

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.980 of 2013

Gian Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

2. CWP No.22398 of 2014 (O&M)

Gian Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

Date of Decision: 27.02.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harparteek S.Sandhu, Advocate,
for the petitioner.

Mr. Nikhil K.Chopra, DAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.980 of 2013 titled *Gian Singh v. State of Punjab and others* & CWP No.22398 of 2014 titled *Gian Singh v. State of Punjab and others* both filed by the petitioner, one at the stage when the impugned order was not passed whilst the other challenging it after it was conveyed.

2. Briefly put, the relevant facts are that in the process of direct

recruitment of male and female constables initiated through public advertisement issued in 2011 for filling up 3726 posts of Male Constables in Punjab Police of which 492 posts were to be filled in Jalandhar Rural, the petitioner was placed at merit position 34 in the waiting list of the general category. The result was declared in December 2011. Appointment letter was offered by the Police Department to a candidate at Sr. No.33 in the waiting list. The petitioner was placed next. It transpired that on verification and scrutiny of documents as per the criteria adopted a few candidates were found disqualified whose names were mentioned in the waiting list and, therefore, they were denied appointment. One such candidate was Subheg Singh who was placed at Sr. No.8 in the waiting list. Subheg Singh who has been arrayed as respondent No.3 in the petition was disqualified when it was discovered that he had a compartment in B.A. 1st Year examination but was wrongly assigned two extra marks for possessing qualification of B.A. Part-I and B.A. Part-II. Since he was not a pass candidate he was denied appointment. As a result, one vacancy was to be counted out of the wait list when his name was removed from the select list.

3. In these circumstances, the petitioner had approached Court for directions that he deserved to be considered for appointment as the next candidate in the wait list. Is the petitioner entitled to be offered appointment is the question which has to be answered in this petition? If the answer is in the affirmative then should he be offered appointment in the year 2016 and whether the claim is hit by delay and laches sufficient to deny him the consideration? The petitioner has asserted that the selection was called in question in CWP No.21000 of 2011 before this Court and the process of

recruitment was stayed. The stay operated from December 24, 2011 to May 30, 2012. There was another impediment in his way to appointment as per merit position since in the meanwhile the code of conduct had come into force due to Assembly elections. The petitioner had represented on December 05, 2012 with a memorial addressed to the Chairman of the Recruitment Board i.e. The Senior Superintendent of Police, Jalandhar Rural, Punjab for which district he competed in the recruitment process. When nothing was heard on his representation he approached this Court in CWP No.980 of 2013 in January 2013 praying for directions to the Police Department to appoint him in place of vacancy created by rejection of the case of Subheg Singh. A direction was issued by this Court to consider and decide the representation. The claim was rejected on the sole ground that the waiting list had outlived its validity. The order is at Annex R-3 with the written statement. It is stated in the order dated September 05, 2013 it was recorded that approval was accorded to Inspector General of Police, Jalandhar Zone vide office memo dated October 18, 2012 to recruit the candidates from waiting list after condoning the delay for the period December 24, 2011 to May 31, 2012 while considering the period of six months for operation of the waiting list to be excluded. The result of the selection was approved on December 13, 2011. The election code of conduct was imposed in Punjab on December 24, 2011 due to Vidhan Sabha elections. Besides, there was a stay order operating which was vacated on May 31, 2012. In short, the waiting list was to operate for six months only and the period had expired. Since the result had been declared, more than one year and eight months has elapsed and for this reason the case of the

petitioner was rejected. The State has produced an extract of para.10 of the Standing Guide on the working of the Subordinate Services Selection Board, Punjab recommending to the Board that it may maintain a waiting list for a period of six months from the date of its original recommendations. The waiting list shall not be valid after the expiry of six months. The fact that Subheg Singh was disqualified is not disputed.

