

(2011) 03 SHI CK 0329

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 6320 of 2010 with C.W.P. No. 123 of 2011

Ramesh Kumar and others

APPELLANT

Vs

State of Himachal Pradesh and others

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Punjab Police (Himachal Pradesh Amendment) Rules, 2007 — Rule 3(1)

Citation : (2011) 2 ShimLC 26

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—Both these petitions can be disposed of by a common judgment as the point in issue is same. For the purposes of adjudication, facts narrated in CWP No. 6320 of 2010 are being referred to wherein petitioners have prayed for the following reliefs:-

(i) That the respondents may kindly be directed to allow the petitioners to participate in the suitability-cum-personality test which is going to be held w.e.f. 10.10.2010 to 16.10.2010.

(ii) That the impugned letter Annexure P-6 issued to the petitioners may kindly be quashed and set-aside.

(iii) That the entire record pertaining to the case may kindly be summoned for the kind perusal of this Hon"ble Court.

2. In terms of order dated 25th September, 2007 (Annexure P-10) petitioners were selected as Home Guard Volunteers. They were appointed on 2.3.2008.

3. Recruitment to the post of Constable in the Himachal Pradesh Police Department, is regulated by the Rules known as Punjab Police (Himachal Pradesh Amendment) Rules, 2007 (Annexure P-2) (for short the Rules). Rules provide for reservation by 15% from the category of Home Guards for whom eligibility criteria is age (20 to 28 years), minimum qualification (10+2) and physical

specifications laid down therein. Rules also prescribe issuance of advertisement specifying eligibility criteria of age, educational/other qualifications and physical standards. All applications in response thereto are to be carefully scrutinized. Incomplete applications are to be summarily rejected. Candidate has to undergo three stages of selection process. Apart from physical efficiency test, candidates are to undertake a written examination and then personality test. Importantly Rules do not lay down any condition of experience as a Home Guard volunteer. Rule 3.1 only provides that reservation shall be governed by instructions issued by the Government from time to time. Eligibility criterion for experience is prescribed in two circulars (Annexures R-3 and R-4) issued by the Government. They read as under:

Office Memorandum dated 5.9.2001 (Annexure R-3)

The matter with regard to providing reservation to Home Guards personnel in the recruitment of Police Constables was under active consideration of the Govt. for quite some time past. After careful consideration, it has been decided by the Government to provide 5% quota for these personnel in direct recruitment of Constables in the Police department, subject to the condition that the incumbents have put in 3 years of unblemished service in that organization and also possessed the requisite educational and physical standard prescribed in the Police Rules for the post of Constables. However, it has further been decided that upper age limit relaxation of 3 years for these personnel will be provided by making amendment in the relevant chapter of Punjab Police Rules, 1934, which are applicable in this State also.

(Emphasis supplied)

Office Memorandum dated 10.9.2002 (Annexure R-4)

In partial modification of this Department Office Memorandum of even number, dated 18.4.2002, it is intimated that the matter with regard to reducing the minimum unblemished service period as Home Guards Volunteers for recruitment to the post of Constables in H.P. Police was under consideration of the Government for sometime past. It has now been decided to reduce the minimum unblemished service period as Home Guard volunteers from present 3 years to 2 years for their recruitment to the post of Constable in H.P. Police against the quota fixed for them which has now been increased from 5% to 15% as per instructions issued vide Government letter No. Home-B(B)15-2/96, dated 8.8.2002.

(Emphasis supplied)

4. Applications for recruitment to the post of Constables for the 6th India Reserve Battalion in the department of Himachal Pradesh Police were invited by respondent No. 2, Director General of Police, Government of Himachal Pradesh. Recruitment notice dated 6th January, 2010 (Annexure P-11) to this effect is on record. In all 1309 posts are to be filled up out of which 104 posts are for district

Mandi to which the petitioners belong. For the purposes of determining the controversy in issue relevant portion of the notice is extracted:-

Submission of applications.--The applications on the prescribed formats will be submitted by the candidates (Male and Female) on or before 28th February, 2010 upto 5.00 P.M. in the office of the Superintendent of Police of the district of H.P. (except Tribal Districts L&S, Kinnaur and Tribal area of district Chamba) of which he/she is resident as per record. The candidates belonging to Districts L&S, Kinnaur and Tribal area of district Chamba shall submit their applications on the prescribed format on or before 31st May, 2010 upto 5.00 P.M. in the office of Superintendents of Police, Lahul & Spiti at Keylong, Kinnaur at Recong-Peo and Chamba.

The reservation of vacancies for various categories i.e. SC, ST, OBC, Sportsman. Ex-Servicemen. Wards of Ex-Servicemen, in case of resulting 5th IRBn (Mahila) Home Guards. Wards of Freedom Fighter etc, will be as per instructions of the Government. The details about the category-wise reservation of posts from each district can be seen in the officer respective district Superintendent of Police.

The cut off date for calculation of upper and lower age limits of the candidates will be 15.1.2010. The candidates who do not meet the physical standards and do not possess the requisite educational qualifications as mentioned above need not apply.

The Recruitment Procedure: The Recruitment tests will be consisting of the following:

1. Physical Efficiency Test consisting of 100 Meters race, 800 Meters Race (For Male), 400 Meters Race (For Female), High Jump, Broad Jump and short put.
2. Written Examination of the standard of 10+2.
3. Suitability-cum-Personality Test.

(Emphasis Supplied)

5. Another recruitment notice dated 9.4.2010 (Annexure P-9), which is actually in a nature of a corrigendum, was issued by respondent No. 2. For better appreciation and adjudication of the dispute, reproduction of the same in toto is necessary. It reads as under:-

Recruitment Notice

Whereas application for recruitment of 1309 Posts of Constables for 6th India Reserve Battalion etc. were invited vide this office Recruitment Notice No. P.II(3) Rec.(6th IRB)/2010-886 dated 06.01.2010 and advertisement to this effect got published in the various leading newspapers.

Whereas as per district wise distribution of posts in the above recruitment of constables, 151 posts of different categories, i.e, General/ST/ SC/OBC (Horizontal Reservation) are reserved for Home Guard Volunteers.

Whereas the Government of Himachal Pradesh, vide letter No. Home F(B)15-2/2008 dated 9.4.2010 has accorded relaxation for raising the age limit to Home Guards Volunteers for their recruitment as Constable in the Police Department only for the ongoing recruitment for 6th IRB Battalion etc. for the posts reserved for Home Guards Volunteers by raising the upper age limit from 28 to 33 years as onetime relaxation.

Therefore, the last date for receipt of applications from Home Guard Volunteers (Male & Female) for recruitment of constables in 6th IRBn.etc, is extended upto 31.5.2010 (5.00 PM). The cut off date for calculation of lower and upper age limits will be 15.1.2010. Home Guards Volunteers are advised to submit their applications on plain paper on the prescribed format in the office of the District Superintendent of Police of their respective district of which they are bonafide resident alongwith the requisite processing fee as already advertised. Home Guard Volunteers who have already submitted their applications in response to earlier Recruitment Notice, need not apply again. The Physical Efficiency Test of the eligible Home Guard Volunteers for recruitment as constables will be held on 29.6.2010 and 30.6.2010 at Range Headquarters i.e. Dharamshala (for bonafide residents of district Chamba, Kangra and Una), Mandi (for bonafide residents of districts Bilaspur, Hamirpur, Mandi & Kullu) and Shimla (for bonafide residents of districts Kinnaur, Shimla, Sirmaur and Solan). It is further reiterated that the Range Dv Inspectors General of Police, will call the eligible Home Guards Volunteers of their respective districts for conducting Physical Efficiency Test at Range Headquarters.

(DIG Admn.) for Director General of Police, Himachal Pradesh, Shimla-2.

(Emphasis Supplied)

6. It is not in dispute that in response to the notice dated 6.1.2010, petitioners names, amongst others, were sponsored by the Superintendent of Police Mandi (respondent No. 3) vide letter dated 23.2.2010 (Annexure P-1). Importantly, date of enrollment of the petitioners as Home Guard Volunteers was clearly reflected. Authorities were aware that neither on 6.1.2010 nor on 28th February, 2010 petitioners had completed 2 years of service/gained experience as a Home Guard volunteer. I may add that term service and experience is understood to be interchangeable by the respondent authorities. Instead of rejecting their applications respondents issued call letters asking them to appear before the Recruitment Board for physical efficiency test. One such letter dated 23.3.2010 is Annexure P-3. It is in this communication, for the first time, respondents imposed the condition that:

6. Candidate claiming for the post reserved for Home Guard should bring experience certificate of minimum two years issued by Commandant of the concerned Home Guard Battalion as on 15.01.2010.

