
(2016) 01 SHI CK 0068

In the High Court Of Himachal Pradesh

Case No : LPA Nos. 158, 160, 163, 183 of 2014 and CWP No. 7464 of 2014

Suresh Kumar and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Himachal Pradesh Police Act, 2007 — Section 141, Section 142, Section 143, Section 144(4)

Citation : (2016) 2 HimLR 1059 : (2016) ILRHP 418 : (2016) LatestHLJ(HP) 210

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Yudhbir Singh Thakur, Advocate, for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional Advocate General and J.K. Verma, Deputy Advocate General, for the Respondent

Final Decision : Disposed off

Judgement

Tarlok Singh Chauhan, J.—1. Since common question of law and facts arises for determination, therefore, all these cases are taken up together for disposal.

2. The Letters Patent Appeals are directed against the judgment passed by the learned writ Court whereby the prayer of the appellants for directing the respondents to send them for Lower School Training Course on the basis of the B-1 list against available vacancies of Head constables came to be rejected and on the same grounds CWP No. 7464 of 2014 has been preferred. For convenience, the parties shall be referred to as writ petitioners and respondents.

3. The writ petitioners are working as Constables in the Police Department and for purpose of further promotion to the rank of Head constables, they are governed by the Punjab Police Rules, 1934 (as applicable to the State of Himachal Pradesh).

4. The facts as necessary and even otherwise not disputed are that all the writ petitioners on completion of five years service as Constables were eligible to

compete for a test known as B- 1 test prescribed by the Punjab Police. The writ petitioners qualified the B-1 test and were brought in list-C making them eligible to promotion as Head constables. For this purpose, they were required to be sent to Lower School Course on the basis of list-B maintained by the Superintendent of Police/Commandant of the Battalion concerned in terms of Rule 13.7 of the Punjab Police (Himachal Pradesh Amendment) Rules, 2008.

5. As per Rule 13.7, the Superintendent of Police/Commandant Police Battalion is required to maintain list B (in Form 13.7) which shall include the names of all Constables selected for admission to the promotion course for Constables at the Police Training College. The above list is prepared on the basis of selection made by the Departmental Promotion Committee (DPC) on the basis of test given in parade, general law, interview and examination of service records. All constables who have put in five years of service from the date of appointment are eligible to take the test.

6. Before amendment to Rule 13.7 as notified on 13.06.2008, the respondent department had been following Rule 13.7 of Punjab Police Rules for preparing B-1 List. The unamended provision of Rule 13.7 is reproduced below:--

"13.7. List "B". Selection of candidates for admission to promotion Course for Constables at the Police Training College.-(1) List "B" in Form 13.7 shall be maintained by each Superintendent of Police/Commandant, Police Battalion of Himachal Pradesh. It shall include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College. Selection shall be made in the month of January every year generally. However, the Director General of Police shall have discretionary powers to hold these tests once, or more than once in a year in case of exigencies, keeping in view the vacancy position. The test shall be regulated by the standing orders issued by the Director General of Police. All the successful candidates shall be kept in a panel and shall be sent for lower school course on merit basis as per available vacancies. Names shall be entered in the said list in order of their merit as determined by the Departmental Promotion Committee constituted by the Director General of Police on the basis of the tests given in Parade General Law (Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act, Local & Special Laws and Police Rules as per details given below):

To test the intelligence of candidates in applying their theoretical knowledge to practical conditions, interview and examination of service records. XXXXX All Constables:

- (a) who are middle pass and have put in more than four years of service;
- (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 rule 19.2; will be eligible to have their names entered in the aforesaid list, if they are not

above thirty years 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 such 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 the year he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules.

(3) Temporary Constables brought on List "B" shall be absorbed in the regular establishment in preference to others.

(4) No Constable who has failed to qualify in the promotion course of Constables shall be readmitted to List "B", unless the Principal, Police Training College, for the reasons to be recorded in writing by him considers him deserving of another chance and he is still eligible. The reasons for doing so shall be communicated by him to the Superintendent of Police concerned."

7. The respondents, however, decided to delete the condition of requiring the Constables to compete again with the new candidates, if they were not sent to the Police Training College within one year of the preparation of the list and for this purpose standing orders were issued on 13.09.1993 incorporating the following provisions in Clause 16:--

"The constables who duly qualify B-1 test will not have to appear again in the same test. All the successful candidates will be kept in a panel and they will be sent for Lower School Course on merit basis as per available vacancies."

