

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

1

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

214

**CM-4778-2021 in/and RA-CW-90-2021
in CWP-10914-2020
Date of decision: 23.03.2021**

Surinder Pal Singh Parmar and others

.....Petitioners

versus

State of Punjab and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Ms. Alka Chatrath, Advocate and
Mr. Naresh Kaushik, ADvocate
for the applicant-respondent No.5/UPSC.

Mr. Gurminder Singh, Senior Advocate with
Mr. R.P.S. Bara, Advocate
for the non-applicants/petitioners.

Ms. Reeta Kohli, Senior Advocate with
Mr. Balvinder Sangwan, Advocate
for the non-applicant/petitioners.

Ms. Monica Chhibber Sharma, Senior DAG, Punjab.

Mr. Satya Pal Jain, Senior Advocate with
Mr. Namit Kumar, Advocate
for non-applicant/respondent No.4/UOI.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. K.S. Kang, Advocate for the non-applicant.

Mr. D.S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh, Advocate
for non-applicants/respondents No.6 & 7.

Mr. Sartej Singh Narula, Advocate
for respondent No.8.

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

2

GIRISH AGNIHOTRI, J. (Oral)

The matter has been taken up through video-conferencing on account of restrictions due to outbreak of pandemic COVID-19.

CM-4778-CWP-2021

This application has been filed by respondent No.5 seeking permission of this Court *inter alia* to place on record the affidavit dated 17.03.2021 of Under Secretary, UPSC.

Notice of the application was issued to counsel for the non-applicants.

For the reasons mentioned in the application, the same is allowed.

Affidavit is taken on record.

RA-CW-90-2021

The present Review Application has been filed by respondent No.5 *inter alia* with a prayer that order dated 22.02.2021 (Annexure A-2), passed by this Court, be appropriately reviewed/clarified/modified and UPSC be permitted to open the sealed cover of proceedings of meeting dated 29.01.2021 and also to approve the reviewed select list of the years 2010 to 2013 and fresh select list of the years 2014 to 2018, prepared by Selection Committee in its meeting held on 29.01.2021 for promotion to IPS of Punjab Cadre.

Learned counsel for respondent No.5 has *inter alia* made reference to para Nos. 7.2 and 9 of the Review Application, to briefly submit that if the Commission approves the select list of the years 2014 to 2018 only, as directed by this Court vide order dated 22.02.2021, the officers included in Select List

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

3

of 2014 to 2018, would become senior to the officers included in the select list of 2010 to 2013. In other words, it is submitted by learned counsel that it would create anomaly inasmuch as the proceedings of the Selection Committee, which were held on 29.01.2021 jointly for the review select list of 2010 to 2013 and fresh select list of 2014 to 2018, shall be adversely affected.

Notice of the application was issued on 22.03.2021 to the non-applicants. Upon notice, reply has been filed to the Review Application by non-applicants/petitioners and the same is taken on record.

In the reply, it has been inter alia submitted that the submissions made by UPSC in the corresponding para 7.2, are wrong and the said averments have been made without their being any basis. It is further stated that there are total of 31 vacancies for the years 2014 to 2018 for fresh select list. The vacancies which are going to be reviewed, are 17 in number (having ten of 2010, two of 2012 and five of 2013). It is submitted that the issue, on the basis of which, respondents are trying to make submissions in the application i.e. regarding allotment of year of vacancies will not arise at this stage. It is then submitted that in case, the reviewed select list of the years 2010 to 2013 is allowed to be implemented during pendency of the aforementioned petition, it would adversely affect the interest of the petitioner and it is further submitted that if the respondents would be selected to the IPS against the post on which the petitioners are working, the petitioners shall be down graded in seniority.

Learned Senior Counsel appearing for respondents No.6 & 7 however submits that firstly a perusal of the order/judgment date 02.11.2018,

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

4

passed by this Court in CWP-6801-2013, would show that this Court had allowed the writ petitions and the impugned seniority list dated 19.12.2011 and 29.01.2013, were set aside along with all orders of confirmation. He further submits that detailed directions were given to the State Government to frame the seniority list in accordance with law and as per the directions given therein.

At this stage, learned State counsel also submits that in fact in compliance to the said orders, tentative seniority list was framed, objections were invited and all affected parties who submitted their objections, were heard and thereafter, vide order dated 03.07.2020, a detailed speaking order was passed and a fresh seniority list was drawn.

