

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1.

CWP No.13493 of 2010

Date of Decision: 11.03.2015

Ranjit Singh

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

2.

CWP No.23248 of 2011

Gurpreet Singh

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

3.

CWP No.5147 of 2014

Ankurdeep Singh

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

4.

CWP No.20588 of 2013

Mandeep Singh

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

5.

CWP No.24695 of 2012

Gaurav Sharma

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

6.

CWP No.21160 of 2012

Paramjit Kumar

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

In CWP No.13493 of 2010

Present: Mr.K.G. Chaudhary, Advocate, for the petitioner.

Mr.Harkesh Manuja, Addl. A.G. Punjab.

Mr.Sapan Dhir, Advocate,
for the applicants/private respondents.

Mr.S.K. Sharma (Patialewala), Advocate,
for respondent No.17.

Mr.Jatin Salwan, Advocate, for respondents No.35 & 36.

Mr.A.S. Cheema, Advocate, for applicant
(in CM No.15063 of 2011).

In CWP No.23248 of 2011

Present: Mr.K.G. Chaudhary, Advocate, for the petitioner.

Mr.Harkesh Manuja, Addl. A.G. Punjab.

In CWP No.5147 of 2014

Present: Mr.Sapan Dhir, Advocate, for the petitioner.

Mr.Harkesh Manuja, Addl. A.G. Punjab.

In CWP No.20588 of 2013

Present: Mr.S.K. Sharma (Patialewala), Advocate,
for the petitioner.

Mr.Harkesh Manuja, Addl. A.G. Punjab.

In CWP No.24695 of 2012

Present: Mr.S.K. Sharma (Patialewala), Advocate,
for the petitioner.

Mr.Harkesh Manuja, Addl. A.G. Punjab.

In CWP No.21160 of 2012

Present: Mr.S.K. Sharma (Patialewala), Advocate, and
Mr.Gurvinder Singh Sidhu, Advocate, for the petitioner.

Mr.Harkesh Manuja, Addl. A.G. Punjab.

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of a batch of six writ petitions bearing CWP No.13493 of 2010, CWP No.23248 of 2011, CWP No.5147 of 2014, CWP No.20588 of 2013, CWP No.24695 of 2012 and CWP No.21160 of 2012 in which similar prayer has been made by the petitioner. However, for the sake of convenience, the facts are being extracted from **CWP No.13493 of 2010** tilted as **“Ranjit Singh Vs. State of Punjab and others”** [for short ‘the Ist petition’].

In the Ist petition, the petitioner has prayed for a writ in the nature of mandamus seeking direction to the respondents, particularly to respondent No.3, to give appointment to the petitioner as Constable in Intelligence Wing of Punjab Police against 2 % reserve quota meant for the wards of Police personnel. It is alleged that he is the son of serving Head Constable Dilbagh Singh No.3-C/32 and had applied for the post of Constable in Intelligence Wing of Punjab Police in the year 2009. The father of the petitioner submitted an application to the Director General of Police to adjust the petitioner as Constable against 2% reserve quota meant for the wards of police personnel who had done commendable work on the anti terrorist front or otherwise. Allegedly, the case of the petitioner was considered by the office of Director General of police and it was ordered *“Heard. “Examine for rectt in Intelligence Wing as Int. Asstt”.* According to the petitioner, an order was passed on 5.4.2010 by the Additional Director General, Administration to the effect that *“post him to Int. Wing”*. Since, the petitioner was not being posted as ordered, the present writ petition was filed for seeking a mandamus.

Notice of motion was issued in this Ist petition on 2.8.2010. During the pendency of the writ petition, an order was passed by this Court on 15.9.2011, which reads as under: -

*“Let there be a show cause notice to the State Government to explain the legal sanctity behind providing 2% reservation for the wards of policemen for recruitment as Constables. Assistant Sub Inspectors and Inspectors out of direct recruitment quota which is apparently contrary to the decision of this Court in the case **“Jagtar Singh and others Vs. State of Punjab and others”** 2006(3) SLR 781?*

List on 20.1.2012.

Meanwhile, it is directed that till further orders, no appointment against the above stated 2% reserved posts shall be made in any rank.

Let a copy of this order be handed over to the learned Deputy Advocate General, Punjab for information and necessary compliance.”

The writ petition was admitted on 3.7.2012 with the following order: -

“Learned counsel for the parties have been heard.

To consider the prayer made in the present petition regarding appointment being sought by the petitioners to the posts of Constables in the Intelligence Wing under the 2% reservation quota meant for the wards of Police personnel's as per memo dated 11.6.1996, a question would arise as regards the legality of such reservations itself. Prima facie, I am of the view that such reservation is in direct conflict with the mandate of law as

contained in a judgment delivered by a Division Bench of this Court in case of “Jagtar Singh and others Vs. State of Punjab and others” 2006(3) SLR 781.

Admitted.

In view of the fact that there is an interim order restraining the appointments, if any, to be made against such 2% reservation posts, it is directed that the main writ petition be set down for final hearing within a period of six months.

A copy of this order be placed on each connected file.”

The recruitment process of Men Constables in the District Police Cadre was initiated vide advertisement dated 11.9.2010 for filling up 5293 vacancies which was later on enhanced to 5578 vide supplementary advertisement dated 4.12.2010. Similarly, vide advertisement dated 1.8.2011, 150 posts were sought to be filled by the Sub Inspector (both male and female) out of which 120 posts were meant for male and 30 posts were meant for female in the District cadre. The recruitment process was comprised of three parts, namely, written test, physical test and interview. The selection process in respect of the Constables and Sub Inspectors has already been over but for the candidates, who were claiming 2% reservation, because of the order passed by this Court on 15.9.2011 as their result has been withheld by the Department.

The other writ petitions, barring the Ist petition and the petitioner in CWP No.23248 of 2011, the other petitioners in CWP No.5147 of 2014, CWP No.20588 of 2013, CWP No.24695 of 2012 and CWP No.21160 of 2012, have been selected and are waiting for their appointment.

Undoubtedly, the order dated 15.9.2011 was passed by this Court on the ground that in view of a Division Bench judgment of this Court in the case of **“Jagtar Singh and others Vs. State of Punjab and others”** 2006(3) SLR 781, reservation cannot be granted, in terms of Rule 12.14(3) of the Punjab Police Rules, 1934, [for short, ‘the Rules’] on the ground of ‘descent’.

I would, first of all, deal with the judgment rendered in the case of **Jagtar Singh and others (Supra)**. In the said case, the petitioners were all wards/dependents of serving/retired officials of Punjab Police, who claimed to have made an application to the Director General of Police, Punjab seeking recruitment as a Constable in the Police Department under Rule 12.14(3) of the Rules. The said rule is reproduced as under: -

“12.14 Recruits – Status of – (1) Recruits shall be of good character and great care shall be taken in selecting men of a type suitable for police service from candidates presenting themselves for enrolment.

(2) xxxxxx

(3) sons and near relatives of persons who have done good service in the Punjab Police or in the Army shall, subject to the consideration imposed by Rule 12.12 have preference over the other candidates for police employment.”

The Supreme Court in the case of **“Yogender Pal Singh and others vs. Union of India and others”** 1987(1) SLR 379, held that Rule 12.14(3) of the Rules is unconstitutional, being violative of Article 16 of the Constitution, holding that a provision which confers a preferential right for appointment on the children or wards or other relatives of the police officers either in service or retired,

merely because they happen to be the children or wards or other relatives of such police officer would be offending Article 16 of the Constitution of India. There is no quarrel with the law laid down by this Court in **Jagtar Singh's Case (Supra)** relying upon the decision of the Supreme Court in the case of **Yogender Pal Singh and others (Supra)** in which the Supreme Court, dealing with the same provision, namely, Rule 12.14(3) of the Rules, decided a *lis* in respect of the recruitment in Delhi Police.

At the same time, in the said judgment, the Apex Court had held that it may be permissible to appoint a person, who is the son of a police officer, who dies in service or who is incapacitated while rendering service in the Police department.

Thus, it appears that the policy, which is sought to be invoked by the petitioners, came into being on 11.6.1996 and read as under: -

"The Governor of Punjab is pleased to accord sanction to 2% posts for the wards of deserving Policemen in the recruitment as Constables, Asstt. Sub Inspectors and Inspectors out of direct recruitment quota, only in respect of posts, which were previously meant for handicapped persons. The term "deserving" will cover wards of the following police personnel:-

- i. Who have suffered casualties of one or more the following relatives: -*
 - 1. Father*
 - 2. Mother*
 - 3. Sister/Brother*
 - 4. Son/daughter*
 - 5. Any other dependent family member*

OR

- ii. Who has suffered permanent disability on the action against terrorist or attack by terrorist.

OR

- iii. Who has been awarded President's Police Gallantry or Police Medal for Gallantry bravery in actions against the terrorists.

OR

- iv. Who has taken part in at least three encounters with terrorist.

OR

- v. Who otherwise in the opinion of the Director General of Police has been in forefront of the fight against terrorism.

The 'wards' proposed to be covered widow, son, dependent daughter, dependent brother sister or any other dependent family member.

The persons to be given such appointment proposed quota would be selected by the following committee, for which proposal may be sent to Govt.

- a) In respect of Constables:-

The Committee for the recruitment of Constables be constituted by the Director General of Police in accordance with instructions of Personnel Department.

- b) In respect of ASIs/Inspectors: -

The committee in respect of enlistment of Inspectors will be headed by the Principal Secretary Home, the other members of the

*Committee as per instructions of
Personnel Department.*

*4. This issue with the approval of CMH
vide Deptt. Of General Admn. (in Cabinet
Affairs Br.) Cabinet/2926, dated 30.5.1996.”*

Learned counsel for the petitioner has argued that the said policy reserving 2% posts for the wards of serving policemen is made in the wake of terrorism in the State of Punjab to encourage those policemen, who had shown exemplary bravery or have sacrificed their lives on the call of their duties while fighting with the terrorists. The policy, thus, recognizes reservation for the wards of the policemen in case of casualty, permanent disability or who have been awarded President's Police Gallantry medal or Police medal for Gallantry bravery in action against the terrorists and have taken part in at least three encounters with terrorists or who otherwise in the opinion of the Director General of Police has been in forefront of the fight against terrorism.

It is also submitted that the present writ petitions have been filed seeking a mandamus on the basis of the policy which is not under challenge. The judgment of the Supreme Court in the case of **“Secretary to the Govt. and another Vs. M. Senthil Kumar”** 2005(3) SCC 451 has been relied upon in which there was a reservation of 10% quota for the dependents of the serving personnel. The Supreme Court has held that it would not be open to the High Court to dismiss the application on the additional ground that the policy decision was unconstitutional overlooking the fact that respondent/applicant was seeking relief under the policy decision. Meaning thereby, the Supreme Court has held that if the

policy is not under challenge, the benefit has to be given to the person, who is invoking the policy.

Reverting back to the facts of the Ist petition, the entire emphasis of the counsel for the petitioner is on the order dated 5.4.2010 (Annexure P-2) by which the Additional Director General, Administration, has ordered for posting the petitioner in the Intelligence Wing. It is submitted that once the said order has been exercised by the concerned authority, the respondents cannot deny on the other grounds.

On the other hand, learned counsel appearing on behalf of the State has submitted that the Additional Director General, Administration has no power to pass such kind of an order which runs contrary to the provisions of the policy. It is submitted that the documents relied upon by the petitioner are Annexures P-5 and P-7, which do not fall within the purview of the policy because in Annexure P-5, it is mentioned by Tej Parkash Singh that Constable Dilbagh Singh No.82/598 (now Head Constable No.3-C/32) remained deployed on security duty with his father, late Chief Minister, Punjab S. Beant Singh as PSO in 1989-90 during his tenure as President, Punjab Pradesh Congress Committee at that crucial time when the terrorism in the State was on its peak. The second certificate Annexure P-7 is the commendation certificate given to Constable Dilbagh Singh No.82/598 by Inspector General of Police, Punjab Armed Police, Jalandhar Cantt. as per which the father of the petitioner has been rewarded ₹100/- in recognition of having done commendable job during his posting in the BBMB while deployed for security duty at the residence of Sh. SPS Rathore, IPS, Inspector General of Police, Haryana.

