

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

(106)

LPA-1430-2023 (O&M)

Decided on : 27.02.2024

Gurbhawan Singh

.....Appellant(s)

Versus

State of Punjab & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present:- Mr.D.K.Prajapati, Legal Aid Counsel, for the appellant.

Mr.Salil Sablok, Sr.DAG, Punjab.

G.S. Sandhawalia, ACJ (Oral)

CM-3641-LPA-2023

1. Application for condoning the delay of 88 days in filing the present appeal is allowed, in view of the averments made in the application, duly supported by affidavit of the applicant-appellant. Delay of 88 days in filing the appeal is hereby condoned.

2. CM stands disposed of.

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3. Consideration in the present appeal is to the judgment dated 04.05.2023 passed by the Learned Single Judge in CWP-24242-2013 whereby the writ petition was dismissed. Appellant-petitioner was also seeking the relief of quashing the action of the respondents in changing the recruitment criteria on the basis of the marks obtained in Class 10 in place of Class 12 as illegal and unsustainable and making recruitment to the post of Forest Guards.

4. The Learned Single Judge found that the recruitment notice was issued in the year 2011 to fill up 188 vacant posts of Forest Guards and the stand was also taken by the State that the writ petitioner did not attend the counselling session and had to be considered for the physical test and walk test. The claim of the writ petitioner before the Learned Single Judge in detail apparently was that he was never called for the walk test and physical test. Resultantly, keeping in view that disputed questions of facts were involved that could only be decided by the Court after permitting the parties to lead their evidence and the length of the litigation was kept in mind that it was 12 years since the selection and appointment were made. The fact that the petitioner was 53 ½ years old also weighed with the Learned Single Judge to dismiss the writ petition.

5. Counsel for the appellant has thus submitted that rules of the game have been changed midway and therefore, the appellant was justified in challenging selection of the private-respondents and seeking consideration being an Ex-serviceman, falling under Scheduled Caste Category and possessing a 10+2 Class pass certificate.

6. As per advertisement No.5 of 2011, seven seats for Scheduled Caste Category of Ex-servicemen were advertised against which the appellant is a aspirant. It is submitted that six candidates have been selected and therefore, there is one vacant post available. Apart from that the eligibility criteria has been dropped from 10+2 to Matriculate. It is not disputed that in pursuance of the application form, he was allotted registration No.10114701 (Annexure P-4). It is his case that the selection process was over in the month of November-December,

2011 and after physical test and counselling, merit-list was prepared in April, 2012 which information he had sought under Right to Information Act, 2005 and therefore, had filed the writ petition in the year 2012.

7. The categorical stand of Subordinate Selection Board, Punjab, respondent No.3 is that the writ petitioner was absent at the time of counselling and physical test which had taken place at Chhattbir Zoo from 06.12.2011 to 15.12.2011. It has been averred that public notice dated 03.12.2011 had been advertised in different newspapers and also placed on the website of the Forest Department but the writ petitioner never appeared at the time of counselling and physical test and thus was not eligible to be considered for appointment. Justification had also been given that the reason to drop the minimum qualification was that the certificates of Graduation were not bearing details of the marks obtained by each candidate and hence the Sainik Welfare Department advised to prepare the merit-list in the case of Ex-servicemen candidates on the basis of Matriculation certificate.

8. The averments regarding the advertisement dated 03.12.2011 which led to the counselling in November-December, 2011 at Chhattbir had not been controverted by way of filing replication. In such circumstances, presumption arises that the appellant had not denied the said fact. Therefore, the argument now raised that the bar had been dropped subsequently is not justified once he had opted not to appear for counselling in pursuance of the public notice. The said reasons thus weighed with the Learned Single Judge in dismissing the writ petition which are well justified in the facts and circumstances and the fact that he

was an Ex-serviceman and 53 ½ years old.

9. The consideration would have only arisen if he would have appeared for counselling and having a 10+2 certificate or 10th certificate which would have weighed with the authorities to consider his case but he opted not to appear in the counseling and physical test. Thus, no case is made out to interfere in the well reasoned order passed by the Learned Single Judge.

10. Resultantly, in view of the above discussion, the present appeal is hereby dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

February 27th, 2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No