7. Petitioners had no certificate to this effect yet they were allowed to appear in the physical efficiency test which they cleared. Later on they were also called

upon to appear in the written test to be conducted on optical marks reader (OMR) sheets. By way of written communication petitioners were also issued roll numbers for the same. One such letter dated 16.7.2010 is Annexure P-4. In this letter there is no condition of experience of two years as on 15.1.2010. Petitioners appeared in the written examination held on 25.7.2010 which also they successfully cleared. Chart indicating the marks secured by each of the petitioners in physical and written examinations are as under:-

Name

Total Marks

Ramesh Kumar

72.00

Inder Singh

68.00

SomDutt

63.00

Ravinder Kumar

68.50

KishoriLal

62.50

Sohan Singh

57.50

SubhashChand

55.00

Some of the petitioners are high on the merit list.

8. Thus petitioners had successfully completed the second stage of the process of selection. However, before the process could be finally concluded, petitioners were issued letters conveying that pursuant to the clarifications received from the Police Headquarters, Shimla they were found not eligible for the suitability-cum-personality test for the reason that as on 15.1.2010 they did not fulfill the eligibility criteria of "minimum unblemished service of two years in the Home Guards Department". Hence petitioners are before this Court.

9. From the affidavit filed by the Principal Secretary (Home) to the Government of Himachal Pradesh as also the Director General of Police it is apparent that the eligibility criteria of two years of "unblemished service period for recruitment to the post of Constable in the Himachal Pradesh Police" was imposed in terms of

Office Memorandum dated 10.9.2002 (Annexure R-4). Since as on 15.1.2010 petitioners were not having the requisite experience of two years service hence their candidature was rejected pursuant to the decisions taken by the appropriate authorities in terms of letters dated 26.8.2010 (Annexure R-1), 28.8.2010 (Annexure R-2) and 20.8.2010 (Annexure A-6).

10. I have heard Mr. M.L. Sharma, learned Senior Counsel assisted by Mr. Dharam Veer Sharma, learned Counsel for the petitioners in CWP No. 6320 of 2010, Mr. Vivek Chandel, learned Counsel for petitioners in CWP No. 123 of 2011, Mr. Ankush Dass Sood, learned Additional Advocate General for the respondents/State and Mr. Neeraj K, Sharma, learned Counsel for the intervenes (in CWP No. 6320 of 2010).

11. Learned Counsel were indulgent in making their elaborate submissions. They were liberal in citing several judicial pronouncements of various Courts. They were also heard patiently. However, considering that the controversy in issue is narrow. I do not intend to advert to or deal with the same in entirety except to the extent necessary. Considering the view that I am taking, it is only fair that I refer to the submissions made by Mr. Ankush Dass Sood. According to him Annexure P-9 is a policy decision meant only to give benefit and advantage to those who had put in more than 8 to 11 years of service and were endlessly waiting in queue for selection. Condition of age was relaxed for them alone. They had a prior constitutional right of consideration. Petitioners have not laid any challenge to Annexures P-3 or P-9. Hence balancing the scales of equity, petition merits rejection. While supplementing, Mr. Neeraj K. Sharma, learned Counsel for the interveners has emphasized that any adverse decision would totally mar the prospects of his clients employment in future. For them it is now or never.

12. Annexure P-9 and Annexure P-11 evidently did not stipulate any condition for Home Guard candidate to have a minimum experience of two years as on 15.1.2010. Office Memorandum dated 10.9.2002 (Annexure R-4) also could not have laid such a condition of a cut off date to be 15.1.2010. It simply states that a candidate must have an unblemished service period of a minimum of two years as a Home Guards Volunteer for recruitment to the post of Constables in Himachal Pradesh Police.

13. It is not in dispute that as on 6.1.2010, the date when advertisement was issued, petitioners were falling short of the eligibility criteria of two years experience/service by just two days. If the relevant date is taken to be 15.1.2010 then petitioners are short by 44 days.

14. A conjoint reading of the Rules (Annexure P-2) and memorandum dated 10.9.2002 (Annexure R-4) evidently makes it clear that respondents are well within their right to lay down the condition of eligibility of minimum experience, it is two years. Even the recruitment notice (Annexure P-11) provides that reservation of vacancies would be as per the instructions issued by the Government. Hence petitioners' contention that respondent/State had no power

or authority to impose condition of a minimum experience cannot be accepted. However the matter does not end there.

