

**C.W.P. No28527 of 2017(O&M)
and other connected cases**

2023: PHHC: 048012

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

**C.W.P. No28527 of 2017(O&M)
and other connected cases
Reserved On 13.03.2023
Date of decision:17.04.2023**

Khushwinder Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Amit Singh Sethi, Advocate
Mr. Ishwar Pratap Singh, Advocate
for the petitioner (in CWP-28527 of 2017)**

**Mr. Sukhdev Kamboj, Advocate
for the petitioner (in CWP-28358 of 2017)**

**Mr. L.S.Virk, Advocate
for the petitioner (in CWP-22551 of 2017)**

**Mr. Harchand Singh Batth, Advocate
for the petitioners (in CWP-12993 of 2019)**

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab

**Ms. Gurpreet Kaur, Advocate, for
Mr. G.P.S.Bal, Advocate
for the respondent no.2 (in CWP-28527 of 2017)**

**Mr. R.K.Arora, Advocate,
for the respondent no.6 to 9 & 11 to 14
(in CWP-28527-2017)
for the respondent no.7 & 11 to 14 (in CWP-12993-2019)**

ANIL KSHETARPAL, J.

1. After having heard the learned counsel representing the parties at length, and on perusal of the various paper books, this court is of the considered opinion that the following question arises for adjudication:-

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“Once it is established that the Departmental Selection Committee failed to follow the procedure laid down in the applicable rules and instructions for selecting the candidates claiming reservation under the category of Sports persons then whether the selection and consequential appointment of candidates is sustainable?”

2. In order to comprehend the controversy involved, it is imperative to acknowledge the fundamental facts involved.

3. The Department of Jails (Prison), Punjab, issued recruitment notice No.2 of 2011 on 12.10.2011 inviting applications for recruiting 527 Warders, Matterns and Car/Jeep drivers. This batch of writ petitions pertain to selection of sportspersons against the posts of Warders. As per the recruitment notice, the selection was based upon the written test, higher qualification etc. However, a decision was taken by the concerned department against holding the written test.

4. As per the facts noticed in the judgment dated 17.12.2016, the selection process was completed. However, on receipt of complaints of irregularity in the selection process, a public notice was issued on 05.06.2014 to cancel the selection made for the post of Warders. This public notice was based on the minutes of the meeting dated 23.12.2013 by which a decision was taken to scrap the recruitment process.

5. In the first round, 41 writ petitions including CWP 15409 of 2014 (**Laxman Singh and others vs. State of Punjab and others**) and other connected cases challenging the correctness of the decision to scrap the selection was challenged. Vide judgment dated 17.12.2016, the writ petitions were allowed and the public notice dated 05.06.2014 was quashed while directing the respondents to complete the process of selection from the

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petitioners who fulfill the requirement of a physical test by adopting the criteria as per the advertisement. The last paragraph of the said order reads as under:-

“However, the respondents are directed to consider the claim of the petitioners and fulfil the requirement of physical test by adopting the criteria as per advertisement and prepare a fresh merit list. In case, they are found to be eligible by considering the criteria as mentioned in the advertisement and corrigendum, they be considered for appointment against the vacancies which are lying vacant. The necessary exercise be done within a period of four months from the date of receipt of certified copy of the order.”

6. After the aforesaid decision, a public notice and the provisional merit list without considering the candidature of some candidates was issued which was put to challenge in a fresh round of litigation. The aforesaid writ petition was disposed of vide order dated 10.08.2017 with the following directions:-

“In the present case, the whole of the selection process has been cancelled and the direction has been issued to prepare fresh merit list as per terms and conditions of the advertisement and corrigendum. In case the petitioners are found to be entitled as per criteria, they be considered. It is also clarified that in case, the petitioners are in zone of consideration by considering

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their respective educational qualifications and physical test, they have a right to be considered but in case, they do not reach to the stage, they cannot claim their selection as a matter of right. To clarify the ambiguity which has arisen between the parties or other candidates, the merit list of all the candidates mentioning their marks in the physical test, educational qualifications and interview be displayed/published so that the candidates are well aware about their respective merit prepared by the respondents..”

7. Once again, CWP No.13905 of 2017 was filed which was allowed to be withdrawn while granting liberty to the petitioners to challenge the selection, if so advised. Even on 13.05.2017, COCP No.181 of 2017 was disposed of. Finally, on 16.12.2017, while issuing the merit list of all the candidates along with the marks scored in the physical test, educational qualifications and interview, the result of the said selection was published. Pursuant to the merit list, the appointment letters were issued to the selected candidates.

