

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

**CWP No.2722 of 2012**  
**Reserved on :25.05.2016**  
**Date of decision :08.07.2016**

Shamsher Singh & others

... Petitioners

Versus

State of Punjab & others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA**

Present : Mr.K.S.Sidhu, Advocate  
Mr.Navkiran Singh, Advocate  
Mr.Gagneshwar Walia, Advocate  
Mr.G.S.Sandhu, Advocate,  
Mr.B.S.Banga, Advocate, for  
Mr.Munsur Ali, Advocate,  
for the petitioners.

Mr.L.S.Virk, Addl.A.G., Punjab.

**G.S. Sandhawalia , J.**

The present judgment shall dispose of cases bearing, C.W.P. Nos. 2722, 1962, 2389, 2629, 9242, 2723, 3552, 3261, 3129, 3387, 2904, 4239, 5712, 5726, 13467, 20049, 18725, 18575 of 2012, C.W.P. Nos.20611, 22285, 22304 of 2011, C.W.P. Nos. 24321, 28068 of 2013 and C.W.P. No.5422 of 2014, involving common questions of law and facts. However, to dictate orders, facts have been taken from CWP-2722-2012 titled *Shamsher Singh & others Vs. State of Punjab & others*.

2. The petitioners challenge the order dated 13.01.2012 (Annexure P14) whereby respondent No.1 rejected the claim of the petitioners for absorption as Constables, while granting sanction for adjustment of 1120 unsuitable Special Police Officers (for short, 'SPO') in the Punjab Home Guards (for short, 'PHG'), as Home Guard Volunteers

(for short, the 'HGV'), as per their willingness. A condition was put that on account of non-joining, their services were to be dispensed with. Challenge is also raised to the order dated 25.01.2012 (Annexure P15 Colly.) wherein the petitioners were called for the screening for conversion as HGV. Accordingly, a writ of mandamus is sought for allotting the constabulary numbers to the petitioners after giving them necessary relaxation, in view of the recommendations of the Committee dated 18.04.2011 (Annexure P12).

3. The said claim of the petitioner is based on account of the fact that similarly situated persons have already been allowed the said benefit. The last prayer made is that the petitioners be regularized as 4<sup>th</sup> Class Employees, in view of the decision taken by the Government on 18.03.2011 (Annexure P16).

4. It is the pleaded case of the petitioners that in view of the standing order dated 05/10.10.1990 (Annexure P1), issued by the Director General of Police, Punjab (DGP), they were recruited as SPOs. Thereafter, another standing order No.1 of 1997 (Annexure P2) was issued whereby there was a provision for relaxation for the recruitment of SPOs in the rank of Constables, provided their work and conduct was found satisfactory. It was the case of the petitioners that they were appointed between the years 1990 to 1995 and therefore, were entitled to be absorbed. They claim to have passed the written test but could not be selected due to not having the requisite physical requirement and claimed discrimination on account of the fact that various others had been granted exemption. It is their case that advertisement of posts in the District police and for the Punjab Armed

Police had been issued and there were sufficient vacancies against which they could be adjusted.

5. It is the case of the petitioners that they had approached this Court by way of filing CWP-16441, 11821 & 18070-2010, whereby the matter was referred to the Officers' Committee. The said Committee, vide proceedings dated 18.04.2011 (Annexure P12) recommended their case. Similarly, orders had been passed for conversion of SPOs into Punjab HGV, which was unfair and was challenged by filing CWP-16438-2011, which was again referred to the Committee. The impugned order had been passed without taking into consideration the recommendations of the Committee which had recommended relaxation or in the alternative, a dying cadre to be created. Reliance also, was, accordingly, placed upon the regularization policy whereby daily wagers and work-charged employees, who had completed ten years service upto 2006, were to be regularized, in view of the decision of the Apex Court in Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC 1.

6. The State, in its written statement, has taken the plea that the appointments were made under Section 17 of the Police Act, 1861, between the years 1992-1995, in various districts of Amritsar, Jalandhar, Ludhiana, Khanna and Ropar Districts, on daily wages, due to terrorism in the State. Some of the SPOs were absorbed as Constables on out of turn of their seniority due to various reasons, i.e., good work against the terrorists, suffered at the hands of the terrorists etc. Their out of turn absorption were challenged by the others who were their seniors, on the ground that they

were not considered while allotting the constabulary numbers to their juniors. A bunch of 35 cases were disposed of on 12.12.1996 in **SPO Lal Mohammed & others Vs. Punjab State 1996 (6) SLR 409**. Keeping in view the said directions, the judgment had been implemented and all the SPOs working in the State were considered for regularization for the post of Constables in July, 1997. Out of 16000 SPOs, 4647 had been found suitable for the post of Constables. Those who had passed the suitability test for the post of Constables in the year 1997, had been allotted the constabulary numbers and had been granted the benefit of notional pay fixation, as per **Lal Mohammed's case** (supra). The petitioners were not found suitable for the post of Constables in the year 1997.

