

(2014) 11 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 2578 and 15831 of 2012

Mohit Sharma and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 226

Citation : (2015) 1 SCT 159

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : A.K. Walia, Advocates for the Appellant; Monica Chhibber Sharma, DAG, Advocates for the Respondent

Judgement

Rajiv Narain Raina, J.—This order will dispose of two writ petitions, i.e. CWP No. 2578 and 2012 and CWP No. 15831 of 2012 as common questions of law and facts are involved in both the petitions and they can be disposed of by a common order. The facts are culled out from CWP No. 15831 of 2012 for the sake of convenience. In September, 2010, Punjab Police advertised 5578 posts of constables in Punjab Police calling applications from eligible candidates to serve in the District Police cadre. The posts were distributed district-wise in the State of Punjab. Of the advertised number 145 of them were to be filled to serve in District Hoshiarpur. The minimum educational qualifications laid down for the post was possession of 10+2 certificate in any discipline or equivalent but it was compulsory for each of the candidates to have passed the matriculation examination with Punjabi language as a compulsory or as an optional subject. The cut off date fixed for receiving applications in the public notice was 1st September, 2010. The selection was made through District Recruitment Boards set up for the purpose and the selection process comprised of three stages involving physical measurement, physical efficiency test followed by an interview. A corrigendum was issued in partial modification of the advertisement reducing the number of posts of male constables to 5293 posts as a decision was taken to fill up 485 posts from female constable category. Consequently, the quota from

male originally advertised was reduced in Hoshiarpur District from 145 to 135 while all other conditions remained the same.

2. The petitioner applied for the post of Constable under the reserved category of ad dharmi which falls in the scheduled caste category in Punjab. The petitioner participated in the selection and secured 27.50 marks. It transpired that respondents No. 5 to 7 also secured equal number of marks. In the final list prepared, respondents No. 5 to 7 were placed at Serial Nos. 104, 113 and 118 respectively whereas the petitioner stood at Serial No. 132 in the merit list far below them. They all belong to the same reserved category. Thereafter, the list of selected candidates" category wise was prepared by the Recruitment Board, according to which, respondents No. 5 to 7 came to be shown at serial No. 10, 11 and 12 respectively whereas the petitioner's name fell at Serial No. 14 of the waiting list.

3. The Director General of Police, Punjab had earlier issued instructions before the recruitment process began on 19th March, 2010 dealing with the situation where more than one candidate secures the same marks then how would the tie be broken. It was decided that preference should be given to the person younger in age. It is the case of the petitioner that being older in age to the private respondents, he should be should be given a preference for appointment to service. The petitioner is 1987 born while the respondents were born between 1989 and 1991.

4. In the written statement filed by the State, the claim of the petitioner has been contested by aid of the aforesaid instructions that persons younger in age in a case of tie, should be given preference for the reason that service rendered to the Department will be longer than the persons older in age. On the basis of the circular, the claim of the petitioner has been rejected which has brought him to this Court agitating that he has a superior right to appointment based on age factor being older. A challenge has been laid to the circular dated 19th March, 2010 (P-6) which denies him consideration for selection and appointment to the post of a male constable (scheduled caste category) as it violates Article 14 of the Constitution of India.

5. The only issue worth consideration canvassed by the learned counsel for the petitioner is that the decision taken in introducing a tiebreaker by the Director General of Police, Punjab does not qualify as execution instructions of the State Government issued under Article 162 of the Constitution. It is urged that the power of introduce a tiebreaker was vested only in the Home Secretary to the Government of Punjab who is cadre controlling authority and is superior to the 2nd respondent, i.e., DGP, Punjab who reports to the former.

6. The Director General of Police, Punjab is the Head of the Police Department in the State and in the matter of recruitment of constables he is the best judge to have taken the impugned decision. He cannot viewed as a persona non-grata in issuing instructions dated 19th March, 2010. No policy making authority was

exercised. It may be true that the 2nd respondent does not possess power to make policy since he is not the State Government, but in a matter so rudimentary in its object of prescribing a mode of tiebreaking there is no element of policy making where more than one person secured equivalent marks on merit then he was well within his jurisdiction to have ordered so. No provision of law has been shown by the petitioner which denudes the authority of the Director General of Police, Punjab from exercising his inherent power reasonably and for good reason to settle the impasse. Better sense can always prevail and the Head of the Department can act in the interest of the police department. It is his business while holding office to run the affairs of the State Police and District Police which are thought best to serve the interest of the State and the public. It cannot be said as a cardinal principle of service jurisprudence that a person older in age is better off or has a fundamental right under the Constitution to be appointed to service in preference to a person younger in age where they obtain the same marks in the same test/examination while following the same criteria prescribed for the selection. Where the Punjab Police Rules, 1934 or the Punjab Police Act, 2007 are silent on a tiebreaker, executive instructions can well be issued by the Head of Department to fill in the gaps left by the recruitment rules". In prescribing the mode of tiebreaking it is not a sovereign policy function of State Government over which there should deservedly be no court interference in jurisdiction exercised under Article 226 of the Constitution of India. The principles of equality before the law and of equal opportunity enshrined in Articles 14 and 16 of the Constitution do not entrench upon the power of the appointing authority to put a reasonable condition as to age or a preference being given one way or the other to break a tie. It was eminently a practical solution to a problem which cropped up after the result was declared.

