

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:038564-DB



LPA No. 128 of 2020 (O&M)

Reserved on : 03rd March, 2025
Date of pronouncement: 18th March, 2025

Ranbir ... Appellant
Versus
State of Haryana and others ... Respondents.

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Sunil Kumar Nehra, Advocate,
Mr. Rahil Mahajan, Advocate,
Mr. Arjun Dosanj, Advocate and
Mr. Akash Gahlawat, Advocate, for the appellant.

Mr. Saurabh Mohunta, Senior Deputy Advocate General,
Haryana.

SANJEEV PRAKASH SHARMA, J.

The appellant assails the order passed by the learned Single Judge whereby his writ petition was dismissed.

2. The writ petitioner/ appellant had applied for the post of Male Constable (General Duty) for which advertisement was issued by the Haryana Staff Selection Commission on 19.07.2015. He scored 65.60 marks as against the cut off 61.90 marks. He was successful in both the written as well as physical tests conducted for the purpose. He was sent for medical examination and the Civil Surgeon, Hisar referred him to PGIMS, Rohtak for medical examination. Medical report dated 11.07.2017 mentioned evidence of '*right dorso lumber spine scoliosis*'. The Civil Surgeon based on the said report declared the writ petitioner unfit on account of having been diagnosed with '*right dorso lumber spine scoliosis*'. It was the contention of

the appellant that medical condition noted by the PGIMS, Rohtak did not constitute a disqualification or medical unfitness.

3. The respondents filed their reply stating that the writ petitioner was medically unfit and Civil Surgeon, Sirsa, had clarified so, while indicating the complications and implications which might arise on account of '*right dorso lumber spine scoliosis*'. The Single Judge directed the petitioner to appear before the Director, PGIMS, Rohtak for ascertainment/assessment of his medical conditions as also the duration for which he could work in the said condition. The report was submitted on 18.10.2018, stating that the time period of implication/ complication was dependent on many variables and, therefore, it could not be predicted.

4. Learned counsel for the appellant contends that in such circumstances, denying the appointment to the appellant was not justified. He submits that learned Single Judge fell in error in calling one doctor of Civil Hospital, Sirsa, who wrongly stated that the complications could be aggravated during the strenuous activities whereas the appellant was fully fit.

5. Learned counsel for the appellant submits that the observations of learned Single Judge relating to Appendix 12.16 which provides for the method to be adopted qua the observations by Medical Officer, and to consider the situation where there is an abnormal curvature of spine, has been erroneously overlooked.

6. Initially, when the LPA came up for hearing, the Co-ordinate Bench of this Court observed that the composite report of the Board of Doctors from the Department of Orthopedics, PGI, Chandigarh, be obtained and the appellant was directed to present himself before the Superintendent, PGIMER, Chandigarh. This was done as the appellant had successfully

cleared the physical screening test, including running to a distance of 5 kilometers in 25 minutes and had also qualified the physical measurement test as per the prescribed standards under the Punjab Police Rules.

7. The matter came up for hearing again before the Court on 25.04.2024 and report of the Medical Board was placed before the Court. The Court observed as under:-

“In compliance of the said order, a report of the Medical Board has been placed before this Court in relation to the appellant. In the said medical report, it was mentioned that the Medical Board examined the appellant on 06.09.2022 and consequently on 26.09.2022, and carried out radiological investigations and submitted its opinion as under:-

“Mr.Ranbir suffers from Dorso lumbar scoliosis measuring 15 degrees. The spine is well balanced and currently he does not have any complaints or restrictions. However, there is a small risk of progression of the curve and risk of developing back ache in the future, especially on lifting weights due to spine degeneration and unfavourable biomechanics.”

However, we are not satisfied with the said opinion because the Court had wanted the Board to give an opinion with reference to the post on which the petitioner is to be appointed i.e. Constable. More so, he has successfully cleared the physical screening test as well as the other qualifying tests and physical measurements.

The possibility of future illness and troubles, which an individual may face, depends on several circumstances and contingencies and the same cannot be a possible apparent ground to deny appointment to the appellant. However, a confirmed report regarding

medical evidence of the appellant is required to be given one way or the other by the concerned Doctor.

We also feel that since the matter relates to the spine and the appointment to be considered is of the post of Constable, it would be appropriate to form a Medical Board of Professors/Doctors of Department of Orthopedics, Medicines and Neurology, PGIMER, Chandigarh so that final opinion can be produced before this Court in relation to the appellant.

Accordingly, the appellant is directed to be present himself before the Medical Superintendent of PGIMER, Chandigarh on 29.04.2024 with a copy of this order. The Medical Superintendent shall accordingly fix the date and form a Medical Board in terms of aforesaid observations made by us and submit its opinion within a period of 15 days thereafter in terms of the order passed by this Court as well as earlier orders.”

8. In compliance to the order dated 25.04.2024, the Assistant Administrative Officer (N), PGIMER, Chandigarh, sent a report of the Medical Board constituted by the Superintendent, consisting of seven doctors under the Chairmanship of Professor Sarvdeep Singh Dhatt, Department of Orthopedics. The Medical Board found that the appellant is independent of activities of daily living. He can walk, run, hop on either leg and does not have any neurological deficiency. He is fit to perform the duties of a Constable. The medical report dated 13.05.2024 is reproduced as under:-

“In this regard, Mr.Ranbir was asked to report in the office of Medical Superintendent, PGIMER for medical examination on 11.05.2024 at 10:00 AM vide letter no. EV (9)PGI-MS/MA-63/2024 dated 10.05.2024. After detailed medical and radiological examination Mr.Ranbir on 11.05.2024 by the board members, the medical board is of the opinion that Mr. Ranbir suffering from Dorso Lumbar scoliosis measuring 15

degrees. The spine is well balanced and he does not have any complaints or restrictions at present. He is independent of activities of daily living, he can walk, run, hop on either leg and does not have any neurological deficits. He is currently fit to perform the duties of a constable.”