Learned Senior counsel for respondents No.6 & 7 secondly submits that while the earlier seniority list(s) dated 19.12.2011 and 29.01.2013 were under challenge in CWP-6801-2013 and other connected writ petitions, Government of India on recommendations of UPSC, had issued notifications from time to time. He has referred to one notification dated 10.03.2015, whereby, five officials were appointed as IPS and in Para 2 of the said notification it was specifically mentioned that the said appointments are subject to the result of writ petition including the CWP-6801-2013 (which has been referred to above, decided on 02.11.2018). The said Para 2 of the notification is reproduced hereunder:-

“...2. The aforesaid appointments will be subject to the decision of the Hon'ble High Court of Punjab and Haryana in CWP No.13203/2013 filed by Shri Ajay Maluja and CWP No.6801/2013 filed by Shri Gurdial Singh & others vs. State of Punjab & others regarding the seniority of officers in the State Police Service.”

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

5

Learned Senior Counsel for respondents No.6 & 7 further submits that the seniority list has now been finalised on 03.07.2020 after the common order dated 16.01.2020, passed in LPA-302-2019, LPA-1286-2019 and LPA-1215-2019. He submits that the said LPAs were filed by the petitioner herein against the judgment dated 02.11.2018. In the said LPAs, there was a specific direction to the State Government to decide the objections/representations to be filed against the tentative seniority list. It was further recorded in the order that the final seniority list in the cadre of DSP shall be subject to the outcome of these LPAs. Thereafter, in one of the appeal i.e. LPA-1215-2019, an application-CM-268-2020, was filed, but the same was dismissed by making it clear that the Hon'ble Division Bench had refused to stay the operation of the impugned judgment dated 02.11.2018. Thereafter, an SLP was also filed against the order dated 16.01.2020 and the order dated 22.01.2020 as aforementioned, but on 07.02.2020, the Hon'ble Supreme Court of India passed the order granting permission to the petitioners to withdraw the SLP and with certain further observations. All the three above said orders are reproduced hereunder:-

Order dated 16.01.2020

“Heard.

Caveat petition stands discharged.

*Since common questions of law and facts are involved
in these three appeals so the same are taken up together.*

*In sequel to the impugned judgment dated 02.11.2018,
a tentative seniority list has been drawn. The respondent-
State has invited objections by 23.01.2020.*

Accordingly, the State Government is directed to

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

6

decide the objections/representations to be filed against the tentative seniority list. Thereafter, final seniority list be drawn.

The final seniority list in the cadre of DSP shall be subject to the outcome of these LPA.

List on 04.03.2020.

A photo copy of this order be placed on all the connected files.”

Order dated 22.01.2020

“It is explicit from the order dated 16.01.2020 that this Court has refused to stay the operation of the impugned judgment 02.11.2018.

No ground is made out to entertain the application.

Dismissed.”

Order dated 07.02.2020 in SLP-3560-3561-2020

“Learned counsel for the petitioners seek permission of the Court to withdraw the special leave petitions. Permission granted. Special Leave Petitions are dismissed as withdrawn. However, we request the High Court to expedite the hearing of the matter.”

Learned Senior counsel for respondents No.6 & 7 has also made reference to the order passed by this Court on 27.01.2021 in the present writ petition. He has also referred to another order dated 09.02.2021, passed in CWP-2790-2021, to submit that it was directed by this Court that nominations, if any, made to the IPS Cadre, shall abide by decision of the writ petition. The said two orders read as under:-

Order dated 27.01.2021

“CM-1027-CWP-2021

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

7

This is an application for clarification/modification of order dated 15.10.2020 and permitting UPSC to convene Selection Committee meeting on 29.01.2021.

Heard learned counsel for the parties.

A perusal of order dated 29.07.2020 shows that notice of motion was issued but no stay was granted as liberty was granted to the petitioners to make appropriate application in case a date for review DPC is fixed during the intervening period. Thereafter on 28.08.2020 when the matter was adjourned it was observed that respondent No. 5-UPSC had not fixed any date for review DPC. Since no date was fixed, stay was not granted.

Learned counsel for respondent No.5-UPSC has informed that date for review Selection Committee Meeting is now fixed for 29.01.2021.

Hence, application is allowed and order dated 15.10.2020 is being clarified that there is no interim stay.

