

**HIGH COURT OF PUNJAB & HARYANA**

**Bench : Hon'ble Mr. Justice Jagmohan Bansal**

**Date of Decision: 09<sup>th</sup> April 2024**

CWP-8053-2024

**LOVEPREET KAUR AND OTHERS ...PETITIONERS**

**VERSUS**

**STATE OF PUNJAB AND ANOTHER ...RESPONDENTS**

**Legislation:**

Articles 14, 16, 226, 227 of the Constitution of India – Articles 14 and 16 of the Constitution of India

**Subject:** Challenge to the advertisement for recruitment of constables by the State of Punjab, alleging discrimination against non-Punjab residents and violation of constitutional rights under Articles 14 and 16.

**Headnotes:**

Challenge to Recruitment Process – Petitioners, non-Punjab residents, challenged the recruitment advertisement (Annexure P-1) for 1746 constable posts claiming discrimination as no reservation was provided for candidates from other states – Held, petitioners eligible to apply under general/unreserved category – No entitlement to specific reservation for non-state residents [Para 2, 5].

Jurisprudence on Participation in Selection Process – Supreme Court precedents cited, establishing that participation in selection without initial objection bars candidates from contesting the process post-results – Referenced *Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others*, 2023 SCC OnLine SC 344 which emphasizes non-entitlement to challenge a process post-participation if one has not been selected [Para 6].

Application of Constitutional Rights – Argument of violation of Articles 14 and 16 rejected – Court found no merit in claims of discrimination or unfairness in the selection process as open category was available to all [Para 7].

**Decision:**

Petition dismissed on grounds that petitioners participated in selection process without objection and lacked grounds to challenge post being unsuccessful – No constitutional rights violated.

**Referred Cases:**

- Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others, 2023 SCC OnLine SC 344
- Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576
- Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309
- Ashok Kumar v. State of Bihar, (2017) 4 SCC 357

**Representing Advocates:**

**Mr. Pardeep Singh Mirpur for petitioners**

**Mr. Aman Dhir, DAG for respondents**

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**JAGMOHAN BANSAL, J (ORAL)**

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of advertisement dated 31.01.2023 (Annexure P-1) and provisional list of selected constables (Annexure P-13).

2. The petitioners claim that they belong to States other than State of Punjab. The respondent-State of Punjab advertised 1746 vacancies of Constables. 33% seats were reserved for Women. There is no reservation for candidates belonging to other States.

3. Mr. Pardeep Singh Mirpur, Advocate submits that respondent has reserved seats for candidates belonging to SC, BC, Ex-Servicemen, Police Personnel and Economically Weaker Section (for short 'EWS'). The respondent has not made provision for male and female candidates belonging to other States. The act of respondent amounts to violation of Articles 14 and 16 of the Constitution of India. On the perusal of advertisement, it appears that out of 1746 posts, 738 vacancies are meant for general/open/unreserved candidates. The respondent has made provision for SC/BC/Ex-servicemen/EWS category. The State has also reserved 33% seats for women candidates. The petitioners being resident of States other than Punjab can apply under general/open/unreserved category. They cannot claim that there should be reservation for them. The petitioners have participated in the selection process and after being unsuccessful are assailing advertisement.

6. A two Judge Bench of Apex Court in **Tajvir Singh Sodhi and Others v. State of Jammu and Kashmir and Others, 2023 SCC OnLine SC 344** has held that candidates having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. A candidate cannot allege that selection process was unfair or there was some lacuna in the process just because selection process was not palatable to a candidate. The relevant extracts of the judgment read as:

*“67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process, the following grounds raised by the writ petitioners, which are based on an attack of subjective criteria employed by the selection board/interview panel in assessing the suitability of candidates, namely, (i) that the candidates who had done their post-graduation had been awarded 10 marks and in the viva-voce, such PG candidates had been granted either 18 marks or 20 marks out of 20. (ii) that although the writ petitioners had performed exceptionally well in the interview, the authorities had acted in an arbitrary manner while carrying out the selection process, would not hold any water.*

68. *The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5<sup>th</sup> May, 2008 was recast vide a corrigendum dated 12<sup>th</sup> June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:*

*i) In Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.*

*ii) In Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:*

*“24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”*

*iii) Similarly, in Ashok Kumar v. State of Bihar, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twentyseven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared a list. The High Court declined to approve the Select List on the*

*ground that the ratio of full marks for the written examination and the interview ought to have been 90 : 10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:*

*“13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar, (2007) 8 SCC 100, this Court held that:“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724)”.*

7. In the case in hand, the petitioners participated in the selection process and could not be selected. Their case is squarely covered by afore-cited judgments of Supreme Court in **Tajvir Singh Sodhi (Supra)**. There is no violation of Articles 14 and 16 of the Constitution of India. The petition sans merit, thus, deserves to be dismissed and accordingly dismissed.

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