, then at the discretion of Competent Authority, an additional list for PET may be drawn based on the merit of written test to fulfill the vacancies.”

The conditions of the Recruitment Notice No.01/2021/Punjab

are as under :-

“9. ELIGIBILITY CRITERIA FOR ERSTWHILE CONTRACTUAL SECURITY GUARDS

- I. Maximum age for General Category erstwhile Contractual Security Guards shall be 54 years as on 31.5.2022 i.e. the probable date of completion of entire recruitment process so that the candidates belonging to reserve category may be confirmed to the post after service of one year, which is prerequisite for confirmation to the post as per FCI rules.

xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx

- IV. The minimum qualification is 5th pass for erstwhile contractual security guards.
- V. The erstwhile contractual security guards to produce I. Card, EPF No., Salary Slip and Contractor Orders pertaining to the period they were engaged as contractual security guards as a proof of having worked with FCI Punjab. Besides they shall have to submit Affidavit (Annexure F) as suggested by the joint committee of FCI Punjab and Haryana Regions.

“SELECTION PROCESS

I. PATTERN OF WRITTEN TEST

Written Examination Paper (Duration – 90 Minutes).

The Written test will be comprised of 120 Multiple Choice Questions from General Knowledge, Current Affairs, Reasoning, English Language and Numerical Ability.

II. PATTERN OF WRITTEN TEST (FOR EX CONTRACTUAL SECURITY GUARDS)

Written Examination Paper (Duration – 90 Minutes).

The Written test will be comprised of 120 Multiple Choice Questions accordingly to test the ability of the candidates in the basic arithmetic's and general knowledge pertaining to basic numeracy skills i.e. Addition, Subtraction, Multiplication, Division etc., basic general knowledge restricted to our country only And basic English i.e. Spelling correction, Parts of speech etc.

Note - 6

1. All questions will carry 1 mark each. There will be no negative marking.
2. The Question Papers for written test will be trilingual i.e. in

English, Hindi and Punjabi.

PATTERN OF PHYSICAL ENDURANCE TEST (QUALIFYING PURPOSE) :

<u>Physical Endurance Test (PET)</u>							
<u>RUNNING</u>							
Gender	Distance (in Meters)	Qualifying parameters in minutes as per age					
		18 – 30 years	30-35 years	35-40 years	40-45 years	45-50 years	50 years and above
Male Candidates	1000 m	330 sec.	370 sec.	409 sec.	440 sec.	471 sec.	497 sec.
Female Candidates	800 m	255 sec.	300 sec.	345 sec.	390 sec.	435 sec.	480 sec.
<u>Long Jump (Qualifying in three attempts)</u>							
Gender	Agewise break up and distance in meters	Qualifying parameters in minutes as per age					
		18 – 30 years	30-35 years	35-40 years	40-45 years	45-50 years	50 years and above
Male Candidates							
Female Candidates		3.95 m	3.80 m	3.65 m	3.50 m	3.35 m	3.20 m
		2.74 m	2.60 m	2.45 m	2.30 m	2.15 m	2.00 m
<u>High Jump (Qualifying in three attempts)</u>							
Gender	Agewise break up and distance in meters	Qualifying parameters in minutes as per age					
		18 – 30 years	30-35 years	35-40 years	40-45 years	45-50 years	50 years and above
Male Candidates							
Female Candidates		1.14 m	1.10 m	1.05 m	1.00 m	0.95 m	0.90 m
		0.90 m	0.85 m	0.80 m	0.75 m	0.70 m	0.65 m

Note - 7

1. FCI reserves the right to introduce additional phase of written examination/screening test in compelling circumstances for screened candidates on the basis of performance in written test and decision regarding calling such number of candidates shall be decided by FCI only.
2. The number of candidates will be shortlisted for Physical Endurance Test (PET) in the ratio of 1:3 and will be informed about the venue of PET through website <https://fci-punjab-watch-ward.in> (web portal). The candidates are advised to keep visiting the website regularly.
3. The Physical Endurance Test (PET) is of qualifying nature only.
4. The final merit list will be prepared on the basis of written test subject to qualifying the physical endurance test. Only those candidates who are qualified in the Physical Endurance Test will be considered for final selection.
5. Fitness certificate from the Registered Civil Surgeon alongwith eye/vision test has to be brought by the shortlisted candidate at the time of attending Physical Endurance Test (PET) without which the candidates shall not be allowed to participate into the PET. However once again the Eye/Visual Test will be conducted by FCI also to check the veracity and authenticity of Fitness Certificate for finally selected candidates.
6. Physical Endurance Test for PWBD is exempted.
7. The qualifying marks for written test will be 40%. The candidates who do not acquire 40% marks in written test will be disqualified. However, the candidates

- belonging to erstwhile contractual Security Guards worked with FCI upto 22.8.2002 will be treated qualified if they acquire 30% marks in written test.*
8. *In case the requisite numbers of Candidates are not available to fill up the vacancies, then at the discretion of Competent Authority, an additional list for Physical Endurance Test (PET) may be drawn based on the merit of written test to fulfill the vacancies.”*

