

## **Hoshiar Singh vs State Of Haryana And Others on 25 August, 1993**

**Equivalent citations: AIR1993SC2606, JT1993(5)SC63, 1993LABLC2666, (1994)ILLJ562SC, 1993(3)SCALE572, 1993SUPP(4)SCC377, 1994(1)SLJ180(SC), AIR 1993 SUPREME COURT 2606, 1993 AIR SCW 3299, 1993 LAB. I. C. 2666, 1993 (4) SCC(SUPP) 377, 1993 SCC (SUPP) 4 377, (1993) 5 JT 63 (SC), 1993 (2) UJ (SC) 5443, 1993 UJ(SC) 2 5443, 1994 SCC (L&S) 249, (1993) 67 FACLR 861, (1994) 1 LABLJ 562, (1993) 4 SCT 291, (1993) 5 SERVLR 36, (1994) 26 ATC 325**

**Author: S.C. Agrawal**

**Bench: S.C. Agrawal, R.M. Sahai**

ORDER

S.C. Agrawal, J.

1. These appeals, by special leave, have been filed against the judgment of the High Court of Punjab & Haryana dated October 31, 1991 in Civil Writ Petition No. 5123 of 1991, and other connected writ petitions, whereby the High Court has quashed the selection and the recommendation made by the Subordinate Services Selection Board, Haryana (hereinafter referred to as 'the Board') for appointment on the post of Inspector of Police and the orders for appointment of 18 of the persons selected on the said post.

2. The Board has been constituted under Article 309 of the Constitution and is vested with the function of selecting and recommending candidates for appointment to class III non-gazetted posts falling within the purview of the Board. The post of Inspector of Police is one of the posts falling within the purview of the Board. On October 23, 1987, the Director General of Police had sent requisition to the Board for selecting suitable candidates for appointment on six posts of Inspectors of Police. In these six posts, one was reserved for scheduled castes, two for ex-servicemen and there were in general category. -After the receipt of the said requisition, the Board issued an advertisement dated January 22, 1988 inviting applications for the said posts. On July 7, 1988, a corrigendum was issued to the advertisement dated January 22, 1988. The advertisement as amended by the said corrigendum stated as under-

6 POSTS OF INSPECTOR OF POLICE FOR POLICE DEPTT.(1 resvd. for SC & 2 for ESM of Haryana) SCALE : Rs. 2000-3200, with rent free accommodation or House rent allowance @ 10% of pay in lieu thereof plus compensation allowance @ 10% of Basic pay as per rules. E.Q. : i) Graduate of a recognised University. Preference will be given to Criminology Graduates, ii) Hindi upto matric standard, iii) Height 5'-7", Chest 33" with expansion of 1-1/2". Due weightage will be given proficiency in sports including athletics, PHC and candidates wearing spectacles are not eligible. The candidates will have to pass a written test comprising of the following two papers of 100 marks each:-

1. General English & Hindi of B.A. standard
2. General Knowledge & General Studies.

Only the candidates who will obtain 50% marks and above (at least 40% & above, in case of SC's and EC's candidates), will be called for physical test and interview. Successful candidates will have to pass one star physical qualifying test as under:-

1. 800 Meters run : (2 minutes & 50 seconds) 2. 100 meter run : (14.5 seconds) 3. Long Jump : 15 feet 4. High Jump : 4 feet 5. Putting the shot : 20 feet Age: 18-27 years as on 8.8.88, for ESM they must be below 27 years plus continuous services added by 3 years. However, there should not be a gap for more than 2 years between their discharge from the Army and joining the service in Police Dept. Note: Omitted.