15. Condition that the candidates should be having two years of experience as a Home Guard Volunteer as on 15.1.2010 was imposed after the Rules for the game had been set. It was so done only after 6.1.2010. It is a settled position of law that conditions cannot be changed midway to the disadvantage of the candidates. Government can withdraw/cancel the process of selection but not alter the conditions to give advantage to the chosen few.

16. In his affidavit dated 23.10.2010 respondent No. 2 took the stand that during the process of recruitment it so revealed that Home Guards Volunteers could not obtain certificate from the department and submitted that "the requisite certificate shall be submitted later on". Therefore petitioners were provisionally allowed to take the physical efficiency and written test without producing the requisite certificate. In the rejoinder petitioners have seriously disputed the same. In fact it is alleged that the Government exercised the power of relaxing the age limit only to accommodate 33 candidates who were otherwise ineligible under the Rules. Be that as it may be there is nothing to support the stand taken by respondent No. 2. Rules mandate summary rejection of applications submitted by ineligible candidates. This was not so done. On the contrary petitioners were allowed to appear for the tests not once but twice.

17. On 7.12.2010 this Court directed respondent No. 1 to explain the authority of respondent No. 3 to insist for qualifications not prescribed under the Rules. In response, affidavit dated 6.1.2011 was filed explaining that:-

2. It is submitted that the Home Department has notified the detailed procedure for recruitment of Constables in the H.P. Police Department vide No. Home (A)A(3)1/2005-Part, dated 18.11.2008 wherein 15% reservation has been provided to Home Guard Volunteers for the recruitment of Constables. In para-4-Eligibility of the aforesaid Rules, it has been stated as under:-

Educational and other qualifications and physical standards will be as follows or as notified by the Government from time to time.

Further, it is submitted that in the case of Home Guards Volunteers, the Himachal Pradesh Government has prescribed the condition of 2 years unblemished service for recruitment to the post of Constable vide Home Department's Office Memorandum No. Home(A)B(2)-4/90-II, dated 10.9.2002 copy of which is annexed as Annexure R-I. It would be clear from these instructions that these are not new instructions but these have been in existence for over 8 years. In view of these submissions, it is submitted that the respondent No. 2 i.e. Superintendent of Police, District Mandi has rightly applied the condition of 2 years unblemished service for Home Guards Volunteers to be eligible to be recruited as Constable.

18. Pursuant to order dated 5.3.2011 another affidavit dated 16.3.2011 was filed

by respondent No. 1 stating:--

9. That in case of the Mandi District, to which the petitioners belong, it is submitted that consequent upon the issuance of recruitment notice by the Police Hdqrs. a notice was issued by S P Mandi to the Commandant 6th Bn. Mandi on" 21.4.2010 advising him that the Home Guard Volunteers having two years experience as Home Guard as on 15.1.2010 and eligible for the post may be asked to apply for the Police recruitment on the prescribed proforma, alongwith requisite processing fee, before 31.5.2010. The cut off date of two years experience as Home Guard volunteers was taken as on 15.1.2010 irrespective of the fact whether the Home Guard volunteers had applied on or before 28.2.2010 or before the extended date of 31.5.2010.

12. That no doubt the last date for filing of application was extended upto 31.5.2010 after allowing the one time relaxation in upper age limit but the cut off date for considering the two years experience as Home Guard volunteer continued to be as 15.1.2010 on both occasions.

15. That in view of the above position, it is evident that the Police Department had rightly fixed 15.1.2010 to be the cut-off date for calculation of 2 years experience of Home Guard volunteers, for being eligible to be considered for Police recruitment. This cut-off date was reasonable considering that the initial recruitment notice was given on 6th January, 2010. Shifting of the cut-off date for counting of experience of Home Guard volunteers would complicate the recruitment process, will make it open ended and would invite similar such competing demands. Accepting the petitioners prayer would also invite similar such requests from similarly placed persons. It would also adversely affect the chances of Home Guard volunteers with longer Home Guard volunteer experience and who are senior in age. It is submitted that in all public recruitments, a cut-off date is invariably specified for purpose of experience, age etc. as has been done in this case.