7. If we examine the case in the converse I should think that the respondents could well have taken a decision, by way of policy or otherwise, that a person older in age would be given preference to a person younger in age when two or more competitors secured the same marks in which event also the Court would normally not have interfered with. Who should be given preference, the younger or the older, is a matter of choice not of state policy and it not open to forensic debate or dissection or for a loser to contend which one should rule the roost. Point and counterpoint are two sides of the same coin but the Director General of Police, Punjab was sagacious enough not to toss the coin or throw the dice. He had the wisdom to opt for choice but not chance. Had he opted for either the court would have still have been faced with a judicial dilemma, a Hobson's choice. This is where interference is not called for, for court to impose its personal notions of what is right and wrong. There is always another debatable point of view when the issue comes to court which sits in secondary review of administrative action. But the debate is confined to relief and what the court can still do. Therefore, the argument cuts both ways. It cannot thus ever be held on first principles of law as to which one of the preferences is better suited to the service when appointing constables to the uniformed force. The making of choice

would largely depend on the nature of the job and what are its demands and so many factors which only the man in the hot seat knows given that he acts dispassionately and disinterestedly distancing himself from individual interest because personal interest must give way to public interest, this is where good governance comes. This is not the business of the Court or for it to rationalize as to which decision is the best possible which deserves largely to be left to the wisdom and experience of those who are in charge of administrative affairs. And this would be fine so long as the choice is neither wholly arbitrary nor palpably unreasonable the kind which no prudent man would make in the circumstances in the search of human resources in the police department looking to the future. In the process of elimination of variables and in the absence of a mode prescribed in the service rules the question can be seen hardly as actionable or in conflict with the method adopted by the 2nd respondent and the scope of rule 12.2 of the Punjab Police Rules which gives the State the power to appoint its constabulary. All that was done by the 2nd respondent was to introduce by force of circumstances and as quickly as possible, the fiat of a rational tiebreaker to determine the winner among the players equally placed except in age. Disappointment may be writ large on the face of petitioner of which one can only sympathize but writs are not meant to issue to repair disappointment and can only be issued to enforce appointment where it unlawfully denied and for the wrong reasons.

8. The learned law Officer then relies on a decision of the Single Bench decision of this Court rendered in *Gurmukh Singh v. State of Punjab* and others decided on 22nd May, 2013 in CWP No. 11246 of 2012 where the same issue arose with regard to the instructions dated 19th March, 2010 which are clearly in favour of the validity of the selfsame tie-breaking rule.

9. On the other hand the learned counsel for the petitioner relies on an earlier decision of the Single Bench of this Court in *Harinderpal Singh v. Board of Directors, Gurdaspur, Amritsar*, 1995(6) SLR 83 : 1995(1) SCT 363 where also the question arose of giving a preference to an older competitor where more than one person had secured equal marks in the selection. In that case, the Court was dealing with the post of Officer in the Amritsar Kshetriya Gramin Vikas Bank, Gurdaspur where the petitioner was better qualified than the respondents who had been selected for appointment. The petitioner was younger in age than the 4th respondent. The petitioner was ignored for the reason that he had secured fewer marks in Graduation than the respondents but it had happened because the roll number was after that of the respondent. The method of giving preference to those who had roll numbers before the other but had secured the same marks, better qualified person possessing a higher degree in the same line and being older in age was held to be arbitrary. The claim of the petitioner was held justified by observing that merit could not be ignored as that would be in violation of Article 14 of the Constitution of India. Once a person is older in age and is better qualified, then there would be no question for the department to focus its attention on a person who was less qualified. There was no decision of

the Bank on the mode and manner in which a tie could be broken amongst equal merit as in the present case. The nature of the job content is also qualitatively different in the two sets of cases. Therefore, the case cited has no relevance to the facts of the present case and is distinguishable. I do not find sufficient reason to interfere in this matter for any of the above reasons.

10. The last limb of the argument of the petitioner deserves to be noticed in challenge to the selection of the 4th respondent on the tie breaking mode adopted suggesting that it is irrational as a more experienced man older in age would be better suited to work as a constable in the police force. Counsel argues that no such condition was put in the advertisement that in the event of equal marks obtained by more than one candidate, preference will be given to the candidate younger or older in age and thus the condition of ouster is an afterthought. Even if such a condition was not placed in the advertisement calling applications for filling up the posts of constables, it would make no difference since the field was already occupied by the executive instructions dated 19th March, 2010 issued by the department before the advertisement was put in public domain and made operational. The date of publication of the advertisements in the Tribune, Ajit and the Punjab Kesri thus become relevant and it will not be out of place to record that those dates were between 11th September, 2010 to 16th September, 2010 prior to the instructions which would have to be read into the advertisement since that was the procedure adopted to start with on the subject of tiebreaking.

11. The challenge to the circular/policy decision dated 19th March, 2010 is thus repelled as there is nothing arbitrary, irrational or discriminatory found in it. The reasonable restriction put on the rights, if any, of the petitioners is neither irrelevant consideration nor oppressive. Consequently, both the petitions are dismissed. No costs.