

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CWP-28074-2022
Date of Decision: 14.02.2024

Avinash Dalmotra ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Kshitij Sharma, Advocate and
Mr. Shubhkarman Singh Gill, 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 permit him to join as Constable in District Police Cadre.
2. The petitioner pursuant to Advertisement No.2/2021 dated 16.07.2021 (Annexure P-1) applied for the post of Constable in District Police and Armed Police Cadre. The minimum education qualification was prescribed in Clause 5.3 of the advertisement. The said Clause of the advertisement reads as:

“5.3 Education Qualifications

5.3.1 Minimum Education Qualifications

- (i) *10+2 or its equivalent from a recognized Education Board/ University.*

(ii) In case of Ex-Servicemen, the minimum educational qualification shall be Matriculation.

Note: Candidates must have attained the above mentioned educational qualifications on or before the closing date for submission of online applications for this recruitment.

5.3.2 Mandatory Education Qualifications

Candidates must have passed Matriculation examination with Punjabi as one of the compulsory or elective subjects, or any other equivalent examination in Punjabi language as specified by the Punjab Govt. from time to time.

Provided that where a ward of Defence Service Personnel, who is a bonafide resident of Punjab state, is appointed by direct appointment, he shall have to pass an examination of Punjabi language equivalent to Matriculation Standard or he shall have to qualify a test conducted by the Language Wing of the Department of Education of the Punjab Government within a period of two years from the date of his appointment.”

[Emphasis Supplied]

3. The last date for filing application was 15.08.2021 and written test was conducted on 29.09.2021. The petitioner cleared written test as well as successfully passed through scrutiny of documents which took place on 12.12.2021. The petitioner was found fit in the medical examination. In May’ 2022, select list was uploaded on the website of the respondent. The name of the petitioner figured in the select list, however, he has not been issued appointment letter because he, on the date of application, was not possessing matriculation certificate with Punjabi language. The petitioner had applied for examination of Punjabi subject before July’ 2021 and exam was to be

conducted by Punjab School Education Board in July' 2021. On account of COVID-19, the exam could be conducted on 10.11.2021 and result was declared on 05.04.2022. In this way, the petitioner, on the date of filing application for the advertised post, was not possessing matriculation certificate with Punjabi.

4. The respondent referred the matter to its Law Officer who formed an opinion that in terms of Rule 17 of Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (for short '**1994 Rules**'), the petitioner, on the date of filing application for the post of Constable, was supposed to possess certificate of matriculation with Punjabi language. On the basis of said opinion, the Commissioner of Police, Amritsar vide communication dated 28.11.2022 (Annexure R-4) informed the Senior Superintendent of Police, Pathankot that petitioner was not possessing requisite qualification on the date of application, thus, he is not eligible for appointment. For the ready reference, letter dated 28.11.2022 is reproduced as below:

"On the above noted subject, it is intimated that the Hon'ble Director General of Police, Punjab, Chandigarh vide his office letter No.11353/E-1(4) dated 03.10.2022, has intimated to this office that candidate Avinash Dalmotra son of Shri Kewal Krishan has passed his 10th and 10+2 educational qualification from C.B.S.C., Board and he passed Punjabi as additional subject, from the Punjab School Education Board Mohali, after the last date of applying for recruitment. In this case legal opinion has been obtained from the Law Officer, CPO, which is as under:-

"The present case file pertains to the joining of candidate Avinash Dalmotra bearing Roll

No.3121210375 as Constable in Police Department who has been selected in the enlistment process of Constables in pursuant to an advertisement and standing order No. 02 of 2021.

Since, as per provisions of Rule 17 of " The Punjab Civil Services (General and Common Conditions of Service) Rules 1994; the said candidate has not passed examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi Language as specified by the Government from time to time, prior to the issuance of Standing Order and Advertisement pertaining to the enlistment of Constable-2021, therefore, this candidate may not be considered eligible for his joining as Constable in the department. The provisions of letter dated 29.01.1982 of the Government of Punjab, Department of Education (Education Branch-5) are not applicable in the present case in hand."

