

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

**CWP-20613-2013 (O&M)
Date of decision-04.07.2019**

Surinder Pal Kaur

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Khaira, Advocate
for the petitioner(s).

Ms. Sunint Kaur, A.A.G., Punjab.

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of mandamus directing the respondents to produce the complete record of the case and further to promote the petitioner as Head Constable w.e.f. the date from which her juniors, namely, Jarnail Singh and Sarabjit Kaur were promoted as such with all consequential benefits.

The petitioner was appointed as SPO by respondent No.4 on 19.05.1994. Her work and conduct was appreciated and name of the petitioner was recommended for promotion as a constable by DIG Police, Ludhiana Range, Ludhiana. Thereafter, the name of the petitioner was again recommended for promotion to the post of Constable. Vide order dated 17.04.1996, the services of the petitioner were terminated by passing a

stigmatic order. As a result thereof, the petitioner approached this Court to challenge the order of termination through CWP No.18083 of 1998 which came up for final hearing on 14.10.2004 and the impugned order of termination was quashed and the respondents were directed to reinstate the petitioner with all consequential benefits within a period of three months. Vide order dated 27.01.2006 (Annexure P-4) passed in Civil Appeal No.862 of 2006, she was reinstated in service and was paid salary of 9 years but her seniority was ignored. The paragraph of the judgment dated 27.01.2006 (Annexure P-4) passed by Hon'ble the Supreme Court of India reads as under:-

“Our attention, however has been drawn to Memo No.16318-40-P-3 dated 2nd July, 1999 issued by the Director General of Police, Punjab, Chandigarh to all Senior Superintendents of Police, Punjab whereunder it was directed that deemed dates be granted to all suitable SPOs (from the dates persons junior to them were enlisted as Constables in their respective districts) reference point of a junior SPO who was first (earlier) allotted a constabulary number, out of turn, compared to the suitable SPO, individually be taken from the concerned district/unit. The date on which such a junior SPO was allotted constabulary number be fixed as the deemed date of appointment for the non petitioners also”.

It is further submitted that so far as Jarnail Singh is concerned, he was appointed as SPO on 18.07.1994 and promoted as Constable on 26.07.1999 bearing belt No.629 of BT-7 PAP Jalandhar and has now been promoted as Head Constable C2 Belt No.150 BT-75 PAP Jalandhar on 30.07.2009. He further submits that thus, it is clear that the petitioner, who joined as SPO on 19.05.1994, is senior to said Jarnail Singh.

On the other hand, learned State Counsel submits that for promotion as Head Constable, the petitioner has to pass B.I. Test (now B.T. Test) from the Punjab Police Academy, Phillaur, as per Rule 13.7 of Punjab Police Rules and only the persons who pass this test on the basis of merit, are sent to complete Lower School Course. After completing Lower School Course, names of these constables are included in the List C-1 and the seniority is prepared on merit of those, who complete the Lower School Course.

Heard.

It is not in dispute that the petitioner is senior to said Jarnail Singh, who initially joined as SPO but subsequently he was absorbed as Constable on 26.07.1999 and has now been further promoted as Head Constable on 30.07.2009. As per record, said Jarnail Singh has also not passed the B.I. Test (now B.T. Test). The respondents have tried to differentiate the case of the petitioner from the case of Lady Constable Sarabjit Kaur by asserting that she had passed the said B.T. Test on 21.03.2007 and as such was entitled to be promoted as Head Constable. However, there is not even a whisper in the reply of the respondents as to what was the intelligible criteria adopted to promote said Jarnail Singh as Head Constable when he had not passed the pre-requisite B.I. Test. The State being a model employer cannot act in a discriminatory manner and follow the policy of pick and choose. Hon'ble the Supreme Court in its judgment titled as ***'The Workmen of Bhurkunda Colliery of M/s Central Coalfields Ltd Vs. The Management of Bhurkunda Colliery of M/s Central Coalfields Ltd.'***, 2006(3) SCC 297 has held as under:-

16. *This Court in S.M. Nilajkar and Others v. Telecom Distt. Manager, Karnataka, 2003(2) SCT 1013 : (2003)4 SCC 27 was of the opinion that the labour laws being beneficial pieces of legislation are to be interpreted in favour of beneficiaries. According to the Court, in case of doubt or where it is possible to take two views of a provision, the benefit must go to the labour.*

17. *This Court in State of Haryana v. Piara Singh, 1992(3) SCT 201 : (1992)4 SCC 118 held that so far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person.*

18. *In the matter of regularization, the main concern of the Court is to see that the rule of law is respected and to ensure that the executive acts fairly and give a fair deal to its employees consistent with the requirement of Articles 14 and 16 of the Constitution of India. The State being a model employer should not exploit the employees nor take advantage of helplessness and misery of either the unemployed person or the person concerned, as the case may be.*

19. *Where a temporary or ad hoc appointment is continued for long, the Court presumes that there is regular need for his services on a regular post and accordingly considers regularization.*

20. *It is also our bounded duty to give expression to the legislative intention for creating a healthy environment leading to proper understanding and cooperation and in true sense a partnership between the employers and the employees in cases*

of industrial disputes.

26. The industrial jurisprudence, likewise, seeks to evolve a rational synthesis between the conflicting scheme of the employers and employees. In finding out solutions to industrial disputes great care is always taken, as it ought to be, to see that the settlement of industrial disputes does not go against the interests of the community as a whole. In the decision of major industrial disputes, three facts are thus involved. The interests of the employees which have received constitutional guarantees under the Directive Principles, the interests of the employers which have received a guarantee under Article 19 and other Articles of Part III, and the interests of the community at large which are so important in a Welfare State. It is on these lines that industrial jurisprudence has developed during the last few decades in our country.

27. When we modulate our thinking process and attitude according to the underlying philosophy of Industrial and Labour jurisprudence and apply the laws meant for industrial peace and harmony, then the conclusion becomes irresistible that the employees who have been working since 1973-74 required to be regularised as expeditiously as possible.

28. Both employers and employees have their respective obligations. They must have the appreciation of each others's responsibilities, duties and obligations. The Trade Union and Labour Union should understand and appreciate the fact that Labour is not a commodity nor is it a mere supply of Labour force at the management's disposal. Essentially, Labour is the real basis that underlines the production of goods and services. Through the work should the human personality and its sense of responsibility be able to unfold, management should appreciate this and always attribute its success to the trained and effective labour force. It must be understood by all concerns that both the employees and employers are vital for any industry and unless there is proper coordination, a smooth functioning of any industry would be difficult.

In the present case, the respondents cannot be allowed to set different standards for similarly situated persons without any rationale to do so. Since the petitioner is senior to Jarnail Singh, therefore, she is entitled to be enlisted as Constable w.e.f. the same date from which Jarnail Singh was promoted i.e.26.07.1999 with all consequential benefits. Consequently, the present petition stands allowed. However, the arrears shall stand restricted to 38 months, as has been held in judgment titled as '*Saroj Kumar Vs. State of Punjab*', 1998(3) S.C.T. 664.

04.07.2019

ps-I

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No