



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No. 31 of 2020 a/w

CWP No. 8860 of 2022

Reserved on: 14.03.2022

Decided on: 24.03.2023

CWPOA No. 31 of 2020

Pankaj Bhardwaj

...Petitioner

Versus

State of H. P. & Ors.

...Respondents

CWP No. 8860 of 2022

Pawan Kumar

...Petitioner

Versus

State of H. P. & Ors.

...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ Yes

For the Petitioners : Mr. Rajiv Rai, Advocate, for the petitioner in CWPOA No. 31 of 2020.

Mr. Sanjeev Bhushan, Sr. Advocate with Mr. Rajesh Kumar, Advocate, for the petitioner in CWP No. 8860 of 2022.

For the Respondents :Mr. Anup Rattan, A.G. with Mr. I. N. Mehta, Mr. Y. W. Chauhan, Sr. Addl. A.G., Mr. J. S. Guleria, Dy. A.G. and Mr. Rajat Chauhan, Law Officer, for respondents-State in both the petitions.

Mr. Sanjeev Bhushan, Sr. Advocate with Mr. Rajesh Kumar, Advocate, in CWPOA No. 31 of 2020 of respondent No. 7.

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

Tarlok Singh Chauhan, Judge

Since the outcome of CWP No. 8860 of 2022 is dependent on the outcome of CWPOA No. 31 of 2020, therefore, both the matters were tagged and are being disposed of by a common judgment.

In order to maintain clarity, the facts of CWP No. 8860 of 2022 are being referred to.

2. The respondents-Department issued notification dated 10.02.2016 for filling up 1200 posts of Constables (Male) and 300 posts of Constables (Female).

3. The petitioner in CWP No. 8860 of 2022 qualified the Physical Efficiency Test, written test and was eventually subjected to medical examination as per Rule 12.16 of the Punjab Police Rules on 09.07.2016 whereby he was declared unfit and referred to Medical Board. The Indira Gandhi Medical College constituted a Medical Board which examined the petitioner on 20.07.2016 and he was declared fit and accordingly the petitioner was offered appointment on 24.09.2016 and thereafter has been continuously performing his duties.

4. One Pankaj Bhardwaj, petitioner in CWPOA No. 31 of 2020 assailed the appointment of various candidates including the petitioner in CWP No. 8860 of 2022. His specific challenge with regard to the petitioner Pawan Kumar (Petitioner in CWP No.

8860 of 2022) is that the said Pawan Kumar was not medically fit for the post as per the terms and conditions provided in the Medical Fitness Certificate for the Police Personnel recruited as Police, which provides *"Should not have any old/mal united fracture of bones"* and further *"Candidate should not have any artificial prosthesis like (Screw/Pin/Rod) in any bone or joint joint-renders candidate unfit"*. It was further averred that the said Pawan Kumar had been operated and artificial rod has been placed in his body and, therefore, said Pawan Kumar was not eligible for being appointed.

5. On 30.08.2022, this Court passed the following order in CWPOA No. 31 of 2020:-

Heard for some time. As per the criteria prescribed for the medical fitness for providing medical fitness certificate for the police personnel to be recruited as constable, it has been specifically provided under Head-H 'Orthopedic' that a candidate should not have any artificial prosthesis like (Screw/Pin/Rod) in any bone or joint, which render candidate unfit.

It has specifically come in the reply of the official-respondents that respondent No.7 Pawan Kumar had initially been examined by the Medical Officer on duty, who declared him unfit and referred him to IGMCI, Shimla for ortho diagnosis by the Medical Board and it is only thereafter that he was found to be fit.

We really wonder under what power and authority such exercise was undertaken by the respondents in terms of the guidelines relating to the medical fitness (supra)

which renders a candidate unfit in case he is found to have any artificial prosthesis like Screw/Pin/Rod in any bone or joint.

Learned Senior Additional Advocate General prays for and is granted three weeks' time to file a supplementary affidavit.

6. Even though respondents filed a supplementary affidavit in terms of the aforesaid order but the Court was not satisfied with the same and accordingly proceeded to pass following order on 20.09.2022 in CWPOA No. 31 of 2020:-

Even though, supplementary affidavit is stated to have been filed on 19.9.2022, however the same is not on record. Registry to trace and place it on record.

A copy of the supplementary affidavit has been shown to us, which reveals that query raised by this Court has not been adverted to, much less replied by the respondents.

We once again make it absolutely clear that as per instructions issued by the respondents themselves for providing medical fitness certificate for the police personnel to be recruited as constable, under Head-H 'Orthopedic' a candidate should not have any artificial prosthesis like (screw/pin/rod) in any bone or joint, which renders the candidate unfit.

