
(2022) 04 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1306, 1536, 1537 Of 2021, COPCT No. 366, 392, 397 Of 2020

State Of Himachal Pradesh And Others

APPELLANT

Vs

Harish Kumar And Others

RESPONDENT

Date of Decision : 02-04-2022

Acts Referred:

Citation : (2022) 04 SHI CK 0007

Hon'ble Judges : Mohammad Rafiq, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Vikas Rathore, Surender Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

CWP Nos. 1306, 1536 & 1537 of 2021

1. Common questions of law and facts are involved in these petitions, therefore, they are taken up together for disposal.

For convenience, facts of CWP No. 1306 of 2021 are being considered hereinafter.

2. Vide order dated 27.11.2017 passed in O.A. No. 3226 of 2016 and other connected matters, learned erstwhile H.P. State Administrative Tribunal allowed the petition filed by respondent No. 1 holding that cut-off date mentioned in the advertisement for determining the eligibility of candidates applying against Home Guards Volunteers quota, could not be subsequently altered by the State. Direction was issued to the competent authority to consider the respective cases of three original applicants (respondents No. 1 in all the three writ petitions) for appointment as Police Constables in their respective categories against each of the post ordered to be kept vacant vide interim orders passed in the petitions. Aggrieved, the State has assailed the order passed by the Tribunal.

3. Facts may be briefly noted hereinafter:-

3(i) A recruitment notice for filling-up various posts of Police Constables was issued by the State on 10.2.2016. As per the recruitment notice, the applications on the prescribed format could be submitted by the eligible candidates on or before 15.3.2016. In district Shimla, around which the present three petitions revolve, total 142 posts of Police Constables (Male) were to be filled-up on the basis of this recruitment notice. Out of 142 posts of Constables (Male), 22 posts were reserved for Home Guard Volunteers having rendered two years continuous service as Home Guard Volunteers as on 15.3.2016. Further, out of 22 posts reserved for Home Guard Volunteers, 12 were meant for General, 5 for Scheduled Castes, 1 for Scheduled Tribes and 4 for Other Backward Class categories. The recruitment notice also mentioned that there will be no carryover of the vacancies meant for Home Guards if eligible and suitable candidates are not available in any recruitment year. It was stipulated that in such a case the vacancies will be filled from the candidates of respective main categories.

3(ii) Respondent No. 1 was recruited in Himachal Pradesh Home Guards on 3.11.2011. He fulfilled the requisite criteria of having rendered two years service in the Home Guards as on 15.3.2016 i.e. the cut-off date given in the recruitment notice. Being eligible and qualified for the post in question, respondent No. 1 applied for the post of Home Guard General category in district Shimla.

3(iii) Respondent No. 1 qualified the Physical Efficiency Test on 21.4.2016. He was also successful in the written examination. He appeared for personality test-cum-interview on 23.6.2016. Private respondents No. 4 to 6 (as impleaded in the original application) also appeared in the interview. On coming to know that the private respondents were the persons who had not completed two years service as Home Guard Volunteer by 15.3.2016, the cut-off date prescribed in the recruitment notice, respondent No. 1 sent an SMS to the Superintendent of Police, Shimla on 16.6.2016. In response to the SMS sent by respondent No. 1, a return message was received by him from the S.P. Shimla that his SMS had been further forwarded for inquiry.

3(iv) Categorywise list of provisionally selected candidates for the post of Police Constables (Male) was notified on 24.6.2016 wherein names of private respondents figured as provisionally selected candidates. Respondent No. 1's name was not there in this list. After the issuance of provisional select list of the candidates, respondent No. 1 came to know that the criteria of having rendered two years Home Guard Volunteers service as on 15.3.2016 was modified by the department by way of notification dated 14.3.2016. As per this notification, the cut-off date for counting two years service for Home Guard Volunteers was modified from earlier existing 15.3.2016 to 1.7.2016.