So, as per the above said opinion, the case of candidate Avinash Dalmotra son of Shri Kewal Krishan resident of House No. 66 Seikh Mohall, Police Station Sujanpur, District Pathankot (90419-80496, 98774-62002) for his recruitment as Constable is not covered, hence case has been filed. The candidate can collect his original documents, which he deposited in this office, on any working day. In this regard, candidate may be informed accordingly and intimation be sent to this office please."

5. Learned counsel for the petitioner submits that he could not take exam of Punjabi in July' 2021 because Board deferred the exam on account of COVID-19. The test was conducted on 10.11.2021 and result was declared on 05.04.2022. The petitioner had applied for test much prior to July' 2021 and Board in the certificate has confirmed that exam was of July' 2021.

In support of his contention, he relies upon judgment of this Court in ***Minni Grover v. State of Punjab and another, 2015 SCC OnLine P&H 14222.***

6. *Per contra*, Mr. Pawan Kumar, learned State counsel submits that as per advertisement read with Rule 17 of 1994 Rules, the petitioner was supposed to possess matriculation certificate with Punjabi before the last date for filing application for the advertised post. Concededly, he was not possessing the said certificate on the last date of application, thus, respondent has rightly rejected claim of the petitioner in the light of Rule 17 of 1994 Rules.

In support of his contentions, he relies upon judgment of Apex Court in ***Rajasthan Public Service Commission, Ajmer and another v. Shikun Ram Firuda and another, 2019(10) SCC 271***, judgments of this Court in ***Balwinder Kaur v. State of Punjab and others, 2018(1) SCT 229*** and ***Dr. Arunpreet Kaur and others v. Managing Director, Punjab Health Systems Corporation and others, 2012(4) SCT 808.***

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

8. The conceded position emerging from the record is that respondent-State issued advertisement inviting application for the post of Constables on 16.07.2021 and last date to apply was 15.08.2021. The petitioner applied for the exam of Punjabi language prior to July' 2021 and exam was to be conducted in July' 2021, however, due to COVID-19, it was conducted on 10.11.2021. The result was declared on 05.04.2022. The

respondent conducted written test on 26.09.2021 and select list was released in May' 2022. The name of the petitioner figured in the select list, however, he has not been issued appointment letter because he was not possessing requisite certificate of Punjabi language before the last date for filing application for the advertised post. The respondent, relying upon Rule 17 of 1994 Rules, has rejected candidature of the petitioner.

9. The respondent-State, relying upon Rule 17 of the 1994 Rules, has rejected candidature of the petitioner, thus, it is inevitable to look at said Rule, which is reproduced as under:-

“17. Knowledge of Punjabi Language- *No person shall be appointed to any post in any Service by direct appointment unless he has passed Matriculation Examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi Language, which may be specified by the Government from time to time :*

Provided that where a person is appointed on compassionate grounds on priority basis under the instructions issued in this behalf by the Government from time to time, the person so appointed shall have to pass an examination of Punjabi Language equivalent to Matriculation standard or he shall have to qualify a test conducted by the Language Wing of Department of Education of Punjab Government within a period of six months from the date of his appointment:

Provided further that where educational qualification for a post in any service are lower than the Matriculation standard, then the person so appointed shall have to pass an examination of Punjabi Language equivalent to Middle Standards:

Provided further that where a War Hero, who has been discharged from defence services or paramilitary forces on account of disability suffered by him or his widow or dependent member of his family, is appointed under the instructions issued in this behalf by the Government, the person so appointed will not be required to possess aforesaid knowledge of Punjabi Language.

Provided further that where a ward of Defence Service Personnel, who is a bona fide resident of Punjab State, is appointed by direct appointment, he shall have to pass an examination of Punjabi Language equivalent to Matriculation Standard or he shall have to qualify a test conducted by the Language Wing of the Department of Education of Punjab Government within a period of two years from the date of his appointment.”

