
(2010) 09 P&H CK 0267
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15514 of 2010

Dharambir Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Police Act, 1861 — Section 3, 7

Punjab Police Rules, 1934 — Rule 13.1, 13.4(2), 13.7, 13.8, 13.9

Citation : (2010) 09 P&H CK 0267

Hon'ble Judges : Ritu Bahri, J; M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The Petitioners who are members of Schedule Castes have been working on the posts of Head Constable in the State of Haryana. They have approached this Court with a prayer for quashing instructions dated 19.3.2010 (P-5), issued by the Director General of Police-Respondent No. 2. Another consequential prayer has also been made for quashing order dated 19.7.2010 (P-6), passed by the Commissioner of Police, Gurgaon-Respondent No. 3. The principal ground for attacking aforesaid two orders is that these are in patent violation of the provisions of Rules 13.1, 13.7, 13.8 and 13.9 of the Punjab Police Rules, 1934 (for brevity, 'the Rules?'), which provide for imparting of training to Head Constables, which is necessary to acquire eligibility for promotion to the post of Assistant Sub-inspector. On the basis of instructions dated 19.3.2010 (P-5), the Director General of Police has restricted detailing of Head Constables for Intermediate School Course (which is requirement for becoming eligible for promotion as Assistant Sub-Inspector), only to those who have completed two years service.

2. Brief facts may first be noticed. The Petitioners are members of Schedule Castes and 20% of the posts in the Intermediate School Course are reserved for them. They were enlisted as Constable in the Haryana Police on various dates ranging from the year 1988 to 2000. Their names were brought on List-C in the year 2008-2009 for promotion to the post of Head Constable. Accordingly, they

were placed in the tentative seniority list of Head Constables of newly created Commissionerate of Gurgaon. The names of the Petitioners in the seniority list figures at Sr. Nos. 251, 254, 255, 259, 261, 262, 267, 271, 277, 281, 287 and 291 respectively. The Petitioners have claimed that Head Constables have been detailed for Intermediate School Course. In the 1st and 2nd Batch of 2010, detailed for Intermediate School Course, the name of the last person is Head Constable Ajay Singh. His name figures at Sr. No. 245 in the seniority list and he has not completed two years of probation period. The names of the Petitioners have been placed undisputedly in the seniority list under the reserved category.

3. The Director General of Police-Respondent No. 2 allotted seats for Intermediate School Course on 4.1.2010 and the Course commenced on 1.2.2010, in which 10 Schedule Caste candidates were deputed as per the norm of reserving 20% seats for them. None of those candidates had completed two years of service and, in fact, they were on probation. The names of similarly situated Head Constables figures in the tentative seniority list at Sr. Nos. 203, 209, 221, 225, 231, 241, 242, 244 and 245 and the Intermediate School Course commenced with effect from 12.7.2010. However, on 19.3.2010, the Director General of Police-Respondent No. 2 issued instructions stipulating that the Head Constables, who have not completed two years probation period, may not be deputed for Intermediate School Course in future. On the basis of the aforesaid instructions, the Commissioner of Police, Gurgaon-Respondent No. 3, has detailed General Category candidates against the reserved seats for the Intermediate School Course, which was to commence from 12.7.2010, citing the reason that the Petitioners did not complete two years of probation period. The Petitioners have alleged that one Head Constable Shri Madan Singh-Respondent No. 15, who is far junior to them and also belong to Schedule Caste category, has been detailed for the Intermediate School Course after his medical checkup on 16.7.2010 and is placed in the seniority number at 297.