Shri Chetan Mittal, Ld. Senior Counsel appearing on behalf of respondents has submitted that after the decision of this Court in LPA-930-2018 and CWP-20928-2017 a Committee of five officers at AGM level was constituted on 18.3.2019 to examine all issues with respect to relaxation of age, qualification, pattern of exam and Physical Endurance Test etc. The Committee submitted a report dated 3.6.2019 recommending inter-alia that the recruitment agency may be advised to frame the questions accordingly to test the ability of the candidates in the basic arithmetic and general knowledge pertaining to basic numeracy skills i.e. Addition, Subtraction, Multiplication, Division etc., basic general knowledge restricted to our country only and basic English i.e. Spelling correction, Parts of Speech etc. It further recommended that the preferential treatment to ex-contractual security guards may be accorded by adopting normalization method i.e. by equating the highest marks obtained by the ex-contractual guards to the highest marks obtained by general candidates and then drawing a joint merit list on percentile basis. The service of expert in consultation with recruiting agency be sought to draw detailed guidelines.

The department also decided on the issues relating to the genuineness of the ex-contractual employees and relaxation in age, educational qualification, qualifying marks and standard of examination to be conducted for ex-contractual employees as well as preparation of merit list on percentile basis (normalization method) etc. The report of the

Committee on relaxation was considered and opinion was provided by IIM, Amritsar. After taking necessary approval, the draft notice inviting applications was sent to the recruitment agency. He stressed that it has been categorically held by Hon'ble the Supreme Court in Steel Authority of India Ltd. (supra) that on issuance of a Notification under Section 10 of the CLRA Act for abolishing the Contract Labour, the contractual labour so employed have no right of automatic absorption by the principal employer. The only direction was that that if subsequently the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour and if necessary give relaxation in age and educational qualifications. He argued that the age and qualification requirement in respect of contractual employees have been suitably relaxed. Considering the nature of the duty which the security staff has to perform, the minimum Physical Endurance Standards are required to be maintained. He contended that the directions have been faithfully complied with and no cause is made out of initiating contempt proceedings against the respondents.

Having heard Ld. Counsel in my view no case of contempt can be said to be made out against the respondents.

Hon'ble Supreme Court in **SAIL case** categorically held that neither under Section 10 of the CLRA Act nor any other provision in the Act is there any requirement for automatic absorption of contract labour on issuing a notification prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to absorb the contract labour

working in the establishment concerned on issuing of a notification under Section 10. The only direction given by the Supreme Court was that if subsequently the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable. In giving the preference, if necessary, the employer would also relax the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relax the condition as to academic qualifications other than technical qualifications.

Clearly, in respect of the erstwhile contractual security guards the age has been suitably relaxed. Whereas for general candidates the maximum age is 25 years for the General Category ex- contractual security guards it is 54 years. The minimum qualification for erstwhile contractual security guards is 5th Pass as against 8th (Middle) Standard Pass for the others.

As per the Recruitment Notice No.1/2017 the written test was common for the erstwhile contractual security guards and the other candidates. Such is not the position in the Recruitment Notice No.01/2021. For the other candidates the written test, as in the earlier notice, will be comprised of 120 Multiple Choice Questions from General Knowledge, Current Affairs, Reasoning, English Language and Numerical Ability. But in the case of erstwhile contractual security guards the written test will be comprised of 120 Multiple Choice Questions. It would test the ability of the candidates in the basic arithmetic and general knowledge pertaining to basic numeracy skills i.e. Addition, Subtraction, Multiplication, Division

etc., basic general knowledge restricted to the country only and basic English i.e. Spelling correction, Parts of speech etc. The qualifying marks are 40% for the general candidates whereas they are 30% for ex-contractual guards. A combined merit list is to be prepared on the basis of the raw scores/ marks obtained by the candidates.

The Physical Endurance Test which is only for the purpose of qualifying, itself contains in-built relaxation in case of the erstwhile contractual security guards as different qualifying standards have been laid down for different age groups. There are six age groups i.e., 18-30 years, 30-35 years, 35-40 years, 40-45 years, 45-50 years and 50 years and above. The standard is highest for the youngest age group and goes on decreasing with the increase in the age group. It being the lowest for the highest age group of 50 years and above.

Mr. Mittal insists that these minimum standards are necessary keeping in view the requirements of the job and the standards have been fixed after due consideration by a Committee.

Clearly, in the case of erstwhile contractual security guards suitable relaxation in age, educational qualifications, the standard of questions, the minimum qualifying marks and even the qualifying parameters of Physical Endurance Test have been made. Though Mr. Narwana has asserted so, but there is no material to indicate that the Physical Endurance Standards prescribed for the higher age groups i.e., 40-45 years, 45-50 years and 50 years and above is an unrealistic standard which cannot be attained by healthy and fit persons in those age groups. In view thereof it cannot be said that the respondents have in any way

committed contempt of the directions as contended.

Accordingly, this petition is dismissed.

Rule stands discharged.

January 28, 2022

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No