8. It is the case of the State that the selection of the candidates has been made on the basis of the following three components:-

- (a) Physical measurement test
- (b) Physical efficiency test
- (c) Interview.

9. At this stage, it is appropriate to notice that in exercise of powers conferred by proviso to Article 309 of the Constitution of India, the

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State has notified the Punjab Recruitment of Sportsmen Rules, 1988 which provides for the reservation of 3% of the vacancies to be filled in by way of direct recruitment in all the State Civil Services and the posts connected with the affairs of the State of Punjab. In the present case, we are dealing with the selection by way of a direct recruitment to the vacancies in Class-III posts. The 1988 Rules provide as under:-

“(b) In the case of recruitment to reserved vacancy in Class III posts:-

(i) that he belongs to the State of Punjab: and
(ii) that he has won first, second or third position in team or individual events while representing the State of Punjab in a State Level Championship in any of the discipline affiliated to the Punjab Olympic Association organized by the State Level Federation.”

10. Subsequently, on 19.07.1989 the State of Punjab circulated instructions reiterating the rules. On 10.09.1997, the Government of Punjab issued elaborate instructions for issuance of the Sports Gradation Certificates for the recruitment of the Sportspersons wherein it was provided that Sports Gradation Certificates shall be issued by categorizing the sport persons in Grade ‘A’, ‘B’, ‘C’ and ‘D’ categories. Under Clause-III, it has been provided that the performance in the following sport disciplines only, will be considered for the purpose of the Sports Gradation which is extracted as under:-

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“3. Performance of following Sports disciplines only will be considered for the purpose of Sports Gradation:-

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|-------------------------------------|--------------------------------------|
| <i>1. Athletics</i> | <i>2. Badminton</i> |
| <i>3. Basketball</i> | <i>4. Cricket</i> |
| <i>5. Cycling</i> | <i>6. Gymnastics (Artistic only)</i> |
| <i>7. Foot Ball</i> | <i>8. Hockey</i> |
| <i>9. Hand Ball</i> | <i>10. Judo</i> |
| <i>11. Kabaddi (National Style)</i> | <i>12. Kho-Kho</i> |
| <i>13. Lawn Tennis</i> | <i>14. Boxing</i> |
| <i>15. Wrestling</i> | <i>16. Swimming</i> |
| <i>17. Table Tennis</i> | <i>18. Volley Ball</i> |
| <i>19. Weight Lifting</i> | <i>20. Shooting</i> |
| <i>21. Archery</i> | <i>22. Equestrian</i> |
| <i>22. Fencing.</i> | |

11. Clause-4 (3) and (6) of the Instructions read as under:-

“3. The Certificates issued by the Sports Associations must be submitted for gradation to the concerned District Sports Officer within 9 months from the date of issue of certificate. In the absence of this, any delay occurred will be the responsibility of the applicant. The application should be submitted as per the direction/requirements spelled out by the Department of Sports. Copy of the same can be had from the District Sports Officer's Office.

6. In the matter of rating interse, the preference in the same grade will be given in the following descending order:-

- | | |
|-----------------------------|--------------------------------|
| (i) Winner | (ii) Runner Up |
| (iii) Third position holder | (iv) Number of participations. |

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Regarding Senior and Junior Tournaments/Championship Senior shall have precedence over Junior in the same performance i.e for example Gold Medalist in Senior Category shall have precedence over Gold Medalist in Junior Category and Gold Medalist in Junior Category over Silver Medalist in Senior Category and so on which implies that participation in grade 'B' Category in the same orders of medalists, if after considering the performance criteries mentioned above, the candidate having higher marks obtained in the examination which is considered for admission will decide the seniority from highest to lowest marks obtained by the candidate.”

12. Vide instructions dated 21.07.2000, the policy instructions dated 10.12.1997 were modified to the following effect:-

“1. Para-(8) Performance achieved in individual event of any discipline and in team games will be considered only if it has been achieved through a competition within 7 or more, competition (in individual event) and 10 or more units in team games.

2. Para (12) No certificate shall be graded after 10 years have lapsed in issuance of the certificate.”

13. Vide instructions dated 05.06.2003, 9 more sports disciplines were included for the purpose of the Sports Gradation Certificates with immediate effect which are extracted as under:-

*“1. Rowing 2. Softball
3. Netball 4. Roller Skating
5. Canoeing 6. Power Lifting
7. Body Building 8. Yachting
9. Golf.”*

14. Subsequently, vide instructions dated 14.07.2003, the Government decided to consider the performance achieved in the newly included games prior to the issuance of the circular dated 05.06.2003 for the

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purpose of the Sports Gradation Certificate. On 18.08.2008, to streamline the gradation process and ensure that only legitimate sportspersons receive certification, the Governor of Punjab approved certain changes to the categories 'A' and B' of the Sports Gradation policy. However, these changes are not relevant to the facts of the present case. On 25.08.2011, the Government decided to include the sport of Gymnastics (Rhythmic) with Gymnastic Artist.