CM-1190-CWP-2021

Since application for review Selection Commission Meeting committee is fixed for 29.01.2021, this application for stay is being taken up.

Heard learned counsel for the parties.

As per the judgment passed in CWP-6801-2013, decided on 02.11.2018 (Annexure P-1), direction was given to prepare fresh seniority list. The seniority list dated 03.07.2020 (Annexure P-5) has been challenged by the petitioners in this writ petition. Their grievance is that seniority list has not been made in accordance with rules.

The UPSC can proceed with the meeting scheduled on 29.01.2021. The review Selection Committee can review the select lists of 2010 to 2013 and prepare the select lists

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

8

of 2014 to 2018 for promotion to IPS of Punjab Cadre on 29.01.2021.

The decision of the review Selection Committee shall be produced before this Court in a sealed cover on the next date of hearing.

List on 02.02.2021.

In the meantime, the respondents can file their reply, if any.”

Order dated 09.02.2021

“The petitioners were appointed as Deputy Superintendents of Police through direct recruitment on 10.08.1994 and thereafter. All were, however, appointed in the year 1994. They all belong to schedule caste category. They are aggrieved by the seniority list annexed with Annexure P-8 because although inter se seniority of direct recruits on the basis of merit of appointment has been maintained, roster points to which reserved category candidates are entitled have not been given.

Notice of motion.

Ms. Monica Chhibbar, Sr. DAG Punjab accepts notice on behalf of respondents No.1, 3 & 4 and waives service.

Ms. Alka Chatrath, Advocate accepts notice on behalf of respondent No.2 and waives service.

Learned State counsel submits that the seniority list (Annexure P-8) is also under challenge in CWP No.10914 of 2020 titled as Surinder Pal Singh Parmar and Others vs. State of Punjab and Others and, thus, this case may be heard along with the said case.

Ordered accordingly.

Adjourned to 11.02.2021.

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

9

To be heard alongwith CWP No. 10914 of 2020.

*Meanwhile, nominations, if any, made to IPS cadre
shall abide by the decision of this writ petition.”*

I have given thoughtful consideration to the rival contentions, pleadings and the documents referred to by the parties.

I am of the considered view that at this stage, it is deemed appropriate to refer to CM-1027-2021, which was filed on 19.01.2021 by respondent No.5-UPSC. In this application filed by UPSC, it was inter alia prayed that a clarification/modification of order dated 15.10.2020, be granted and permit the UPSC to convene selection Committee on 29.01.2021. In para 1 of the said application, order dated 29.07.2020 was reproduced, which makes it clear that counsel for respondent No.5 at that stage had informed the Court that no date for review DPC has been fixed. Accordingly, the case was adjourned to 28.08.2020. In para 4 of the application, it was submitted that as per respondent No.5-UPSC, the order dated 29.07.2020 could not be treated as an order to stay the review DPC. It was then submitted that subsequently when the case was taken up for hearing by this Court on 15.10.2020, inadvertently it had been recorded in the order that interim directions given in the order dated 28.08.2020 be continued. It was further specifically contended by UPSC that as per its understanding, there is no order by this Court to stay the review DPC. It was still further contended in para 5 of the application that Government of Punjab vide letter dated 21.08.2020, had sent the proposal for review/preparation of select list for the years 2010 to 2018 and the UPSC after receiving deficient documents, has fixed the Selection Committee meeting tentatively on 29.01.2021. Accordingly, a specific prayer was made by UPSC

CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020
10

through this application dated 19.01.2021, by bringing out and referring to previous orders passed by this Court in the present writ petition that this Court may clarify/modify the order dated 15.10.2020 and permit the UPSC to convene the Review Selection Committee Meeting to review the select list of the years 2010 to 2013 and Selection Committee Meeting to prepare the select lists of the years 2014 to 2018 for promotion to IPS of Punjab Cadre on 29.01.2021.

Records of the case show that the said application i.e. CM-1027-2021, came up for hearing on 21.01.2021 and the same was posted for 27.01.2021. On 27.01.2021, this Court passed the order which is reproduced above.