4. The petitioner has filed a replication to the written statement asserting on the strength of documents received under RTI Act on January 28, 2013. The petitioner was informed that one candidate had not joined and joining of one candidate was pending. The petitioner asserts that being next in waiting should have been recruited without any delay and the department was negligent in not offering appointment despite several representations. He pleads that delay cannot be attributed to him and the department cannot take undue benefit of its own wrongs. It is not disputed that the petitioner had made representation on December 05, 2012 meaning thereby he had not waived his right of consideration for appointment from the wait list. The representation is placed at Annex P-4 from where it is apparent that he had pressed his case even when Subheg Singh had been disqualified being found an ineligible candidate. The respondents have not disputed receipt of this representation. Therefore, the ball was in the court of the Police Department to have offered appointment on the discovery of the disqualification of Subheg Singh at Sr. No.8 of the wait list. No fault can be found with the petitioner or in his conduct to be hit by vice of delay in agitating his rights nor had he slept over them. The representation of the petitioner ought to have been decided within reasonable time by the Police

Department during the currency of the wait list minus the period covered by the code of conduct and the interim orders of this Court. It is also not disputed by the respondents that the petitioner has no right whatsoever being the next wait listed and available candidate. The defence is only that the wait list has expired by citing guidelines. There is also no dispute that Subheg Singh made a representation against rejection of his candidature and the request was turned down on May 14, 2013 vide order Annex P-7 which text has also been placed with the written statement at Annex R-2/T.

5. It would have been quite a different matter if the petitioner had not staked his claim which he did on December 2012. This makes the material difference since appointment is not within the control of a candidate. He can only represent, demand justice and on failure to obtain relief approach a court of law. There is no culpable delay in the petition from approaching Court in the present writ petition in January 2013 to throw out the claim from the door of the court, the petitioner has come knocking for deserved relief.

6. Again, to marshal the relevant facts, a few essential facts may be recapitulated in their logical order. The result was approved on December 13, 2011. Eleven days thereafter the election code of conduct was clamped. The period from December 24, 2011 to May 31, 2012 stands excluded as per the respondent department itself. The six months period would start running again from June 1, 2012 which takes us to about the end of November 2012. The claim of Subheg Singh was rejected on May 28, 2013 which foreclosed consideration of the case of the petitioner by PUC of Subheg Singh. The Director General of Police, Punjab responded to the

advice by the SSP Jalandhar (Rural) vide letter No.34187 dated August 21, 2013 vide letter dated September 05, 2013. He was advised to remove the name of the petitioner from the wait list. The legal notice served by Subheg Singh was rejected on May 28, 2013 vide Annex R-2/T closing his case.

7. The petitioner approached this Court against the order rejecting his case on September 05, 2013. In such circumstances, it can be legitimately held that the representation dated December 05, 2012 was decided on September 05, 2013, while according to the department the sixth month period of the wait list expired in the end of November 2012. The deficit number of days run for no more than a fortnight would be looking at the life of the wait list too hyper technically and from the wrong angle weighed with the right deprivation and substantial injury that may be caused to the petitioner for a life time if consideration is denied in a casual manner without paying due regard to injury caused. It is not the case of the department that the petitioner had no right whatsoever for appointment. He had a right to be shifted up in place of Subheg Singh but at point 33 bringing his name up by the last step in the ladder by sliding down vacancy at point 8 remaining unfilled. As a matter of fact, the Police Department should have activated the wait list immediately upon discovery of disqualification of Subheg Singh. The respondents had a wealth of time between the approval of the result on December 13, 2011 and till the end of November 2012 to have acted paying due regard to the life of the wait list continued to operate and remained alive. Therefore, the respondents cannot accuse the petitioner when he took all possible steps within his means through RTI requests for information which really ought to have been

uploaded on the official website of the police department. The petitioner approached the authorities when he had knowledge of facts regarding Subheg Singh.

8. The two questions posed in the opening part of this order in para. 3 supra are best answered by the judgment handed down by the Supreme Court in **State of J&K and others v. Sat Pal**, (2013) 11 SCC 737:-

“The case in point is [State of Jammu & Kashmir and others vs. Sat Pal](#), (2013) 11 SCC 737 in which reference was made to Hooda-1 and therefore is of a special value in the understanding of the present cases. The facts were that Sat Pal was next below in merit to one Trilok Nath in the select list of direct recruitment to the advertised posts of Junior Engineer [Civil] Grade- II. They were both Scheduled Caste reserved category candidates. The admitted position was that Trilok Nath was offered appointment but declined to accept the offer and did not join service. Sat Pal laid claim on the vacant post as next in waiting before the High Court of Jammu & Kashmir at Jammu. The High Court issued notice and called upon the State Government to file pleadings which were not filed and the right to file objections was closed by order dated April 05, 2010. The Supreme Court noticed that it should have been natural for the High Court to infer that the assertions made by the respondent before it were truthful and acceptable for a final determination of the controversy. Despite the aforesaid, the High Court disposed of the writ petition at the admission stage with a direction to the State to consider appointment keeping in mind the communication dated May 05, 2008 issued by the Chief Engineer, R&B Department, Jammu, affirming that Trilok Nath had declined to join. A period of two months was fixed to take a final decision. The Department rejected the claim on two grounds. Firstly, that the waiting list issued in respect of the recruitment has

