
(1981) 07 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3838 of 1980

Harbhajan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-07-1981

Acts Referred:

Punjab Police Rules, 1934 — Rule 19.14

Citation : AIR 1982 P&H 140 : (1982) 1 ILR (P&H) 473

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.P. Goyal, J

Bench : Division Bench

Judgement

S.S. Sandhawalia, C.J.—The solitary though somewhat significant question which alone has been agitated herein is--whether the provisions of R. 19.14 of the Punjab Police Rules, 1934 are mandatory or directory in nature.

2. In view of the pristinely legal nature of the aforesaid question, the facts would obviously pale into insignificance and therefore, may be noticed with relative brevity. All the 38 petitioners. in this joint petition are constables serving in the Punjab Police Force. A test for selection to the promotion post for constables, conveniently labelled as Lower School Course, was held by the authorities in Jan., 1980. Therein amongst, others, respondents Nos. 4 and 5 were selected. It is the petitioners' claim that both of them ranked junior to all the petitioners and their selection as also that of the other constables has been challenged on a number of grounds.

3. This case first cam up before my learned brother S. P. Goyal, J sitting singly. The primary ground pressed was with regard to the non-compliance of the provisions of R. 19.14 of the Punjab Police Rules, 1934, (hereinafter referred to as "the Police Rules"), and it was the stand that this rule being mandatory, the whole selection was consequently vitiated. Reliance on behalf of the petitioners was primarily placed on a single Bench decision of this Court in C. W. P. No. 1592 of 1978 (Om Prakash v. Union Territory of Chandigarh) decided on Sept. 25, 1978*. In view of the significance of the issue and apparently doubting the

correctness of the earlier view, the case has been referred for decision to the Division Bench.

3-A. At the very outset it may be noticed that Mr. J. L. Gupta, the learned counsel for the petitioner has very fairly stated that the only material issue pertains to the mandatory nature or otherwise of R. 19.14 of the Rules. Inevitably the whole controversy revolves around the relevant statutory provisions and it is apt to read Rr. 13.7 and 19.14 of the Rules which are complementary at the outset :--

"13.7. (1) List "B" Form 13.7 shall be maintained by each Superintendent of Police. It will include the names of all Constables selected for admission to the promotion course for Constables at the Police Training College. Selection will be made in the month of January, each year and will be limited to the number of seats allotted to the districts for the year with a twenty per cent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee constituted by the Inspector-General of Police on the basis of tests in parade, general law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws) interview and examination of records.

(2) All Constables;

(a) who are middle pass and have put in more than four years of service ; or

(b) who are at least matriculates and have put in more than three years of service; or

(c) who obtain first class with credit in the Recruits Course specified in R. 19.2; will be eligible to have their names entered on the aforesaid list, if they are not above thirty years of age on the first day of July in the year in which the selection is made;

Provided that no Constable who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which selection is made will be eligible for admission to this list and if any Constable whose name has been brought on this list is not sent to the Police Training College in that year he will required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules.

(3)-(4) xxx xxx "19.14. The selection of constables made under R. 13.7 shall be made at least three months before the men are due at the Police Training School. It shall be made after the men competing have been called into lines and put through a short "refresher" course of drill and instruction in the headquarters school, at the end of which they shall be examined in competition. After regard has been had to those candidates, nearing the age limit, selection shall be made, as far as expedient, according to the result of this competition. The men selected shall be posted to police stations as assistants to station clerks or on similar duty until they are due to be sent to the Police Training School."

4. The main thrust of Mr. J. L. Gupta's contention on behalf of the petitioners is that R. 19.14 prescribes the qualifications for and lays down a condition for the eligibility of constables for selection to the promotion Course. On these premises it was sought to be submitted that R. 19.14 of the Rules should be construed as mandatory in nature.

