

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

Date of Reserve: 19.05.2023

Date of Decision: 07.07.2023

1. CWP No.15941 of 2001 (O&M)

Rajinder KumarPetitioner

Vs

State of Haryana and othersRespondents

2. CWP No.5115 of 2020 (O&M)

Rajinder Singh @ Rajinder KumarPetitioner

Vs.

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

**Present:Mr. Anil Rathee, Advocate
for the petitioner.**

Mr. Tapan Kumar Yadav, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CWP No.15941 of 2001 (O&M) and CWP No.5115 of 2020 (O&M) are being decided. Since both the petitions have arisen out of the similar controversy, therefore, for brevity the facts are being culled out from CWP No.15941 of 2001 (O&M).

[2]. The petitioner has preferred CWP No.15941 of 2001 (O&M) for the issuance of an appropriate writ in the nature of certiorari, quashing the selection and appointment of the private

respondents as the respondent No.6 was found medically unfit and the respondent No.5 was not possessing the requisite qualification of matriculation. The petitioner is more meritorious to the aforesaid respondents. Further a writ in the nature of mandamus has also been sought seeking directions to get the respondent No.6 medically examined from the PGI, Chandigarh and also to direct the respondents to fill up the seat of SC-B Ex-Serviceman category as no candidate was found available for SC-B Ex-Serviceman category and also to direct the respondents to fill up 7 seats of SC-B category of Scheduled Caste in district Yamuna Nagar in the recruitment in question.

[3]. Notice to the respondents was issued for 11.02.2002. Thereafter, a civil misc. application was filed with reference to the Annexure P-14 passed in CWP No.1113 of 2002 on the ground that the controversy is covered by the judgment dated 22.05.2003 and that is how the case was taken up by the Court.

[4]. Vide order dated 25.04.2017, the Court found that the matter relates to the selection and appointment to the post of Constable and the case is of the year 2001, therefore, the official respondent was directed to bring all the records including cut off percentage of general and other categories and also the marks awarded for each of the selected candidates. Thereafter

on 11.05.2017, the Court recorded that there was some insertion of physical standard in respect of height of respondent No.6. The respondent No.6 was subjected to physical standard examination on two occasions. The reasons for examining the respondent No.6 for physical standard examination have not come forth on record. The respondents sought time to place on record as to how the respondent No.6 was subjected to physical standard examination on two occasions. For ready reference the order dated 11.05.2017 is reproduced hereasunder:-

“After hearing for some time, records were perused. Perusal of the records, it is evident that so far as sixth respondent's physical standard is concerned, it was noticed that there is some insertion of physical standard in respect of height is concerned as 5.6 which is supported by date as well as on the instruction of superior officer in the Police Department. In other words, it is to be understood that sixth respondent was subjected to physical standard examination on two occasions. Reasons for examining the sixth respondent for physical examination is not forthcoming. Therefore, the respondents-selecting authority seeks time to place it on record as to how the sixth respondent was subjected to physical standard examination on two occasions.

List this matter on 17.5.2017.

(P.B. BAJANTHRI)
JUDGE

May 11, 2017.
sandeep sethi”

[5]. Thereafter on 19.05.2017 after perusing the record, the Court found that the grievance of the petitioner (wrongly typed petitioner in place of the respondent No.6) has been entertained and taken note of re-examination of physical standard. No material has come on record in respect of request of the respondent No.6 for re-assessment of physical standard. In the absence thereof one has to draw inference that re-examination of physical standard of the respondent No.6 is due to extraneous consideration. The official respondents have not placed on record any requisition from the respondent No.6 for re-measurement of his physical standard. The Court directed the respondents to consider the case of the petitioner for appointment by creating a supernumerary post on notional basis. In view of lapse of time and the fact that the petitioner was already selected in the year 1995 by judicial order and his selection/appointment was cancelled in the year 2001. The respondent-State was directed to have instructions in this context. The order dated 19.05.2017 reads as under:-

“Perusal of the records, it is evident that 6th respondent's grievance has been entertained and taken note for re-examination of physical standard. No material has been placed in respect of 6th respondent's request for re-assessment of physical standard and related records. In absence of the same, one has to draw inference that it is a clear case of extraneous considerations for the reason that

neither the 6th respondent nor the official respondents have placed on relevant requisition from the 6th respondent for re-measuring the petitioner's physical standard. In view of lapse of time and the fact that the petitioner was already selected in the year 1995 by judicial order, his selection and appointment was cancelled in the year 2001. Therefore, the concerned respondent is hereby directed to consider the petitioner's name for appointment by creating a supernumerary post on notional basis. In this regard, learned State counsel is hereby directed to get instructions by the next date of hearing.