3. The applicants who applied in response to the advertisement were required to undergo the written test. On the basis of the result of the written test candidates were called for physical efficiency and measurement test and viva-voce. Prior to holding the physical efficiency test, the Board took a decision that even those candidates who qualified in 3 out of 5 items of the physical qualifying test mentioned in the advertisement would be deemed to have passed. The Board held the physical efficiency and measurement test as well as interview from January 28, 1991 to January 31, 1991. Prior to that the Director General of Police had, on January 24, 1991, sent a revised requisition for 8 posts of Inspectors of Police (3 in general category, 3 scheduled castes and 2 ex-servicemen). By its letter dated March 29, 1991 addressed to the Director General of Police, the Secretary of the Board forwarded the names of 19 candidates (12 in general category, 2 belonging to Scheduled Castes, 3 ex-servicemen and 2 belonging to backward classes) who were being recommended (in the order of merit categorywise) for appointment to the post. Since there was an order by the High Court for reserving one post for ex-servicemen, appointments were made of 18 persons on the post of Inspector of Police out of the said list of 19 candidates forwarded by the Board. The appointment orders were issued during the period from April 3, 1991 to April 6, 1991. The said selection and recommendation by the Board and the appointments made pursuant thereto on the post of Inspector of Police were challenged by the various candidates who were not selected by filing writ petitions under Article 226 in "the High Court.

4. The challenge in the writ petitions was made on the grounds that (i) the relaxation in the requirement of passing in all the 5 items prescribed for the physical test was unauthorised and as such illegal; (ii) the number of posts that could be filled could not exceed the number of posts that were advertised; (iii) the number of candidates called for interview could not exceed three times the number of posts that were advertised; (iv) the candidates who had passed the written and the physical test could not be eliminated on the ground that they had misbehaved before the Board at the time of viva-voce and; (v). the selection was liable to be quashed on the ground that the Board was actuated by mala fides and considerations other than pure merit.

5. Before the High Court no reply was filed on behalf of the State of Haryana as well as the Board and the Chairman of the Board who was also impleaded as a party in some writ petitions. On behalf of the Director General of Police, Haryana, two replies were filed. One reply, dated May 15, 1991, was filed by Shri R.K.Hooda, Director General of Police, Haryana. Subsequently, another reply was filed on August 18, 1991 by Shri B.R.Lall, Inspector General of Police, Haryana on behalf of the Director General of Police. The High Court has pointed out that there is substantial difference in the stand taken by the Director General of Police in the two affidavits. In the earlier reply of Shri R.K.Hooda, it was stated that as on April 2, 1991, there were 20 posts of Inspector of Police available to be filled up by direct recruitment and the Government was justified in making the 19 appointments. In the subsequent affidavit of Shri B.R.Lall, it has been stated that the posts available for direct recruitment were in fact only 8 and that the additional 11 candidates who have been selected were offered appointments against the posts in the Wireless Section which was a separate cadre and that these candidates have not been taken over as the appointment authority in the Wireless Section had objected to their appointments. In the said affidavit, it was also pointed that the break up of the 19 posts now sought to be filled in ought to have been as under-

General category - 10 Ex-service men - 03 Scheduled Castes - 04 Backward Classes - 02

6. The High Court was of the view that in the advertisement and the corrigendum issued thereafter, it was clearly spelt out that the candidates will have to pass one star physical test in the five items and it was, therefore, incumbent upon all the candidates to pass in all five items in order to be eligible for appearing in the viva-voce and the Government alone, in case it had the authority to do so, could make a relaxation in the prescribed test and the Board had no jurisdiction to relax the qualifications prescribed by the Government. Relying upon the decision of this Court in District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Ors. v. M.Tripura Sundari Devi, , the High Court has held that the authorities were bound by the conditions laid down in the advertisement and the corrigendum and no deviation there from was permissible. The High Court rejected the contention that no addition could be made in the qualifications prescribed in Rule 12.6 of the Punjab Police Rules, 1934, hereinafter referred to as 'the Rules', in the advertisement. According to the High Court one star physical test has been introduced to evaluate the active habits of the applicants as required under Sub-clause (b) of Clause (2) of Rule