It is not in dispute that respondent No.7 was medically examined and it was admittedly found that there is a plate in his left forearm. If that be so, then why his case was not rejected on the ground of his being unfit in terms of the instructions issued by the respondents themselves and why still the reply is not forthcoming in this regard.

Therefore, let better affidavit be filed by the Inspector General of Police within a period of two weeks from today.

Later on, when the matter came up for consideration

7. Subsequently, when the matter came up on 21.10.2022, the Court proceeded to pass the following order:-

On 30.08.2022, this Court passed the following order:-

“Heard for some time. As per the criteria prescribed for the medical fitness for providing medical fitness certificate for the police personnel to be recruited as constable, it has been specifically provided under Head-H ‘Orthopedic’ that a candidate should not have any artificial prosthesis like (Screw/Pin/Rod) in any bone or joint, which render candidate unfit.

It has specifically come in the reply of the official respondents that respondent No.7 Pawan Kumar had initially been examined by the Medical Officer on duty, who declared him unfit and referred him to IGMC, Shimla for ortho diagnosis by the Medical Board and it is only thereafter that he was found to be fit.

We really wonder under what power and authority such exercise was undertaken by the respondents in terms of the guidelines relating to the medical fitness (supra) which renders a candidate unfit in case he is found to have any artificial prosthesis like Screw/Pin/Rod in any bone or joint.

Learned Senior Additional Advocate General prays for and is granted three weeks’ time to file a supplementary affidavit. List on 20.09.2022.”

Repeated affidavits filed by Deputy Inspector General of Police, Central Range, Mandi, H.P., were not satisfactory and eventually on 13.10.2022, the Court passed the following order:-

“Learned Additional Advocate General has placed on record instructions dated 12.10.2022, pursuant to which, we exempt the personal presence of Deputy Inspector General Police, Central Range, Mandi. However, in case the previous order is not complied with, then the concerned Officer shall remain present on the next date of hearing. List on 20.10.2022.”

It is in compliance to the aforesaid order that a supplementary affidavit has now been filed by respondent Nos. 1 to 4, para-8 whereof reads as under:-

“That it is admitted that the opinion of the medical board cannot overrule the recruitment rules framed by the department. It is also admitted that the selection of the respondent No.7 namely Pawan Kumar on the basis of opinion of the Medical Board is not valid as it is undisputed fact that there was a plate in left forearm of the respondent No. 7 which render him unfit in view of the amended Punjab Police Rules 12.16 sub clause (G) notified vide notification dated 30.07.2013 and as such when the respondent No.7 was appointed, the Rule in question was vogue.”

Record reveals that even though respondent No.7- Sh. Pawan Kumar stands served, however, in view of what is stated in the affidavit, we feel that it may not be appropriate to declare the appointment of respondent No.7 as “not valid” without affording him an opportunity of being heard.

Registry is directed to issue fresh notice for the service of respondent No.7, through Superintendent of Police, returnable for 18.11.2022.

8. Since the official-respondents had now admitted that the opinion of the Medical Board could not overrule notification dated 30.07.2013, therefore, the selection of Pawan Kumar, on the basis of the opinion of the Medical Board was not valid. This constrained Pawan Kumar to file an independent petition being CWP No. 8860 of 2022 assailing the validity of the notification dated 30.07.2013.

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

9. It is not in dispute that the respondents themselves had issued notification dated 30.07.2013 wherein the provisions of the Punjab Police Rules, have been ordered to be amended vide Rules called the Punjab Police (Himachal Pradesh Amendment Rules, 2013), more particularly, the substitution of Appendix 12.16, the relevant clause whereof reads as under:-

F) ORTHOPEDIC

Limbs, hands and feet should be well and fully formed.

There should be free and perfect movement of all the joints.

Should not have any old/mal united fracture of bones.

Candidate must not have knock knee, flat foot varicose veins, loss of any finger, hammertoes with painful corns/bursae, hallux valgus OR abnormal curvature of spine.

Candidate should not have any artificial prosthesis like (Screw/Pin/Rod) in any bone or joint-tenders candidate unfit.

10. A bare perusal of the aforesaid notification would go to indicate that the same is delightfully vague. It is not in dispute that the petitioner-Pankaj Bhardwaj had been subjected to medical examination by the Medical Board. We otherwise find no basis to uphold Clause-G of notification dated 30.07.2013 to the extent it states that the "candidate should not have any artificial prosthesis like (Screw/Pin/Rod) in any bone or joint-renders a candidate unfit. We can take judicial notice of the fact that insertion of artificial screw, pin and rod is today an essential part of treatment and unless and until the artificial prosthesis like screw, pin and rod in any bone works as an impediment or creates any hurdle in the functioning of the joint so as to render a candidate unfit, the same alone cannot be the basis of rejection of candidature of a candidate.

