

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-16910-2015 (O&M)
Date of Decision:-7.8.2023

Jeevan SinghPetitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. G.S. Sidhu, Advocate with
Mr. Mohit Kumar, Advocate for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

Mr. Arshdeep, Advocate for
Mr. Manbir Singh, Advocate and
Mr. Tushar Sharma, Advocate for respondent No.4.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner herein aggrieved by order dated 12.6.2015 (Annexure P-4) passed by respondent No.4 - Chairman Recruitment Board (Band)-cum-Deputy Inspector General of Police, Punjab Police Academy, Phillaur, wherein respondent – authorities while relying upon a judgment passed by this Court in CWP No.2578 of 2012 titled as Mohit Sharma Versus State of Punjab and others have held that the petitioner has no claim for the post of Constable in Band Staff of Punjab Police Academy, Phillaur.
2. The short point involved in the present case is that in case two candidates secured equal marks in the recruitment process, then as to whether it is the one younger in age, who is to rank higher in the merit list or the one older in age.

3. The State relies upon instructions dated 19.3.2010 (Annexure P-5). The relevant extract from instructions dated 19.3.2010 reads as under:

“Following terms are clarified with regard to recruitment of Constables in District Police and Armed Police:

1. No application shall be entertain after the scheduled date.
2. With regard to recruitment of Ex-serviceman, their education qualification may be considered and awarded marks as given below.

XXXX	XXXXX	XXXXX	XXXXX
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3. xxx
4. xxx
5. xxx
6. xxx
7. xxx
8. **While preparing the merit list if two or more candidates get equal marks, preference shall be given to younger candidate.”**

4. The validity of said instructions was assailed before this Court in Mohit Sharma’s case (supra) and the controversy has been set at rest. The relevant extracts from said judgment are reproduced hereinunder:

“7. It cannot be said as a cardinal principle of service jurisprudence that a person older in age is better off or has a fundamental right under the Constitution to be appointed to service in preference to a person younger in age where they obtain the same marks in the same test/examination while following the same criteria prescribed for the selection. Where the Punjab Police Rules, 1934 or the Punjab Police Act, 2007 are silent on a tiebreaker, executive instructions can well be issued by the Head of Department to fill in the gaps left by the recruitment rules. In prescribing the mode of tiebreaking it is not a sovereign policy function of State Government over which there should deservedly be no court interference in jurisdiction exercised under Article 226 of the Constitution of India.

The principles of equality before the law and of equal opportunity enshrined in Articles 14 and 16 of the Constitution do not entrench upon the power of the appointing authority to put a reasonable condition as to age or a preference being given one way or the other to break a tie. It was eminently a practical solution to a problem which cropped up after the result was declared.

8. If we examine the case in the converse I should think that the respondents could well have taken a decision, by way of policy or otherwise, that a person older in age would be given preference to a person younger in age when two or more competitors secured the same marks in which event also the Court would normally not have interfered with. Who should be given preference, the younger or the older, is a matter of choice not of state policy and it not open to forensic debate or dissection or for a loser to contend which one should rule the roost. Point and counterpoint are two sides of the same coin but the Director General of Police, Punjab was sagacious enough not to toss the coin or throw the dice. He had the wisdom to opt for choice but not chance. Had he opted for either the court would have still have been faced with a judicial dilemma, a Hobson's choice. This is where interference is not called for, for court to impose its personal notions of what is right and wrong. There is always another debatable point of view when the issue comes to court which sits in secondary review of administrative action. But the debate is confined to relief and what the court can still do. Therefore, the argument cuts both ways. It cannot thus ever be held on first principles of law as to which one of the preferences is better suited to the service when appointing constables to the uniformed force. The making of choice would largely depend on the nature of the job and what are its demands and so many factors which only the man in the hot seat knows given that he acts dispassionately and disinterestedly distancing himself from individual interest because personal interest must give way to public interest, this is where good governance comes. This is not the business of the Court or for it to rationalize as to which decision is the best possible which deserves largely to be left to the wisdom and experience of those who are in charge of administrative affairs. And this would be fine so long

as the choice is neither wholly arbitrary nor palpably unreasonable the kind which no prudent man would make in the circumstances in the search of human resources in the police department looking to the future. In the process of elimination of variables and in the absence of a mode prescribed in the service rules the question can be seen hardly as actionable or in conflict with the method adopted by the 2nd respondent and the scope of rule 12.2 of the Punjab Police Rules which gives the State the power to appoint its constabulary. All that was done by the 2nd respondent was to introduce by force of circumstances and as quickly as possible, the fiat of a rational tiebreaker to determine the winner among the players equally placed except in age. Disappointment may be writ large on the face of petitioner of which one can only sympathize but writs are not meant to issue to repair disappointment and can only be issued to enforce appointment where it unlawfully denied and for the wrong reasons.

11. The last limb of the argument of the petitioner deserves to be noticed in challenge to the selection of the 4th respondent on the tie breaking mode adopted suggesting that it is irrational as a more experienced man older in age would be better suited to work as a constable in the police force. Counsel argues that no such condition was put in the advertisement that in the event of equal marks obtained by more than one candidate, preference will be given to the candidate younger or older in age and thus the condition of ouster is an afterthought. Even if such a condition was not placed in the advertisement calling applications for filling up the posts of constables, it would make no difference since the field was already occupied by the executive instructions dated 19th March, 2010 issued by the department before the advertisement was put in public domain and made operational. The date of publication of the advertisements in the Tribune, Ajit and the Punjab Kesri thus become relevant and it will not be out of place to record that those dates were between 11th September, 2010 to 16th September, 2010 prior to the instructions which would have to be read into the advertisement since that was the procedure adopted to start with on the subject of tiebreaking.

12. The challenge to the circular/policy decision dated 19th March, 2010 is thus repelled as there is nothing arbitrary, irrational or discriminatory found in it. The reasonable restriction put on the rights, if any, of the petitioners is neither irrelevant consideration nor oppressive.”
5. The respondent having acted on the basis of executive instructions/policy dated 19.3.2010, the validity of which has been upheld by this Court in Mohit Sharma’s case (supra), cannot be said to have acted arbitrarily. Nothing to the contrary could be shown to this Court so as to take a difference view. As such, this Court does not find any infirmity in the impugned order and the same is hereby upheld. Finding no merit in the present petition and the same is hereby dismissed.

7.8.2023

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No