It was noticed in the order dated 27.01.2021 that a perusal of the order dated 29.07.2020 shows that notice of motion was issued but no stay was granted as liberty was granted to the petitioners to make appropriate application in case a date for DPC is fixed during the intervening period. It was noticed that learned counsel for respondent No.5 has informed that date of Review Selection Committee is now fixed for 29.01.2021. Hence, a specific clarification was given by recording that application is allowed and order dated 15.10.2020 is being clarified that there is no interim stay. It was further observed that since the application for Review Selection Committee Meeting has fixed for 29.01.2021, the application i.e. CM-1190-2021 was taken up. Thereafter, reference was made to the judgment dated 02.11.2018 (already noticed in the foregoing paras). In the said judgment dated 02.11.2018 direction was given to prepare fresh seniority list, as noticed in the order dated

CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020
11

27.01.2021 also. The contention of learned counsel for the petitioners was also noticed that the seniority list dated 03.07.2020 has been challenged by the petitioners in the writ petition and their grievance is that seniority list has not been made in accordance with the rules. It was further observed that UPSC can proceed with the meeting scheduled on 29.01.2021. It was clarified that Review Selection Committee can review the select list of the years 2010 to 2013 and prepare the select list of the years 2014 to 2018 for promotion to IPS, Punjab Cadre on 29.01.2021. The matter was adjourned to 02.02.2021 and it was also ordered that decision of the Review Selection Committee shall be produced before this Court in a sealed cover on the next date of hearing. On 02.02.2021, the matter was adjourned to 11.02.2021 and on 11.02.2021, the matter was adjourned to 02.03.2021 with further direction that the records of the Selection Committee be produced on the date fixed.

Thereafter, CM-2805-2021 was filed by the applicants and this Court passed the following order on 22.02.2021 (under Review in present application). The order dated 22.02.2021 is reproduced hereunder:-

“Petitioners Surinder Pal Singh Parmar and two others have filed the present writ petition inter alia with a prayer to quash the speaking order and impugned seniority list dated 03.07.2020 (Annexure P-5) whereby the persons promoted in excess of quota and far junior to the petitioners as per the vacancies to their share have been wrongly placed above them resulting in the State forwarding their names against posts on which petitioners stand promoted, along with further relief as mentioned in the writ petition.

CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020
12

Records of the case show that vide order dated 29.07.2020, notice of motion was issued.

CM No.2805-2021 has been filed by the applicant inter alia with a prayer to clarify order dated 27.01.2021 (Annexure A-5) to the extent that summoning of the record of Selection Committee by this Court be not construed as impediment in further proceedings of the UPSC, which may be undertaken by UPSC as per procedure.

Notice of the application to counsel for the non-applicants.

On asking of the Court, Mr. G.S. Kharbanda, Sr. Advocate assisted by Mr. R.P.S. Bara, Advocate, accepts notice on behalf of the petitioners/non-applicants and other respective counsel have also put in appearance and accept notice.

Learned counsel for the applicant submits that the petitioners are three in number whereas the selection process as mentioned in the order dated 27.01.2021 pertains to the years 2010 to 2013 and for the select lists of 2014 to 2018 for promotion to IPS of Punjab Cadre. He, therefore, submits that the applicant is having a good prima facie case and on merit likely to be promoted/appointed as IPS, in pursuance to the select lists of 2014 to 2018.

Learned Senior counsel representing the petitioners submits that qua the promotion exercise for the year 2014 to 2018, the petitioners would have no objection in case the respondents are directed to finalize the select lists. Learned counsel representing the petitioners, however, does not dispute the factual position.

On a further query put by this Court, learned Senior counsel representing the petitioners submits that the

CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020
13

petitioners would not object to the clarification sought for in the present application for a direction to the respondents to finalise the promotion process for select lists for the years 2014 onwards.

Learned State counsel also submits that the selection process should go on and the State be allowed to fill up the vacancies of IPS of Punjab Cadre.

Learned counsel for respondent No.7, however, also submits that the petitioners do not have a good prima facie case on merits to even challenge the select lists/review select lists of 2010 to 2013.

In view of the above peculiar facts and circumstances of the case as noticed above, CM No.2805 of 2021 is allowed and it is clarified that the respondents may proceed further to finalize the select lists of 2014 to 2018 for promotion to IPS of Punjab Cadre in accordance with law.

Ordered accordingly.”

