

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

CWP-25828-2021
Date of Decision: 14.03.2024

Gagandeep Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Vikas Chatrath, Advocate,
Mr. B.P.S Thakur, Advocate and
Mr. Dharmvir, Advocate for the petitioner
Mr. Pawan Kumar, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to the respondents to appoint him on the post of Constable pursuant to advertisement dated 31.05.2016 (Annexure P-4).
2. The petitioner, pursuant to an advertisement dated 31.05.2016 (Annexure P-4), applied for the post of Constable under General Category. He is 10+2 pass as well as diploma holder in Electrical Engineering. In the advertisement, the respondent under Column 'Educational Qualifications' prescribed minimum educational qualification as 10+2 or its equivalent from recognized Education Board/University. The petitioner was 10+2 as well as possessing Diploma in Electrical Engineering. He, in the application form, disclosed marks secured in the diploma though he was 10+2 apart from being

diploma holder. The respondent on the basis of marks obtained in the diploma as well as height, assessed 28 marks of the petitioner. The respondent uploaded provisional merit list on the official website wherein name of the petitioner figured at Serial No.1041 with total marks 28. He appeared for counselling and produced original documents relating to his educational qualifications. The respondent during scrutiny of documents found that petitioner is 10+2 apart from holding diploma in Electrical Engineering. The respondent further found that petitioner has secured 52.2% marks in 10+2 whereas he has secured 63.23% marks in Diploma. On the basis of 10+2, he was entitled to 12 marks whereas on the basis of diploma, he was entitled to 13 marks. It is apt to mention here that as per advertisement, a candidate possessing minimum qualification with first division, was entitled to 13 marks whereas with second division was entitled to 12 marks. The respondent revised result of the petitioner on the basis of marks obtained in 10+2 and reduced his total marks from 28 to 27. Accordingly, he could not be selected because cut-off in Armed Police Cadre was 28 and District Police was 29.

3. The petitioner preferred *CWP No.3454 of 2017* before this Court seeking direction to respondents to consider his claim and appoint him on the post of Constable. This Court vide order dated 07.03.2019 (Annexure P-12) disposed of said writ petition with a direction to respondents to decide representation of the petitioner. The respondent, pursuant to directions of this Court, passed order dated 09.05.2019 (Annexure P-13). The claim of the petitioner has been rejected holding that he was 10+2 apart from diploma holder and a candidate having qualification of 10+2 cannot be awarded marks on the basis of diploma i.e. equivalent qualification.

4. Mr. Vikas Chatrath, Advocate submits that petitioner was holding diploma apart from qualification of 10+2. The minimum qualification was 10+2 or its equivalent. The petitioner was possessing diploma which indubitably was equivalent to 10+2. The respondent has wrongly considered marks of 10+2. There are many candidates who were possessing equivalent qualification and they have been awarded marks on the basis of equivalent qualification. The petitioner has been awarded lower marks on the ground that he is possessing qualification of 10+2 as well as equivalent.

5. *Per contra*, Mr. Pawan Kumar, Deputy Advocate General, Punjab submits that basic qualification prescribed for the post was 10+2 and the petitioner was possessing said qualification. Diploma in Electrical Engineering was equivalent qualification. As qualification of 10+2 was available, marks of diploma could not be considered. The petitioner had secured less than 60% marks in 10+2, thus, he was entitled to 12 marks and his diploma could not be considered. This fact was not initially in the knowledge of the respondents and as soon as it came in the knowledge, requisite amendment was made. The petitioner in the application form has disclosed his qualification 10+2 though he has disclosed marks of diploma.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. The conceded position emerging from record is that the respondent invited applications for the post of Constables in District Police and Armed Police Cadre. The minimum qualification prescribed for the post was 10+2 or its equivalent. The Diploma in Electric Engineering is equivalent

to 10+2. The respondent has selected many candidates who were possessing Diploma in Engineering without qualification of 10+2. The petitioner at the time of filing application was possessing diploma as well as qualification of 10+2. In the application form, he had disclosed his qualification 10+2 with marks of diploma. The respondent in the reply as well as impugned order has formed an opinion that the petitioner is entitled to 12 marks because he is 10+2. The basic qualification is 10+2, thus, equivalent qualification cannot be considered.

8. The educational qualification in the advertisement was prescribed under Clause No.6. (C). The said clause is reproduced as below:-

“C. EDUCATIONAL QUALIFICATIONS

*The minimum Educational qualifications shall be **10+2 or its equivalent from a recognized Education Board/University**, and the candidate must have passed Matriculation examination **with Punjabi as one of the compulsory** or elective subjects or any other equivalent examination in Punjabi language.”*

9. From the perusal of above-quoted clause, it is evident that minimum educational qualification was 10+2 or its equivalent from a recognized Education Board/University. A candidate may be possessing qualification of 10+2 or its equivalent or both. The advertisement is not enjoining that in case a candidate is possessing qualification of 10+2 as well as its equivalent, qualification of 10+2 would be considered and equivalent would be ignored. A person who is possessing qualification of 10+2 as well as equivalent cannot be treated step motherly rather he should be considered as a better candidate. A person, who is holding both the qualifications, in all

probabilities, is better than a person who is holding only one qualification. In the absence of specific instructions, the respondent could not consider marks of 10+2 and ignore marks of diploma. The petitioner in his application has disclosed marks of diploma and respondent is neither disputing genuineness of diploma nor questioning its equivalence with 10+2. As the petitioner was possessing qualification of 10+2 as well as Diploma in Electrical Engineering, the respondent was not justified in considering marks of 10+2 and ignoring marks of diploma. The petitioner, in his application, had claimed marks of diploma, thus, respondent was bound to consider marks of diploma. There was no reason to consider marks of 10+2.

10. As per respondent, all the advertized posts have already been filled up. The petitioner had applied for the post of Constable and this Court has noticed that respondent, from time to time, is advertising posts of Constables meaning thereby advertized posts of Constable might have been filled up but posts of Constable are available. There is no lapse on the part of the petitioner and he is pursuing the matter before this Court since 2017. It would be travesty of justice, if the petition is academically decided and no effective relief is granted to the petitioner.

11. In the wake of above facts and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The respondents are directed to appoint the petitioner on the post of Constable without disturbing last selected candidate under General Category. There are all possibilities that many persons have been appointed during the intervening period. The petitioner has not served the respondent-State, thus, he is not entitled to back wages and other service benefits.

The petitioner shall be issued appointment letter within one month from today. He is 34 years old, thus, if he joins at this stage, would have sufficient period to serve and complete qualifying service for all pensionary benefits, therefore, for all intent and purposes, he would be treated part of the force from the date of joining.

(JAGMOHAN BANSAL)
JUDGE

14.03.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>