

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1287 of 2016 (O&M)

Date of Decision: 07.11.2016

Jugraj Singh

... Appellant

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes / No |
| 4. To be referred to the Reporters or not? | Yes / No |
| 5. Whether the judgment should be reported in the Digest? | Yes / No |

Present: Mr. Manu K Bhandari, Advocate for the appellant

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal under Clause X of the Letters Patent is directed against the order dated 17.11.2015 whereby learned Single Judge has dismissed the appellant's writ petition in which he challenged the order dated 01.07.2015 of his reversion from the post of Head Constable to Constable.

(2) The facts are like this.

(3) The appellant joined the Punjab Police as a Constable in the year 1988. He appeared in the written test called as the "Lower School Course B-I Test" through which Constables are selected to undergo the course for promotion as Head Constables. The appellant competed for B-I Test for the seats allotted to Police District, Muktsar. He belongs to the reserved category of Scheduled Caste.

(4) The appellant was not short-listed in the merit list and being aggrieved, he approached this Court by way of CWP No.15509 of 2009. He raised a plea that two candidates who were lower in merit, namely,

respondents No.3&4 in the writ petition were sent to the Lower School Course ignoring his superior claim. This Court in the light of such factual contention, passed an interim order on 22.10.2009 directing that the appellant be allowed to join the Lower School Course subject to his eligibility etc.

(5) It may be mentioned that the Lower School Course to which the appellant was deputed commenced w.e.f. 01.10.2009. He completed the said Course in February, 2010. Thereafter, he filed a miscellaneous application in the pending case and withdrew his writ petition on 12.01.2011 stating that “the relief claimed in the petition is rendered infructuous”.

(6) The writ petition was thus dismissed as withdrawn.

(7) The appellant had actually misled this Court by alleging that the candidates lower in merit were deputed to the Lower School Course. He referred to the marks obtained in written test only to support his plea, concealing the fact that there were additional marks allocated for service record, parade and interview which were to be clubbed together for preparing the final merit list of B-I test. In the overall merit, the appellant's marks were 60.25 whereas respondent Nos.3 and 4 of his writ petition got 65.50 and 64 marks, respectively. No candidate lower in merit thus was deputed to the Lower School Course.

(8) Be that as it may, under the threat of contempt proceedings and on the basis of some legal opinion, the Senior Superintendent of Police, Sri Muktsar Sahib passed an order dated 25.06.2011 whereby the name of the appellant was entered in the promotion list C-I w.e.f. 01.03.2010 as he had completed the promotional course.

(9) The appellant was consequently promoted as Head Constable w.e.f. 13.04.2011. Thereafter, some other Constables who were senior to the appellant filed a writ petition in this Court alleging that since their junior (the appellant) had been sent to the Lower School Course and promoted as Head Constable, hence they too were entitled to such benefits. Pursuant to the Court directions dated 26.02.2015 to examine the case of those writ petitioners, Senior Superintendent of Police, Sri Muktsar Sahib re-examined the whole matter and having found that (i) no candidate lower in merit than the appellant was ever deputed to Lower School Course; (ii) the appellant was sent to Lower School Course pursuant to an interim order passed by this Court; (iii) the said interim order merged into the final order when subsequently the writ petition was dismissed as withdrawn; and (iv) the appellant was not entitled to be sent to the Lower School Course or for entry to C-I, issued a show cause notice as to why he be not reverted from the post of Head Constable. The appellant submitted his reply but finding no merit therein the reversion order was passed.

(10) The aggrieved appellant approached this Court and the learned Single Judge has dismissed his writ petition observing that the interim order passed by this Court was never made absolute as the writ petition was withdrawn and the appellant took undue benefit of the Court-order for his deployment to Lower School Course even though he had not qualified the B-I test in the reserved category.

(11) Learned Single Judge has further viewed that reversion order was not passed as a punitive measure rather it is a natural consequence of the mischief played by the appellant by concealing facts in CWP No.15509 of 2009.

(12) We have heard learned counsel for the appellant at a considerable length and gone through the record.

(13) It is undeniable that the appellant was promoted as Head Constable solely for the reason that his name was entered in List C-I on completion of Lower School Course.

(14) The question as to whether the appellant underwent the Lower School Course through legitimate means, as per his right, has therefore been rightly gone into by the learned Single Judge. It is an admitted fact that the authorities were compelled to send the appellant to Lower School Course as a result of interim order passed by this Court believing his false statement that candidates lower in merit were deputed to such Course. As a matter of fact, no such candidate was deputed to the Course. The appellant thus could not have said that he was wrongfully denied the opportunity to undergo promotional course. Since the appellant entered the promotional course through deceitful means, he has to blame himself for the consequential reversion.

(15) Reliance placed by learned counsel for the appellant on the decision of the Hon'ble Supreme Court in **Shri Krishan vs. The Kurukshetra University, Kurukshetra, (1976) 1 SCC 311** is totally misplaced. That was a case where the student was ineligible yet he was admitted and allowed to pursue the LL.B. Course till the stage of examination. The Hon'ble Supreme Court held that infirmity which should have been looked into before giving the candidate permission to appear in the examination could not be allowed to work to his disadvantage at a subsequent stage. Here no mistake was committed by the authorities. The appellant took undue advantage and obtained an order from this Court

which, had he disclosed the correct facts, could not have been passed. That interim order never attained finality, as it merged into the final order of dismissal of the writ petition as withdrawn.

(16) Faced with this, learned counsel for the appellant submits that meanwhile 2-3 promotional B-I tests have been held and due to the fact that he already stood promoted, the appellant did not participate in those tests. This may be factually correct but it cannot validate his entry to the Lower School Course in the year 2009. The entry of the appellant in the promotional course was *de hors* the principle of merit and seniority. Such an entry cannot be legitimized for equitable considerations. At best the appellant can be permitted to approach the competent authority to accord him additional chances, if need be, to compete for the Lower School Course as and when occasion arises. Ordered accordingly.

(17) For the reasons afore-stated, we do not find any merit in this appeal and the same is accordingly dismissed.

(Surya Kant)
Judge

07.11.2016
vishal shonkar

(Sudip Ahluwalia)
Judge