12.6 of the Rules, which relates to appointment on the post of Inspector. The High Court observed that this test only supplements the Rules and makes their applicability more uniform and practical and leaves little to the caprice or whims of the selected agency. The High Court found that out of the 19 candidates selected only 7 candidates had passed in all five tests. As regards the number of posts for which selection could be made by the Board, the High Court has pointed out. that the original requisition was for 6 posts which was subsequently revised to 8 and that appointments beyond 8 posts were not legally sustainable. The High Court has further observed that as only 8 posts were liable to be filled in, while calling the candidates for the viva-voce, the Board was entitled to call only thrice the number of vacancies in each category originally requisitioned. As regards rejection of candidates on the ground that they had misbehaved at the time of interview, the High Court, on examining the record, found that some of the candidates who had secured very high marks in the written test and ought to have been selected on the basis of the written test alone, have been eliminated from the panel of selected candidates on the ground that they had misbehaved with the members of the Board at the time of interview. According to the High Court no power has been given to the Board under any rule or instruction to eliminate any person on the basis of misbehaviour in the interview and if the Board found that a candidate had misbehaved at the time of interview it was at liberty to give zero mark to such a candidate and since no minimum marks were prescribed for the viva-voce, the total number of marks obtained ought to have been made the basis of selection. The High Court has further observed that if the power to disqualify is given to the Board, it would give a complete go bye to the principles laid down by this Court in *Ashok Kumar Yadav and Ors. v. State of Haryana and Ors.* 1985(4) SCC 662, *Mohinder Salt Garg v. State of Punjab and Ors.* and *Vikrant Singh and Anr. v. The Subordinate Services Selection Board Haryana and Ors.* . The High Court also felt that it was rather improbable that a candidate appearing before an interviewing body would have the temerity to misbehave at the time of interview and that it was contrary to normal and accepted human behaviour. In this context, the High Court has referred to the affidavit filed by Shri S.K. Sethi, Inspector General of Police, Haryana (Respondent No. 4 in Civil Petition No. 5361 of 1991) who had assisted the Board at the time of physical test and interview as an expert, and has stated that no candidate had misbehaved with any member of the Selection Committee in his presence. The High Court has observed that neither the Board nor the chairman of the Board, who had been impleaded as respondents, had chosen to reply to the writ petition and to controvert the allegations made on this point. In the circumstances, the High Court has proceeded on the basis that there was in fact no misbehaviour on the part of any candidate. The High Court did not go into question of mala fides alleged against the members of the Board as there was absence of proper and full particulars to that effect in the writ petition and also for the reason that all members of the Board had not been impleaded as parties in the writ petitions.

7. In view of the findings aforesaid, the High Court has quashed the selection and appointment made with respect to the 19 posts of Inspector of Police and directed that keeping in view the facts and circumstances of the case and particularly the fact that the integrity of the written test had not been challenged before them, the authorities would be entitled to make fresh selection for eight posts on the basis of the written examination already held and for that purpose all candidates who have secured the qualifying marks would be entitled to be called for the physical test and the candidates who have passed all five items of the test would be eligible to be called for interview subject to the qualification that the number of such candidates would not exceed thrice the number

of posts in each category.

8. These appeals have been filed against the said decision of the High Court. Civil Appeals Nos. 1263-64, 1265, 1268, 1269, 1270 and 1354 of 1993 have been filed by the 18 candidates who were appointed as Inspector of Police on the basis of the impugned selection and whose appointments have been quashed by the High Court. Civil Appeals Nos. 1266, 1267 and 1355 of 1993 have been filed by the three candidates who were not selected by the Board on the ground of having misbehaved at the time of interview.

9. We will first take C.A. Nos. 1263-64, 1265, 1268, 1269, 1270 and 1354 of 1993 filed on behalf of the 18 candidates who were selected and whose appointments have been quashed.

10. The learned counsel for these appellants have not been able to show that after the revised requisition dated January 24, 1991 whereby the Board was requested to send its recommendation for 8 posts, any further requisition was sent by the Director General of Police for a larger number of posts. Since the requisition was for eight posts of Inspector of Police, the Board was required to send its recommendations for eight posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for eight posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned on the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.