7. They could not pass the suitability test again in the years 2000, 2001-02 & 2004, as per reduced standards of suitability test and 2647 SPOs were found unsuitable. Accordingly, vide order dated 16.03.2005, directions were issued to relieve the said SPOs on 30.04.2005, with immediate effect to join as PHG. The said SPOs had filed 160 writ petitions and the lead case was CWP-10291-2005 titled *Malkiat Singh & others Vs. State of Punjab*, which was dismissed on 21.08.2006 (Annexure R1).

8. The respondents issued notices to the petitioners to submit their willingness but they did not submit any reply to join. The State Government passed the order dated 04.06.2009 that there was no regular post of SPOs in the Police Department and the petitioners had been given 4 chances to pass the suitability test for the post of Constables. In view of the orders passed by this Court in CWP-16410, 16441, 12885 & 11821-2010

and 253-2009, the matter had been referred to the Officers' Committee vide various orders dated 19.04.2010, 20.08.2010 and 31.01.2011. The Officers' Committee recommended on 18.04.2011 as under:

*“(i) either absorbed as constables after giving them necessary relaxation;*

*OR*

*(i) a special dying cadre of SPOs should be created within the Punjab Police with a pay equivalent to atleast Punjab home Guards Volunteers, but in a regular pay scale. All SPOs recruited as such before 31.12.1994 should be absorbed permanently in this dying cadre.*

*The above recommendation is being made as the remuneration being given to the SPOs is only @ 110/- per day (equivalent to Rs. 3300/- per month) after atleast 15-20 years of service, which is highly disproportionate to the services rendered by them in terms of both, nature and length of service.”*

9. Thereafter, vide order dated 17.02.2012, sanction was accorded for absorption of 1120 unsuitable SPOs in the PHG. Relaxation to the extent of the following was given, both in the physical measurements, education and the upper age limit, along with the physical tests:

*The following relaxations were given to SPOs in their physical measurement, education and upper age limit:-*

- |                            |                                     |
|----------------------------|-------------------------------------|
| <i>i) Height</i>           | <i>2”</i>                           |
| <i>ii) Chest</i>           | <i>3”-3”</i>                        |
| <i>iii) Education</i>      | <i>Middle/Matric (with Punjabi)</i> |
| <i>iv) Upper age limit</i> | <i>5 years.</i>                     |

*Further, the standards of physical tests were also relaxed, comparison of the normal and the relaxed standards was as:-*

*Physical test for Constables*

| Regular<br>recruitment<br>Standard<br>(Men) | Relaxed standard for SPOs (Men) |                        |             |                                  |
|---------------------------------------------|---------------------------------|------------------------|-------------|----------------------------------|
| S.No.                                       | Event                           | Qualifying<br>standard | 18-30 years | 30 years<br>above                |
| 1.                                          | 100 M. Run                      | 15.0 Sec.              | 20 Sec.     | 1200 M<br>Run/walk<br>in 14 Mts. |
| 2.                                          | Broad Jump                      | 3.80 M                 | 3.20 M      | Sit or<br>Jump=10                |
| 3.                                          | Shot Put                        | 5.60 M                 | 5 M         | -                                |
| 4.                                          | High Jump                       | 1.20 M                 | .90 M       | -                                |
| 5.                                          | 800 M Run                       | 2.50 Mts.              | 4 Mts       | -                                |

