

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.18632 of 2015

Date of Decision:-09.05.2017

Joga Singh.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Gurjinder Singh Thind, Advocate for the Petitioner.

Mr. Vaibhav Sharma, Deputy Advocate General, Punjab.

JASWANT SINGH, J (ORAL)

Petitioner who is working as a Constable, by way of filing the present writ petition under Article 226 of the Constitution, seeks a writ in the nature of Mandamus for directing the respondents to promote the petitioner from Constable to Head Constable w.e.f. March 2008 i.e. the date when his batch mates were promoted as Head Constables.

In brief, the dispute is that an FIR No.142 dated 22.08.2004 was registered against the petitioner and other persons under Sections 223, 224 of IPC at Police Station City Ferozepur on the ground that three convicts had escaped from the custody of the petitioner on

22.08.2004. After investigation, the Investigating Officer submitted challan wherein petitioner was kept in column no.2. Thereafter, the co-accused did not turn up for trial and ultimately they were declared proclaimed offender on 09.10.2006 and consequently, the said case was adjourned sin-a-die on 28.02.2009 (P-3). It is due to the pendency of the alleged FIR that the respondent nos.2 to 4 are not promoting the petitioner to the post of Head Constable, although he is otherwise eligible after clearance of examination etc.

Learned Counsel for the petitioner on the strength of the aforementioned facts has argued that there is no fault on the part of the petitioner and technically there is no criminal proceeding pending against him. Further, he has relied upon the judgment passed by this Court in CWP No.25781 of 2013 decided on 22.05.2014 titled as **Jasdeep Singh Ghuman Vs. Chairman-cum-Managing Director, Punjab State Power Corpn. Ltd. Patiala & Anr.**, whereby in a similar situation this Court has directed the respondents to consider the case of the petitioner therein for promotion etc.

On the other hand learned State Counsel has argued that as per the Punjab Govt. Instructions circulated by the Director General of Police, Punjab dated 29.07.1985 (R-5) the cases of all the officials for promotion would be kept pending against whom criminal case or departmental inquiry is pending. However, the remaining arguments raised by the petitioner have not been denied.

After hearing learned Counsel for the parties and perusing

the paper book, this Court is of the considered view that the present petition deserves to be allowed.

The facts are not in dispute in the present case and the short question that arises for consideration is that whether mere registration of an FIR, in which an employee has been kept in column no.2 at the time of submission of final inquiry report by the Investigating Agency, would justify the action on part of the respondents to withhold the claim of the petitioner or not. The answer to the said question is no more *res-integra*. This Court in Jasdeep Singh Ghuman's case (*supra*) has already held, after discussing the entire law on the aforementioned subject that even a mere registration of an FIR cannot be a ground for doubting the character of the employee and consequently, sit over the case of the employee for promotion. The present case is on a better footing as the petitioner has been kept in column no.2 by the investigating agency at the time of the presentation of the challan. Meaning thereby, technically there is no such criminal proceeding pending against the petitioner at present. Under these circumstances, the instructions (R-5) relied upon by the respondent-State is misconceived and are of no help to them.

Therefore, under the facts and circumstances of the case, this Court is of the opinion that the claim of the petitioner is justified and consequently respondent nos.2 to 4 are directed to promote the petitioner w.e.f. March 2008 i.e. the day when his batch mates were promoted to the post of Head Constables, if the petitioner is otherwise eligible as per rules. However, the petitioner shall be entitled for

notional benefits only and cannot claim actual arrears of salary for the period in question. The entire exercise be carried out within a period of three months from the date of receipt of certified copy of this judgment.

Allowed in the above terms.

(JASWANT SINGH)
JUDGE

May 09, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>