
(2012) 05 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3977 of 2010

Umesh Kumar and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Citation : (2013) 1 SCT 284

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : S.K. Redhu, for the Appellant; Harish Rathee, D.A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Petitioners have approached this Court praying for granting them the benefit of fixation of their seniority under 35% quota in view of the judgment passed by this Court in CWP No. 7952 of 2004 Naresh Kumar v. State of Haryana and others, decided on 5.11.2004. It is the contention of the petitioners that they became eligible for deputing them to the Lower School Course in the year 2002, both under the 55% quota and 35% quota. Claim of the petitioners for deputing them to the Lower School Course was considered only under 55% quota and their claim under the 35% quota was not considered on the ground that they were below the age of 35 years. This according to the counsel for the petitioners, is not in accordance with Rule 3.17 of the Punjab Police Rules, 1934, as applicable to State of Haryana (hereinafter referred to as 1934 Rules"). He, accordingly, contends that deputing the petitioners at a subsequent date and accordingly fixing their seniority below the persons who would be junior to them because of their non-deputing to the Course, is not in accordance with law and, therefore, they are entitled to fixation of their seniority at an appropriate place by treating them to be deputed to undergo the Lower School Course in the 2002 batch when their juniors were deputed as such.

2. Counsel for the respondents, on the other hand, submits that the petitioners

were not eligible for being deputed under the 35% quota meant for seniority-cum-fitness in the list B-I for the year 2002, being below 35 years of age and this quota of 35% is meant for those constables who are above the age of 35 years and fulfil the other qualifications as specified in Rule 3.17 of the 1934 Rules. He contends that the petitioners have rightly been deputed in the respective years and have been granted the enlistment accordingly.

3. I have heard counsel for the parties and gone through the records of the case.

4. The issue involved in the present case is no more *res Integra* in the light of the Division Bench judgment of this Court in the case of *Constable Dharmbir v. State of Haryana and others*, 2009 (1) RSJ 310 where this Court while dealing with a similar situation held as follows:-

18. The minimum age if prescribed by way of executive instructions would go against the interest of the Constables, who are otherwise eligible under the statutory Rules. Rule 13.7 (2) (ii) confers a right which a Constable attains on the basis of his seniority in the service. As and when his turn comes based on the seniority a right to consideration devolves on him. This right on the basis of his seniority cannot be deprived on the basis of executive instructions. This would be in contravention to the statutory rules and, therefore, not sustainable.

19. What the respondents have sought to do in the instant case is to amend the rules by executive instructions, which is not permissible in law. In case, a minimum age is required to be prescribed, then the rules need to be amended incorporating such change. The executive instructions can supplement the rules but they cannot go contrary to the rules and cannot violate the spirit and purpose of the statutory rules by prescribing the minimum age. The right conferred on the employee under the statutory Rules cannot be obliterated or taken away much less wiped off by the executive Instructions. It is settled principle of law that by executive instructions there can be no amendment of statutory Rules. It is no more *res integra* that Instructions can neither override the Rules nor can they be contrary to them. In case there is any conflict between the rules and the instructions, the latter has to make way to the former.

20. The employee cannot be deprived of his right to be considered for promotion, so conferred upon him, under the Punjab Police Rules by mere issuance of executive instructions. If the statutory rules provide for and confers on an employee right to consideration for promotion and further provides for a qualification, which the employee possesses as per the rules, that right of consideration cannot be curtailed so as to deprive him of his statutory right merely on issuance of executive instructions, which is contrary to the statutory Rules.

21. In the light of the above discussion, the Memo No. 13745-82/T-2 dated 11-10-2005 of Director General of Police, Haryana (Annexure R-2) cannot be sustained to the extent it states that all three categories cannot claim benefit of each other and that category-I (55% quota) cannot claim benefit in category-II

(35% quota) as the same is contrary to the statutory rules and is thus quashed to this limited extent.

22. What emerges from the above discussions is that a constable who has completed 5 years of service on the 1st day of January of the year in which the selection is made, is under the age of 35 years and is eligible for consideration and selection for including his name in List B-I of selected constables for admission to Lower School Course under the 55% quota on the basis of merit as per Rule 13.7 (2) (i) of the Punjab Police Rules, 1934 and having participated in the competitive test (B-I test) and failed or was unable to get enlistment due to lower merit can also claim consideration and selection under the 35% quota on the basis of seniority-cum-merit as per Rule 13.7 (2) (ii), if he is eligible under both the categories.

In the light of the above, the present writ petition is allowed; directions are issued to the respondents to treat the petitioners to have been deputed to the Lower School Course from the year 2002-2003 or from the course when junior(s) to the petitioner(s) was/were deputed and grant them enlistment accordingly. The consequential benefits flowing on account of the enlistment and fixation of seniority of the petitioners in the seniority list be also granted to them. Let this exercise be completed within a period of three months from the date of receipt of a certified copy of the order.