

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

**CWP No.16191 of 1997  
Date of decision: 23.12.2016**

**Jagtar Singh and others**

**..Petitioners**

**Versus**

**State of Punjab and others**

**..Respondents**

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

**Present:** Mr. Amandeep Singh, Advocate  
for the petitioners.

Mr. Rupam Aggarwal, DAG, Punjab  
for respondents -State.

Mr. Ajay Pal Singh Rehan, Advocate  
for respondents No.1147, 1345, 1554, 1628, 1740,  
1172, 1779, 1858, 1873, 1978, 2039, 2079, 2116,  
2142, 2167, 2260 and 2323.

Mr. Gautam Thapar, Advocate  
for respondents No. 198, 691, 1046, 1153, 1511, 1541,  
1563, 1854 , 2210, 2372.

Mr. Pritam Saini, Advocate  
for respondents No.2447 to 2485.

Mr. Gurcharan Singh, Advocate for  
Ms. Neha Mahajan, Advocate  
for the applicants in CM Nos.19352-CWP of 2002, 4831  
and 4854-CWP of 2016.

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**Daya Chaudhary, J.**

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned orders of termination of the petitioners being arbitrary, illegal and passed without any application of mind by misinterpreting the directions issued by this Court. A further prayer has also been made for issuance of a direction to the respondents to make

recruitment of Constables not to confine only with SPO's but by considering rights of the petitioners.

Briefly, the facts of the case as made out in the present writ petition are that an advertisement was issued for inviting applications for recruitment of Constables in PAP, which was published in 'Daily Tribune' dated 30.09.1993. In response to said advertisement, the petitioners finding themselves to be eligible and qualified applied for the post of Constables. They were found fit in the physical test and thereafter, they were called for written test and thereafter, for interview. There were total 5159 vacancies and a list of 3630 candidates was prepared but it was extended upto 4326 candidates out of general candidates and 696 posts were kept vacant for reserved categories, for which the candidates were not available. A decision was taken by the respondents-State to fill up the vacancies by way of promotion from SPO's. The decision was taken by the DGP to promote SPO's on the basis of seniority without taking into consideration the requirement of physical and mental capability which was contrary to Rules. The Selection Committee did not only make selection but the persons so selected were medically examined and their antecedents were also sent for verification. It was decided to fill up 5159 vacancies of the Constables after doing Police verification. Some of the persons were ignored in spite of their seniority as character verification of those candidates could not be done and they could not be appointed. There was reservation of 25% of Scheduled castes category, 5% of Backward Class category, 15% of Ex-servicemen Category and their dependents and 1% for freedom fighter category. The number of vacancies were curtailed.

The grievance of the petitioners is that they were not only selected but qualified the physical as well as written test and their medical examination was also conducted. They were issued constabulary numbers and all formalities were also completed. They were also deputed for training in PAP Training Centre, Jalandhar, which was successfully completed. All the petitioners completed three years of service and automatically confirmed. Some of the persons, who were selected in pursuance of advertisement but could not join because of decision of DGP Punjab to promote SPO's filed **CWP No.12860 of 1996** titled as **Kulwant Singh and others vs. State of Punjab and others** for issuance of directions to the respondents to appoint them as Constables and also for quashing of appointment of private respondents No.4 to 7, who were alleged to have been appointed by back-door entry and without having been selected by the Departmental Selection Committee. The petitioners were not impleaded as party in that writ petition. Respondents No.4 to 7 in that petition were of Sports Category and they did not belong to category to which the petitioners belong to. Said petition was disposed of vide order dated 17.10.1996 by issuing directions that the department shall publish the merit list in the newspaper having wide circulation in the State of Punjab and steps will be taken to dispense with the services of those candidates, who were appointed by passing the merit. After issuing show cause notices and also by giving opportunity of hearing, the exercise was to be completed within a period of three months. It was also directed that the consequential vacancies, which became available were to be filled up by appointing candidates strictly in accordance with the merit keeping in view the reservation, if any. A

direction was also issued that any appointment made by relaxing the ban imposed by the Government, shall be subject to any policy decision regarding the currency of the panel prepared on the basis of selection already made. Regarding SPO's, it was left to the Government to make policy decision regarding their appointment. In pursuance of that direction, the Selection Committee published a selection list in the daily newspaper dated 06.03.1997. The respondents issued notices to the petitioners to show cause as to why their services be not terminated. The petitioners approached Hon'ble the Apex Court by raising the ground that the judgment passed by this Court in CWP No.12860 of 1996 shall not have any affect upon them and it was dismissed by Hon'ble the Apex Court in limine and the petitioners were advised to approach the High Court, if so needed. Thereafter, the petitioners made a request for supplying information to submit reply as in absence thereof, no detail reply could be filed. The interim replies to show cause notices were filed so that the exparte proceedings may not be initiated against them. Orders of termination of the petitioners were passed by the respondents. Thereafter, the petitioners filed CWP No.16191 of 1997 before this Court challenging their orders of termination. During pendency of said petition, respondents supplied a list of 3070 candidates, who were recruited as Constables in the recruitment held in the month of October/December, 1993 and total 3535 SPOs were promoted as Constables. This Court ordered for constitution of Committee to make recruitment of SPOs. The appointment letters were issued to the candidates upto merit No.3070 and the appointments of the petitioners were cancelled without any reason and without application of mind, which is

subject matter of challenge.

Learned counsel for the petitioners submits that the action of respondents in terminating the services of the petitioners, who belong to reserve category of Scheduled Caste and Backward Class, is contrary to instructions issued by State Government as 25% posts of Constables are reserved for Scheduled Caste candidates, 5% for Backward Class, 15% for Ex-servicemen category and their dependents. The quota of said reserved categories was not complete. The respondents are bound to implement Government instructions on reservation. Neither the backlog of the numbers of Scheduled castes, Backward Class, Ex-servicemen Category have been completed nor proper representation has been given. As per direction issued by this Court in **Kulwant Singh's case (supra)**, the candidates were to be appointed on the basis of merit subject to the reservation policy but said directions were not complied with, which amounts to disobedience of the orders of the Court. Learned counsel further submits that the Punjab Police Rules do not provide for promotion from any rank to the post of Constable and the promotion orders of respondents were void ab-initio. The vacancies given to them cannot have any affect of curtailing the vacancies against which, the petitioners were selected and appointed. Learned counsel also submits that the respondents had made selection out of SPOs by constituting the Departmental Selection Committee but in that selection, no person other than the SPOs were allowed to compete. The classification made by the respondents was hit by equality clause as mentioned in Article 14 of the Constitution of India. Learned counsel also submits that the respondents did not apply their mind while passing the orders of termination as issuing of

show cause notices was merely a formality and the orders of termination were passed only on the ground that direction of this Court is there whereas no such direction was there. The direction issued by this Court was misinterpreted as only direction was to make appointment on the basis of merit list prepared by the recruitment Committee subject to reservation to different categories. It is also the argument of learned counsel for the petitioners that the respondents acted contrary to the instructions and did not follow the relevant rules. The services of the petitioners were terminated, who belong to Scheduled Castes and Backward Classes. The action of respondents in restricting the appointment of the Constables upto merit No.3070 was not legal and valid as all the selected candidates were entitled to be appointed against the existing vacancies. Some of the candidates even did not join and there was no justification not to go beyond merit list No.3070. Learned counsel also submits that the selection was curtailed not only on the ground that there was no vacancy or it was decided by the respondents-State to keep the posts vacant but was curtailed just to give these posts to SPOs. At the end, learned counsel for the petitioners submits that the action of respondents in limiting the selection upto merit No.3070 is arbitrary, discriminatory and against the law laid down in the directions issued by this Court. The vacancies were available at that time and today also and the petitioners have the right to be considered against the vacant posts.

Learned State counsel submits that advertisement dated 30.09.1993 did not contain the number of vacancies but approximately 5159 vacancies were anticipated due to creation of five Indian Reserve Battalions

vide letter dated 21.12.1993 issued by Government of Punjab. It was mentioned in said letter that the preference of recruitment be given to the serving Home Guards and SPOs subject to fulfilling the terms and conditions relating to physical norms. Total 2925 vacancies were consumed from serving SPOs and 2234 vacancies were left to be filled up from general public candidates. Learned State counsel further submits that in compliance of order dated 17.10.1996 passed in CWP No.12860 of 1996 filed by Kulwant Singh and others, total 71 candidates were allotted constabulary numbers by passing the merit were terminated in the year 1997 including the Constables, who were earlier dismissed/resigned from their posts. The Director General of Police, Punjab vide office memo dated 07.08.1997 had directed to create 70 vacancies after dispensing with the services of persons recruited out of turn and remaining waiting list stand invalidated. Accordingly, 70 candidates including 10 candidates, whose services were dispensed with, allotted constabulary numbers. In the said process, total 2588 candidates upto merit No.3070 from all categories i.e., General, Scheduled Caste, E.B.C., Freedom Fighter, E.S.M., were appointed as per their respective roster points.

Heard arguments of learned counsel for the parties and have also perused the documents available on the file and the written submissions made by learned counsel for the petitioners.

Admittedly, an advertisement was issued on 30.09.1993 for recruitment of Constables in PAP. Total 5159 posts of Constables in Armed Battalions were to be filled up. Total 3630 candidates were selected through general recruitment held in the year 1993 and their merit was extended upto

Sr. No.4326 and 2925 SPOs were to be absorbed, meaning thereby, constabulary numbers to 2925 SPOs selected by the Board was allotted and 2234 vacancies were left for general candidates. CWP No.11874 of 1995 was filed by Kulwant Singh and others selected candidates through general recruitment in the year 1993 with a prayer to allot constabulary number in PAP. The said petition along with 12 other writ petitions was disposed of vide judgment dated 17.10.1996 with the following directions:

“We, therefore, dispose of the writ petitions with the following directions:-

(i) The department shall publish the merit list in newspaper (Punjabi Tribune, Dainik TRIBUNAL (Hindi edition) and Punjabi Kesri (Punjabi edition) having wide circulation in the State of Punjab.

(ii) The Department shall take steps to dispense with the services of those who have been appointed by passing the merit. This would necessarily involves giving of show cause notice to such persons and passing of appropriate orders after giving opportunity of hearing to such persons. This exercise shall be completed within next three months.

(iii) The consequential vacancies which may become available shall be filled by appointing candidates strictly in accordance with the merit keeping in view the reservation, if any, and:

(iv) In view of the statement made by learned Deputy

Advocate General, Punjab that there is prohibition of future recruitment, we direct the department that in case, any appointment is made in relaxation of the ban imposed by the Government then merit list prepared by the department shall be taken into consideration while appointing the candidates. This shall be subject to any policy decision regarding the currency of the panel prepared on the basis of selection already made. With respect to the SPOs, we leave it open to the Government to take policy decision regarding their appointment.”

In compliance of said directions issued by this Court, services of 77 candidates, who were allotted constabulary number by passing the merit were terminated in the year 1997 and 70 vacancies were created after dispensing with the services of persons recruited out of turn. It was directed to enlist the persons, who were in the waiting list, as per seniority list. In compliance of order, 70 candidates including 10 candidates, whose services were dispensed with, were allotted constabulary numbers and merit reached upto 3070 from all sources i.e., General, Scheduled Caste, E.B.C., Freedom Fighter, E.S.M., were appointed as per their respective roster points.

Thereafter, as per order issued by DGP, Punjab vide memo dated 17.06.1997, the remaining merit list i.e., after Sr. No.3070 was invalidated and no constabulary number was allotted to any other candidate. Out of merit list of 3630 candidates, whose names were placed after Sr. No.3070, filed COCP No.801 of 1997 claiming therein that the department

had not implemented the judgment dated 17.10.1996. The same was dismissed on 22.10.1997 by holding that the other petitioners, who were not given the constabulary number were lower in merit than the last candidate recruited at Sr. No.3070.

Thereafter SLP No.8939 of 2002 was filed before Hon'ble the Apex Court but the same was dismissed on 07.10.2002. The relevant portion of the judgment is reproduced as under:

“In our view the High Court has rightly rejected the contempt petition, because by its order dated 17, October 1996. The High Court has specifically made it clear that consideration of the merit list prepared by the department for appointment would be subject to any policy decision regarding the currency of the panel. In this view of the matter, if the period of panel prepared on the basis of the selection has expired then there is no question of consideration of the same for appointments.

