

(2024) 09 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : CWP No. 8022 Of 2022

Pawan Kumar

APPELLANT

Vs

State of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 24-09-2024

Acts Referred:

Citation : (2024) 09 SHI CK 0012

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Surinder K. Saklani, Sumit Sharma, Vinod Chauhan, Vishal Singh Thakur

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has, inter alia, prayed for the following reliefs:-

â??(i) That a writ in the nature of certiorari may very kindly be issued and impugned order dated 01.11.2022 as contained Annexure P-5, may kindly be quashed

and set aside.

(ii) That a writ in the nature of mandamus may very kindly be issued and respondents be directed to allow the petitioner to continue working on the post of Constable in the Himachal Pradesh Police Department with all consequential benefits.â??

2. The case of the petitioner is that he is an Ex-serviceman and was discharged from Indian Army in the year 2020. Thereafter, he got himself

enrolled in the Ex-servicemen Employment Cell. In terms of Annexure P-1, the

respondent-Department issued an advertisement for filling up the posts of Constable and Constable Driver, including from the Ex-servicemen category, for which, requisition was sent to respondent No.4, to sponsor the names of eligible candidates. Annexure P-1 is the communication, appended with the writ petition to demonstrate this fact.

3. The name of the petitioner was sponsored by respondent No.4 for the post of Constable vide communication dated 15.06.2022. He was offered

appointment vide Annexure P-2 as Constable, Non-Gazetted Police Officer, Grade-II against existing vacancy of 5th IRBn. (Mahila) Bassi, District

Bilaspur (H.P.) with effect from 07.09.2022. The petitioner joined as such pursuant to the issuance of said letter, in the month of September, 2022.

4. The process of said selection was questioned by way of CWP No. 721 of 2022, which was disposed of by this Court vide order dated 16.09.2022,

by directing respondents No.1 & 2 in the said writ petition to revisit the issue of fixation of cut-off period of retirement (discharge) of ex-servicemen

for determining their eligibility to the post of Constable, as per recruitment notice 10.09.2021.

5. The grievance of the petitioner is that thereafter in terms of Annexure P-5, the appointment of the petitioner has been withdrawn and feeling

aggrieved, he has filed this writ petition.

6. Learned Counsel for the petitioner has submitted that the petitioner was fully eligible to be considered for appointment against the post of Constable.

He participated in the process of selection successfully and thereafter was offered appointment in terms of Annexures P-2 and P-3. His service has

been terminated without any show cause etc. as per Annexure P-5 and as the impugned order has been issued without adhering to the principles of

natural justice and otherwise also, as there was no occasion for the respondents to do away with the service of the petitioner, the impugned order be

quashed and set aside and respondents be directed to allow the petitioner to serve the State against the post of Constable.

7. On the other hand, the stand of the State is that Honâ??ble Division Bench of this Court in CWP No. 721 of 2022, titled as Subhash Kumar Vs.

State of H.P. & Ors. along-with other connected matters, which was disposed of on 16. 09.2022, set aside the cut off period of discharge (31.10.2019

to 21.12.2020) prescribed for determining the eligibility of Ex-servicemen to the

post of Constable under recruitment notice dated 10.09.2021 and

thereafter, the respondents therein were directed to revisit the entire issue of fixation of cut off period of retirement (discharge) of Ex-servicemen, for

determining their eligibility to the post of Constable in terms of recruitment notice dated 10.09.2021.

8. Learned Additional Advocate General submitted that after the decision of said writ petition, miscellaneous application No. 13870 of 2022 was filed

in the decided writ petition and while disposing of the said application on 29.09.2022, this Court observed as under:-

“3. The learned Counsel for the petitioner has pointed out that despite the clear directions in the order dated 16.09.2022 and even after passing of the said

order, appointment letters have been issued by respondent No. 2. This is not disputed by the learned Senior Additional Advocate General, on instructions. On a

query by this Court, learned Senior Additional Advocate General states that prior to the order dated 16.09.2022, 29 appointment letters were issued and after the

said order, 38 appointment letters have been issued.

4. Prima-facie, we find that there is an attempt to over- reach the order dated 16.09.2022 passed by this Court. Before we pass further orders, we direct respondent

No. 2-Director General of Police, Government of Himachal Pradesh, to file an affidavit explaining why despite the order dated 16.09.2022, 38 appointment letters

were issued. Let such affidavit be filed by the next date.”

9. In compliance thereto, learned Additional Advocate General submitted that thereafter Annexure P-5 was issued and the services of the petitioner

were terminated/appointment order was withdrawn.

10. Having heard learned Counsel for the parties and having perused the pleadings as well as documents appended therewith, including judgment and

the subsequent order passed by Honâble the Division Bench of this Court, this Court is of the considerable view that the withdrawal of the

appointment letter of the petitioner, at least in the peculiar facts of the case, is not justified.

11. It is not the stand of the respondents before this Court that the petitioner was not eligible for being appointed against the post of Constable and he

was not falling within the cut off period of discharge as determined, both pre and

post judgment passed by the Honâ??ble Division Bench of this Court dated 16.09.2022. In the present case, the appointment letter stood issued to the petitioner on 07.11.2022, i.e., before 16. 09.2022. In this backdrop, when one peruses the subsequent order that was passed by the Honâ??ble Division Bench on 29.09.2022, relevant portion whereof stands quoted by me hereinabove, the only inference that can be drawn by this Court is that the Honâ??ble Division Bench of this Court had expressed its displeasure on appointment letters having been issued, despite the order passed by the Honâ??ble Division Bench on 16.09.2022. In other words, Honâ??ble Division Bench questioned the issuance of appointment letters issued after 16.09.2022. However, neither the recruitment process was set at naught per se by the Honâ??ble Division Bench in terms of its judgment dated 16.09.2022 nor in terms of subsequent order passed by it on 29.09.2022, there was any direction that the appointment letters which stood issued before 16.09.2022, were also required to be withdrawn.

12. In this view of the matter, the withdrawal of the appointment of the petitioner by the respondents and that too without any show cause notice and without adhering to the principles of natural justice, is not sustainable. Nothing prevented the State from informing the Honâ??ble Division Bench that certain appointment letters also stood issued before 16.09.2022 and no direction was sought by the respondents qua the appointees, who had already joined pursuant to appointment letters issued before 16.09.2022. In the absence of the Honâ??ble Division Bench either directing or observing anything against the appointment letters which stood issued before 16.09.2022, the withdrawal of the appointment letter of the petitioner is not sustainable in law.

13. Accordingly, the writ petition is allowed. Order dated 16. 09.2022 qua the petitioner is hereby quashed and set aside and respondents are directed to re-engage the petitioner against the post of Constable and there shall be deemed continuity of the service as from the date when his services were arbitrarily withdrawn vide Annexure P-5. The deemed continuity shall be for all purposes including seniority etc., but not for monetary purposes and petitioner shall be entitled to monetary benefits from the date of this judgment. Pending miscellaneous application(s), if any, also stand disposed of accordingly.