4. In the written statement filed by Respondent Nos. 1 to 4, it has been admitted that the instructions were issued on 19.3.2010 (P-5) stipulating that no Head Constable should be deputed to the Intermediate School Course unless he has completed mandatory period of two years. The Head Constables, who have already undertaken the training, were not to be re-called and they were not to be entitled to take any undue benefit of promotion and seniority. It is conceded that 100 seats for two batches for Intermediate School Course of 50 Head Constables in each batch were allotted to the Police Commissionerate Gurgaon-Respondent No. 3 by the Director General of Police-Respondent No. 2 on 4.1.2010. The second batch has been deputed w.e.f. 15.7.2010. It has remained undisputed that the members of the Schedule Caste category are entitled to get 20% reservation in Intermediate School Course and 10 seats in the second batch were to be utilized by deputing at least 10 Schedule Caste candidates. Since there was no Head Constable belonging to the Schedule Caste category, who has completed period of two years as per instructions, those seats were diverted by deputing candidates belonging to General Category as per their seniority with the

condition that the backlog of Schedule Caste category would be filled up on the availability of eligible candidates, as has been clarified by order dated 19.7.2010 (R-1). Respondent Nos. 1 to 4 have also claimed that no Head Constable junior to the Petitioners has been deputed to undergo Intermediate School Course except Head Constable Madan Lal-Respondent No. 15. Even his name is sought to be withdrawn and he is likely to be recalled.

5. Mr. Ravi Partap Singh, learned Counsel for the Petitioners has argued that Rule 13.8 and 13.9 of the Rules dealing with the promotions to the posts of Head Constable and Assistant Sub-inspector respectively do not contemplate any bar for deputing a probationer Constable or Head Constable to the Lower School Course or Intermediate School Course respectively. In support of his submission, he has placed reliance on a Full Bench judgment of this Court rendered in the case of Sardul Singh Head Constable v. Inspector General of Police, Punjab, 1970 S.L.R. 505. According to the learned Counsel, the aforesaid Rule has been interpreted to mean that the authorities has to exhaust the list of confirmed Head Constables first for the Intermediate School Course and after the list of confirmed Head Constables is exhausted, the Head Constables on probation are to be sent and thereafter the Officiating Head Constables can be considered and sent. Learned Counsel has maintained that the view taken by the Full Bench has been followed in the cases of Head Constable Dhoop Singh v. State of Haryana 1991 (3) SCT 41 and Janak Singh v. State of Haryana 1991 (3) SCT 94.

6. Ms. Mamta Singhal Talwar, learned State counsel has, however, argued that the judgment of the Full Bench in Sardul Singh's case (supra) would not apply because there were no instructions issued by the Director General of Police, which might be parallel to the instructions dated 19.3.2010 (P-5). According to the learned Counsel those instructions have to be given its due effect and, therefore, none of the judgments cited by the Petitioners would be attracted to the facts of the present case.

7. Having heard learned Counsel for the parties and after perusal of the paper book with their able assistance we are of the considered view that this petition deserves to succeed. It would first be appropriate to examine Rule 13.9 of the Rules, which reads thus:

13.9.List D. Promotion to Assistant Sub-Inspectors. (1) A list shall be maintained in each district in card index Form 13.9(1) of those head constables who have passed the lower school course and the Intermediate school course at the Police Training School and are approved by the Deputy Inspector-General as eligible for officiating or substantive promotion to the rank of Assistant Sub-Inspector. No head constable shall be admitted to this list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity.

(2) Officiating promotion to the rank of assistant Sub-inspector shall be made from the list prescribed in Sub-rule (1), as far as possible in rotation, so as to

give each man a trail in the duties of the higher rank. Substantive promotion shall be made by the deputy Inspector-General in accordance with the principles prescribed in Rule 13.1, and officiating promotion shall be made in accordance with Sub-rule 13.4 (2).

(3) Half-yearly reports in Form 13.9(3) on all head constables in this list shall be furnished on the 15th April and the 15th October, to the Deputy Inspector-General.