Aggrieved against selection of private respondents No. 4 to 6 and also aggrieved against change of cut-off date for counting two years service of Home Guard Volunteers/change of eligibility criteria for Home Guard Volunteers, respondent No. 1 filed Original Application No. 3226 of 2016 before the erstwhile H.P. State

Administrative Tribunal. This original application alongwith other two connected matters [(i) O.A. No. 3262 of 2016, titled Praveen Sagar vs. State of H.P. & others, (ii) O.A. No. 3307 of 2016, titled Laxmi Kant vs. State of H.P. & others] were allowed by the Tribunal on 27.11.2017. The competent authority was directed to consider the cases of the three original applicants for appointment as Police Constables (Male) in their respective categories against the posts kept vacant for them vide interim orders passed in their respective petitions by taking into consideration only those candidates who had fulfilled all the eligibility conditions including the qualifying service as on 15.3.2016 in terms of recruitment notice dated 10.2.2016.

Feeling aggrieved, the State has assailed the judgment passed by the learned Tribunal.

4. Learned Additional Advocate General appearing for the petitioner submitted that the cut-off date for satisfying the qualifying service criteria laid down in the recruitment notice for candidates applying as Home Guard Volunteers, was changed to have a wider choice of selection in public interest. Respondent No. 1 had participated in the selection process subsequent to the alteration in the change of cut-off date. After participating in the selection process without challenging the variations in the notification and the selection process, it was not open for the respondent to challenge the same. It was further submitted that the Selection Committee after evaluation of the record and performance of the candidates in the interview had selected the candidates for the post of Police Constables purely on merit basis.

Learned counsel for respondent No. 1 submitted that as per the prescribed eligibility criteria, the condition of having rendered two years of service as Home Guard Volunteers was to be seen as on last date for submission of application forms i.e. 15.3.2016. Respondents No. 1 had participated in the selection process on the basis of the criteria laid down in the recruitment notice dated 10.2.2016. On becoming aware of participation of private respondents, who did not have requisite two years service as Home Guard Volunteers, either on the last date of submission of the application forms or even on the date of interviews, the respondent No. 1 raised this issue by sending SMS (enclosed alongwith the original application) to the Superintendent of Police, Shimla on 16.6.2016. Respondent No. 1 also received a return message from the Superintendent of Police, Shimla (enclosed with the original application) to the effect that his SMS had been sent to the concerned quarters for inquiry. Despite this, no concrete action was taken for redressal of his grievances compelling him to file the original application in the learned Tribunal. Learned counsel argued that it was not open to the State to change the selection criteria midway the selection process. Learned counsel prayed for dismissal of all the three writ petitions.

5. We have heard learned counsel for the parties and gone through the record.

5(i) It is not in dispute that the recruitment notice for the posts in question was

issued on 10.2.2016. As per the recruitment notice, the applications were to be submitted by the eligible candidates on or before 15.3.2016. Out of total 142 posts of Police Constables (Male) to be filled in district Shimla, 22 posts were meant for Home Guard Volunteers. According to the prescribed eligibility criteria, the candidates applying under the Home Guard Volunteers quota were required to fulfill the condition of having rendered two years of service as such. The fulfillment of this condition was to be seen as on the last date of submission of application forms i.e. 15.3.2016. It was by way of a communication dated 14.3.2016 that the State modified the cut-off date for counting two years continuous service of Home Guard Volunteers from 15.3.2016 to 1.7.2016.

5(ii) Respondent No. 1 participated in the selection process in terms of the recruitment notice dated 10.2.2016. His contention that he became aware of the change in the cut-off date for determining the eligibility criteria for candidates applying under Home Guard Volunteers quota only a few day prior to participating in the personality test-cum-interview appears to be a bonafide submission. This is for the fact that as per the pleadings made in the original application, respondent No. 1 on becoming of aware of participation in the selection process of certain candidates (impleaded as private respondents in the original application), who did not have the requisite two years service as Home Guard Volunteers in terms of recruitment notice dated 10.2.2016, had sent an SMS to the Superintendent of Police, Shimla on 16.6.2016. In response, he received a return message from the S.P. Shimla that his message had been further forwarded for inquiry. Text of these messages has been placed on record. Interviews were conducted by the respondent much later i.e. on 23.6.2016. Therefore, the contention of the State that respondent No. 1 having participated in the selection process without any demur, cannot assail the same, is not sustainable. Respondent No. 1 had lodged his protest against change of cut off date for determining the qualifying service of candidates applying under Home Guards Volunteers quota.