I have heard learned counsel for the parties and after examining the record, much less the policy, am of the considered opinion that the case of the petitioner in the Ist petition does not fall in any of the category provided in the policy which has been solely relied upon by the petitioner for the purpose of seeking mandamus.

In such circumstances, upholding the policy, I am of the considered opinion that right of mandamus is always issued if there is a vested right with the petitioner and a corresponding duty on the part of the respondent. Since there is no vested right with the petitioner, therefore, he cannot invoke the writ of mandamus for that right if there is no corresponding duty on the part of the respondent to perform it.

Now referring to CWP No.23248 of 2011, Mr.K.G. Chaudhary, Advocate, appearing on behalf of the petitioner, has submitted that due to inadvertence on his part, the writ petition was wrongly drafted to claim benefit of 2% quota, otherwise the petitioner belongs to BC category and is at Sr. No.3 in the waiting list and two persons before him in the waiting list have already been recruited. It is further submitted that four posts are lying vacant in view of the order passed by this Court on 15.9.2011. In this regard, learned counsel for the State, on instructions, has submitted that appropriate direction may be issued to the Department for considering the case of the petitioner in the category of BC and if there is any post lying vacant and the life of the waiting list has not expired, the case of the petitioner may be considered.

I order accordingly. Thus, the writ petition, namely, CWP No.23248 of 2011 is hereby disposed of with a direction to the respondents to consider the case of the petitioner in the said writ

VIVEK PAHWA
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I attest to the accuracy and
authenticity of this document

petition, in the category of BC in which he is in the waiting list and if any post is lying vacant, the case of the petitioner be considered in accordance with law.

The other writ petitions, namely, CWP No.5147 of 2014, CWP No.20588 of 2013, CWP No.24695 of 2012 and CWP No.21160 of 2012, are filed by the selected candidates, who are waiting for their appointment. The only hitch before the State Government is because of the order dated 15.9.2011 in which the question was raised as to whether 2% reservation can be maintainable in view of the Division Bench judgment in the case of **Jagtar Singh and others (Supra)**. As I have already held that there is no quarrel with the judgment of **Jagtar Singh and others (Supra)**, but had there been the reservation only on the basis of 'descent' because the reservation on the basis of 'descent' as provided under Article 16(2) of the Constitution of India has already been struck off by the Supreme Court in the case of **Yogender Pal Singh and others (Supra)**, then the said reservation could not have been claimed by the selected candidates but the reservation has been provided by virtue of a policy, referred to above, which has not been challenged either by the petitioner or the respondents, therefore, keeping in view the law laid down by the Supreme Court in the case of **Secretary to the Govt. and another (Supra)**, it is directed that the said policy would operate and the respondents/State shall consider the case of the petitioners in the remaining writ petitions, namely, CWP No.5147 of 2014, CWP No.20588 of 2013, CWP No.24695 of 2012 and CWP No.21160 of 2012 for the purpose of issuing appointment letters to them in accordance with law.

With these observations, all the writ petitions, namely, CWP No.5147 of 2014, CWP No.20588 of 2013, CWP No.24695 of 2012 and CWP No.21160 of 2012 are hereby disposed of.

Before parting, it would be relevant to mention that in the Ist petition an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 [for short 'the CPC] has been filed by some of the persons, who were also selected and tried to intervene in this petition. Though there is no such writ petition on their behalf but keeping in view the fact that they are similarly situated persons with those candidates who had filed their separate writ petitions, in which it is pleaded that they have been selected but appointment letters are not issued to them because of the order passed by this Court on 15.9.2011, their cases be also considered by the State while considering the case of the writ petitioners.

11.03.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**