19. From the material placed on record it is thus evident that 15.1.2010 was not prescribed as a cut off date by the government by way of any public notice. No rule, instruction, notification, guideline has been placed on record to show to the contrary. Annexures P-11, P-9 and R-4 are unambiguously clear. There is also no cut off date stipulated therein. Under the Rules power to issue instructions is with the "Government". What was the rationale for determining 15.1.2010 to be the cut off date is also not evident from record. It appears that without prior approval of the Government, a decision was taken in the office of respondent No. 2 to the effect that even with regard to the eligibility of experience the date fixed for eligibility of age i.e. 15.1.2010 be taken into account. This action of the respondents is totally impermissible in law. In terms of corrigendum (Annexure P-9), respondents themselves extended the last date for receipt of applications from "Home Guard Volunteers" to 31.5.2010. Significantly cut off date i.e. 15.1.2010 is only with respect to age limit. In fact all Home Guard volunteers were advised to submit their applications before the prescribed date. It stood

clarified that those volunteers who had already applied earlier "need not apply again". In terms of Annexure P-9, petitioners being fully eligible, were entitled to apply for the post in question.

20. The Apex Court in *Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others*, and *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others*, has held that in the absence of any cut of date specified in the advertisement or rules last date for filing the applications must be considered as the cut off date. Similar view has also been taken by this Court in *Shri Sureshwahr Thakur v. High Court of Shri Sureswahr Thakur Vs. High Court of Himachal Pradesh and State of Himachal Pradesh*, and *Deepa Sharma v. Himachal Pradesh State Environment Protection and Pollution Control Board and others*, Latest HLJ 2009 (HP) 468.

21. Thus keeping in view the ratio of law laid down by the Apex Court relevant date has to be the last date on which applications were required to be submitted, which in the instant case was initially 28.2.2010 but later on extended to 31.5.2010. Respondents were aware of the eligibility criteria and could have clarified the same. Yet they choose not to do so in the second notice. Annexure P-3 is letter issued to a private individual. It is not a general circular issued to the public. Public was not notified about any cut off date either. It is a settled position of law that a cut off date can be fixed by an authority and the scope of interference in judicial review of the same is very limited. But then the criteria cannot be without any foundation. There has to be some basis for fixing the date which must have some nexus with the object which is sought to be achieved not resulting into creating an artificial classification between similarly situated persons. In the instant case reservation for Home Guards Volunteers is 15%. Initially instructions issued by the Government required minimum experience to be of three years which was later on reduced to two years. Consequently intention of the Government was to widen the field of consideration for more number of eligible candidates. Selection is for induction into a police force. Government intended to choose few out of many. Only the best and more meritorious are to be chosen.

22. Annexure P-9 does not restrict its application to a particular class of volunteers, or else it would result into an invidious discrimination. There is no doubt that Government relaxed the criteria of age. This, as is also the stand of the government, was done only to accommodate few persons falling within the age group between 28 to 33 years. Contention that private respondents who have been waiting in the queue for 8 -11 years be given a chance over and above the petitioners is unacceptable in law. State has to act as an umpire. Recruitment has to take place strictly in accordance with law. Simply because private respondents have more experience that fact by itself cannot give them a preferential right for public employment. It is not the condition of the Rule. Appointment to the post of constable is not by promotion simpliciter, it is by selection based only on merit. Rule of law has to and must prevail and pure sympathetic consideration cannot be allowed to acquire character of equity. In

matters of selection to a public post and that too in a disciplined police force such considerations have no place. Doctrine of equity, in such circumstances, cannot be invoked in their favour. Respondents themselves enlarged the scope of consideration and therefore neither any constitutional nor any legal right of private respondents, or such of those persons who were having more experience, can be said to be infringed.

23. In this backdrop, condition No. 6 imposed by the respondents in Annexure P-3 cannot be said to be legal. The impugned action i.e. Annexure P-6 is also illegal.

24. In view of my aforesaid discussions I am not adverting to the various submissions on the question of waiver and promissory estoppel and other contentions raised on behalf of the parties. In any event there cannot be any estoppel or waiver against law.

25. It is true that no specific challenge has been laid to Annexure P-3 in the petition. However consequential action based thereupon has been assailed. Having come to the conclusion that respondents action is absolutely illegal, arbitrary and capricious, this Court, in exercise of its extraordinary writ jurisdiction, can always mould the relief.

26. Consequently condition No. 6 as contained in Annexure P-3 and all consequential actions of the respondents in holding the petitioners ineligible for not having fulfilled the eligibility criteria of minimum unblemished service of two years in the Home Guards Department as on 15.1.2010 are quashed.

27. Pursuant to the interim order dated 6.10.2010 petitioners were provisionally allowed to be interviewed by the respondents in the suitability-cum-personality test. Accordingly respondents are directed to complete the process of selection strictly in accordance with law.

28. Petitions stand disposed of so also the pending application(s) if any.