8. The aforesaid Rule deals with preparation of List-D for promotion to the rank of Assistant Sub-Inspector. Those Head Constables have been made eligible for entry of their names in this List who have passed the Lower School Course and the Intermediate School Course. They are not entitled to be considered for entry of their names to List-D in the event of their failure to qualify the aforesaid examination. Once a Head Constable qualifies by passing both the Courses, his case is placed before the competent authority for being brought to List-D, when his efficiency and integrity are considered along with other relevant factors. One of the important factor is whether he is fit for officiating or for substantive promotion to the rank of Assistant Sub-Inspector. The passing of Intermediate School Course alone would not give him the right to enter his name in List-D. By passing the course such a Head Constable only qualifies himself for being considered for entry of his name to List-D. The Full Bench in Sardul Singh's case (supra) has remarked that "it is inherent in Rule 13.9 and a legitimate inference can be drawn from the language of this rule that every head Constable on list ? C? has the right to be deputed for the Intermediate School Course on his turn and no obstacle can be placed in his way by any of the authorities because it is a necessary qualification prescribed by that rule and there is no other institution from where this qualification can be acquired. If a Head Constable could qualify himself by passing the Intermediate School Course from any other institution, no obligation would have been cast on the Government to afford him an opportunity to pass that course and thus acquire that qualification just as educational qualifications are prescribed which can be acquired by the candidates from any of the numerous institutions. Since this qualification cannot be acquired in any other way but by admission to the Police Training College, the Head Constable willing to undergo that course must be afforded an opportunity to do so. Since the number of seats for the Intermediate School Course is limited, the Head Constables can be sent to the order of seniority....

9. The Full Bench after taking into consideration various other factors has concluded in para 15 as under:

15. For the reasons given above, we are of the opinion that every head Constable on list ?C? has the right to be sent for the Intermediate School Course in the order of his seniority determined in accordance with Rule 13.8. While sending the head Constables for the Intermediate School Course, the Deputy Inspector-General of Police shall first send the confirmed Head Constables and after their list is exhausted, the Head constables on probation will be sent and

last of all officiating Head Constables will be sent. This appears to us to be the most reasonable, fair and equitable way of complying with the provisions of Rule 13.9 of the Police Rules in the interest of all the Head Constables in the police force who legitimately aspire for promotion. Any Head Constable unwilling to undergo that course will of course be omitted.

10. The aforesaid view of the Full Bench has been followed and applied by the learned Single Judge in the case of H.C. Dhoop Singh (supra) and Janak Singh (supra). Therefore, we do not entertain any doubt that the instructions issued by the Director General of Police-Respondent No. 2 on 19.3.2010 (P-5), are patently against Rule 13.9 of the Rules as interpreted by a Full Bench of this Court and various other judgments.

Therefore, the same are liable to be set aside.

11. There is another aspect of the matter, which would also take care of the argument advanced by the learned State counsel. Sections 3 of the Punjab Police Act, 1861 (for brevity, 'the Act'), vests in the State Government the power of superintendence of the police throughout a general police district. It also postulates that no person, officer or Court is to be empowered by the State Government except as authorized under the Act to supersede or control any police functionary. Section 7 of the Act deals with appointment, dismissal etc. of inferior officers. Accordingly, the State Government had framed the Rules. It follows that the Director General of Police-Respondent No. 2 independently cannot issue any instructions restricting the right of the inferior officers of police for detailing them on training courses. Accordingly, it follows that no instructions could have been issued by the Director General of Police-Respondent No. 2. Moreover, those instructions are directly in conflict with Rule 13.9 of the Rules as interpreted by the Full Bench of this Court in Sardul Singh's case (supra) and other cases. Therefore, the argument raised by the learned State counsel is devoid of any merit and does not need any serious consideration. Hence, we do not have any hesitation to reject the aforesaid argument.

12. For the reasons aforementioned, this petition succeeds. Instructions dated 19.3.2010 (P-5) and order dated 19.7.2010 (P-6) are hereby quashed. Accordingly, Respondent Nos. 1 to 4 are directed to depute the members of the Schedule Caste category in accordance with the seniority to the Intermediate School Course at the earliest. However, we leave it open to the Respondent State to permit continuation of Respondent Nos. 5 to 15 to undergo the Intermediate School Course as they have been deputed for training w.e.f. 15.7.2010 and more than 2½ months have passed because it would avoid wastage of resources already expended on them.

13. The writ petition stands disposed of in the above terms.