



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

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**CWP-13308-2018 (O&M)
Date of decision: 10.02.2025**

Ramesh Kumar

...Petitioner

VERSUS

State of Haryana and others

...Respondents

217-A

**CWP-5356-2019 (O&M)
Date of decision: 10.02.2025**

Gurpreet Singh

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. P.K. Ganga, Advocate for the petitioner
in CWP-13308-2018.

Mr. P.K.S. Phoolka, Advocate for the petitioner
in CWP-5356-2019.

Mr. Praveen Chander Goyal, Addl. AG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

CM-1823-CWP-2019

Application is allowed as prayed for subject to all just exceptions. Annexure P-8 as well as replication to the reply filed by the respondents is taken on record.



Registry is directed to tag the same at an appropriate place with its paging.

Main case:

1. Involving identical dispute, both these writ petitions have been filed. They are accordingly being decided by a common judgment with the consent of the respective parties. Facts are being adumbrated from **CWP-13308-2018** titled as '**Ramesh Kumar Vs. State of Haryana and others**'.
2. Challenge in the present petition is to the order/letter dated 16.01.2018, passed by the office of the Superintending Engineer, Public Health Engineering Circle, Sirsa whereby the appointment letter issued to the petitioner, for the post of Water Pump Operator Grade-II has been cancelled on account of the petitioner being found colour blind by the office of Civil Surgeon, Sirsa and hence being declared unfit for Government service.
3. Learned counsel appearing on behalf of the petitioner contends that respondent-Haryana Staff Selection Commission had published an advertisement regarding appointment of various posts in Public Health Engineering Department, Haryana. The petitioner submitted his application for the post of Pump Operator Grade-II under the SC Category. The petitioner possessed the requisite qualification and was fully eligible and he was thus, eventually selected for being appointed as Pump Operator Grade-II. An appointment letter was accordingly issued to the petitioner on 08.01.2018 and the petitioner was directed to undergo a medical fitness test before submitting joining. For obtaining the same, the petitioner appeared



before the Civil Surgeon, Sirsa, who however reported that the petitioner suffers from colour blindness. The petitioner was thereafter referred to PGI Rohtak for reconsideration of the eye test vide letter dated 20.02.2018. As per the medical report of the three member board, the eye vision of the petitioner was found to be R/E=6/6 and L/E=6/6 and the Anterior Segment was found to be within normal limit B/E. However, it was discovered that the petitioner is missing some of the plates on Ishihara Chart and is unable to recognize primary colours on lantern test in both large and small apertures. For the said reason, the candidature of the petitioner was cancelled by the respondents on the ground of the petitioner being unfit due to colour blindness.

4. Learned counsel appearing on behalf of the petitioner contends that the said disqualification has no bearing since the nature of the job is not technical and the purported deficiency in the eye as colour blindness for primary colours in lantern, would have no impact on his discharging the functions and duties as a Pump Operator. He submits that in similar circumstances, the Courts have granted interim and set aside numerous orders of cancellation of letter of appointment. Reliance is placed on the judgment of this Court in **CWP-7596-2016** titled as '**Jasmer Singh Vs. State of Haryana and others**' reported as **2017 (4) SCT 571**. Relevant extract of the same reads thus:-

“Perusal of advertisement, nowhere physical standard in respect of eye has been prescribed or stipulated. Therefore, contention of the respondents that the petitioner suffering



from colour blindness, therefore, he is not entitled to be selected and appointed to the post of Assistant Superintendent Jail is hereby rejected. One more aspect of the matter is whether it is technical or non technical post. Admittedly, the respondents furnished information that the post of Assistant Superintendent Jail is executive post (Non Technical Post). Since medical officers have opined that petitioner is fit for non-technical post. Petitioner is entitled to appointment.”

5. Reliance was also placed on the judgment dated 04.03.2010 passed in CWP-14795-2009 titled as ‘Nasib Singh Vs. State of Haryana and others’ wherein this Court passed a similar order. The operative part thereof reads thus:-

“Learned counsel for the petitioner has vehemently argued that the rules prescribed only 6 × 6 eye sight for Constable and colour blindness cannot be a ground for rejection of the petitioner on medical grounds. In the reply also, the respondents have not shown as to whether the colour blindness can be considered to be a ground for medical unfitness. The only ground taken in the written statement is that the petitioner is also required to serve in the Traffic Police, so he should not be of colour blindness. No rule or regulation or instructions have been brought on record in this case by the respondents in support of their plea raised above.

Apart from the above, the issue has been considered by



Hon'ble Supreme Court in the case of Union of India v. Satya Prakash Vasist, 1994 Supplement (2) SCC, 52, wherein the following observations have been made:-

“The contention of learned counsel for the appellants is that the expression “shall be free from colour blindness” is applicable both to sub-clauses (I) and (ii) of clause (a) and not merely to sub-clause (ii). It is on this basis that the learned counsel for the appellants supported the non-appointment of the respondent on the ground that he was colour blind. We are unable to accept this contention. Reading the above extract as a whole, it is clear that the requirement that the candidate should be free from colour blindness is only for the post of Drivers and traffic staff in sub clause (ii) and that does not apply to sub-clause (I) relating to Constables, Head Constables and Sub -Inspectors (Executive). It is obvious that the disqualification of colour blindness has no application to sub-clause (iii) and this was rightly not disputed by learned counsel for the appellants. In such a situation, the applicability (sic inapplicability) of the disqualification of colour blindness to sub-clause (I) is further supported by the fact that the other expression “Visual acuity (both eyes) 6/12 without glasses” is repeated identically in sub-clause (I) also even though it



finds place in sub-clause (ii). If the words “shall be free from colour blindness” appearing in sub-clause (ii) were applicable also to sub-clause (I), the other expression “Visual acuity (both eyes) 6/12 without glasses” would not have been repeated in sub-clause (I) when it finds place in sub-clause (ii). That apart, there is clearly discernible basis for the disqualification of colour blindness for persons appointed as Drivers and traffic staff, the nature of whose duties are different from that of a sub Inspector (Executive). The only contention advanced in support of the appellants cannot, therefore, be accepted.”