10. The respondent has relied upon above-cited judgments of this Court as well as Supreme Court. All the judgments hold that candidate must possess requisite qualification on the date of filing application. The judgments are adverted with essential qualifications prescribed for the advertised post. In the case in hand, the essential qualification is matriculation or 10+2. In the note annexed to Clause 5.3.1, it has been provided that candidate must possess qualification of 10+2 or matric on the last date of submission of application. The judgments cited by respondents are applicable to the said qualification. The judgments are not applicable to passing of exam of Punjabi language which is governed by Rule 17 of 1994 Rules.

11. A Coordinate Bench of this Court has adverted with identical facts and circumstances. In the case of ***Minni Grover (Supra)***, the petitioner was not having matriculation certificate with Punjabi on the date of filing

application. The last date for filing application was 19.08.2011 whereas she passed Punjabi examination at matriculation level in March' 2012. The Court considered advertisement as well as Rule 17 of 1994 Rules and concluded that a candidate cannot be deprived from the appointment because he has cleared exam of Punjabi at matriculation level after last date of submitting application. The Court has held that Rule 17 talks of date of appointment and not date of advertisement or last date for filing application. The facts of the present case are identical to the facts involved therein. The said judgment is squarely applicable to the present case. The relevant extracts of the judgment in ***Minni Grover (Supra)*** read as:

“2. This paved the way of issuance of appointment orders on 7th September, 2012 to the selected candidates. Trouble began for the petitioner when on the last date of submission of applications in the advertisement, was on August 19, 2011, she admittedly had not passed the matriculation examination with Punjabi as one of the compulsory or elective subject or any other equivalent examination in Punjabi language which was the 4th condition of the terms of the advertisement dated 26th July, 2011 [P-1] issued by the Directorate of Health and Family Welfare Punjab, Chandigarh calling applications from eligible candidates for filling up several categories of posts in consolidated form including that of Medical Officers [Dental] which is the post in question. Indisputably, the petitioner holds the Bachelor's degree in Dental Surgery from a University recognized by the Dental Council of India and was registered in Part 'A' of the register maintained by the Punjab State Dental Council and was otherwise eligible for consideration in terms of the Public Notice. She, however, passed the Punjabi

examination at matriculation level in March, 2012 during the currency of the recruitment process.

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11. Rule 17 of the 1994 rules is the operative rule on the subject matter and all advertisements and public notices inviting applications for direct recruitment in Punjab have to comply with rule 17 of the rules. Bylanes and side lanes cannot be carved out from Rule 17 which is couched in the negative form that no person shall be appointed to any post unless he has passed matriculation examination with Punjabi as one of the compulsory or elective subjects or any other equivalent examination in Punjabi language which may be specified by the Government from time to time. Therefore, clause 3(ii) of the advertisement published in 2010 [P-4] is compliant of rule 17 but the condition in the present advertisement imposes a restriction circumscribed by the cut-off date with reference to submission of the applications and is clearly in excess of the mandate of rule 17 and is, therefore, not compliant of rule 17 as it imposes a condition which does not exist in the rule. The terms and conditions of the advertisement are to be treated as the instructions and guidelines of the recruitment process which cannot supplant the rules but only supplement them. Delay in direct recruitment process in the State of Punjab are well known as in other States and are a bane in litigation and therefore the conditions which are qualifying in nature but not essential conditions of eligibility ought not to be measured from the date of submission of the application forms when there is delay in the process. Passing of the Punjabi language examination is one such qualification which is not part of essential qualifications, at the stage of receipt of applications, to hold the post of a Medical Officer

[Dental] which is appointment based. The Government was after all looking for Dentists to serve its dispensaries and hospitals and it is not fair to ignore pure merit altogether, as after all the petitioner has ranked 13th amongst 114 candidates to fill advertised posts in open competition and is otherwise within the zone of consideration in offering and making appointments.

