

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 5963 of 2014 (O&M)

Date of Decision: 21.07.2016.

Constable Sanjay Kumar

--Petitioner

Versus

State of Haryana and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. G.S. Gopera, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

TEJINDER SINGH DHINDSA.J

The petitioner, who is serving as a Constable with the 2nd I.R.B., Haryana Police has filed the instant petition assailing the order dated 11.12.2013 (Annexure P-9), passed by the D.G.P., Haryana, respondent no.2 in terms of which his claim seeking deemed date of appointment w.e.f. 27.10.2004 i.e. the date a person junior to the petitioner had been appointed, has been rejected.

Brief facts and on which there is no dispute would require notice. Petitioner applied for the post of Constable in Haryana Police for Indian Reserved Battalion in pursuance to an advertisement issued in December, 2003. Having been duly selected in a process of selection petitioner was deputed for training on 29.10.2004. His candidature, however, was cancelled vide order dated 6.12.2004 ostensibly on the ground that he had concealed the factum of having been involved in an F.I.R at the stage of submission of his application form. At that stage petitioner preferred CWP No.897 of 2006 before this Court impugning the order dated

6.12.2004 canceling his candidature. A Division Bench of this Court disposed of the petition in the light of order dated 4.5.2009 directing the respondent authorities to re-examine the matter and to pass appropriate orders after grant of an opportunity of personal hearing.

Suffice it to observe that the Division Bench while issuing directions on 4.5.2009 had taken notice of the submissions raised on behalf of the petitioner that F.I.R dated 16.9.1999 had been registered but since the witnesses did not support the prosecution version petitioner was acquitted vide order dated 25.10.2004, passed by the Trial Court. This was prior to the date of passing of the order of cancellation of candidature of the petitioner i.e. 6.12.2004. It was further taken notice that the matter had been compromised between the complainant and the accused party on 21.9.1999 itself and which fact was recognized by the Trial Court in the order of acquittal passed subsequently. In other words, the compromise had been effected even prior to filling up of the form by the petitioner seeking appointment to the post of Constable. Yet another fact that had weighed with the Division Bench was that a State Policy had been formulated containing a list of offences constituting moral turpitude and debarring the candidates from employment and the case/offence of the petitioner was not covered under such list.

In purported compliance of the directions issued by the Division Bench in CWP No.897 of 2006 the matter is stated to have been re-considered and a constabulary number was assigned to the petitioner and he was issued appointment letter dated 10.11.2009 as Constable under B.C (B) quota.

It so transpires that one Ramesh Kumar son of Budh Ram was also selected as Constable in the same very selection process in which the petitioner had participated. The candidature of Ramesh Kumar was also canceled on the same very basis i.e. of having suppressed the fact of registration of F.I.R No.212 dated 3.11.2000 under sections 148, 149, 307, 325, 327 I.P.C, Police Station Sadar, Narwana. Ramesh Kumar having been acquitted by the Trial Court in the trial that had ensued, preferred CWP No.5163 of 2010 in this Court and which was allowed vide order and judgement dated 27.5.2010 and in which the respondents were directed to issue appointment letter in favour of Ramesh Kumar along with consequential benefits in the nature of seniority etc. It was however held that Ramesh Kumar would not be entitled to any monetary benefits and his pay would be fixed on notional basis. Placed on record at Annexure P-7 is an order dated 29.6.2011 issued by the Commandant, 2nd Battalion, I.R.B., Bhondsi (Gurgaon) in terms of which Ramesh Kumar has been given notional appointment to the post of a Constable w.e.f. 27.10.2004 along with consequential benefit of seniority as well.

In the light of such development present petitioner submitted a representation dated 3.9.2013 (Annexure P-4) claiming ante dated appointment w.e.f. 27.10.2004 i.e. the date similarly situated person and who had participated in the same very selection process had been appointed to the post of Constable. Perusal of the representation would reveal that in para 4 thereof the petitioner had cited the names of as many as nine other selected candidates whose candidature had also been canceled on the same very ground i.e. suppression of facts pertaining to pendency of criminal proceedings and who upon acquittal have been granted appointment relating

back to the year 2004.

Such representation stands rejected vide order dated 11.12.2013 at Annexure P-9. It is against such brief factual backdrop that the instant petition has been filed.

The facts noticed herein above are not disputed by learned State counsel. It is however contended that the petitioner was issued appointment letter on the post of Constable w.e.f. 10.11.2009 in pursuance to an exercise of re-consideration that had been directed by the Division Bench of this Court in its judgement dated 4.5.2009 while disposing of CWP No.897 of 2006. As regards the benefit of ante dated appointment in favour of Ramesh Kumar son of Budh Ram is concerned, it is sought to be justified by contending that such benefit was granted in pursuance to the directions issued by the Writ Court. Yet another objection raised by learned State counsel is that even though the petitioner had been granted appointment to the post of Constable w.e.f. 30.11.2009 the petitioner accepted the same and has remained mum for a period in excess of 4 years and as such the claim set up by him is time barred.

Counsel for the parties have been heard.

In the considered view of this Court, the impugned order dated 11.12.2013 at Annexure P-9 cannot sustain. Such view is being taken for more than one reason.

Perusal of the impugned order would reveal that the same is bereft of any reasoning which would justify the rejection of the claim of the petitioner seeking ante dated appointment to the post of Constable w.e.f. 27.10.2004. The impugned order has been passed while dealing and disposing of a representation dated 3.9.2013 (Annexure P-4). In this very representation the instances of identically situated Constables had been

furnished and it had been specifically averred that they have been granted the benefit of ante dated appointment w.e.f the year 2004. Such contention has not even been noticed much less dealt with in the impugned order. Orders passed by administrative authorities dealing with the rights of the employees have to be speaking orders and by assigning reasons. The impugned order dated 11.12.2013 (Annexure P-9) would not survive on account of such infirmity alone.

The objection raised by learned State counsel as regards Ramesh Kumar son of Budh Ram having been granted the requisite benefit only on account of directions having been issued by the Writ Court and on the other hand the writ petition filed by the petitioner having been disposed of only to re-consider the matter is a frivolous objection. Employees, who are identically situated have to be meted out similar treatment. Such aspect has been ignored by the D.G.P., Haryana while passing the impugned order dated 11.12.2013 (Annexure P-9).

The objection with regard to delay also cannot be sustained. The petitioner is seeking parity with Ramesh Kumar son of Budh Ram and other similarly situated selected candidates who even though have been granted benefit of ante dated appointment but they have not been paid any actual monetary benefits for the period that they have not served. It is only the benefit of notional pay fixation that was to be granted. Delay, as such, cannot defeat the claim of the petitioner.

For the reasons recorded above, the impugned order dated 11.12.2013 (Annexure P-9) is set aside. Writ petition is allowed. Respondents are directed to issue appointment order in favour of the petitioner w.e.f the date a candidate belonging to the B.C (B) category and

who had remained successful in the same very process of selection had been so appointed. Petitioner, however, will not be entitled to any monetary benefit even though, his pay etc. shall be fixed on notional basis. Petitioner would be entitled to seniority on the basis of merit as determined in the selection panel.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

21.07.2016
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Whether to be referred to Reporter? Yes.