For the detailed facts and reasons noticed above, I am inclined to accept the Review Application i.e. RA-CW-90-2021, filed by respondent No.5-UPSC. In continuation of this Court's order dated 27.01.2021, it is directed that the Review Application dated 17.03.2021, is allowed. This Court, at this stage, is inclined to record specifically that this Court had passed the order dated 22.02.2021 and the order now passed, keeping in view the order dated 27.01.2021, whereby, this Court had specifically clarified and allowed the application i.e. CM-1027-2021. Vide order dated 27.01.2021, it was clarified that in the order dated 15.10.2020, there was no interim stay. In other words, on 27.01.2021, this Court had clarified that the UPSC can proceed with the meeting scheduled on 29.01.2021. This Court had also clarified that 'Review

CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020
14

Selection Committee' can review the select list of the years 2010 to 2013 and prepare the select list of the years 2014 to 2018 for promotion to IPS of Punjab Cadre on 29.01.2021. *(emphasis added by this Court)*

In view of what has been observed in the order dated 27.01.2021, I am inclined to accept the Review Application filed by UPSC. In fact, order dated 22.02.2021 was passed in view of respective contentions recorded by counsel for the parties. At that stage, counsel representing the petitioners had not objected to the promotion exercise to finalise for the years 2014 to 2018 and accordingly order dated 22.02.2021 was passed. However firstly, joint reading of the order dated 27.01.2021, passed by this Court in CM-1027-2021 and secondly application (RA-90-2021) clearly lead to the conclusion that prayer made in the application dated 17.03.2021 filed by respondent No.5-UPSC, deserves to be allowed.

Accordingly, Review Application filed by UPSC, is allowed and the order dated 22.02.2021 is recalled/reviewed and a fresh direction is issued whereby the prayer of UPSC to permit to open the sealed cover of the proceedings of meeting dated 29.01.2021 and also to approve the reviewed select list of the years 2010 to 2013 and fresh select list of the years 2014 to 2018 prepared by the Selection Committee in its meeting held on 29.01.2021 for promotion to IPS of Punjab Cadre, is allowed.

At this stage, Learned Senior Counsel for the petitioners draws attention of this Court to CM-1190-2021 filed by the petitioners. Learned Senior counsel submits that this Court vide order dated 27.01.2021 had further issued directions to the effect that the decision of the Review Selection

**CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020**

15

Committee shall be produced before this Court in a sealed cover on the next date of hearing.

On this issue, firstly, I am inclined to make a reference to the fact that as on today, the impugned seniority list under challenge dated 03.07.2020 has neither been stayed by this Court in the present writ petition nor the process of framing of the said seniority list was stayed by the Hon'ble Division Bench in LPA-302-2019 and LPA-1215-2019. In the orders dated 16.01.2020, passed in these cases had rather made it clear that final seniority list in the cadre of DSP shall be subject to the outcome of the LPA. This Court is therefore of the view that once the said seniority list has not been stayed and it is the specific stand of the State of Punjab as well as UPSC that they have proceeded to hold the UPSC meeting on 29.01.2021 in furtherance of the said seniority list, it will not be appropriate for this Court to put a stop on the proceedings finalised by the Selection Committee Meeting of UPSC held on 29.01.2021.

It is lastly contended by learned Senior Counsel for the petitioners that in the order passed by this Court today, it should be clarified that this order shall not affect their rights to argue CM-1190-2021 in which respondents were asked to file reply on 27.01.2021.

I have given thoughtful consideration to the contention raised by learned Senior Counsel for the petitioners. I will be failing in my duty if it is not observed that as has been noticed in the foregoing part of the order, this Court had on 22.02.2021 and even today, proceeded primarily on the basis of the order dated 27.01.2021, wherein this Court had clearly stated firstly that in

CM-4778-2021 in/and RA-90-2021
in CWP-10914-2020
16

the present writ petition there is no interim stay. Secondly it was clarified that UPSC may conduct Review Selection Committee meeting on 29.01.2021. Thirdly it was clarified that UPSC can proceed with the meeting scheduled on 29.01.2021 of Review Select List of the years 2014 to 2018 for promotion to IPS of Punjab Cadre on 29.01.2021.

Therefore in view of the above, in my view, the contention of learned Senior Counsel for the petitioners that their would be stay on the proceedings of the UPSC's Review Selection Committee dated 29.01.2021, is misconceived in view of the observations as recorded above.

Ordered accordingly.

(GIRISH AGNIHOTRI)
JUDGE

23.03.2021

anju rani

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No