8. What was incorporated in Clause 16 of the standing orders of 1993 was substituted in Rule 13.7 and for this purpose an amendment was made to Rule 13.7 by way of Punjab Police (Himachal Pradesh Amendment) Rules, 2008. The amended provision of Rule 13.7 is reproduced below:--

"13.7: List "B"-Selection of candidates for admission to promotion course for constables, at the Police Training College-

"(1) List-"B" (in Form 13.7) shall be maintained by each Superintendent of Police/Commandant, Police Battalion of Himachal Pradesh. It shall include the names of all Constables selected for admission to the Promotion Course for Constables at the Police Training College. Selection shall be made in the month of August every year generally. However, the Director General of Police shall have discretionary powers to hold these tests once, or more than once in a year in case of exigencies, keeping in view the vacancy position. The test shall be regulated by the standing orders issued by the Director General of Police. All the successful candidates shall be kept in a panel and shall be sent for lower school course on merit basis as per available vacancies. Names shall be entered in the said list in order of their merit as determined by the Departmental Promotion Committee constituted by the Director General of Police on the basis of the tests given in

Parade, General Law (Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act, Local & Special Laws and Police Rules as per details given below):

To test the intelligence of candidates in applying their theoretical knowledge of practical conditions, interview and examination of service records.

XXXX

(2) All Constables:

(a) Who have put in 5 years service from the date of appointment are eligible to take the test. In case the test is not held in the month of August, all the candidates who becomes eligible subsequently shall also be eligible to appear in the said test; or

(b) Who obtained first position in the Recruits Basic Training Course shall be eligible to appear in the B-1 test after completing 3 years service; or

(c) Who are on deputation and the Constables serving outside the district/unit shall also be eligible for consideration subject to fulfillment of other conditions. Provided that no Constable, who has been awarded major punishment within a period of 3 years preceding the first day of August of the year in which such selection is made shall be eligible for admission to that list.

Similarly, the Constables with minor punishment shall also not be allowed to take B- 1 test for 6 months after the date of award of punishment. The candidates caught cheating or using unfair means shall be disqualified and debarred from taking B- 1 test for the entire service and departmental inquiry shall be initiated against such Constables.

(3) Temporary Constables brought on List-B shall be absorbed in the regular Police Establishment in preference to other candidates.

(4) No Constable, who has failed to qualify in promotion course of Constables shall be readmitted to List-B unless the Principal of Police Training College for reasons to be recorded in writing by him considers him deserving of another chance and makes him thus eligible. The reasons for doing so shall be communicated by him to the Superintendent of Police concerned."

9. In 2007, the Government of Himachal Pradesh enacted an Act known as Himachal Pradesh Police Act, 2007, which inter alia provides that the Punjab Police Rules, 1934, will continue to be applicable to the State of Himachal Pradesh to the extent the provisions of these rules were not inconsistent with the provisions of the Act. The relevant provisions of Section 144(4) read as under:--

"The Punjab Police Rules, 1934 as applicable to the State of Himachal Pradesh shall, except to the extent that a provision may be inconsistent with the provisions of this Act, continue to be in force and shall have effect as if made under the corresponding provisions of this Act."

10. The power to make rules, regulations and standing orders are provided in

Sections 141, 142 and 143 which are reproduced below:--

"141. Power to make rules.

(1) The State Government may, by notification in the Official Gazette and after previous publication, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of not less than ten days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rules should not be made, the rules shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

142. Power to make regulations.

The Director General of Police may, with the previous approval of the State Government and subject to the rules made under section 141 of this Act, by notification published in the Official Gazette, make regulations to carry out the purposes of this Act.

143. Power to issue standing orders.

(1) The Director-General of Police may, subject to the rules and the regulations made under this Act, issue standing orders to carry out the purposes of this Act.

(2) Subject to sub-section(1), the Inspector-General, the Deputy Inspector-General, the District Superintendent of Police and Commandant of a Battalion may, with the previous approval of the authority to whom they are directly subordinate and subject to the rules and regulations made under this Act, issue standing instructions within their respective jurisdiction to carry out the purposes of this Act."

11. On 06.04.2012, the Director General of Police, Himachal Pradesh, in continuation of the standing orders circulated vide letter dated 13.09.1993 issued amended standing orders No. 3/2012 regarding selection of constables for admission to list-B. The Director General of Police (respondent No. 2) restricted the validity of B-1 list for one year only for which the test has been held. This condition has been laid down in Clause 16 of the standing orders of 2012 which reads as under:--

"16: As per HPPR, List will be valid for one year only for which the test has been held."

12. It is not in dispute that 687 constables (including appellants) were brought on list-B which was issued on 15.02.2013. Out of this list, 272 constables were sent to Lower School Course, whereas, constables who were next in the list could

not be sent to the Course for want of vacancies. There are about 362 vacancies of Head constables with the respondent department. The B-1 list prepared by the respondents in 2012 has not been fully exhausted and despite this the aforesaid Constables have not been sent for Lower School Course only on account of Clause 16 of the standing orders of 2012. Consequently, the writ petitioners were required to compete again for being brought on list-B of the notification. This action of the respondents was questioned before the learned writ Court on various grounds as taken in the writ petitions.

13. The respondents contested the writ petitions by filing replies wherein it was averred that though there is no provision in the rules which may require the writ petitioners to compete again for being brought in list-B but then this provision had been supplemented by issuing standing orders which inter alia provides that HPPR will be valid for one year only for which the test has been conducted.

14. The learned writ Court dismissed the writ petitions by concluding that the merit list of test B-1 could not remain operative in perpetuity and by virtue of standing orders would now remain operative only for one year from the date of its preparation.

