

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

**LPA-2086-2017 (O&M)
Date of Decision: 01.02.2023**

State of Haryana and others Appellants

Vs.

Jasmer Singh Respondent

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present: - Mr. Hitesh Pandit, Addl. A.G., Haryana.

Mr. Sushil Bhardwaj, Advocate, for the respondent.

M.S. RAMACHANDRA RAO, J. (ORAL)

CM-4567-LPA-2017

This application is filed seeking condonation of delay of 48 days in filing of appeal.

Mr. Sushil Bhardwaj, Advocate appearing on behalf of the non-applicant/respondent states that he has no objection if the delay of 48 days in filing of the appeal is condoned.

Accordingly, this application is allowed.

CM-4566-LPA-2017

Application is allowed as prayed for.

LPA-2086-2017

This Letters Patent Appeal is preferred by the State challenging the judgment and order dt.02.06.2017 passed by Learned Single Judge in CWP No.7596 of 2016.

In the Writ Petition, the respondent had assailed the order dt.10.02.2016 vide which his candidature for the post of Assistant Superintendent Jail had been rejected on the ground that he is suffering from colour blindness.

The learned Single Judge in the impugned order has held that in the advertisement issued for selection and appointment to the said post of Assistant Superintendent Jail, nowhere physical standard in respect of eyesight had been prescribed or stipulated, and therefore, the appellants cannot refuse to select and appoint him in the said post. He further held that the appellants themselves had furnished information that the said post is an executive post (non-technical post) and the medical report in respect of respondent itself stated that he is fit for non-technical post. He therefore, allowed the Writ Petition and set aside the order dt.10.02.2016 and directed issuance of appointment letter to the respondent within 3 months.

Challenging the same, this Appeal is filed.

Counsel for the State contended that even through there is no prescription on the standard of the eyesight for a person to be selected and appointed to the post of Assistant Superintendent Jail, and though it is an executive post, he is required to perform certain duties day and night which could be that of a guard, patrolling, investigation, security of jail and safety of the prisoners, maintaining law and order etc. in Jail for which colour

vision is utmost required. It is also stated that all uniformed forces require that the recruit is not colour blind because he has to perform duties day and night and also under foggy conditions.

Counsel for the State also relied on the judgment rendered by this Court in *Sanjeev Kumar and another vs. State of Haryana and others*¹.

Counsel for the respondent strongly refuted the said contentions and supported the order dt.02.06.2017 passed by the learned Single Judge.

We may point out that it is undisputed that the respondent is an ex-serviceman and he had applied for the post of Assistant Superintendent Jail under the Ex-servicemen quota and he also belonged to the SC category.

A perusal of the advertisement and even the applicable Rules for Appointment to the post of Assistant Superintendent Jail shows that there is no specification as to the standard of eyesight which should be possessed by recruit to the said post.

In the absence of any prescription in the Service Rules or even in the advertisement in that regard, it is not open to the appellants to introduce such a requirement in the process of recruitment to the said post, more so, when they admit that the duties of the post of Assistant Superintendent Jail are executive in nature, which imply that they are non-technical in nature.

The decision in *Sanjeev Kumar and another* (Supra) cited by the counsel for the appellants has no application because the Rule applicable to the post of General Duty Constable, to which the Writ Petitioner therein applied, required a test of eyesight as well and mandated that the medical examination of the candidate should be strict; and a candidate would be

¹ 2012(3) PLR 708

rejected for any disease or defect which is likely to render him unfit for the active duties of a police officer. Such a prescription is not contained in the Rule relating to the appointment of Assistant Superintendent of Jail and therefore, the said decision has no application.

We are therefore of the opinion that there is no error in the judgment rendered by the learned Single Judge warranting interference by this Court under Letters Patent jurisdiction.

Therefore, the appeal fails and is dismissed.

Counsel for the appellants has brought to the notice of the Court that the respondent has attained the age of superannuation prescribed for the post of Assistant Superintendent Jail on 04.05.2019, that his date of birth is 04.05.1961, and therefore, no relief can be granted.

We are unable to agree since the delay on part of this Court to decide this appeal cannot operate to prejudice the respondent and create an advantage to the appellants.

If at a time when the respondent was eligible for his appointment to the said post, he was wrongly denied appointment by the appellants, they cannot take advantage of their own wrong and then refuse to comply with the order of the learned Single Judge, and cause injustice to a person who is not only an ex-serviceman, but a person who belongs to the Scheduled Caste category on the pretext that during pendency of this Appeal, he attained the age of superannuation.

We therefore, direct the appellants to pay to the respondent, wages for the period from 10.02.2016, the date when the impugned order was passed by the learned Single Judge, till the date he had attained the age of

superannuation of 58 years all consequential benefits, within 3 months from the date of receipt of copy of this Order.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

01.02.2023
Vivek

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |