

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**CWP No.8319 of 2025****Decided on: 21.05.2025**

Akhil

.....Petitioner

Versus

State of H.P. and others

.....Respondents.

Coram**The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.****The Hon'ble Mr. Justice Sushil Kukreja, Judge.*****Whether approved for reporting?¹ Yes*****For the Petitioner:****Mr.Sanjeev Bhushan, Senior Advocate with Mr. Rajesh Kumar, Advocate.****For the Respondents:****Mr. Ramakant Sharma, Additional Advocate General with Mr. Navlesh Verma, Mr. Sushant Keprate, & Ms. Sharmila Patial, Additional Advocates General and Mr. Raj Negi, Deputy Advocate General.****Tarlok Singh Chauhan, Judge (Oral)**

The petitioner as per the averments made in this Writ Petition qualified his 10+2 examination in the year 2021 and is an outstanding distinguished sportsman/ boxer who has not only participated, but has won medals both at State and National level in the weight category of 48 to 52 Kgs. The petitioner got himself registered with respondent No.4, Director Youth Services and Sport, H.P., Shimla as it has been providing reservation to the distinguished sport persons

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

in various services under the government who are entitled to 3% reservation.

2 The respondents No. 1 to 3 issued an advertisement for 116 posts of constables i.e. 89 male and 27 female constables in State of Himachal Pradesh. Pursuant to such advertisement, the petitioner was called by the respondent No.4 for document verification and same was duly verified on 28.01.2025. After due verification, the respondent No.4 recommended the name of petitioner, whose name finds mention at Sr. No.65 in the order of merit.

3 After recommendation, the petitioner and all similar situated persons were called to report in Bharari Police Ground on 11.03.2025 but he was declared ineligible on the ground that he was not qualifying the physical standard since his height was below 05' feet 06" inches and is 05' feet 04" inches.

4 Aggrieved by the acts of respondents, whereby the petitioner has been declared to be ineligible, he has filed the instant petition for grant of following substantive reliefs:-

"(i) That an appropriate writ, order of directions may kindly be issued and column No.8 of Rule 8 of the H.P. Police Department (Recruitment of Constables), Rules, 2004 fixing height as 05 feet 06 inches for distinguished sports person may be quashed and set-aside in the interest of law and justice.

(ii) That an appropriate writ, order or directions may kindly be issued and the respondents may kindly be directed to grant the same relaxation in the height to the petitioner as has been granted to other reserved categories, i.e. SC, ST and not only

this which even has granted to Gorkhas in the interest of law and justice.

(iii) That an appropriate writ, order or directions may kindly be issued, thereby directing the respondents to consider the petitioner eligible and thereafter being in merit of the distinguished sport persons as prepared by respondent No.4 may be ordered to be appointed as Police Constable from the same date when same and similarly situated persons in furtherance of Annexure P-5 are appointed by granting the petitioner all the consequential benefits of pay, arrears, seniority etc. by further granting the arrears with interest @9% p.a”

5 We have heard learned Senior Counsel for the petitioner and having gone through the material placed on record, find that his instant petition is not maintainable or it is not in dispute that the recruitment being made by the respondents is strictly as per the rules occupying the field i.e. H.P. Police Department (Recruitment of Constables) Rules, 2024, which clearly prescribe for the height of 05' feet 06" inches for the general category candidates even though belonging to the distinguished sportsman category. It is only the Gorkhas, SC and ST categories for whom the height has been prescribed as 05' feet 04" inches.

6 The petitioner cannot claim any parity with the aforesaid candidates solely on the ground that he belongs to sportsman category.

7 Granting of relaxation in R&P rules is the sole prerogative of the competent authority i.e. employer. Moreover, writ of mandamus

cannot be issued to direct the respondents to act contrary to R & P rules or act beyond the powers flowing from the rules applicable.

8 Furthermore, the Court cannot lay down conditions of eligibility nor can delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of advertisement. If the language of advertisement and rules are clear, the Court cannot sit in judgment over the same.

9 The Court under the garb of judicial review cannot sit over the rules to decide what is best for employer. In taking this view, we are duly supported by the judgment of Hon'ble Supreme Court in ***Maharashtra Public Service Commission versus Sandeep Shri Ram Warade and others, 2019 (6) SCC 362***, wherein the Hon'ble Supreme Court in para-9 observed as under:-

“9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders,

to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.”

10 Clearly, the instant petition is a misadventure. Accordingly, we find no merits in this petition and the same is dismissed.

11 Pending application if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

21th May, 2025.
(yogesh)