The above said case has been followed by this Court in the case of Satish Kumar v. State of Haryana and others, (CWP No. 13338 of 2008) decided on 29.04.2009.

In view of the observations of the Hon'ble Supreme Court, this petition is allowed. The impugned order dated 21.08.2007 (Annexure P-3) is hereby quashed and set aside. The respondents are directed to appoint the petitioner on the basis of selection within a period of one month from the date a certified copy of this order is made available to the competent authority. Needless to say, the petitioner shall be entitled to seniority on the basis of the merit adjudged in the selection process, though no financial benefits will be allowed



to the petitioner. The salary of the petitioner shall be, however, fixed by giving notional benefits of increments etc.”

6. Reliance was also placed on the judgment passed by the Hon’ble Supreme Court in the matter of ‘**Union of India Vs. Satya Prakash Vasisht**’ reported as 1994 (Sup2) SCC 52. Paragraphs No.3 and 4 thereof are extracted as under:-

“3. The contention of learned counsel for the appellants is that the expression shall be free from colour blindness” is applicable both to sub-clauses (i) and (ii) of clause (a) and not merely to sub-clause (ii). It is on this basis that the learned counsel for the appellants supported the non- appointment of the respondent on the ground that he was colour blind. We are unable to accept this contention. Reading the above extract as a whole, it is clear that the requirement that the candidate should be free from colour blindness is only for the post of Drivers and traffic staff in sub-clause (ii) and that does not apply to sub-clause (i) relating to Constables, Head Constables and Sub-Inspectors (Executive). It is obvious that the disqualification of colour blindness has no application to sub-clause (iii) and this was rightly not disputed by learned counsel for the appellants. In such a situation, the applicability (sic inapplicability) of the disqualification of colour blindness to sub-clause (i) is further supported by the fact that the other expression "visual acuity (both eyes) 6/12



without glasses" is repeated identically in sub-clause (i) also even though it finds place in sub-clause (ii). If the words "shall be free from colour blindness" appearing in sub-clause(ii) were applicable also to sub-clause (i), the other expression "visual acuity (both eyes) 6/12 without glasses" would not have been repeated in subclause (i) when it finds place in sub-clause (ii). That apart, there is clearly discernible basis for the disqualification of colour blindness for persons appointed as Drivers and traffic staff, the nature of whose duties are different from that of a Sub-Inspector (Executive). The only contention advanced in support of the appellants cannot, therefore, be accepted.

4. The question now is of the nature of relief which should be granted to the respondent in view of the fact that he was actually appointed in February 1988 after refusal of stay in this matter by this Court. The selections were made in 1978 and the other selected candidates had been duly appointed and were working for several years prior to the date of actual appointment of the respondent in 1988. In such a situation, the grant of back wages to the respondent does not appear to be just and proper. Learned counsel for the respondent in all fairness accepted this position. We are also of the opinion that even though the respondent is entitled to the benefit of service for the earlier part commencing from the date on which he



should ordinarily have been appointed on being duly selected yet it would not be appropriate to treat the earlier period prior to the date of his actual appointment as a period to be reckoned as 'actual service' if a period of actual service is prescribed as a necessary qualification for promotion. We also make it clear that the promotions already made of persons junior to the respondent in the merit list on account of the late appointment of the respondent shall not be disturbed as a result of this relief granted to the respondent. Subject to these limitations, the entire earlier period commencing on the date on which the respondent should have been ordinarily appointed would be treated as a part of his continuous service for all other purposes including the retiral benefits and fixation of his seniority."

7. Relying upon the same, learned counsel appearing on behalf of the petitioner vehemently argues that a medical disability cannot *ipso facto* be held to be an ineligibility, especially in circumstances where the posts are not technical. There is no direct co-relation established by the respondents as to how the petitioner would be unable to discharge the duties required to be performed by him while working. It is contended that as a water pump operator, the petitioner is not required to deal with any technical work and his job is only to ensure that the lines are changed for ensuring water supply in the respective zones/areas as per the time so assigned. It is thus argued that the order of cancellation of the letter of appointment has been passed in



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a mechanical manner without appreciating the nature of the job, the responsibility to be discharged and without even ascertaining whether the alleged deficiency would render the petitioner ineligible for performance of functions and duties relating to the job.

8. Learned counsel appearing on behalf of the respondents does not dispute the factual aspects and is also not in a position to controvert the applicability of the judgments that have been cited by the learned counsel for the petitioner and noticed above.

9. No further argument has been advanced by either of the parties nor any judgment has been cited by the learned State counsel.

10. Under the given circumstances, **the present writ petitions are allowed.** The impugned letter of canceling the letter of appointment already issued to the petitioners are set aside. The respondents are directed to restore the appointments of the petitioners. The petitioners shall not be given any salary for the intervening period but would be entitled to the consequential benefits other than experience and seniority.

11. Let the needful be done by the respondents within a period of **03 months** of the receipt of certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

10.02.2025*Mangal Singh*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No