

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109) LPA-440-2024 (O&M)
Decided on : 16.02.2024

State of Punjab and others
.....Appellant(s)
Versus
Naresh Kumar and others
.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE VIKAS SURI

Present: Mr. Saurav Khurana, Addl.AG, Punjab
for the appellants.

Ms. Alka Chatrath, Advocate for caveator/respondent No.1.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-1053-LPA-2024

Application for condonation of delay of 90 days in filing the appeal is allowed, in view of the averments made in the application, duly supported by the affidavit of the official. Delay of days 90 in filing the appeal is condoned.

CM stands disposed of.

LPA-440-2024 (O&M)

1. Consideration in the present letters patent appeal is sought of the order of the learned Single Judge dated 12.10.2023 passed in CWP-1231-2022 ‘Naresh Kumar VS. State of Punjab and others’, whereby the writ petition filed by respondent No.1 was allowed and directions were issued for consideration for appointment on the post of Jail Warder (Male) provided that the writ petitioner fulfills all other requirements.

2. The reasoning which weighed with the learned Single Judge was that the writ petitioner had applied for the said post in the Backward Class Category, which had been advertised on 10.05.2021 (Annexure P-2). Having qualified the written examination he had cleared the efficiency test, but in the physical measurement test was supposedly short on the requirement pertaining to the size of the chest. The said requirements and the actual measurement which had taken place, read as under:-

Sr. No.	Parameters of Chest as per Advertisement	Chest Measurement of the petitioner as per office record on 10.10.2021
(1)	(2)	(3)
1.	Chest Normal-33 Inches Chest Expanded- 34.5 Inches	Chest Normal-32.0 Inches Chest Expanded- 35.0 Inches

3. Apparently, not satisfied with the measurement he had filed representation dated 16.10.2021 (Annexure P-7) claiming that many candidates had been selected after re-measurement, but the officials are not entertaining his requests. Thereafter he filed CWP No.21720 of 2021, which was got dismissed as withdrawn, but liberty was given to pass a speaking order. Relevant portion of the said order reads as under:-

“Dismissed as withdrawn with liberty aforesaid.

Needless to say that in case such a representation has been received by the quarter concerned, the same shall be considered and decided in accordance with law by passing a speaking order within two months from the date of receipt of this order.”

4. The rejection having been taken place, vide the impugned order dated 28.12.2021 (Annexure P-11), was subject matter of consideration before the learned Single Judge. Vide interim order dated 21.07.2022, the learned Single Judge directed that one post be kept vacant for considering the case of the writ petitioner, subject to final outcome of

the writ petition. Thereafter, on 28.09.2022, after re-examination having been conducted and the petitioner having been found to be eligible, interim directions were also issued to consider the case of the writ petitioner for appointment, subject to final outcome of the writ petition, if any post was lying vacant. A perusal of the order dated 28.09.2022 passed by the learned Single Judge would go on to show that after re-examination by the Medical Board of the Civil Hospital, Mohali, the writ petitioner was found to be fully eligible for the post in question and, therefore, interim directions were issued to consider the case of the writ petitioner for issuance of an offer of appointment, subject to final outcome of the writ petitioner, if any post was lying vacant in his category and other fulfilling other conditions as well.

5. Apparently, compliance of the order of the learned Single Judge was not made, though an additional affidavit was filed. In pursuance of the directions issued by the learned Single Judge, the re-measurement had been got done by the Medical Board, Civil Hospital, Mohali, wherein his normal chest was found to be 33.5 inches whereas the expanded chest was 36 inches and, it accordingly satisfied the requirements, rather over and above, at least regarding the expansion capacity. In such circumstances, the writ petition was allowed by noting that the candidate cleared the writ examination as well as physical efficiency test and on account of minor difference at an earlier point of time could not be a reason to oust permanently from the post.

6. A perusal of the impugned order dated 28.12.2021 (Annexure P-11) would go on to show that the writ petitioner had scored 625.98365 normalized marks in the written examination. It is not the case

of the appellants/State herein that the writ petitioner had not cleared the test and was below the cut-off marks on account of the marks obtained in the written examination. The argument of the Counsel for the State that the cut-off-date of 10.10.2021 would be applicable for the physical examination would not be a relevant reason to reject the case of the writ petitioner. The said criteria would only be applicable regarding the receipt of the application for the advertisement. Having approached this Court for a decision of the issue of passing a fresh order on his representation was also considered by the authorities. It was the specific case of the writ petitioner in his representation that the requests for re-measurement had not been entertained by the official, which were never denied by the State in its reply and was never met in speaking order and he, thus, claimed bias and discrimination. It was also his case that he had got himself medically examined immediately thereafter on 14.10.2021 (Annexure P-6) from the Civil Hospital, Fazilka and he had necessary parameters of un-expanded chest of 33 inches and expanded as 35 inches. It is also not disputed that he had also cleared the physical efficiency test.

7. In such circumstances, the discretion which has been exercised by the learned Single Judge, keeping in view the fact that there is an interim order in favour of the writ petitioner and he has necessary physical parameters, we do not find any ground to interfere in the well reasoned order of the learned Single Judge. Resultantly, the present appeal is dismissed in limine.

8. However, the apprehension of the State regarding the fact that other similarly situated persons may approach this Court is without any basis. The writ petitioner was always agitating for his grievances

diligently and firstly got himself medically examined immediately after his physical measurement test conducted on 14.10.2021 from the Civil Hospital, Fazilka, as per the averments made in paragraph No.9 of the writ petition, which was within 4 days of the measurement and was objectionable having been taken place on 10.10.2021. The only defence of the State was that said re-measurement report does not have any sanctity. In such circumstances the stand as such that physical standards could be improved within 4 days is not liable to be accepted. Thereafter, he filed writ petition before this Court and as noticed above directions were issued to consider his representation. Apparently on the re-examination also done by the Medical Board, Civil Hospital, Mohali at a subsequent point of time, the writ petitioner has been found fully eligible for the post in question. After passing of the impugned order, he had filed second writ petition before this Court, which was allowed by the learned Single Judge. Therefore, we do not see any reason that other similarly situated persons at any belated stage can claim parity on the strength of this order, keeping in view the law laid down in **State of Uttar Pradesh & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 191.**

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(VIKAS SURI)
JUDGE

February 16, 2024
Naveen

Whether speaking/reasoned :	Yes	
Whether Reportable :		No