List this matter on 02.06.2017.

(P.B. BAJANTHRI)
JUDGE

May 19, 2017.
sandeep sethi"

[6]. Evidently, vide the aforesaid order, a direction was issued to the respondents to consider the name of the petitioner for appointment by creating a supernumerary post on notional basis. It was a positive direction for which the respondent-State sought time to have further instructions by the next date of hearing and the case was accordingly adjourned.

[7]. Feeling aggrieved against the order dated 19.05.2017, the respondent-State filed CM No.12841-CWP of 2017 for recalling of the order. In the aforesaid application, the Court directed the official respondents to produce the application filed by the respondent No.6 for second physical standard

examination and relevant provision permitting the competent authority to hold second physical examination. In the event of not producing the same, the respondent was directed to implement the order dated 19.05.2017 failing which further adverse order was to be passed. The order dated 09.11.2017 reads as under:-

“CM for recalling order dated 19.05.2017 is heard. If 6th respondent's application for subjecting him for the 2nd physical standard examination and further relevant provision permitting the competent authority to hold 2nd physical standard examination is not produced before the next date of hearing in that event concerned respondent is directed to implement order dated 19.05.2017 failing which further adverse order would be passed.

List this matter on 12.12.2017.

09.11.2017
pooja saini”

(P.B.BAJANTHRI)
JUDGE

[8]. Perusal of the aforesaid order would show that the controversy was crystallized on the issue whether there is an application filed by the respondent No.6 for subjecting him for second physical standard examination and availability of provision in this regard permitting the competent authority to hold such second physical standard examination. On the adjourned dated i.e. 12.12.2017, the learned State counsel

submitted that there was no record in respect of filing of any application by the respondent No.6 for subjecting him for second physical standard examination and the Court proceeded to observe that it was for the extraneous reasons that the request of the respondent No.6 for second physical standard examination was entertained. The application bearing CM No.12841-CWP of 2017 for recalling of the order dated 19.05.2017 was dismissed. The order dated 12.12.2017 reads as under:-

“Learned State counsel submits that there was no records in respect of 6th respondent's application for subjecting him for the Second Physical Standard Examination. Therefore, one can draw inference that for extraneous reasons 6th respondent's request for Second Physical Standard Examination has been entertained. Thus, application for recalling the order dated 19.05.2017 has not been made out.

For compliance of the order dated 19.05.2017, list this matter on 24.01.2018.

12.12.2017
pooja saini”

(P.B.BAJANTHRI)
JUDGE

[9]. In this background of the case, the case remained pending. During pendency of the present writ petition, the Director General of Police, Haryana has passed order dated 20.01.2018. In this context, it is relevant to mention here that in

the order dated 20.01.2018 passed by the Director General of Police, Haryana, the authority after considering the order dated 19.05.2017 and 12.12.2017 proceeded to record that the request of the respondent No.6 for re-examination of physical parameters cannot be traced from the official record, however as per para No.16 of the circular issued for recruitment on 09.02.2001, a candidate rejected at any stage had/has a right to appeal before the respective Range Deputy Inspector General of Police/Inspector General of Police within three days, who shall examine the complaint and dispose off the same with a speaking order within a week. Accordingly, the order dated 16.05.2001 was passed by the appellate authority/Inspector General of Police, Ambala Range, Ambala and re-measurement of the respondent No.6 was conducted at that time in lieu thereof.

[10]. Thereafter in order to ascertain the factual position on record, this Court vide order dated 15.02.2023 passed the following order:-

“Perusal of the order dated 20.01.2018 passed by the Director General of Police, Haryana shows that the rejected candidate had a right to appeal before respective Range Deputy Inspector General of Police/Inspector General of Police within three days in view of circulation dated 09.02.2001. A specific allegation is made in respect

of giving undue indulgence in favour of the respondent No.6 by undertaking his second medical examination without there being any appeal filed by him in pursuance of instructions dated 09.02.2001.

Learned State counsel seeks a very short adjournment in order to apprise this Court whether any appeal was preferred by the respondent No.6 and how many candidates had opted for this remedy of appeal for their re-medical examination at the relevant time.

Adjourned to 27.03.2023.

A photocopy of this order be placed on the file of connected case.”