Similarly physical test standard for Lady SPOs were relaxed as below:-

| Regular<br>recruitment<br>Standard<br>18-35 years for<br>Women | Relaxed standard for Women SPOs |                        |                |                               |
|----------------------------------------------------------------|---------------------------------|------------------------|----------------|-------------------------------|
| S.No.                                                          | Event                           | Qualifying<br>standard | 18-30<br>years | 30 years<br>above             |
| 1.                                                             | 100 M. Run                      | 16.5 Sec.              | 24 Sec.        | 800MRun/<br>walk = 12<br>Mts. |
| 2.                                                             | Broad Jump                      | 3.25 M                 | 2 ½ Mtr        | Sit Up=05<br>OR<br>Jump=24    |
| 3.                                                             | Shot Put                        | 4.50 M                 | 3 Mtr          | -                             |
| 4.                                                             | High Jump                       | 1.05 M                 | .75 M          | -                             |
| 5.                                                             | 200 M Run                       | 35.0 Sec.              | 1 Mts          | -                             |

10. It was also pleaded that monthly wages of PHG was Rs.11000/- whereas the SPOs were getting only Rs.6600/- per month. The relaxation accorded to others in the year 1992-94 was justified on the ground that it was done 18-20 years back, during the terrorism in the State and policy decision had been taken subsequently. The absorption had to be done as per

the standing order No.1 (Annexure P2) and there could be no relaxation in the said orders. It was, accordingly, defended that 4647 SPOs had passed the suitability test in the year 1997, 400 had passed in the year 2000, 4500 had passed in the year 2002 and 1408 had passed in the year 2004 and no discrimination had been made with the petitioners. The petitioners had been granted relaxation up to middle standards in Punjabi but had not been found eligible and 4 chances had been given to them between the years 1997 to 2004. Reference was made to the Constables who had been absorbed in the year 1993, which was at prior point of time. The private respondents No.8 to 13 had been appointed as Constables, in view of the notification dated 02.03.2004. The petitioners were not entitled to claim 50% share in the posts which had been advertised because they were not eligible/suitable. The report of the Officers' Committee had not been accepted by the State Government vide the impugned order. 2647 SPOs had already joined in the PHG in the year 2005-06, in compliance of the letter dated 16.03.2005 and sanction had also been granted for the adjustment of the 1120 unsuitable SPOs, for their joining in the PHG. The reservation claimed to the extent of 50% in the posts advertised was denied on the ground that the same was only to be given to the suitable SPOs and the last test was conducted in the year 2004 and 1408 SPOs had been found suitable. Now, no suitable SPOs were available and therefore, the petitioners had no cause of action. The instructions dated 18.04.2011, passed in the meeting of the Cabinet of Ministers, was not applicable in the case of the petitioners. The petitioners had been allowed to join as PHG's and therefore, there was no cause of

action. Resultantly, it was pleaded that the writ petitions be dismissed.

11. No replication was filed to the written statement, filed by the State. Only a CM application was filed, giving details of various persons who were given the benefit of exemption, vide orders passed between April, 2010 to May, 2010 (Annexures A2 to A11) wherein they had been granted exemption, as per the standing order and absorbed as Constables.

12. Counsel for the petitioners, accordingly, raised the argument that there was discrimination since relaxation had been granted to similarly situated persons by absorbing them, as per the standing order (Annexure P2) and therefore, the same benefit is to be granted to the petitioners also. Reliance was also placed upon the order passed on 07.07.2014 in the present set of cases wherein details of how many recruitments had been effected after the year 2004, was asked for. Reliance was placed upon the reply furnished by way of affidavit to submit that over 18000 Constables had been appointed with the Punjab Armed Police and the District Police and the other wings of the respondents since 2004. Therefore, the petitioners were liable to be absorbed and reliance was placed upon the judgment of the Apex Court in **Nihal Singh & others Vs. State of Punjab & others 2013 (14) SCC 65** to submit that the petitioners are entitled for the same benefits, as directed by the Apex Court.

13. Mr.L.S.Virk, Additional Advocate General, Punjab, has submitted that the petitioners have been given several opportunities and only in case they were found suitable, they have to be absorbed. It is not their case that they have not been considered and therefore, they are not



entitled to claim absorption, as a matter of right. Reliance was placed upon the letter dated 15/16.03.2005 to submit that on account of the orders passed in CWP-13782-2001 titled *Jarnail Singh Vs. State of Punjab*, decided on 28.11.2002, last chance was directed to the persons who had earlier failed to qualify. It was, accordingly, submitted that the said order was subject matter of challenge in the case of Malkiat Singh (supra). The order of the Division Bench had been complied with in as much as the petitioners were being absorbed as Home Guards, who had three times the pay of the SPO's. The judgment in Nihal Singh's case (supra) was sought to be distinguished on the ground that in that case, the relationship of employer-employee had been denied and the consideration for absorption had never been undertaken.

