

**LPA no.737of 2017 (O&M) 1**

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

**LPA no.737of 2017 (O&M)  
Date of Decision : 31.10.2018**

State of Punjab and others

....Appellant(s)

Versus

Ex. Ct. Jagtar Singh and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER  
HON'BLE MR JUSTICE ARUN MONGA**

Present : Ms. Anu Pal, DAG, Punjab

Mr.Girish Agnihotri, Sr. Advocate with  
Mr. Saroj Makkar, Advocate for respondents No. 1 to 57

Mr. Balram Prashar, Advocate for respondents No.  
13, 14, 22, 23, 26, 30, 34, 38, 44, 49, 56 and 57

Mr. Yash Pal Thakur, Advocate for respondents No.  
2584 to 2499, 2500 to 2504, 2506 to 2508, 2510 to 2514, 2516  
2518, 2521, 2529, 2523, 2525 to 2527, 2529-2531

**MAHESH GROVER, J.(ORAL)**

This appeal is directed against the judgment of the learned Single Judge dated 23.12.2016. We need to refer to the facts as they were somewhat convoluted.

The State of Punjab decided to fill up the posts of Constables and inserted an advertisement in this regard on 30.9.1993. Interestingly no figure was set out qua the existing vacancies intended to be filled up and what we gather from the subsequent litigation that erupted was that they were anticipating 5159 vacancies at the time of advertisement. This is in the

earlier round of litigation that took place at the behest of those persons who questioned the violation of the merit list in CWP No. 12860 of 1996. The present respondents were found fit for selection in the select list issued on 6.3.1997. Consequent thereto they were appointed. As observed earlier, some of the candidates claiming that the merit list has been violated filed CWP No.12860 of 1996 which was accepted vide orders dated 17.10.1996 and while parting with the order the following directions were given:-

“In view of the candidate admission made by the respondents, that select list has not been followed while making appointments, it cannot but be held that the official respondents have violated the law laid down by the Supreme Court in State of Haryana vs. Subash Chander Marwaha AIR 1973 SC 2126.

However, keeping in view the fact that the Government has imposed a ban on appointments, we do consider it appropriate to direct the respondents to make public the merit list and then take necessary steps for making appointments strictly in accordance with the merit list by keeping in mind the reservation policy of the Government, if any.

We, therefore, dispose of the writ petitions with the following directions:-

i) The department shall make public the merit list in newspapers (Punjabi Tribune, Dainik Tribune) (Hindi Edition) and Punjab Kesari (Punjabi Edition) having wide circulation in the State of Punjab).

ii) The department shall take steps to dispense with the services of those who have been appointed by passing the merit. This would necessarily involve giving the show cause notice to such persons and passing the appropriate orders after giving opportunity of hearing to such persons. This exercise shall be completed within next three months.

iii) The consequential vacancies which may become available shall be filled by appointing candidates strictly in accordance with the merit keeping in view the reservation, if any, and

iv) In view of the statement made by learned Deputy Advocate General, Punjab that there is prohibition on future recruitment, we direct the department that in case any appointment is made in relaxation of the ban imposed by them Government than merit list prepared by the Department shall be taken into consideration while appointing the candidates. This shall be subject to any policy decision regarding the currency of the panel prepared on the basis of selection already made. With respect to the SPOs we leave it open to the Government to take policy decision regarding their appointment.”

It is pertinent to mention here that official respondents had filed an affidavit in these proceedings to disclose the intention of filling up 5159 anticipated vacancies for creation of Five All India Reserved battalions. In

this affidavit it is stated that 2925 vacancies were consumed from the Special Police Officers (hereinafter referred to as the ‘SPOs’) leaving 2234 vacancies to be filled up from general line candidates. A merit list upto 3630 candidates was prepared which extended to sr.no.4326.

Pursuant to the directions of the writ Court extracted above, a fresh merit list was prepared after some of the persons likely to be affected were issued the show cause notice. The present respondents are a group of those people who were initially appointed but removed from service ostensibly as a result of exercise carried out in terms of the mandate of the writ Court.

All these persons preferred a writ petition contending that there has been a complete arbitrariness on the part of the State and also highlighting that they have put in more than 4 ½ years of service.

Before the learned Single Judge the State conceded that 159 vacancies from the selection of 1993 still existed as some of the candidates were not appointed due to various reasons. A break up of the available vacancies is as below:-

| Sr.No. | Category | No. of candidates upto merit no.3070 | No. of candidates after merit no.3070 | Total |
|--------|----------|--------------------------------------|---------------------------------------|-------|
| 1.     | General  | 79                                   | 42                                    | 121   |
| 2.     | SC       | 25                                   | 6                                     | 31    |
| 3.     | EBC      | 2                                    | 0                                     | 2     |
| 4.     | E/S      | 5                                    | 0                                     | 5     |
|        | Total    | 111                                  | 48                                    | 159   |

Surprisingly, before us learned counsel for the State tries to shrug off this aforesaid information given by the State itself in writ

proceedings by stating that these cannot be construed as vacancies as the people were appointed in excess.

This to our minds is an unacceptable plea considering that at no stage, the State ever came out with a specific figure of available vacancies and even at the time of filing an affidavit in the earlier writ petition from where the directions emanated, the plea taken up was of anticipated vacancies. We are also of the opinion that State itself has created a mess by initially not determining the vacancies for filling up and making it part of the advertisement and secondly by filling up more than half of the intended vacancies through the SPOs. How these figures for filling up vacancies of SPOs while leaving the rest to general line was arrived at, has not been explained by the State even till now. Other than by saying that it was the decision of the Director General of Police to fill up the vacancies from the SPOs nothing that justifies such a course has been said.

Had there been a coherent policy determining the vacancies and the ones to be filled up from the SPOs such a confusion would not have arisen. Not only that, if there were no determined vacancies then how did the State arrive at a figure to assign them to the SPOs and the general line. This itself lend ambiguity to the merit list. Suffice it to say that the stand of the State has not only resulted in confusion but has also resulted in unmitigated hardship to the persons who once gained employment.

It is for this reason that the learned Single Judge after noticing the vacancies which pertain to the same selection directed their absorption and we would have no reason to disagree as the State has been completely at fault due to the arbitrary decision that it has taken.

The learned Single Judge has observed that the decision to fill

up vacancies from the SPOs was taken without ascertaining the fitness criteria according to the rules and rather the rule of seniority was adhered to while absorbing the SPOs. Even otherwise if the posts were to be filled up from SPOs then the exercise to determine the vacancies that were to be thrown open to general line should have been ascertained first. Finding the action of the State to be completely arbitrary we would concur with the judgment of the learned Single Judge to dismiss the instant appeal. That apart it is also barred by delay of 93 days in filing which has not been explained satisfactorily.

(Mahesh Grover)  
Judge

31.10.2018  
rekha

(Arun Monga)  
Judge

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |