

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

DATE OF DECISION : 17.8.2015

1. C.O.C.P. No.167 of 2013 (O&M)
Sukhjant Singh and others v. Shri Sumed Singh Saini and others.
2. C.O.C.P. No.13 of 2013 (O&M)
Rakesh Kumar and others v. Shri D.S.Bains and others.
3. C.O.C.P. No.127 of 2013 (O&M)
Sukhraj Singh and others v. Shri D.S.Bains, IAS and others
4. C.O.C.P. No.283 of 2013 (O&M)
Onkar Singh and others v. Shri Sumed Singh Saini and others.
5. C.O.C.P. No.391 of 2013 (O&M)
Mander Singh and others v. D.S.Bains and others.
6. C.O.C.P. No.489 of 2013 (O&M)
Jaswinder Singh and others v. Shri Sumed Singh Saini and others.

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

**Present:- Shri R.K.Arora, Advocate for the petitioners
(in all the petitions except COCP Nos.13, 127 of 2013).**

Shri Vikas Kuthiala, Advocate for the petitioners
(in COCP No.127 of 2013).

Ms.Poonam Josan, Advocate for the petitioners.
(in COCP No.13 of 2013).

Shri M.C.Berry, Additional A.G. Punjab with
Shri Anant Kataria, D.A.G. Punjab.

MAHESH GROVER, J.

This order will dispose of C.O.C.P. Nos.167, 13, 127, 283, 391 and 489 of 2013.

The petitioners pray for initiation of contempt proceedings against the respondents for having violated the decision rendered by this Court.

The controversy centres around the allocation of cadres to the Punjab Police Constables. Prior to the promulgation of the Act of 2007 (Punjab Police Act, 2007) which came into operation in 2008, all those Constables who fulfilled the parameters of the policy of 1992 governing the transfer of Armed Btln. to District Police as modified from time to time, were also to be transferred to District Police subsequently.

For the purpose of reference, the relevant portion of the policy is reproduced here below :-

“It has been proposed to make a recruiting Board actually for the appointment of Constables. All the recruitment-illegible – the first instance be made in P.A.P. and from P.A.P. the recruits would be shifted to the Commando BNs and then to districts. For the recruitment of constables and further transferred to the districts, the following procedure will be adopted :-

“i. The Board will be nominated by the Director General

of Police with an I.G.P. as its Chairman, one D.I.G. and one S.P. shall be its Members. One of the members shall belong to Scheduled Caste. The Board shall be nominated for one year. The Director General of Police, may however change any member at any time. The Chairman of Sainik Welfare Board shall nominate a member for the Ex-Servicemen when Ex-Servicemen will be recruited.

- ii. The Board will give preference to S.P.Cs with atleast six months service and selection will be made from general public only if eligible S.P.Os are not available.

Initially, all the candidates shall be appointed in the P.A.P. After undergoing initial training all the trainees will be put through three months Commando Training. Thereafter, they would be sent to P.A.P. BNs and after serving for two years in the P.A.P. (excluding training period) they would be transferred to the Commando BNs. They shall undergo 2 months Commando Refresher Course. The Constables trained in the Commando Course shall stay in the Commando BNs for two years and thereafter shall be shifted to the district Police, G.R.P., Intelligence Wing etc. The period of their stay in P.A.P. or in Commando BNs can be reduced under the orders of the D.G.P. if the necessity so arises due to shortage of Constables in the districts.”

The aforesaid would indicate that an incumbent who is appointed in P.A.P. would initially undergo a training to be sent to P.A.P. thereafter to serve for two years excluding the training period whereupon they would be transferred to the Commando Training to undergo another training of two months refresher course to be followed by a tenure of two years in the Commando Btltn. where-after they would be shifted to the District Police G.R.P. Intelligence Wing etc. The period of stay in P.A.P. or Commando Btltn. could be reduced under the orders of the D.G.P. if the necessity arises due to shortage of Constables in the districts. This in essence is the crux of the policy regarding transfer of Constables from P.A.P. Commando Btltn. to the District. A number of writ petitions were filed before this Court which were disposed of by a common order dated 24.4.2012 largely on the strength of a statement suffered by the learned Additional A.G. Punjab who filed an affidavit of Shri M.C.Chhina, A.I.G. of Police (Welfare and Litigation, Punjab) wherein it has been stated as follows :-

“It is most respectfully submitted that on examination, the committee recommended the matter may be fairly dealt with in the following manner :-

- i. All constables who joined the Armed Wing pursuant to the rotational policy of the D.G.P. Office dated 12.11.1992 but before the enactment of the Police Act 2007 would be transferred to the districts provided they fulfill all the parameters as laid down under the policy of 1992 as amended from time to time.
- ii. All constables enlisted directly to specific cadres after the enactment of Punjab Police Act 2007 would stay in the respective cadre to which they are recruited.
- iii. At present, 1341 constables of Commando Bns are

eligible for transfer to District Police under the instructions of 18.8.2009. 12835 Constables have been selected in 2011 after the notification of Punjab Police Act 2007 for direct recruitment to District Police out of which 1326 candidates are awaiting joining instructions in view of the stay order of this Hon'ble Court. Results of another 977 vacancies are yet to be finalized. The total number of vacancies available in the District Police is nearly 3850, which means it could be possible to adjust both directly recruited candidates and the eligible commando constables.

5. That in all fairness, all of the 1341 constables of Commando Battalions who are eligible as per the instructions of DGP Punjab 18.8.2009 including the petitioners who fulfill the laid down criteria in this regard may be transferred to District Police. **The remnant constables who had joined the armed wing prior to the notification of the Punjab Police Act 2007 and fulfill all the parameters as laid down in the policy of 1992 governing transfer from Commando Battalions to District Police as modified from time to time may also be transferred to District Police subsequently."**

Learned counsel for the petitioners contend with reference to the aforesaid that the petitioners fell within the category of remnant constables who had joined the armed wing prior to the notification of the Punjab Police Act 2007 and fulfill all the parameters as laid down in the policy of 1992 and thus, were eligible for transfer from Commando Btln. to the District Police.

Learned counsel for the petitioners contend that since their writ petitions were disposed of on the strength of the aforesaid and the respondents not having sent the petitioners to District Police, they need to be proceeded under the Contempt of Courts Act for having violated the directions of the Writ Court.

Learned counsel for the respondents contend that respondents have passed the orders in individual cases and the persons who were eligible, were sent to the district, but the petitioners herein were found ineligible on account of their lesser tenure with the P.A.P. in terms of the policy extracted above.

Learned counsel for the petitioners contend that when writ petitions were filed and disposed of, the petitioners had already completed more than two years in terms of the aforesaid policy and were thus, eligible on all counts.

Learned counsel for the respondents in turn, contend that if the decision of the Committee on the basis of which the writ petitions were disposed of is scrutinized minutely, it does not imply that the Constables who had completed the tenure on the day of the filing of the writ or on the day of its decision, would be eligible, but the relevant date would be the date of coming into existence of the Act of 2007.

To understand this aspect, it would be necessary at the cost of repetition to reproduce the relevant few lines :-

“The remnant constables who had joined the armed wing prior to the notification of the Punjab Police Act 2007 and fulfill all the parameters as laid down in the policy of 1992 governing transfer from Commando Battalions to District Police as modified from time to time may also be transferred to District Police subsequently.”

A closer look at the aforesaid does lead to an impression that the

respondents wanted to convey that only those Constables who had joined the armed wing prior to the notification of the Punjab Police Act 2007 and fulfill all the parameters as laid down in the policy of 1992, would be held eligible. Whether it would be the date of promulgation of the Act or the date of the filing or decision of the writ petition, is a question for interpretation which the petitioners are entitled to get settled through appropriate proceeding by impugning the decision taken by the respondents in this regard.

For the present, the Court is of the opinion that in view of the possible interpretation placed by the respondents of the afore-extracted paras, they cannot be held liable for contempt.

The petitions are disposed of leaving the petitioners to their remedy under the law.

August 17, 2015
GD

(MAHESH GROVER)
JUDGE