14. The position was different in the present case and as per the directions in Ranjit Singh's case (supra), the competent authority was to consider the case of the Committee and it was not binding, as such. The competent authority being the State Government, had rejected the claim of absorption and the grant of constabulary numbers. Resultantly, keeping in view the observations in Lal Mohammed's case (supra), the standard of physical test was reduced but still, the petitioners had not made the cut. Resultantly, the examples of exemptions which have been given were sought to be justified on the ground that the same were done in view of the outstanding performance of certain SPO's. The instructions had further been issued that if any SPO had been found unsuitable, he would be issued a show cause notice for reverting him to the rank of the SPOs. Accordingly,

Article 14 of the Constitution of India, being positive concept and not a negative concept, it was submitted that merely because the others have been granted exemption, it could not be directed as a rule that all the persons are entitled for absorption.

15. It is further the stand of the State that the said benefits, as directed by the Apex Court in **Grah Rakshak, Home Guards Welfare Association Vs. State of H.P. & others 2015 (6) SCC 247** would also be given to the petitioners whereby the Home Guard Volunteers were to report before the Commandant, Home Guards. It was further clarified that 290 SPOs who had been mentioned by the Officers Committee were not absorbed after 21.08.2006, the date of the judgment of the Division Bench.

16. After hearing counsel for the parties, this Court is of the opinion that the dispute in question actually stands settled in view of the decision of the Division Bench in Malkiat Singh's case (supra). The Division Bench noticed that the SPOs had been directed to join as Home Guard Volunteers and had to report to the concerned department's Commandant of Home Guards, within one month of the date of relieving, in view of the orders dated 16.03.2005, taken by the State Government. The said order reads as under:

“Whereas some Special Police Officers were appointed in Punjab on daily wages basis, under section 17 of the Police Act, 1861, during the days of Militancy;

And whereas suitability tests of those S.P.Os were conducted with relaxed conditions in the years 1997 and 2002 to adjust them as Constables in the Punjab Police, but some SPOs were not found suitable from adjustment as constable;

And whereas in CWP No.13782 of 2001, the Hon'ble

Punjab & Haryana High Court passed the following orders on 28.11.2002:-

“Thus, this submission of the petitioners is accepted to the limited extent and respondents are hereby directed to conduct a suitability test for the petitioners including grant of last chance to the persons who earlier failed to qualify the same as a final measure for awarding of constabulary numbers and their posting as constables in the Punjab Police. The respondents shall abide by their directions of the letter and order of the Hon'ble Apex Court.”

And whereas even after giving the last chance under the above direction of the Hon'ble High Court, 2647 S.P.Os mentioned in the Annexure have been found unsuitable for their absorption as constables in the Punjab Police;

Now, therefore, the Governor of Punjab is pleased to relieve these 2647 S.P.Os with effect from the afternoon of 30.4.2005.

The Governor of Punjab is further pleased to order to appoint the above persons as Home Guards Volunteers in the Punjab Home Guards, if they are willing to become the Home Guard Volunteers. Those willing to become Home Guards Volunteers will have to report to the concerned District Commander of Punjab Home Guards within one month from the date of relieving them as S.P.Os.

The budget allocation of Police Department, which is being utilised for making payment of these S.P.Os will also be transferred from Punjab Police to Punjab Home Guards with effect from the above said date.

Dated, Chandigarh the  
15<sup>th</sup> March 2005

A.K.Dubey  
Principal Secretary to  
Government of Punjab  
Department of Home  
Affairs & Justice”

17. Keeping in view the judgment of the Apex Court in *Ghan Sham Sunder & others Vs. State of Punjab & others (2004) 9 SCC 508* and the judgment in Uma Devi's case (supra), the following questions were formulated by the Division Bench:

- (i) Whether the petitioners have acquired a right on account of service of about 15 years to be appointed as constables without being subjected to any suitability test.
- (ii) Whether the petitioners have right to continue as SPOs on being regularized in service.
- (iii) Whether the petitioners could be deputed as Home Guards without protection of their existing pay or other service conditions.”

18. It was, accordingly, held that the petitioners had no indefeasible right to be appointed as constables once they had failed to qualify the test, repeatedly.