Hence, this petition is dismissed.”

Candidate, namely, Rajinder Singh and 41 other candidates, who were placed after merit Sr. No.3070, also filed CWP No.18012 of 1997 before this Court and the same was dismissed. Thereafter, LPA Nos.156 of 2006, 157 of 2008 and 210 of 2008 were filed by the candidates, which were also dismissed. Thereafter, SLP (Civil) No.35016/35017 of 2009 was filed by the candidate, namely, Sucha Singh and 63 others before Hon'ble the Supreme Court against order dated 07.07.2009, which was also

dismissed on 10.09.2014. The order passed by Hon'ble the Apex Court is reproduced as under:

“In the scenario, noticed hereinabove, even though we were originally inclined to allow the learned counsel for the appellants to implead them as party-respondents, and that could have been easily done, as their details could have been obtained from the State Government. But what persuaded us to dissuade ourselves from the aforesaid process is that, those 353 candidates who have been appointed during the ban period must have by now rendered about one and a half decades of service. Their rights have been crystallized. It would not be appropriate at this juncture to summon them in a process of litigation, wherein, their initial appointment as constables has been assailed. We, therefore, chose not to follow the aforesaid course. It is not possible for us to accept, that the claim of the appellants seeking directions for their appointments against posts filled by 353 constables during the ban-period, can be accepted at this belated stage.

For the reasons recorded hereinabove, we find no merit in these appeals, and the same are accordingly dismissed.”

It has also been brought to the notice of this Court by learned

State counsel that total 902 constables were recruited in the Punjab Police during the ban period imposed by the State Government. Out of said 902 constables, 484 SPOs were given constabulary number in compliance of orders passed by this Court and 45 officials were recruited on compassionate ground. Out of remaining 373 candidates, two were inadvertently counted twice, order of one official was cancelled, one died, four were dismissed, eight resigned from their services, three officials did not join their duties and one official was against recruited on compassionate ground. Ex-post facto approval was given by the State for revival of 353 posts of Constables vide letter dated 29.06.2010.

From the record available on the file, it appears that services of one Ex-Constable Jagtar Singh and 57 others were dispensed with in compliance of judgment dated 17.10.1996, filed CWP No.16191 of 1997. The details of said persons was given to this Court on 29.09.2016 whose merit serial numbers come after Sr. No.3070.

Learned State counsel has also supplied the details of 159 candidates, who were not appointed due to various reasons. The details of categories is given as under:

| <b><i>Sr. No.</i></b> | <b><i>Category</i></b> | <b><i>No. of Candidates upto merit No.3070</i></b> | <b><i>No. of candidates after merit No.3070</i></b> | <b><i>Total</i></b> |
|-----------------------|------------------------|----------------------------------------------------|-----------------------------------------------------|---------------------|
| 1                     | General                | 79                                                 | 42                                                  | 121                 |
| 2                     | SC                     | 25                                                 | 6                                                   | 31                  |
| 3                     | EBC                    | 2                                                  | 0                                                   | 2                   |
| 4                     | E/S                    | 5                                                  | 0                                                   | 5                   |
|                       | Total                  | 111                                                | 48                                                  | 159                 |

The details as given above shows that total vacancies of general category are 121, SC-31, EBC-2 and E/S-5 which comes to 159. It

is also apparent that the petitioners were appointed and continued to work for a period of three years and thereafter their services were terminated. The persons, who were lower in merit and were after Sr. No.3070, were appointed. The petitioner can be considered against the vacant posts. As per chart supplied by learned State counsel, total 159 posts have been reflected as vacant and the categories thereof have also been specified.

Accordingly, the present writ petition is disposed of with a direction to the respondents to consider the petitioners for appointment against 159 vacant posts against their respective categories, in case they are otherwise eligible. The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order. However, it is directed that the petitioners shall not be entitled for any financial benefits for the period, during which, the writ petition remained pending. In case, the petitioners are still aggrieved in any manner, they are at liberty to avail the appropriate remedy.

23.12.2016  
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(DAYA CHAUDHARY)  
JUDGE

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|---------------------------|-------------|
| Whether speaking/reasoned | √<br>Yes/No |
| Whether Reportable        | √<br>Yes/No |