

for the last three years and two months prior to the filing of the writ petition shall be paid to the petitioners. This should be done within a period of four months. If the payment is not so made, the amount due shall carry interest at the rate of 12 per cent per annum till payment. No costs.

R.N.R.

Before : Hon'ble A. L. Bahri & V. K. Bali, JJ.

CONSTABLE RAJWINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 4578 of 1992.

Constitution of India 1950—Art. 226—Punjab Police Rules 1934, Rule 13.7—Whether by framing standing order, the rules framed by State Government (Punjab Police Rules) can be amended—Held that a standing order does not have any overriding effect.

Held, that a standing order which is in the form of instructions cannot override the rule or provide contrary to the rule. Rule 13.7 as already stated above provides for eligibility of the persons at the time of selection and providing a cut off date of January 1st, in the standing order, the operation of the rule stands curtailed which is not permitted under the law.

(Para 5)

Civil Writ Petition under Article 226 of the Constitution of India praying that after calling for the records of the case and after perusing the same :—

- (a) *to issue a writ in the nature of certiorari quashing Part-III of the Standing Order Annexure P-1 so far it prescribes 1st January of that year and more than 3 years of service,—vide part (c) being without jurisdiction, against Rules 13.7 and 13.20 of the Punjab Police Rules. It may also be struck down as arbitrary and in violation of Articles 14 and 16 of the Constitution of India;*
- (b) *to issue a Writ in the nature of mandamus directing respondents to depute the petitioner to the Lower School Course commencing from 15th April, 1992 at Police Training College, Phillaur immediately subject to the decision of the Writ Petition.*
- (c) *to issue any other Writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;*

- (d) *service of notice of motion on the respondents be dispensed with as the matter is urgent one;*
- (e) *filing of certified copies of Annexures be dispensed with;*
- (f) *costs of the Writ Petition be allowed to the petitioner. It is further prayed that this Hon'ble Court may declare that the petitioner is entitled to be deputed to the Lower School Promotion Course on the basis of his selection and has a right to acquire qualification and no obstacle can be placed in the way of the petitioner.*

H. S. Mann, Advocate, for the Petitioner.

M. C. Berri, D.A.G. Punjab, for the Respondent.

JUDGMENT

(1) Only brief narration of facts is necessary to decide the controversy. The petitioner Rajwinder Singh was recruited as Constable on January 9, 1989. He completed three years of service on January 8, 1992. For promotion to the post of Head Constable, he was supposed to pass test and take training in the Lower School Course. This course started factually on April 15, 1992, and selection was completed on February 28, 1992. The petitioner's name was rejected solely on the ground that as on January 1, 1992 he had not completed three years of service under the standing order issued by Inspector General of Police,—*vide* order Annexure P-1 issued on January 14, 1983. *Vide* this order a cut off date as January 1 of every year is fixed for determining eligibility of a constable to sit in the test. The challenge is to the action of the respondents for not deputing the petitioner to attend the aforesaid course, although he had passed the written test securing second position. On behalf of the respondents, reply has been filed *inter alia* alleging that the petitioner had not completed three years of service as on January 1, 1992 and was, thus, not eligible for being deputed to attend the course, under the standing order Annexure P-1.

(2) The question for consideration is as to whether by framing standing order, the rule framed by the State Government (Punjab Police Rules) could be amended. Rule 13.7 of the Punjab Rules is as under :—

“13.7. List B. Section for admission to promotion course for constables at the Police Training College :—

- (1) List 'B' Form 13.7 shall be maintained by each Superintendent of Police. It will include the names of all

Constables selected for admission to the promotion course for Constables at the Police Training College. Selection will be made in the month of January, each year and will be limited to the number of seats allotted to the districts for the year with a twenty per cent reserve. Names will be entered in the list in order of merit determined by the Departmental Promotion Committee Constituted by the Inspector General of Police on the basis of tests in parade, general law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws) interview and examination of records.

(2) All Constables :—

- (a) Who are middle pass and have put in more than four years of service; or
- (b) who are at least matriculates and have put in more than three years of service; or
- (c) who obtain first class with credit in the recruits course specified in the rule 19.2.

will be eligible to have their names entered on the aforesaid list, if they are not above thirty years of age on the first day of July in the year in which the selection is made :

Provided that no Constable who has been awarded a major punishment within a period of three years preceding the first day of January of the year in which selection is made will be eligible for admission to this list and if any Constable whose name has been brought on this list is not sent to the Police Training College in that year he will be required to compete again with the new candidates, if he is still eligible for admission to the said list under the rules."

Rule 13.20 reads as under :—

13.20 Departmental Promotion Committee :—

"In order to ensure that selection and promotion are made in accordance with the rules, Departmental Promotion

Committees shall be set up at various levels. Such Committees shall arrange to put all eligible persons through a written test and parade. Thereafter those persons who secure the qualifying marks will be interviewed by the said committee. The Committee will assess the merit of such persons on the basis of their service records as well as performance in the test. The syllabi for various tests, qualifying percentage of marks, the composition of Departmental Promotion Committees shall be prescribed by the Inspector General of Police in the form of a Standing Order.

Standing Order Annexure P/1 which was issued on January 14, 1983 contains a proviso for eligibility of Constables to sit in the test and relevant portion reads as under :—

III. Eligibility of Constables to sit in the test :—

“All Constables, who upto the 1st January that year :—

- (a) have more than five years service and are educated upto sixth class or are adjudged by the Commandants concerned to be possessing qualifications upto that standard (applicable in the case of Constables of PAP only) or
- (b) are middle pass and have put in more than four years of service; or
- (c) are Matriculates and have put in more than three years of service; or
- (d) had obtained 1st Class with Credit (as defined in IGP's Standing Order No. 1/83) in the Recruits Course, as specified in Rule 19.2 of Punjab Police Rules Vol-II :

(3) Provided that no constable, who has been awarded a major punishment within a period of three years preceeding the first day of January of the year in which selection is made will be eligible for admission to the list and if any Constable whose name has been brought to this list is not sent to the Police Training College in that year, he will be required to compete again with the new candidates. if he is still eligible for admission to the said list under the Rules.”

(4) A reading of the rule 13.7 makes it abundantly clear that a general direction was given to hold the selection in the month of January. It is not uncommon, therefore, that for certain reasons

such selection may not be completed in the month of January but that does not mean that the course is not to be held for the relevant year. As in the present case it took sometime that the selection was completed in the month of February, 1992, and the actual course started in April, 1992. Rule 13.7 as it exists, thus, is to be read in the context that at the relevant time i.e. making the selection for the posts, the necessary eligibility conditions are to be fulfilled. If the selection is to be completed in the month say February, the persons who had completed three years of service and are Matriculate would be eligible for being considered for the test and further deputed for the course. The petitioner had completed three years of service on the date of selection i.e. February 28 1992 and in fact he was allowed to take the written test and had passed the same.

(5) D.A.G. Punjab appearing on behalf of the respondents has argued that the cut off date of 1st January was also provided in the proviso added to rule 13.7 and in the standing order it was merely a clarification that it was also added in clause (2) opening sentence "*All Constables, who upto the 1st January that year*". This contention cannot be accepted. Proviso as it exists only debars punishment imposed prior to 1st of January to be taken into consideration. If a person was awarded major punishment, obviously he could not be sent for the training but from that no analogy can be drawn that for applying clauses (a), (b) and (c), the cut off date in all cases should be January 1st of the relevant year. Rules are framed by the State. A standing order which is in the form of instructions cannot override the rule or provide contrary to the rule. Rule 13.7 as already stated above provides for eligibility of the persons at the time of selection and providing a cut off date of January 1st, in the standing order Annexure P-1, the operation of the rule stands curtailed which is not permitted under the law. The petitioner was eligible to be promoted to the rank of Head Constable, being a Matriculate and having completed three years of service as on February 28, 1992 under Rule 13.7 (2) (b) of the Punjab Police Rules as reproduced above. On that account he was permitted to take the written test, which he passed. Subsequently he could not be deprived of being deputed to the Lower School Course.

(6) For the reasons recorded above, this writ petition is allowed with costs which are quantified at Rs. 1,000. A direction is given to the respondents to forthwith depute the petitioner to the training course which has already commenced.