19. Accordingly, despite the long service, the right to continue as SPOs could not be accepted. However, directions were issued that they would be given some credit for the service rendered by them, by giving relaxation in age or qualifications for any other service or compensating them appropriately. Relevant part of the order reads as under:

“In the above background and particularly in view of judgement of the Hon'ble Supreme Court it cannot be held that the petitioners have right to be appointed as constables irrespective of any selection process. It is right to be appointed as constable irrespective of any selection process. It is not the case of the petitioners that they have not been subjected to suitability test as per directions given in the above judgments rather in repeated tests they failed to qualify. Question No. (1) had thus to be answered against the

petitioners.

XXXX XXXX XXXX XXXX

In view of the above observations contention that the petitioners had acquired a legitimate expectation or a right to continue in service as SPOs can also not be accepted. The said question is answered against petitioners.

Re Q No. (III)

Learned counsel for the petitioners contended that they could not be deputed as Home Guards as this will be changing their service conditions to their disadvantage. Their pay and service conditions are required to be protected.

This argument could be accepted if it could be held that the petitioners had a right to continue as SPOs. Since it has been held that they have not acquired any right to continue as SPOs and they could be relieved from the posts occupied by them. Their being deputed as Home Guards at their option cannot be held to be illegal. The said question stands answered accordingly.

In view of the above, these petitions are liable to be dismissed. Before parting with judgment we cannot ignore that the Petitioners have rendered about 15 years of service and they may have become overage and are not getting any terminal benefit. Even though strictly speaking the petitioners are not entitled to succeed the State Government is not debarred from giving credit for the service rendered by them in such a way as may be considered appropriate either by way of giving relaxation in age or qualifications for any other service and or from compensating them in such other manner as may be considered appropriate.”

20. It is the case of the State that 1163 SPOs had, accordingly, joined the Punjab Home Guards, in compliance of the order dated 16.03.2005 and the remaining kept on working. During the interregnum period, various posts were advertised for filling up vacancies by the Police

Department. On 04.03.2010, in CWP-566-2010 titled *Ranjit Singh & others Vs. State of Punjab & others*, the Officers Committee had been set up to look into various disputes regarding determination of *inter se* seniority of the police personnels. The Committee's recommendations, duly supported by reasons and the recommendations, were to be ordinarily accepted by the Director General of Police/State Government unless there were strong and cogent reasons to be recorded in writing. Relevant portion of the directions read as under:

“[i] there shall be an Officers-Committee comprising [1] Shri Parag Jain, IPS, IGP/Head Quarters, Punjab Police; [ii] Smt. Gurpreet Kaur Deo, IPS, DIG, Administration, Punjab Police Headquarters; and [iii] Shri M.S.Gill, Additional Advocate General, Punjab, attached with the DGP, Punjab who shall consider the claims of the petitioners and other police personnel who are likely to be affected;

[ii] the Committee shall hear the petitioners and all other police personnel who are likely to be affected by the recommendations that may be made by it. The Committee, after examining the rival claims in the light of the Act, Rules, Government Policy, equitable considerations, fair and just principles, shall submit its recommendations to the Director General of Police, Punjab/State Government, as early as possible and preferably within a period of two months from the date a certified copy of this order is received.

[iii] the petitioners and other noticees shall be at liberty to submit additional documents and/or plea[s] as may be required;

[iv] the Committee shall submit its recommendations duly supported with reasons;

[v] the recommendations of the Committee shall ordinarily be accepted by the Director General of Police/State Government,

as the case may be, unless there are strong and cogent reasons, to be recorded in writing;

[vi] if the petitioners are aggrieved at the Committee's report/recommendations, they shall be at liberty to challenge the same in accordance with law;

[vii] till the Officers-Committee resolves the issues, the allocation to different cadres, promotions and/or any other incidental service events shall be subject to the Committee's report and the final decision to be taken thereupon by the Competent Authority.”

21. On 19.04.2010 in CWP No.253 of 2009 'SPO Satnam Singh and others Vs. State of Punjab and others', similarly situated persons approached this Court on the ground that they did not fulfil the prescribed physical standards and were not being enrolled as constables. Keeping in view the order dated 04.03.2010 passed in CWP No.566 of 2010 'Ranjit Singh and others Vs. State of Punjab and others' directions were issued that the Officers' Committee would look into the grievances with compassion and sympathy, in view of the long service rendered by the petitioners. Similar directions were also issued on 20.08.2010 in CWP No.11821 of 2010 'SPO Som Dutt and others Vs. State of Punjab and others' and CWP No.12885 of 2010 'SPO Raghbir Singh and others Vs. State of Punjab and others'.