15. It is vehemently argued by Shri K.D. Shreedhar, Senior Advocate, assisted by Shri Yudhbir Singh Thakur, Advocate that it is settled proposition of law that executive instructions cannot over-ride the statutory rules and once there was no time cap or limit of one year fixed by the statutory rules, then the same could not be curtailed to one year under the standing orders.

16. On the other hand, learned Advocate General, would vehemently argue that in terms of the H.P. Police Act, 2007, (for short the "Act"), the Director General of Police is competent to issue the standing orders to carry out the purpose of the Act and no exception can be taken by the writ petitioners for the same.

We have heard the learned counsel for the parties and have gone through the records of the case.

17. It would be noticed that the amendment to rule 13.7 Punjab Police (Himachal Pradesh Amendment) Rules, 2008, was made by virtue of the powers conferred by the Himachal Pradesh Police Act, 2007 whereby the Government had specifically deleted the requirement of appearing in B-1 test by those Constables, who were not sent to Lower School Course within one year of preparation of list. Therefore, in such circumstances, it was impermissible for the Director General of Police to have issued standing orders which infact were contrary not only to the letter but even the spirit and in utter violation and contravention of Rule 13.7 of the Rules.

18. In case, it would have been the intention of the Government to restrict the validity of list B-1 to only one year, we see no reason why the same could not have been provided in the rules themselves which as observed earlier came to be amended only in the year 2008. It cannot be disputed that the power to issue

standing orders by the Director General of Police is subject to the rules and regulations and the H.P. Police Act, 2007.

19. Even otherwise, it is more than settled that the executive instructions/standing orders cannot over-ride or supersede the rules and, therefore, what was contemplated by the rules and consciously deleted vide amendment carried out in the year 2008 could not have been reintroduced by way of standing orders.

20. That apart, it would also be noticed that the Director General of Police in terms of Rule 13.7 has been vested with discretionary power to hold the test once or more in a year in case of exigencies keeping in view the vacancy position. The other power which has been vested with the Director General of Police is to issue standing orders, but this is confined to the manner in which the test is to be regulated. It does not in any manner confer upon the Director General of Police any other power to add or subtract anything to this rule. Even, under Section 143 of the Act though the Director General of Police is authorized to issue standing orders to carry out the performance of the Act, however, even this power is subject to the rules and regulations made under the Act.

21. Therefore, we have no hesitation to hold that once the rules did not prescribe for a cap or time period of one year validity of the HPPR list, the same could not have been prescribed by issuing standing orders as the same is in conflict with the rules.

22. Even otherwise, the "test" in normal parlance would mean a procedure intended to establish a quality, performance or reliability of something. However, the definition of "test" in legal parlance could be slightly different. The Black's Law Dictionary defines the word "test" as under:--

"1. A set of questions, exercises, or practical activities that measure either what someone knows or what someone or something is like or can do. 2. A medical examination on part of one's body, usu. administered for diagnostic reasons. 3. A procedure designed to discover whether equipment or a product works correctly, or else to discover more about it. 4. A difficult situation in which a person's or thing's qualities are revealed."

23. Once the Constables have successfully competed B-1 test and were admittedly not sent for the Lower School Course only because of Clause 16 of the standing orders, we see no reason why they should be subjected to again undergo a test.

24. It would be noticed that the only reason which persuaded and prevailed upon the learned writ Court to dismiss the writ petitions was that it treated the list B-1 as a select panel and concluded that the same was valid for one year. This was not the correct legal position as the select list is the list which is normally prepared by the Selection Committee out of the candidates, who are considered fit for appointment in order of their merit. Whereas, B-1 enlisted candidates are those successful candidates, who have qualified the B-1 test and would be

required to be sent to Lower School Course. It is only after successful passing of this Course that they would be entitled to be considered for promotion as Head constables. The mere passing of the B-1 test in itself does not result in promotion and, therefore, by any stretch of imagination can be considered to be a select panel.

25. In view of the aforesaid discussion, we find merit in these appeals and writ petition. Consequently, the judgment passed by the learned writ Court is ordered to be set aside and resultantly the writ petitions as filed by the writ petitioners are allowed as prayed for.

26. However, before parting, it may be observed that the instant litigation has arisen only because of lack of clarity and confusion created by the respondents themselves by not having clear-cut and well-defined rules. For some strange reasons, the respondents have still chosen to follow the Punjab Police Rules, 1934 by amending the same to suit their convenience. Therefore, it is high time that the respondents liberate themselves from the shackles of the archaic Punjab Police Rules, 1934, which were enacted more than 80 years back during colonial regime and make an endeavour to frame their own rules or else this would lead to un-necessary complication giving rise to compulsive litigation, the consequences whereof would only lead to a further docket explosion of the already over-burdened Courts and Tribunals.

27. With the aforesaid observations, the appeals as well as writ petition are accordingly disposed of alongwith all pending applications, leaving the parties to bear their own costs. The Registry is directed to place a copy of this judgment on the files of connected matters.