11. As regards requirement of passing the physical test in all the five items mentioned in the advertisement and the corrigendum, it may be stated that in Sub-clause (b) of Clause (2) of Rule 12.6 of the Rules, the only requirement that is prescribed is "good physique and active habits". The Rules do not elaborate the said requirement. Under the advertisement issued by the Board the physical standards which were required to be possessed by the candidates were height 5'7", chest 33" with expansion of 1.5". It was further prescribed that the candidates who obtain the qualifying marks in the written test will have to pass one star physical qualifying test consisting of the following five items: (i) 800 meters run: 2 minutes & 50 seconds (ii) 100 meters run: 145 seconds (iii) Long jump : 14 ft (iv) High jump: 4 ft. (v) Putting the shot: 20 ft. The one star physical qualifying test referred to above appears to have been laid down by the Government of India as a standard of physical efficiency in respect of men in the age group of 18-34 years. Since the Rules are silent with regard to the standards for good physique and active habits, the High Court has held that "good physique" takes within its ambit, the height and physical specifications relating to chest measurement and the one star physical test has been introduced to evaluate the "active habits" of the applicants. It has been held that these tests supplement the Rules and make their applicability more uniform. We are inclined to agree with this view of the High Court. Once it is held that the standards

for physical fitness which have been laid down in the advertisement could be so prescribed, the matter of relaxation of the said standards would depend on the terms of the advertisement. The advertisement and the corrigendum are silent about relaxation of the said standards by the Board. In these circumstances, the Board could not, on its own, relax the standards of physical fitness as mentioned in the advertisement and the corrigendum. Reference, in this context, may be made to the decision of this Court in *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Ors. v. M. Tripura Sundari Devi (supra)*. In that case the minimum essential qualification mentioned in the advertisement was second class post-graduate. The respondent who had third class post-graduate degree was appointed. Disapproving the said appointment, this Court has held-

It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice.

12. In our view, therefore, it was not permissible for the Board to relax the standards of physical fitness as prescribed in the advertisement and treat candidates who had passed in three out of five items of the one star physical test mentioned in the said advertisement as having qualified in the physical fitness test. The selection of person who failed to qualify in all the five items prescribed for the test was, therefore, rightly quashed by the High Court.

13. As regards rejection of candidates on the ground that they had misbehaved at the time of interview, we are unable to agree with the High Court that the Board could not reject a candidate on the ground that he had misbehaved at the time of interview. In the process of selection, the Board is required to adjudge the suitability of the candidate for appointment on the post of which selection is being made. The Board is entitled to take note of the behaviour of the candidate at the time of interview and if it is found that the behaviour is such as to render him not suitable for holding the post for which selection is to be made, the Board would be perfectly justified in rejecting him for appointment on the post. If the course suggested by the High Court is adopted, namely, that the Board may give zero mark to the candidate who misbehaves at the time of interview, the result would be that a candidate whose behaviour was such as to render him unfit for appointment to the post, may have to be selected and recommended for appointment on the basis of the marks secured by him in the written test although in view of his behaviour at the time of interview the Board found that he is not suitable for such appointment. The suitability of a candidate for appointment has to be considered on the basis of an overall assessment of his performance during the process of selection. The conduct and behaviour of the candidate at the time of interview is a relevant factor in making such assessment. The absence of any provision in the Rules prescribing minimum marks for interview does not mean that the Board is bound to select a candidate who is found to be unsuitable for appointment by the Board on account of his behaviour at the time of interview. We do not

propose to go into the question as to whether the candidates who have been rejected by the Board on the ground of misbehaviour had misbehaved at the time of interview since the selection is liable to be quashed for the reasons mentioned earlier.

14. The directions given by the High Court quashing the selection and appointment of the appellants in these appeals must, therefore, be upheld and the appeals are liable to be dismissed.

15. We will now take up Civil Appeals Nos. 1266, 1267 and 1355 of 1993 filed by the candidates who were rejected by the Board on the ground of having misbehaved at the time of interview. Since the selections being quashed, we feel that it will be fair to give to the candidates who were rejected by the Board on the ground of having misbehaved at the time of interview an opportunity to appear before the Board as per the directions given by the High Court. Their suitability for appointment would depend on their performance in the physical fitness test and the interview. They cannot be granted any relief other than that granted by the High Court.

16. In the result, all the appeals are dismissed and the directions given by the High Court in the judgment under appeal are affirmed. All the I.As. filed in different appeals shall also stand dismissed accordingly. No orders to costs.