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14. Mr. Sharma cites this judgment to draw an analogy from it to suit the facts of the present case and relies on rule 17 of 1994 rules to mean demonstration of knowledge of Punjabi language at the required level on the date of appointment, if offered. Such an interpretation should be placed that merit is not diluted and rule 17 affords such an opportunity and therefore if appointment is offered to the petitioner, Articles 14 and 16 would not be breached flagrantly.

15. It is trite that appointments conclude recruitment processes which begin with selection and the cut-off dates to do acts and things. I find that Rule 17 is structured around appointment but not selection. This means that no person shall be appointed who does not possess knowledge of Punjabi language but this does not mean that such a person will not be selected or would be non-suited without a fair chance of demonstrating knowledge of Punjabi language in the manner required by rule 17 and if proof comes by before any appointments are offered, then I am inclined to think that a meritorious candidate should not be dropped from the race to appointment particularly when he/she has cleared the Punjabi language in the meanwhile. The barrier was crossed by the petitioner in March, 2012 while the selected candidates came to be appointed six months thereafter in September, 2012.

16. *It would remain a debatable issue where the advertised posts are filled by appointments and thereafter a candidate comes forward with a plea that he or she has now qualified the examination in Punjabi language, therefore he or she should be appointed, then in such a case, a mandamus may not issue howsoever high the merit position may be, but the fact that the acquisition of the prescription of qualifying the examination in Punjabi language was successfully overcome six months before the appointments were made for the first time, then I am also inclined to think, that appointment should not be denied since after all the State Government is looking for the best dentists and it may be deprived of talent if the rule is absurdly applied to the case in hand. Merit alone must govern appointments even at the cost of some allowance relented here or there provided that the selection process is otherwise fair and proper and above board.*

17. *For the foregoing reasons, this petition is accepted. The petitioner is declared eligible for consideration for the post of Medical Officer [Dental]. The condition that the examination in Punjabi language in all circumstances is mandatory on the date of receipt of applications is held unreasonable and arbitrary and not justified under rule 17 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994. Rule 17 is appointment based and not selection oriented so far as passing of the examination in Punjabi language is concerned as a qualifier. Therefore, a writ of mandamus is issued to the State to consider the case of the petitioner for appointment as a Medical Officer [Dental] in the light of this judgment and order. The process be completed within 6 weeks and in case, the petitioner is found eligible in all other respects, she may be offered appointment to the post of Medical Officer [Dental] after following the formalities. It is declared*

that in the event of appointment, her seniority will relate back to the merit position in the 2011 batch but she will not be entitled to any monetary benefits.”

12. From the reading of note annexed to Clause 5.3.1 of the advertisement, it comes out that minimum education qualification i.e. 10+2 or matriculation was required to be obtained before the closing date for submission of online application. There was a requirement of passing matriculation examination with Punjabi. The said qualification was contemplated in Clause 5.3.2 of the advertisement and in the said clause, there was no condition that candidate must have passed Punjabi language exam on or before the closing date for submission of online application. Rule 17 of the 1994 Rules mandates that no person shall be appointed to any post in any service by direct recruitment unless he has passed matriculation examination with Punjabi.

From the conjoint reading of note annexed to Clause 5.3.1 of the advertisement and Rule 17 of the 1994 Rules as well as Clause 5.3.2, it is evident that neither advertisement nor Rule 17 enjoins that candidate must have cleared matriculation exam before the closing date for submission of application. The requirement is that candidate must have cleared exam of Punjabi language before the date of appointment.

13. From the reading of proviso to Rule 17 of 1994 Rules, it further comes out that in the circumstances contemplated therein, candidates are permitted to clear Punjabi language exam even within two years from the date of appointment. It indicates that requirement of matriculation certificate of

Punjabi language is not required at the time of filing application whereas it is required at the time of appointment.

14. In the wake of above discussions and findings as well as judgment of Coordinate Bench of this Court in *Minni Grover (Supra)*, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The respondents are directed to issue appointment letter to the petitioner within six weeks from today.

(JAGMOHAN BANSAL)
JUDGE

14.02.2024
Mohit Kumar

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