outlived its validity way back in May 2008 and appointment cannot be offered accordingly. Secondly, the vacancies cannot be filled at a belated stage. Aggrieved by the rejection order dated August 23, 2011 Sat Pal instead of assailing the same by way of a fresh writ petition filed a Contempt Petition. The Contempt Petition was disposed of on October 29, 2011 by passing the following order:-

"The claim of the petitioner for his appointment as Junior Engineer (Civil), Grade II arose during the validity of select list/wait list. The duty was cast on the competent authority, who was seized of the select list/wait list to fill up the vacancies from the wait list, but it failed to perform its duty. It is not the fault of the petitioner that his claim for appointment was not considered during the validity of select list/wait list. The fault is committed by the authority and the petitioner cannot be penalised for the same. The claim of the petitioner on merits deserved to be allowed for being appointed on the post of Junior Engineer (Civil), Grade II when select list/wait list was in operation. Same having not been done despite request having been made, his right of consideration for being appointed would thus survive though such claim was considered by the Government after the expiry of the validity period of select list/wait list.

Consideration order issued by the Government does not comply with the court directions. Before initiating action for framing rule in this contempt petition, it will be appropriate to afford an opportunity to the respondents to consider the whole issue and pass orders in accordance with the judgment of the Court. Four weeks' time is granted to the respondents to reconsider the whole issue in the light of the observations made hereinabove and file compliance report by or before next date."

126. Feeling aggrieved by the directions issued in the contempt petition, the State of J&K carried an intra court appeal, assailing the order passed in the petition on the ground that directions were not permissible in exercise of contempt jurisdiction. The High Court dismissed the appeal

as not maintainable. Both the orders were assailed before the Supreme Court by the State of J & K. In para.9 the Supreme Court observed in caustic words, the crux of the controversy:-

"9. The controversy in hand is yet another illustration of the denial of a legitimate claim, of an innocent citizen. Rather than appreciating the claim raised by the respondent before the High Court through SWP No. 1156 of 2009, to which the appellants failed to even file their response, the same was ordered to be closed by an order dated 5-4-2010. Thereupon the appellants have chosen to pursue a course, which would sideline the main controversy. The course adopted would neither serve their own purpose, nor the purpose of the respondent Sat Pal."

127. The Supreme Court held on merits that a waiting list would commence to operate when offers of appointment had been issued to those emerging on the top of the list. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences after vacancies are filled and a post becomes available. The Court found that in the controversy the aforesaid situation for operating the waiting list had not arisen, because one post was actually never filled. Even if it is assumed that all the posts were filled up and Trilok Nath was offered appointment, even then the validity of the waiting list had to be determined with reference to April 22, 2008 when it was offered to Trilok Nath. Even the State did not dispute that the waiting list was valid till May 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, Sat Pal would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position."

9. In the matter of operation of waiting lists, the recruiting authority is under a legal obligation to give effect to the wait list on its own and not to wait for clamour of the appointment seekers to get louder. The

ruling in *Sat Pal* answers the question posed substantially and in view of the law laid down therein, I would accept the petition and set aside the impugned order dated September 05, 2013 rejecting the request of the petitioner.

10. For the foregoing reasons, the petition is not without substance and the same is allowed. A writ of mandamus is issued to the respondents to consider offering appointment to the petitioner as a Constable in Jalandhar (Rural). In the event of appointment being offered the petitioner would take his seniority from his merit position determined by the recruiting agency. However, he will not be entitled to monetary benefits prior to approaching this Court in the present petition from the date the petition was entertained. The remaining benefits will be his notionally including increments etc. from the date the last candidate was appointed in the district concerned.

**(RAJIV NARAIN RAINA)
JUDGE**

27.02.2016
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