5(iii) The earlier prescribed cut off date for determining qualifying service was changed from 15.3.2016 to 1.7.2016 on 14.3.2016. There is nothing on record even to indicate as to whether this communication dated 14.3.2016 altering the cut off date for determining the qualifying service of candidates applying under Home Guards quota was even given due publicity or not.

5(iv) Changing the cut-off date from 15.3.2016 to 1.7.2016 for the purposes of counting two years continuous service of Home Guard Volunteers actually amounts to change in the eligibility/selection criteria. No justification whatsoever has been accorded by the State for changing the selection criteria. It is not even the case of the State that it did not receive adequate number of applications against the Home Guard Volunteers quota. The cut off date for applying under the recruitment notice has remained 15.3.2016 for all the candidates including the candidates applying under Home Guard Volunteers quota. Satisfaction of eligibility criteria was required to be determined as on 15.3.2016 i.e. the last

date for applying. It could not have been altered only for candidates applying under Home Guards Volunteers quota. The cut off date for applying had not changed. The assigned reasons of expanding the zone of consideration for changing the selection criteria is not palatable. Prejudice has been caused to respondent No. 1 by expansion of zone of consideration by changing the selection criteria for one category of the applicants.

5(v) It is well settled that the eligibility of a candidate is to be adjudged as on the last date of receipt of application for the post in question in terms of relevant advertisement and the prevailing service rules. A person who acquires prescribed qualification subsequent to the prescribed date cannot be considered. An advertisement issued calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. [Refer:(2021) 6 SCC 163, titled Suman Devi and Others vs. State of Uttarakhand and Others].

Appointments are to be made in terms of stipulations contained in the advertisement. Though such terms can be changed but that has to be done in terms of the statutory rules. [Refer: (2019) 3 SCC 672, titled High Court of Hyderabad and Another vs P. Murali Mohana Reddy and Others].

In the instant case, recruitment notice was issued on 10.2.2016. As per this notice, last date for applying for posts of Constable for different categories was 15.3.2016. There was no change in this cut off date for any of the categories including the category of Home Guards Volunteers. Possession of requisite qualifying service for candidates applying under Home Guards Volunteers quota was to be seen as on last date for applying i.e. 15.3.2016. Determination of eligibility criteria as on 1.7.2016 when last date of applying was 15.3.2016, defies logic. We have otherwise also held that the change in the date of determination of eligibility criteria for the candidates belonging to Home Guards quota was not in consonance with law.

In view of above discussion, the judgment passed by the learned Tribunal directing the State to consider the respective cases of respondent No. 1 in all the three petitions for appointment as Police Constables in their respective categories against each of the post ordered to be kept vacant vide interim orders passed in these petitions, by taking into consideration only those who had fulfilled the eligibility conditions as on 15.3.2016 is in accordance with law. State is directed to complete this exercise within a period of two months from today. We also do not find any reason to interfere with factual finding of learned Tribunal regarding eligibility of one of the private respondents i.e. Sh. Ravinder Kumar. However, considering the fact that the other private respondents impleaded in these three petitions though were selected and appointed as Police Constables on the basis of altered selection criteria, but have now been serving on the posts in question for the last six years, they, therefore, shall not be disturbed. We also clarify that in the peculiar facts and circumstances, the benefit of this judgment shall remain confined only to the three original applicants who had timely approached the

erstwhile learned H.P. State Administrative Tribunal by filing original applications.

The writ petitions are accordingly disposed of, so also the pending miscellaneous application(s), if any.

COPCT Nos. 366, 392 & 397 of 2020

In view of the observations made in the writ petitions, these contempt petitions are ordered to be closed and notices issued to the respondents are dropped at this stage.