15. It is undisputed that the Departmental Selection Committee has failed to select the sportspersons claiming recruitment under the category of Sports persons on the basis of the Sports Gradation Certificates issued in accordance with the instructions dated 10.12.1987 which were modified from time to time. It is further the case of the petitioners that the Departmental Selection Committee has appointed Sh. Amanpreet Singh on the basis of performance in shooting ball sport which is not one of the sports discipline for which Sports Gradation Certificate could be issued as per the instructions issued by the State from time to time.

16. It may be noted here that a detailed written statement has been filed by the respondent-State as well as the private respondents. The learned State counsel, though given an opportunity, has failed to file the written arguments. Keeping in view the aforesaid facts, the question which has been culled out in the beginning of the judgment arises for adjudication.

17. On the one hand, the learned counsel representing the petitioners while referring to the 1988 Rules and instructions dated 10.09.1997 contends that the Departmental Selection Committee has completed the selection in infringement of the rules and instructions of the

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department, whereas, on the other hand, the learned State counsel supported by the learned counsel represented by the private respondents contends that the selection has been carried out on the basis of physical measurement test, physical efficiency test and interview. It has been stated that the merit list of the selected candidates was prepared on the basis of height, educational qualifications and the marks scored in the interview. In para 11 and 12 (ii), the petitioner in the lead case has specifically asserted that the selection has been made without insisting on the Sports Gradation Certificate and therefore, the criteria adopted in the selection process has no nexus with the object sought to be achieved. The State of Punjab while replying has not disputed that the requirement of Gradation Certificate was dispensed with and the selection has been made on the basis of height, educational qualifications, marks of the interview, physical measurement test and physical efficiency test.

18. Once it is not in dispute that the Government of Punjab had introduced a concept of the issuance of the Sports Gradation Certificate to claim reservation in direct recruitments for the posts reserved for sports-persons, then there was no occasion for the Departmental Selection Committee to complete the selection process *de hors*/ in disregard to the aforesaid instructions. The State Government, in the exercise of its executive powers under Article 162 of the Constitution of India is entitled to issue instructions from time to time. Such instructions in the absence of any conscious decision to exclude them, are binding on the recruiting agencies. It is not appropriate for the Departmental Selection Committee to

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ignore the instructions and rules. Hence, the selection based on the criteria, which is in violation of the instructions, cannot be sustained.

19. The argument of the learned counsel representing the selected candidates that executive instructions cannot override the rules has no substance because the instructions issued on 10.12.1997 are not in violation of the 1988 Rules. Further, the selected candidates cannot claim that on account of completion of their training and probation period, they are entitled to be selected. Similarly, there is no merit in the plea of the selected candidates that they are not at fault.

20. The learned counsel representing the selected candidates relies upon the judgment of Supreme Court in **Vikas Partap Singh vs. State of Chhattisgarh (2013) 14 SCC 494**, wherein after evaluating the peculiar facts of the case including the fact that the Selection Board had committed an error in evaluating the answer scripts, the Court held that the innocent appointees selected on account of the erroneous evaluation of the answer scripts should be saved after taking a note of the fact that it will not adversely affect the candidates who are entitled to be selected on the basis of the revised merit list. He also relies upon the judgment passed in **Sahil Aggarwal vs. State of Punjab and others 2014 (3) SCT 813** wherein the court, after noticing that the selected candidates have worked on the selected post for 3 years or more, refused to set aside the appointments after observing that the writ petitions have been filed only by 10 petitioners while the recruitment notice was to recruit 643 Inspectors.

21. It is evident that the judgments relied upon by the learned counsel representing the selected candidates have been given in the peculiar

facts and circumstances of those cases. Hence, with the highest regard, these judgments cannot be treated as the definitive statements of the law that form the basis of the court's decision.

22. It may be noted here that the revised select list was published in December 2017 and the first writ petition was filed in the same month. Hence, there is no delay in filing the writ petitions.

23. Keeping in view the aforesaid discussion, this court is left with no choice but to quash the select list (Annexure P-10) with regard to the category of sportspersons. It shall be open to the respondents to take a call whether they intend to proceed with the selection process particularly when the recruitment notice was issued around 11 years ago.

24. Disposed of accordingly.

25. All the pending miscellaneous applications, if any, are also disposed of.

17th April, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No