9. The appellant was examined by the doctors of Department of Orthopedics, Department of Neurosurgery, Department of Neurology, and the Department of Internal Medicine. The State was also asked to produce the medical opinion of the Board of Doctors constituted by the State which was the basis of declaring the appellant unfit.

10. An affidavit of Additional Director General of Police, Administration, Haryana, Panchkula, was filed along with the report. From the perusal of the report, we find that two doctors downloaded the complications as available from the books and conveyed it to the authorities and did not give their own opinion. The medical examination report of the office of Civil Surgeon, Sirsa, was also placed on the record where again there is no observation of the doctor for holding the appellant to be unfit.

11. Upon the said aspect being placed before learned counsel for the respondents, he has also referred to Annexure R-2 and R-3 as well as to the medical certificate of fitness of the appellant, but on careful examination, we only find that while it has been stated that there is evidence of ‘*right dorso lumber spine scoliosis*’ and there is no observation of the doctor for treating him unfit. It is only the letter sent by Civil Surgeon to the Commandant dated 18.07.2017, which mentions that the appellant is unfit on account of ‘*right dorso lumber spine scoliosis*’. However, in the report of the Medical Board, PGIMS, Rohtak, it is not to be found in the report where they do not say that he is unfit.

12. Thus, from the above facts, it is apparent that while Civil Surgeon, Sirsa has declared the appellant as unfit, no doctor from PGIMS, Rohtak or from PGIMER, Chandigarh has declared him unfit for discharging duties of constable. Rule 12.16 (1) of the Punjab Police Rules, 1934, as applicable to the State of Haryana, provide as under:-

“Every recruit shall, before enrolment, be medically examined and certified physically fit for service by the Civil Surgeon. A certificate in the prescribed form (10.64) signed by the Civil Surgeon personally, is an essential qualification for enrolment (vide Fundamental Rule 10).

The examination by the Civil Surgeon, will be conducted in accordance with the instructions issued by the medical department and will test the eyesight, speech and hearing of the candidate, his freedom from physical defects, organic or contagious disease, or any other defect or tendency likely to render him unfit, and his age. The candidate must strip for examination, a lion covering being allowed except when the examination is being completed and any candidate who refuses to do so must be rejected. The conditions of police service make it necessary that the medical examination of candidates would be strict. Candidates shall be rejected for any disease or defect which is likely to render them unfit for the full duties of a police officer.”

13. Thus, a specific opinion is required to be given for declaring a person unfit. Merely because of some 15 degree curve in the spine, we cannot say that it is a deformity nor can it be said that there is a finding to deprive him from performing the duties as a constable.

14. While we are conscious that this Court would not have expertise to declare a particular person fit or unfit, but since a Special Medical Board, consisting of seven doctors from the necessary medical fields, namely Orthopedics, Neurology, Neurosurgery and Internal

Medicine, have examined the appellant and found him fit, denying him the benefit of appointment would be a travesty of justice.

15. Learned counsel for the respondents has stated that the post of constable is not available. However, we find that the writ petition was filed in time and keeping in view the principle/ theory of '*lis pendens*', it was not necessary to direct the respondents to keep any post vacant especially for the appellant. Theory of '*lis pendens*' has been recently examined by in detail by Hon'ble the Supreme Court in **M/s Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy & Others**, 2024 INSC 861, and has held as under:-

“49. The purpose of lis pendens is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of lis pendens, a defendant could defeat the purpose of the suit by alienating the suit property. This purpose of the provision is clearly elucidated in the explanation clause to Section 52 which defines “pendency”. Amending Act 20 of 1929 substituted the word “pendency” in place of “active prosecution”. The Amending Act also included the Explanation defining the expression “pendency of suit or proceeding”. “Pendency” is defined to commence from the “date of institution” until the “disposal”. The argument of the respondents that the doctrine of lis pendens does not apply because the petition for review was lying in the registry in a defective state cannot be accepted. The review proceedings were “instituted” within the period of limitation of thirty days. The doctrine of lis pendens kicks in at the stage of “institution” and not at the stage when notice is issued by this Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this Court. Any transfer that is made during the pendency is subject to the final result of the litigation.”

16. In view of the above, relief cannot be denied to the appellant merely because the respondents have chosen to fill up the posts inspite of pendency of the writ petition and the notices having been served upon them. It is at their own risk and cost that they have filled the posts and, therefore, the contention raised by counsel for the respondents is not sustainable in the eyes of law.

17. We accordingly allow the appeal and direct the appellant to be considered for appointment on the post of constable. He shall, however, be only given benefit notionally from the date the candidates lower in merit from him have been appointed. His pay fixation shall be done accordingly and actual benefits shall be given from the date of passing of this order. The exercise shall be completed within a period of one month from the date of this order.

18. All pending applications stand disposed of.

19. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

18th March, 2025
vs

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No