

matter to the High Court and if Tribunal declined, then to issue a *mandamus* to the Tribunal to refer the matter, because in either eventuality, the answer would be a forgone conclusion. In such a situation, it should be deemed that the case was stated to the High Court and following the earlier decision the High Court had answered the question on these lines.'

To the same effect are the judgments in *C.I.T. v. Indian Press Exchange* (2) and *C.I.T. v. Kerala S.R.T.C. Trust* (3).

(5) The Supreme Court in *C.I.T. v. Chander Bhan Harbhajan Lal* (4), held that where the question of law raised was not substantial and the answer to the question was self evident, the Court was not bound to require the Tribunal to refer the question. In the instant case, the answer to the question sought to be referred is self evident in view of the judgment of the Full Bench in *M/s Sovrin Knit Works' case* (supra).

(6) No merit. Dismissed.

J.S.T.

Before Hon'ble S. S. Grewal & M. L. Koul, JJ.

PARDEEP KUMAR,—Petitioner.

versus

STATE OF HARYANA & ANOTHER,—Respondents.

C.W.P. No. 3287 of 1994

23rd November, 1994

Constitution of India, 1950—Arts. 226/227—Recruitment to police force—Petitioner not fulfilling physical standard—Claiming relaxation in physical standard—No power of relaxation.

(2) 176 I.T.R. 331.

(3) 167 I.T.R. 383.

(4) 1960 I.T.R. 188.

Held, that as per rules of recruitment, the Board in no manner could relax these standards in favour of the petitioner enabling him to appear in the interview although he was not holding the required physical standards as laid down in the advertisement notice. The petitioner was to be appointed in a very disciplined regulated force and since the posts of Assistant Sub Inspectors are highly sensitive posts and they are also employed for the security of the State, the physical test is of the utmost importance and rightly no relaxation can be given at any stage in such standards by the recruiting authority. Since the petitioner did not fulfil the required physical standards, which were a very essential component of the selection process, therefore, the petitioner had no *locus standi* to claim that he had not been called for interview.

(Para 9)

Sanjeev Sharma, Advocate, for the Petitioner.

P. S. Kadian, DAG, Haryana, P. S. Patwalia, Advocate, for the Respondent.

ORDER

M. L. Koul, J.

(1) In response to Advertisement No. 6/92 published in the Daily Tribune in its issue dated 7th December, 1992 for filling up 102 vacancies of Assistant Sub Inspectors of Police by the respondents, as contained as Annexure P/1, the petitioner Pardeep Kumar applied for recruitment against a post of Assistant Sub-Inspector of Police as per the stipulations contained in the said advertisement. After the petitioner passed the written examination, he was called for physical test at the Police Training College, Madhuban (Karnal) on 30th October, 1993 at 9.00 a.m. and his physical test was conducted with other 76 candidates on that date. The officials of respondent No. 2, before conducting the qualifying events, measured the height and chest of the candidates and only those candidates, who fulfilled the minimum prescribed physical standards, were asked to compete in the qualifying events. The height and the chest of the petitioner were also measured and the same were found to comply with the prescribed standards, as contained in Annexure P-1 above. Subsequently, the official who was conducting the measurements, informed the petitioner that his height was short by 1 cm although, at the first instance when his height was measured, it was found that he was complying with the required physical standards as laid down in the advertisement notice. After the measurement of height and chest, the petitioner was asked to compete in the qualifying events and he topped in all the four physical events among the other 76

candidates who were examined on that date. As the officials of respondent No. 2 had created a doubt about the height of the petitioner, he got himself measured in the office of the Superintendent of Police, Faridabad, and his height was found to be 5'—7". The petitioner thereafter was not called for interview and, therefore, he seeks the indulgence of this Court by issuance of a writ of *certiorari* for the quashment of the Select List which has been issued by the respondents and a *mandamus* directing the respondents to appoint the petitioner against the post of Assistant Sub Inspector.

(2) After the notice of motion was issued, the objections were filed by respondent No. 2, i.e., Subordinate Services Selection Board, Haryana and the averments of the petitioner were controverted on the ground that the petitioner has deliberately mis-stated the facts with a view to persuade this Court to hold the roving enquiry in the matter. The petitioner did not fulfil the physical standards prescribed for the post of Assistant Sub Inspector and the physical standards fixed for selection, as per the notification, were as under :—

Height :

5'—7"

Chest :

33" with expansion of $1\frac{1}{2}$ "

(i.e. $33" \times 34\frac{1}{2}"$)

(3) The petitioner was physically measured by the Board in presence of a departmental expert who happened to be the Deputy Inspector General of Police. The physical measurement and physical test were held at the Police Training Centre, Madhuban (Karnal) from 26th October, 1993 to 30th October, 1993. The petitioner was found short by $\frac{1}{2}$ " in height and $1\frac{1}{2}" \times 1\frac{1}{2}"$ in chest and he did not fulfil the required physical standards as mentioned above. The petitioner, on being found short in height and chest, was not considered to be called for interview because only those candidates, who qualified the written test and fulfilled the physical measurements and qualified the physical efficiency test, were called for the interview. Passing of the physical measurement and the physical efficiency test was a condition precedent for appearing in the interview. Those candidates, who did not fulfil the physical standards and did not qualify the physical efficiency test, prescribed for the post of Assistant Sub Inspector, were not called for the interview. The selection was made on the basis of composite tests, i.e., written test, physical test and *viva voce* test. As the petitioner did not pass the physical test, therefore, he was not called for the interview and, as such, he could not be declared as a successful candidate for selection for the

post of Assistant Sub Inspector, for which the test as per the advertisement notice, was held, which consisted of the written test, physical test and *viva voce* test.

