

## **Suresh Kumar And Ors. vs State Of Haryana And Ors. on 17 January, 2001**

**Equivalent citations:** JT2001(3)SC453, 2001(1)SCALE416, (2003)10SCC276, (2001)2UPLBEC1701, AIRONLINE 2001 SC 357, 2001 AIR SCW 2545, 2001 LAB. I. C. 2396, (2001) 2 ESC 314, (2001) 3 SCT 146, (2001) 2 LAB LN 103, (2001) 1 SCALE 416, (2001) 2 UPLBEC 1701, 2003 (10) SCC 276, (2001) 7 SERV LR 361, (2001) 1 CUR LR 13, (2001) 3 JT 453, (2001) 4 SUPREME 360

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**Bench: B.N. Agarwal**

### **ORDER**

1. Leave granted in SLPs.

2. This batch of appeals is directed against the judgment of the Division Bench of Punjab and Haryana High Court. By the impugned judgment, selection to the post of constables has been quashed and the State Government has been directed to have a fresh set of Rules for governing the recruitment to the post of constable as the earlier rules in force has been struck down. The recruitment to the post of Constable was being governed by Punjab Police Rules of 1934 which had been framed under Section 7 of the Punjab Police Act. Under the Rules in force, there was no requirement of making any public advertisement inviting applications nor there was any requirement to intimate the Employment Exchange with regard to the vacancies likely to be filled up. The last appointment to the post of constable under the aforesaid set of rules had been made in the year 1992. The present recruitment process started in July 1995 when 703 vacancies in the rank of constables were found available. In accordance with the procedure prescribed under Rules 1934, selections were made on the spot after examining the physical fitness of the candidates at different District Headquarters. Be it stated that subsequent to 6.7.1995 more than 800 posts were created and therefore in all about 1600 posts were filled up by adopting the same procedure, as stated earlier. Some of the unsuccessful candidates who had appeared in the process of selection as well as the Union filed writ petitions assailing the entire process of selection. Allegations were made that the process of selection has been vitiated on account of several infirmities including the vague assertion of mala fide and fraud but essential allegation was that the selection could not have been made without due publicity either in the newspaper or without notifying the vacancies to the Employment Exchange. By the impugned judgment the High Court has come to the conclusion that the process of selection has been vitiated because there was no advertisement and no due publicity inviting applications from the candidates at large. Out of the two learned Judges, though one of the learned Judge came to the conclusion that the allegations of mala fide and fraud have not been established by the appellant and the selection process cannot be held to be unfair, the other learned Judge, however, came to the conclusion that there has been an unfair selection and the process of

selection is vitiated. Both the learned Judges, however, agreed with the conclusion that there has been several lapses in the process of selection and ultimately the process of selection was quashed and direction has been issued, as stated earlier. In accordance with said direction, the State of Haryana has framed a set of Rules in exercise of powers conferred under the proviso to Article 309 of the Constitution read with Sections 2 and 7 of the Police Act, 1861. The Rules thus framed is called the Punjab Police (Haryana Amendment) Rules, 1998.

3. Mr. Mohta, the learned senior Counsel, Mr. Das and many other learned Counsel appearing for different set of appellants contended before us that the procedure in vogue since 1934 having been duly followed and about 1600 people having been selected in accordance with that procedure, the High Court was not justified in striking down some provisions of the 1934 Rules and in directing the State Government to frame a fresh set of Rules. It is contended by the learned Counsel appearing for the appellants that even if the old Rules would be struck down and direction to frame a set of Rules would be permitted but there was no justification in quashing the selection already made. The learned Counsel tried to impress upon us that the entire process of challenge is because of change in the Government. It was also urged before us that the very fact that large number of people had appeared for interview in the process of selection would indicate that there was due publicity about the vacancy even though factually there was no advertisement in the newspaper nor the Employment Exchange was intimated about the filling up of vacancies. It is also stated to us that some of these selectors notwithstanding quashing of their appointments have been continuing as on today because of the stay order obtained from this Court.

4. Mr. Mahabir Singh, the learned Counsel appearing for the State, on the other hand, contended that when large number of vacancies in any particular cadre is going to be filled up, it is meet and proper that there should be wide advertisement in the newspaper to enable the intending applicants to apply for the same as otherwise the process of selection would get vitiated inasmuch as it would enable the selecting authority to get the people from the their coterie and ultimately make selection from amongst them. Having considered the rival submissions and on examining the impugned judgment of the High Court even though we do not agree with some of the observations and conclusions but we are not inclined to set aside the said judgment of the High Court as in our view the High Court had approached the problems from correct per spective. But at the same time we are also conscious of the fact that in the process of selection 1600 people in the lowest rank of the Police force got selected and after being trained, some of them are continuing in service and they also have rendered about more than 5 years of service. In the aforesaid circumstances, while we are not inclined to interfere with the impugned judgment of the High Court, we think it appropriate to give the following directions:

(1) These 1600 vacancies in respect of which the process of selection has already been made and the same has been quashed by the High Court should be re-advertised in accordance with the amended Rules of 1998 and this advertisement must be made within 2 weeks from today.

(2) Those of the selectees, who are appointed on the basis of the said selection and are continuing till date, shall be permitted to continue until the fresh selection is

made.

(3) These selectees, whose selection has been set aside, would be entitled to appear at the fresh selection pursuant to the advertisement going to be issued in view of our direction made earlier by relaxation of the age.

(4) In the matter of selection the selecting authority would obviously give some preference to the experience gained by these selectees, who have been appointed and are continuing in service.

(5) Those, who have been selected but not appointed would also be eligible to appear in the selection process going to commence pursuant to the fresh advertisement and their case would also be considered by making relaxation of age, though they cannot claim any preference since they do not possess any experience.

(6) Some of the selectees, who were selected on account of voluntary retirement of the existing police personnel, their selection also has been quashed by the learned Judge of the High Court and their parents have been brought into service by virtue of the order of the High Court. Those persons would also be eligible to make application and participate pursuant to the fresh advertisement and they will have to compete as fresh recruits and not as defendants of the voluntary retirees since there is no provision in the Recruitment Rules of 1998 for making such appointment on the basis of the voluntary retirement of the existing police personnel. In their case also the age relaxation should apply.

5. The entire process of selection be concluded within 6 months from today. We make it clear that those of the selectees, who appointments have been quashed and have been permitted to continue because of the interim order of this Court, would be permitted to continue till the selection process is over pursuant to our aforesaid direction and in the event they fail to get themselves selected they will make way for the fresh selectees.

6. C.A. 15043/1996: In this appeal, though it had been tagged on with the present batch of cases, we have already disposed of, but this relates to a separate process of selection for the post of Wireless Police Constable and the impugned judgment is also different from the judgment which was under consideration in the earlier batch of cases. Unfortunately, in this case, these appellants, though were party-respondents before the High Court, never appeared. The High Court has struck down the process of selection only on the ground that there has not been due advertisement for filling up of the vacancies. It is now contended before us by the learned Counsel for the appellants that in the process of selection, 22 people had been selected but only 4 of them were made party-respondents as a result of which 18 persons selected in the process are being continued while the appointment of 4 others has been struck down, These 4 appellants are continuing because of the interim order of this Court. While we do not find any infirmity with the judgment for our interference, since 18 others selected in the very process of selection are continuing, would request the State Government to consider the case of these 4 applicants as to whether they should also be permitted to continue or

not. All intervention applications are allowed. The appeals are disposed of accordingly.