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

**CWP-18404-2015 (O&M)
Date of decision-14.05.2019**

Ismail

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Malik, Sr. Advocate assisted by
Mr. Sandeep Dhull, Advocate
for the petitioner(s).

Mr. Navdeep Chhabra, D.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 certiorari for quashing the order dated 15.03.2013 (Annexure P-7) passed by respondent No.2 and further directing respondent Nos.2 to 4 to issue necessary appointment order/Belt number to the petitioner for the post of Constable in District S.A.S. Nagar as he has been found fit in all respects.

Learned counsel for the petitioner states that the Director General of Police Department, Punjab vide advertisement dated 27.09.2011 (Annexure P-1) had advertised various posts of Constables including 200 posts of Constables in S.A.S. Nagar. The petitioner had applied for the post

of Constable and had been selected at No.22 in the waiting list. Out of 200 candidates only 163 candidates had joined and 20 candidates were offered appointments from the waiting list and in this manner only 183 posts were filled up and 17 posts remained vacant. Thereafter, Superintendent of Police, SAS Nagar requested the Director General of Police that 17 posts of Constables be permitted to be filled up from the waiting list. The petitioner was medically examined and the character verification of the petitioner was also done but he was not offered appointment letter. Learned counsel further states that writ petition No.19652 of 2013 filed by such candidates was allowed by this Court on 30.09.2014 (Annexure A-1) and the State of Punjab filed LPA No.1152 of 2015 which was dismissed on 03.09.2015 (Annexure A-2) and in compliance of the judgment rendered by the Single Judge dated 30.09.2014 and upheld by the Division Bench on 03.09.2015, all the petitioners of the above said case were allowed to join as Constables. Although the petitioner was at No.22 in the waiting list and 20 candidates of the waiting list were already appointed and if 17 vacant posts would have been filled up then the petitioner was also entitled to be appointed as Constable and the case of the petitioner is squarely covered by the judgments (Annexures A-1 and A-2). Learned counsel further submits that the respondent-Department has not disputed that the case of the petitioner is covered by the judgment (Annexure A-1) rendered by the Single Judge and the said judgment was not implemented qua the petitioner as the LPA against the judgment (Annexure A-1) was pending, which was subsequently dismissed on 03.09.2015. Learned counsel cites judgment dated 30.11.2009 (Annexure A-3) rendered in CWP No.15415 of 2009 titled as '**Mohd.**

Rafeeq Ahmed Vs. State of Haryana & others' to contend that if an

employee has been denied appointment arbitrarily then the said employee is entitled to be appointed from the same date when other batchmates have been appointed. The relevant portion of judgment dated 30.11.2009 (Annexure A-3) reads as under:-

“It is directed that the petitioner's appointment shall relate back from the date when other selected candidates were appointed. The petitioner shall be granted the benefit of length of service, seniority etc. on the basis of his merit position. However, the petitioner shall not be entitled to any monetary benefits during the interregnum.”

On the other hand, learned State counsel that a letter was written by respondent No.4 to respondent No.2 in which it was requested that the waiting list of the male candidates be further extended as many as out of the 200 candidates shortlisted have already got recruited in other Districts. Out of 200 candidates, 166 candidates joined in District S.A.S. Nagar and in reply to the letter, respondent No.2 allowed the waiting list to be extended to 10% of 200 posts, therefore, waiting list of only 20 candidates could be prepared and as such 20 candidates were recruited vide letter No.14890/E-I(4) and no further recruitment was made. The petitioner's number was beyond the prescribed waiting list as the prescribed waiting list was only 10% of the total number of posts, hence the present petition is liable to be dismissed.

Heard.

This Court had passed the following order on 10.01.2019:-

“Learned State counsel, on instructions, informs that against the judgment passed in LPA No.1152-2015, the State has approached Hon'ble the Supreme Court by way of filing an SLP, however, the number and status thereof is not available at the moment.

Post again on 14.05.2019.

In the meantime, the number of the SLP and status thereof, be made available to the Court.”

In compliance thereof, affidavit of Superintendent of Police Head Quarter, District S.A.S. Nagar, Mohali dated 14.05.2019 has been filed in the Court today, which is taken on record as Mark 'A'. The affidavit Mark 'A' reads thus:-

- “1. That at the very outset, it is most respectfully submitted that the present affidavit is being filed in this Hon'ble Court regarding the SLP submitted before Hon'ble Supreme Court of India, New Delhi by this Department against the orders dated 03.09.2015 passed in Civil Writ Petition No.19652 of 2013 of 2013 titled as Ankur Verma and others Vs. State of Punjab and others. The present case is pending for consideration and is fixed for hearing on 14.05.2019.*
- 2. That it is respectfully submitted that the relevant documents of case along with Bank draft bearing No.009162 dated 21.05.2018 on account of legal fees was sent to the office of Advocate General Punjab, Chandigarh vide this office letter No.29422/G/Civil Suit dated 25.05.2018.*
- 3. That it is respectfully submitted that the Advocate General Punjab, Chandigarh further sent these documents to the office of Additional Advocate General, Punjab Legal Cell Office, Punjab Bhawan, New Delhi vide their office letter No.SLP Cell-84/2016/14426/14428 dated 12.06.2018.*
- 4. That it is respectfully submitted that the case file was returned back by the Advocate on record for the State of Punjab, Hon'ble Supreme Court of India on dated 04.07.2018 due to the insufficient delay for filing SLP. Thus, the SLP could not be filed.”*

In view of the above and considering the fact that all the formalities like medical examination, character verification etc. had been completed and only 183 out of 200 approved posts have been filled and 17

posts are yet to be filled, the present petition is allowed and the respondents are directed to consider to issuance of necessary appointment order/Belt number to the petitioner for the post of Constable alongwith all consequential benefits on the basis of his merit position. The exercise be completed within three months from the receipt of certified copy of the judgment. However, the petitioner shall not be entitled to any monetary benefits during the interregnum.

(JITENDRA CHAUHAN)
JUDGE

14.05.2019

ps-I

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