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(4) All those candidates, who fulfilled the physical measurement and passed the physical efficiency test after being successful in the written examination, were called for *viva voce* test. The candidates were selected on the basis of merit and the list was accordingly issued as per the selection made by the competent authority.

(5) Replication was also filed and all the points raised in the petition were reiterated by the petitioner in the said replication.

(6) We have heard the learned counsel for the parties and had a thoughtful consideration over the record on the file. It is the admitted case of the parties that applications were invited for recruitment to 102 posts of Assistant Sub Inspectors of Police by the Secretary, Subordinate Services Selection Board, Haryana, and the petitioner, in compliance to Advertisement No. 6/92, applied for one of the posts and qualified in the written examination. The notification, in a nutshell, postulated that the candidates, who applied for the said posts of Assistant Sub Inspectors, had to pass a written test comprising two papers of 100 marks each, as follows :—

- (i) General English and Hindi of B.A. Standard ; and
- (ii) General Knowledge and General Studies.

The minimum qualifying marks to be obtained by all the candidates (including reserved categories) were 40 per cent in each paper and 50 per cent in aggregate. Those candidates who could qualify the written test, as mentioned above, were to be called for physical test and interview. In physical test, the candidates, who passed the written test, were required to qualify three tests out of the following four tests :—

1. 100 metres' run in 14.5 seconds ;
2. 800 metres' run in 2.5 minutes ;
3. Long Jump—15 feet ; and
4. High Jump—4 feet.

The candidates, who passed the written test, were also to prove the physical standards by being 5'—7" in height and 33" with expansion of 1½" (33" × 34½") by chest.

(7) In the case on hand, the petitioner passed the written test and he was called for physical measurement and physical efficiency

test on 30th October, 1993 at the Police Training College, Madhuban (Karnal), with whom other 63 candidates appeared for such tests. All these candidates, underwent the physical measurement test and the physical efficiency test. As such, the averments of the petitioner that after he was found perfect in height and chest he was asked to undergo the physical efficiency test, are wrong, for the fact that the petitioner in para 4 of the petition, has himself controverted this assertion by saying that the officials of respondent No. 2 had created a doubt about the height of the petitioner and, therefore, he got himself measured in the office of the Superintendent of Police, Faridabad, and his height was found to be 5'—7". This assertion of the petitioner in itself is indicative of the fact that both the physical measurement and physical test in running and jumping were held simultaneously and the candidates who passed both the tests were called for the interview. May be, the petitioner qualified the tests with regard to the runs and the jumps, as mentioned above, but he failed to hold the physical standards with regard to his height and chest.

(8) The petitioner was physically measured by the Board in presence of the Deputy Inspector General of Police. On measurement, the petitioner was found short by $\frac{1}{2}$ " in height and $1\frac{1}{2}$ " \times $1\frac{1}{2}$ " in chest and, therefore, logically and legally he was not entitled to be called for the interviews, for he did not fulfil the requirements as laid down in the advertisement notice that he should hold the height of 5'—7" and chest 33" with expansion of $1\frac{1}{2}$ " (33" \times 34 $\frac{1}{2}$ "). Once the petitioner did not come to the mark to hold the physical standards, as laid down in the advertisement notice, he under law was not entitled to be called for interview.

(9) As per rules of recruitment, the Board in no manner could relax these standards in favour of the petitioner enabling him to appear in the interview although he was not holding the required physical standards as laid down in the advertisement notice. The petitioner was to be appointed in a very disciplined regulated force and since the posts of Assistant Sub Inspectors are highly sensitive posts and they are also employed for the security of the State, the physical test is of the utmost importance and rightly no relaxation can be given at any stage in such standards by the recruiting authority. Since the petitioner did not fulfil the required physical standards, which were a very essential component of the selection process, therefore, the petitioner had no *locus standi* to claim that he had not been called for interview and it is found that he had rightly been rejected for the post, for he did not come to the mark.

as per the requirement and the conditions laid down in Advertisement No. 6/92 issued by the Secretary, Subordinate Services Selection Board, Haryana.

(10) The petitioner himself, from the very day when his physical test was conducted by the Board, was apprehensive that he had not come to the mark, for it was found that he was short by $\frac{1}{2}$ " in height and $1\frac{1}{2}$ " \times $1\frac{1}{2}$ " in chest and, therefore, according to him, he got himself measured in the office of the Superintendent of Police, Faridabad, and his height was found to be 5'-7". He failed in the physical test before the competent authority when his test was held by the Board in presence of an expert who happened to be the Deputy Inspector General of Police and who was in a better position to say whether the petitioner was holding the requisite physical standards for selection as Assistant Sub Inspector of Police, as laid down by the recruiting Board. No illegality or impropriety has been committed by respondent No. 2 in rejecting the petitioner for selection as Assistant Sub Inspector of Police, for the fact that he did not qualify the requisite test and, as such, was not called for interview. He, therefore, rightly could not be selected. This, petitioner, therefore, being without substance, is dismissed. The file be consigned to the records.

S.C.K.

Before Hon'ble N. K. Sodhi, J.

PUNJAB STATE ELECTRICITY BOARD,—*Petitioner.*

versus

THE PRESIDING OFFICER, LABOUR COURT, PATIALA AND ANOTHER,—*Respondents.*

C.W.P. No. 5047 of 1993

6th February, 1995

Probation of Offenders Act, 1958—Ss. 12, 4—Standing Orders Clause 15(2)(d)—Workman convicted but released on probation—Departmental proceedings—Employer proceeded against him departmentally—Termination of services—Whether termination can be retrospectively—Validity of.

Held, that when a person is convicted for an offence and is, thereafter, released on probation, his conviction stands but only the sentence is substituted by the order of release on probation. Section