5. It would appear that apart from other things, the very factual basis for the above submission seems to be totally lacking. On a close analysis of R. 13.7 of the Police Rules as also the supplementary standing orders passed in this regard, it is plain that neither the aforesaid rule nor the standing order either expressly or even by remote implication prescribes that the attendance at the refresher course contemplated under R. 19.14 of the Police Rules is a pre-condition for taking the competitive test for selection to the Lower School Course. The learned counsel for the petitioners could draw out attention to nothing whatsoever which may be even remotely analogous to the prescription of a qualification or inflexible conditions of eligibility in R. 19.14 of the Rules. On the other hand, a plain reading of R. 13.7 of the Rules would indicate that some of the conditions for eligibility are spelled out in sub-section (2) thereof and the constitution of the Departmental Promotion Committees for holding the test and the general syllabi thereof are referred to in sub-rule (1) of R. 13.7 of the Rules. In sharp contrast thereto R. 19.14 of the Rules does not even remotely advert to either the prescription of necessary qualifications or laying down the conditions of eligibility. This position is further buttressed when reference is made to the standing orders made in this regard. This has been appended to the written statement as annexure R/3. The very heading and the object thereof may be noticed in extenso :--

"Standing order under R. 13.20 of Punjab Police Rules Vol. II Governing Selection of Constables by the Departmental Promotion Committee for List B-1 for Undergoing Lower School Course."

OBJECT:

The object of this Standing Order is to prescribe the composition of Departmental Promotion Committee at various levels for selection of Constable to be sent to the lower School Course at PTC Phillaur and to lay down the syllabus and to qualifying marks for various tests, as envisaged in R. 13.20 of Punjab Police Rules, 1934 (as amended by First Amendment, 1972).

Apart from the above, the remaining parts of the standing order provide in detail for the composition of departmental committees, the eligibility of constables, to sit in the test, the marking system to be adhered to and the marks to be allotted to qualifications and commendation on certificates as also for the interview apart from providing for other matters as well. Reading R. 13.7 of the Police Rules with the supplementary provisions of the standing orders, it is manifest that both the prescription of the qualifications and the requisite conditions of eligibility are spelled out therein. R. 19.14 in my view does not even remotely pretend to do

so. The primary argument on behalf of the petitioners, therefore, does not stand the test of serious scrutiny and has to be rejected.

6. Adverting now to the intrinsic language of R. 19.14, it is no doubt true that the word "shall" has been employed therein. However, it is now a legal adage to say that a provision, though couched in terms mandatory, may yet in fact be directory in nature. In this context without multiplying authorities, it suffices to refer to the following observations in *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, (at p. 278) :--

"..... It is well settled that the use of the word "shall" does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word "shall" occurs and the other circumstances....."

It would thus be obvious that the mere use of the word "shall" is very far from being conclusive in this context.

7. Again, one of the tests for adjudging the mandatory nature of a provision is whether the violation thereof is visited by a serious penalty or its infraction results in irrevocable adverse consequences. Tested on this anvil also, R. 19.14 of the Police Rules does not even remotely meet the requirements. The non-holding of a Refresher Course is neither penalised in any provision in the Police Rules nor any adverse consequence far from the same being irrevocable could be pointed out on behalf of the petitioners. Negatively speaking, this consequently is in itself a pointer that the provisions are not mandatory in nature.

8. Yet another test for determining the mandatory nature of the provision is whether its infraction would frustrate the very purpose of the provision. Herein also, I am unable to see how the failure to hold the Refresher Course in any way defeats the main purpose of selection to the Lower School Course. As has already been noticed, the qualification, the eligibility, the method of holding the test and the passing thereof is more than amply spelled out in R. 13.7 itself and the supplementary standing orders framed in this regard. In this context, R. 19.14 is meant only as a mere guideline for giving some benefit of training before the final selection is undertaken. The holding of the Refresher Course or not holding the same, does not in any way materially affect the main thrust of the provision namely, their subsequent selection for deputing them to the Lower School Course at the Police Training College at Phillaur.

9. Equally, the merely procedural and the wholly ambivalent nature of the provisions of R. 19.14 with regard to the holding of a Refresher Course, again militate against the same being mandatory. The provision merely mentions about the men being called in to the Lines for a short Refresher Course of Drill and Instructions in the Headquarter School. Neither it prescribes the duration, nor exactly the curriculum or precise syllabi has been spelled out therein. It was further conceded before us that no administrative instruction or standing order whatsoever with regard to this Refresher course is in existence. The Refresher Course is to be held at the district level. Therefore, its duration may vary

according to the whimsicality of each local administration and even the place where such a course is to be held at the headquarter, can hardly be pin-pointed. No provision for the allocation of marks for this Refresher Course and the result thereof seems to have been made out. All this would tend to show that the provisions of R. 19.14 of the Police Rules, in particular with regard to the holding of the Refresher Course are merely procedural and cannot be raised to the pedestal of mandatory provisions whose mere infraction, without more, would vitiate the meaningful process of selection to the Lower School under R. 13.7 of the Police Rules.

10. Without overly dilating on this aspect or the tests for determining the mandatory nature of a provision, it would suffice to mention that some of them are well spelled out in the Full Bench judgment in *Guru Nanak University Vs. Dr. (Mrs.) Iqbal Kaur Sandhu and Others*, . Applying those here would again make it manifest that R. 10.14 does not satisfy either of them.

11. Indeed the directory nature of this rule is evident from the cavalier fashion with which the authorities who have to implement it, seem to be treating this provision. In Para. 3 of the Return on behalf of the respondent, it is averred as follows :--

"..... It is, however, incorrect to say that the selection under R. 13.7 can be made only after the men competing have been called in to Lines and put through a short Refresher Course of Drill and Instructions in the Headquarters School at the end of which they shall be examined in competition. Now Standing Order under Police Rule 13.20 has done away with the provisions of P. P. R. 19.14. It may also be mentioned that P. P. R. 13.7 does not envisage the calling of prospective competitors in the Lines....."

As at present advised, we are sceptical whether the statutory provisions of the Police Rules can be thus repealed or done away with by a mere standing order. However, the aforesaid averment is indicative of the sanctity which the respondent-State itself attaches to the provision and at least is a pointed to the fact that it considers it not as ***** directory but something which can be completely bypassed.

12. Lastly, in this context, the argument ab inconvenient, may also be noticed. It has been expressly averred in the Return as follows :--

".....As many as 353 constables of this district out of the posted strength of 1331 constables appeared in the test held in Jan., 1980. It may therefore, be seen that such a large percentage of the force cannot be withdrawn as it would render the functioning of the force impracticable. At the same time, it may be added that no prejudice is caused to any of the petitioners. All the competitors had equal opportunity and no course was run in the Lines at the Headquarters."

It is evident from the aforesaid averment that a mandatory construction of R.

19.14 of the Police Rules requiring every eligible constable to be called in to the Police Lines for a long Refresher Course, may apart from being impracticable, might well pose a hazard to the maintenance of law and order which is the primary duty of the Police Force.

13. For all the aforesaid reasons, it appears to me as plain that the provisions of R. 19.14 of the Police Rules and in particular, with regard to the Refresher Course are plainly directory in nature. Nevertheless, this should not be misunderstood that these can be violated with total impunity or be considered as if they are non-existent. However, this much is clear that a mere infraction of the Rules with regard to the non-holding of a Refresher Course cannot even remotely affect the validity of the selection made for the Lower School Course.

14. It now remains to advert to Om Prakash's case 1978 SLWR 318 (supra) on which basic reliance was placed on behalf of the petitioners. An analysis of the judgment would disclose that the crucial issue of the mandatory or the directory nature of R. 19.14 of the Police Rules was neither pointedly raised nor adequately debated and it seems to have been almost assumed that the rule was mandatory. There seems to be no discussion on principle nor any reference to authority in arriving at the cryptic conclusion that a bare reading of the rule would show that the same is mandatory. The issue was not examined from the view point that this provision does not either prescribe the qualifications nor lays down any condition for the eligibility of constables to the promotion course. The relevant standing orders passed under R. 13.7 of the Police Rules were not even adverted to. The basic tests for determining the mandatory or directory nature of a statutory provision do not find the least mention in the judgment. The other factors to which I have made reference above, seem to have not been at all canvassed, and are conspicuous by the absence of their consideration. With the greatest respect, I am of the view that Om Prakash's case (supra) is not correctly decided and has to be necessarily overruled.

15. The solitary and the basic issue herein having been decided against the petitioners, the writ petition is without merit and has to be dismissed. However, in view of the earlier precedent in favour of the writ petitioners, we would decline to burden them with costs.

16. Petition dismissed.