22. In the meantime, on account of the SPOs not joining an order dated 19.08.2011 was passed by the Director General of Police calling upon for the list of unsuitable SPOs, who could not be retained/adjusted in the Punjab Home Guards, since at that point of time, the recommendations of the Committee had come about on 18.04.2011, in view of the directions

issued on 19.04.2010 and 20.08.2010. The petitioners approached this Court in various cases including CWP No.15866 of 2011 'SPO Sukhwinder Singh and others Vs. State of Punjab and others' on the basis of the recommendations made by the Officers' Committee . The Coordinate Bench of this Court, accordingly, issued directions that the appropriate authority should considered and give effect to the recommendations by passing a reasoned order. The relevant part of the directions issued on 29.08.2011 read as under:-

“The petitioners who are working as SPOs, on the other hand, rely upon the recommendations (Annexures P-7) made by the Officers' Committee constituted by this Court vide order dated 4.3.2010 passed in Civil Writ Petition No.566 of 2010 (Ranjit Singh and others versus State of Punjab and others).

In my considered view, it is obligated upon the appropriate authority firstly to consider and give effect to the recommendations made by the Officers' Committee and if there is any administrative or legal difficulty in giving effect to those recommendations, then to pass a reasoned order. Unless a holistic view is taken by the authorities on the recommendation of the Officers' Committee, no adverse decision against those SPOs who were recruited prior to 31.12.1994 shall be taken.

Ordered accordingly.”

23. The competent authority as noticed rejected the cases on the ground that the petitioners had not passed the the suitability test in the years 1997, 2000, 2002 and 2004. It was also noticed that to create a special dying cadre, could not be done as SPOs had already joined, in pursuance of the earlier order dated 16.03.2005. Resultantly, sanction was accorded for the adjustment of 1120 unsuitable SPOs who were not Constables, for absorption as Constables, to join the Home Guards as Home Volunteers, as



per their willingness and their services were to be dispensed with, if they did not report.

24. Thus, the above sequence of events would go on to show that the prayer, effectively, had already been rejected by the Division Bench and the legal issue had been decided against the petitioners. The petitioners, thus, would not be justified to raise the same issue again once in principle, the same had already been decided by the Division Bench against them that they had no legal right to be absorbed on account of the fact that they had failed to pass the suitability test and resultantly, no fault, as such, can be found in the decision of the State Government dated 13.01.2012.

25. Reliance placed upon Nihal Singh's case (supra) also is, apparently, misplaced. In the said case, the petitioners before the Apex Court were a different set of SPOs who were working with the Public Sector Banks as Bank Guards. They had sought regularization and the banks had denied the same on account of the fact that they had no relationship as master and servants, as SPOs who were employees of the State Government. Thereafter, the Senior Superintendent of Police had rejected their case on the ground that they were working with the banks and the claim was not maintainable against the State. Accordingly, the Apex Court came to the conclusion that the appointments were made under Section 17 of the Act by the SSP, in exercise of the statutory powers. The denial for regularization was held not to be justified, as per ground taken by the State. The process of selection, as such, was not of a backdoor entry and being taken in the exigencies of the situation as the service of the persons who had experience

in training and handling arms, were sought to be encashed upon. It was, accordingly, held that it amounted to exploitation of the SPOs and accordingly, directions were issued to regularize their services by creating necessary posts. In the present case, as noticed, the petitioners have been considered on four occasions but have failed to make the cut. It is, in such circumstances, they have been asked to join the Home Guards and therefore, the same is in compliance with the orders passed by the Division Bench in Malkiat Singh's case (supra).

26. The factual aspect that the Home Guards are paid more than the SPOs could not be denied by counsel for the petitioners. State has also placed reliance upon the judgment in Grah Rakshak Home Guards case (supra) to submit that further directions had been issued by the Apex Court that the State Government had to pay duty allowance at such rates for total of 30 days which comes to minimum of the pay to which the police personnel of the State are entitled to. It was, accordingly, submitted that the petitioners would also be given the said benefits and therefore, now, they cannot turn around and contend to the contrary that they are, as a matter of right, entitled for absorption.

