

(2001) 02 SC CK 0140

In the Supreme Court Of India

Case No : Civil Appeal No. 4645 of 2000

Ghan Sham Sunder and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2001) 3 JT 492 : (2004) 9 SCC 508

Hon'ble Judges : G. B. Pattanaik, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed by persons who had been appointed as auxiliary constables in the State of Punjab while the State was in a state of terrorism. There was no post of auxiliary constables in the Punjab Police Force but they had been appointed to meet the situation as prevailing then. The State Government had issued an administrative order in the form of a standing order on 26th of July, 1990, prior to the appointment of these appellants indicating therein that these auxiliary constables would be eligible for recruitment as constables after one year of service, provided their work and conduct are found satisfactory by the District Superintendent of Police (DSP). It was further indicated that the Senior District Superintendent of Police will make selection out of the eligible auxiliary constables for appointment as constables. This standing order of 26th July, 1990 was superseded by another order of 19th of November, 1991 whereunder it was stipulated that even after completion of six months' service these auxiliary constables would be eligible for recruitment as constables, but all other conditions contained in the earlier circular of 26th July, 1990 remained the same. These appellants who had been appointed on different dates between August 1992 and some date in 1993, however, have not been appointed as constables. In 1995 the State Government issued a fresh circular called "The Recruitment Standing Order No. 1 of 1995" for recruitment of constables in

Punjab Police. Under that circular, for the purpose of recruitment as constable, a suitability test was indicated and that suitability test for the purpose of selection was to be done not only of physical efficiency test and interview, but also of a written test. These appellants subsequent to the aforesaid circular coming into force, appeared at the test but could not qualify, as a result of which they could not be appointed. They, therefore, approached the High Court of Punjab & Haryana by filing a writ petition in the year 1999 alleging therein that since several other similarly situated persons had already been appointed as constables without subjecting themselves to any suitability test, they should be also treated similarly and absorbed as constables without holding any suitability test. The High Court by the impugned judgment, however, came to the conclusion that it would not be possible for the Court to issue a mandamus directing the State Government to recruit these appellants even without holding any suitability test in view of the circular of 1995. The High Court accordingly disposed of the matter without granting the relief sought for. It is against that order of the High Court, the present appeal has been preferred. Be it stated that though specific assertions had been made in the writ petition alleging that several others have been appointed without holding any suitability test, the Court never considered that question.

2. Mr. Chopra, learned Counsel appearing for the appellants, contended before us that the circular dated 26th July, 1990 as well as that of 19th of November, 1991, nowhere provided for holding of any suitability test afresh, though it did contain a provision that the senior DSP will find the conduct of these persons to be satisfactory. That being the position and several others, as detailed in Annexure P-10, having been appointed as constables without holding any suitability test, the Court would be justified in issuing a direction that the present appellants also should be recruited as constables without holding any suitability test. Mr. Munjral, learned Counsel appearing for the State of Punjab, on the other hand, contended that the State in its counter-affidavit has categorically indicated the circumstances under which people prior to the issuance of circular of 1995 had been recruited as constables without undergoing any suitability test. According to the stand of the State Government all those candidates were senior to the present appellants excepting seven in number and in respect of whom a special case had been made out as to why they would be absorbed without holding any suitability test. Mr. Munjral contends that to hold a suitability test for permanent absorption in any service is well known and no person can claim a right of permanent absorption without being subjected to suitability test. He also further contends that in reply to the affidavit filed by the appellants that even in February 2000, 5 or 6 persons have been appointed as constables without holding any test, by stating that for them it was not necessary to hold any suitability test as they belong to a different cadre as indicated in Punjab Police Rules.

3. It cannot be disputed as a proposition of law that while absorbing any person or a group of persons after some years of service either as work charged or

those who are not recruited in accordance with the rules in force, to get their suitability adjudged before finally absorbing them in the regular cadre. It is too well known that efficiency is the prime criterion for absorption in Government service. But, at the same time, this fact cannot be lost sight of that in the year 1990, namely, on 26th of July, 1990 as well as on 19th November, 1991 the two circulars issued by the State Government did not indicate that the persons who were being appointed as auxiliary constables would be subjected to any further suitability test for being appointed as constables though they were required to have a satisfactory conduct to be tested by the DSP. It is also apparent from the facts alleged that several people prior to 1995 circular have been appointed as constables without undergoing the suitability test. The circular of 1995 has not been assailed by the present appellants and therefore notwithstanding the circulars being in force it would be difficult for a court to issue a mandamus to appoint these appellants without going through the process of selection, as indicated in 1995 circular. It transpires that these appellants also subsequent to 1995 circular had appeared at the test conducted for the purpose of adjudging their suitability and having failed therein, have approached this Court. It is not known as to why these appellants had not approached the Court for this length of time although they were eligible for being considered on expiry of one year and six months from the date of their recruitment as auxiliary constables pursuant to circulars dated 26th of July, 1990 and 19th November, 1991. It may be stated that out of 61 applicants, 29 have cleared the test and as such they had already been appointed to the post of constables.

4. In these circumstances, we dispose of this appeal with a direction that these appellants may be required to appear in the test as per the circular of 1995 and since they have already rendered service from 1992 for about more than 7 years their suitability may be adjudged at a much lesser standard than what has been indicated in the circular of 1995. We are making this deviation notwithstanding the circular taking into account that they could have been appointed as constables prior to 1995 without being subject to any suitability test and several others like them have been appointed as constables though they are claimed to be senior to the appellants. We hope and trust that the appropriate authority will hold the test in the spirit and the direction given by us. The test in question may be held within two months from today.