[11]. Evidently a specific allegation is made in respect of giving undue indulgence in favour of the respondent No.6 by ordering his second medical examination without there being any appeal filed by him in pursuance of instructions dated 09.02.2001. Learned State counsel sought adjournment in order to apprise this Court whether any appeal was preferred by the respondent No.6 and how many candidates have opted for this remedy of appeal at the relevant time. In compliance of the said order dated 15.02.2023, learned State counsel has brought on record a physical measurement complaint register prepared by the official respondents disposing of the complaints by the competent authority.

[12]. Perusal of the aforesaid register/document would

indicate that the same does not specify the factum of receiving complaint/appeal by the aggrieved candidate on a particular date. Entry and despatch register of the complaint(s) have not been produced on record despite an order dated 27.04.2023 passed by this Court. On 27.04.2023, learned State counsel submitted that the said register has to be summoned from the office of Inspector General of Police, Ambala Range. The order dated 27.04.2023 reads as under:-

“Learned State counsel seeks a very short adjournment in order to produce entry and despatch register of the complaints received from 114 candidates.

Learned State counsel further submits that the said register has to be summoned from the office of Inspector General of Police, Ambala Range.

Let the aforesaid register, if any, in existence, be brought on record by the next date of hearing.

Adjourned to 09.05.2023.

To be taken up at 2.00 P.M.

A photocopy of this order be placed on the files of connected cases.”

[13]. Thereafter learned State counsel sought more time to produce entry register of total complaints received in the context of physical measurement on 09.05.2001. Till date, no such entry register has been brought on record, except filing of short reply by way of affidavit of the Superintendent of Police, Yamuna

Nagar on behalf of the respondents No.1 to 3 accompanied by physical measurement complaint register which does not correspond to the date of receipt of any such application/appeal filed by the aggrieved candidate. The pointed allegation is of extraneous consideration as observed by the Co-ordinate Bench in the orders dated 19.05.2017 and 12.12.2017, therefore, the factum of proof of receipt of any such application from the respondent No.6 was required to be established on record. Despite the order dated 09.05.2023, no such entry register has been placed on record.

[14]. During course of arguments, it has been transpired that no such register is in possession of the respondent-State as of now. The order dated 20.01.2018 came to be passed by the Director General of Police, Haryana only during pendency of the present writ petition and the same is nothing but reiteration of stand already taken by the respondents on record. The stand of the respondent-State is that the case of the respondent No.6 on the less measurement of chest was accepted and re-measurement of chest was done and the same was accepted and order was issued to this effect on 15.06.2001. No application/appeal filed by the respondent No.6 has come forth on record in respect of his grievance. As per instructions dated 09.02.2001, such application has to be filed by the candidate

before the respective Range Deputy Inspector General of Police/Inspector General of Police within three days, who shall examine the complaint and dispose off the same with a speaking order within a week. It is nowhere available on record whether such an application in fact was filed by the respondent No.6 with reference to any date of filing of the same. The direction issued by the Court on 19.05.2017 was very categorical thereby directing the concerned respondent to consider the name of the petitioner for the appointment by creating a supernumerary post on notional basis. Thereafter while dismissing the application for recalling it was observed by the Court on 09.11.2017 that if record in respect of application filed by the respondent No.6 for second physical examination is not produced then the order dated 19.05.2017 was to be implemented and a direction was issued to this effect failing which further adverse order was to be passed. Thereafter the application for recalling of the order dated 19.05.2017 was dismissed by observing that one can draw inference that for extraneous reasons request of the respondent No.6 for second physical standard examination was entertained. The orders dated 19.05.2017, 09.11.2017 and 12.12.2017 have attained finality.

[15]. Even for all abundant caution, this Court at a later stage

vide order dated 15.02.2023 gave one more opportunity to bring on record of receiving application/appeal filed by the respondent No.6 in the context of his second physical examination. The document produced by the respondent-State i.e. physical measurement complaint register is conspicuously silent about the date of receipt of any such application, rather it is a register prepared on consolidated basis without there being any reference of date of entries of total complaints. This document does not improve the case of the official respondents in any manner. The directions came to be passed by this Court on 19.05.2017 and the same was not implemented despite the orders dated 09.11.2017 and 12.12.2017 passed by this Court.

[16]. In view of above, the impugned order dated 20.01.2018 passed by the Director General of Police, Haryana is set aside. Consequently, both the writ petitions are disposed of by directing the respondent No.2 to implement the order dated 19.05.2017 by creating a supernumerary post for the claim of the petitioner on notional basis forthwith.

[17]. Let a compliance report be placed on record within a period of one month from the date of receipt of certified copy of this order, failing which an appropriate order shall be passed in accordance with law.

[18]. All other civil misc. applications, if pending are also disposed of accordingly.

July 07, 2023
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No