11. Here it would be relevant to refer to the opinion of the Medical Board, which reads as under:-

MEDICAL BAORD'S REPORT

The Medical Board of the following doctors was constituted to examine Sh. Pawan Kumar s/o Sh. Amar Singh, r/o Vill. & P.O. Amarpur, Tehsil Ghumarwin, Distt. Bilaspur, H.P. on 20.07.2016 at 3:00 p.m. in the office of Sr. Medical Superintendent, I.G. Hospital, Shimla.

Dr. Ramesh Chand
Sr. Medical Superintendent,
I. G. Hospital, Shimla.

Chairman

Dr. Desh Raj Chandel,

Member

Assoc. Professor, Deptt. of
Ortho, IGMC, Shimla

Dr. Sachin Sud,
Asstt. Professor, Deptt. of
Ortho, IGMC, Shimla

Member

Sh. Pawan Kumar age 25 years old MA was operated for fracture both bone forearm left side in year 2000 at District Hospital Bilaspur, H.P. Clinically and radiologically the fracture has united. He is fit to perform all the activities.

12. It is more than settled that the Courts normally are loath to interfere with the opinion of the experts especially if it relates and is concerned with the speciality as possessed by the experts.

13. As observed above, the petitioner after his selection in the year, 2016 has been continuously discharging his duties to the satisfaction of the respondents, which clearly indicate that the insertion of the prosthesis has not worked to the disadvantage to the petitioner much less acted as an impediment in the discharge of his duties.

14. As observed above, insertion of artificial prosthesis is now a part of treatment and unless the artificial prosthesis like screw/pin/rod acts as an impediment or interfere with the discharge of duties, the same by itself cannot render a candidate unfit for appointment and to that extent Clause G of the notification will have to be read down and shall now have to be

read as candidate should not have artificial prosthesis like screw/pin/rod in any bone or joint, which may render the candidate unfit for appointment and the later part of the notification will simply render a candidate unfit, is quashed and set aside.

15. Today, the implanting of prosthesis is an integral part of treatment. The appointment of the petitioner Pankaj Kumar is upheld and the view taken by Deputy Inspector General of Police, Center Range, Mandi in affidavit dated 17.10.2022 stating therein that the selection of Pankaj Bhardwaj on the basis of opinion of the Medical Board is not valid is also held to be void in law.

16. Having considered the claim of the petitioner Pankaj Bhardwaj against the appointment of Pawan Kumar, we now proceed to deal with the claim of Mr. Pankaj Bhardwaj against the selection of respondents No. 8 to 11.

17. Now, adverting to the claim regarding the appointment of Mr. Pawan Kumar to the post of Constable against Scheduled Caste category, it has been averred that since the proforma respondents No. 8 to 11 who otherwise belong to the category of Scheduled Castes, having secured more marks than the last selected candidate belonging to the General Category, these candidates ought to have been considered in the

General Category thereby creating a vacancy for the Scheduled Caste category against which the petitioner could conveniently be appointed.

18. However, even this contention of the petitioner is equally without merit. It has specifically come in the reply of respondents that the respondents No. 8, 10 and 11 were selected against the vacancy in respect of Scheduled Caste category despite the fact that their score in the ground test, written test and interview were more than the candidates selected against the General Category. However, they fulfill the criteria of age i.e. 18 to 23 years prescribed for the General Category candidate being above age. Accordingly, as per the Condition No. 8 of the advertisement, the eligibility criteria for General Category was between 18 to 23 years, whereas eligibility criteria of Scheduled Caste was prescribed as 18 to 25 years. As regards, respondent No. 9, Vikram Koushal, he was rightly selected in the select list of General Category since he had completed 23 years of age at the time of advertisement.

19. In view of the aforesaid discussion and for the reasons stated above, we find no merit in CWPOA No. 31 of 2020 and the same is accordingly dismissed, whereas we find merit in CWP No. 8860 of 2022 and the same is accordingly allowed and the view taken by the Deputy Inspector General of Police, Central

Range, Mandi in affidavit dated 17.10.2022 and the Clause (g) of Notification dated 30.07.2013 (Annexure P-8) are quashed and set aside. ◇

Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

24th March, 2023
(sanjeev)

(Virender Singh)
Judge