27. Counsel for the petitioners has further tried to elaborate from the examples given that in similar circumstances, various other persons had been given the benefit of exemption whereby they had been absorbed as Constables. The State, in its counter to CM-17208-CWP-2012 in CWP-2722-2012, held out that the exemptions were granted on out of turn seniority due to various reasons as good work against the terrorists, suffered

at the hands of the terrorists etc. and there was no specific challenge, as such, raised to the exemptions granted, which was in the facts and circumstances of the individual case and the power of exemption being there under the rules. Accordingly, it was justified that the SPOs who had qualified the suitability test had been granted the constabulary numbers whereas ones who did not make the cut, were liable to be adjusted in the Home Guards. The details of each exemptions granted were also attached to justify the said discrimination. Accordingly, vide affidavit dated 01.03.2013, the details were given as to why 9 persons, whose examples had been given, have been granted exemption. It is further averred that show cause notice had also been issued wherein it had been mentioned that persons who had been absorbed wrongly and directions had also been issued to review the cases.

28. State Counsel is, accordingly, justified in holding out that merely because some persons had been exempted and had been absorbed, would not, as such, entitle the petitioners to seek exemption, as all of them have been given a chance of consideration. They only had a right of consideration, as such, to be absorbed, on account of not making the cut. The petitioners could not, for the second time, agitate the right of absorption. The argument raised by the counsel on the question of Article 14 also needs to be repelled on the ground that the said concept of equality is a positive concept and not a negative concept. Merely, because exemption has been granted in certain cases would not entitle the petitioners en-block to seek similar relief in spite of having not made the mark and thus

cannot as such as a matter of right claim exemption and relaxation. The said view has held by the Apex Court in '**Gursharan Singh Vs. New Delhi Municipal Committee 1996 (2) SCC 459** and '**Secretary Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain' (Sup 3) SCR 584.**

The relevant paragraphs read as under:-

“24.The question then is whether the action of not delivering possession of the land to the respondents is on par with other persons who had possession is ultra vires act and Violates Article 14 of the Constitution? We had directed the appellants to file an affidavit explaining the actions taken regarding the allotment which came to be made to others. An affidavit has been filed in that behalf by Shri Pawan Arora, Deputy Commissioner, that allotments in respect of 47 persons were cancelled and possession was not given. He listed various cases pending in this Court and the High Court and executing court in respect of other cases. It is clear from the record that as and when any person had gone to the court to get the orders of the LAO enforced, the appellant-authority resisted such actions taking consistent stand and usually adverse orders have been subjected to decision in various proceedings. Therefore, no blame of inaction or favouritism to others can be laid at the door of the present set up of the appellant-authority. When the Minister was the Chairman and had made illegal allotments following which possession was delivered, no action to unsettle any such illegal allotment could have been taken then. That apart, they were awaiting the outcome of pending cases. It would thus be clear that the present set up of the bureaucrats has set new standards to suspend the claims and is trying to legalise the ultra vires actions of Minister and predecessor bureaucrats through the process of law so such so that illegal and ultra vires acts are not allowed to be legitimised nor are to be per-petuated by aid of Article 14. The apart, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to. deny the same benefit. The rational relationship and legal back up are the

foundations to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.

25. In **Yadu Nandan Garg's case (supra)**, it was contended that one of the person whose land was acquired, had the benefit of exemption from the acquisition; writ petition was filed seeking similar benefit. When it was contended that it was violative of Article 14, this court in paragraph 5 had held that "a wrong exemption under wrong action taken by the authorities will not clothe others to get the same benefit nor can Article 14 be pressed into service on the ground of invidious discrimination."

26. In **Coromandel Fertilizers Ltd. v. Union of India and Ors., [1984] Supp SCC 457**, it was held in paragraph 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

27. In **Chandigarh Administration & Another v, Jagjit Singh & Another, [1995] 1 SCC 745**, allotment of the sites was subject matter under several proceedings in the High Court; ultimately some persons had the benefit of allotment while others were denied of the same. When Article 14 was pressed into service, this Court in paragraph 8 at page 750 had held, that the basis of the principle, if it can be called one, on which the writ petition had been allowed to be taken, was unsustainable in law and indefensible in principle. The mere fact that the respondent- authority had passed a particular order in the case of

another person similarly situated, can never be the ground for issuing a writ in favour of petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose.

28. A host of other decisions in that context have laid the same principle. It is not necessary to burden the judgment any further. Suffice to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.”

Resultantly, keeping in view the above discussion, this Court is of the opinion that the decision of the State is not liable to be interfered with. Accordingly, the present writ petitions are, hereby, dismissed.

**JULY 8<sup>th</sup>, 2016**  
*sailesh*

**(G.S. SANDHAWALIA)**  
**JUDGE**