

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

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LPA No. 468 of 2021 (O&M)

Mamta

... Appellant

Versus

State of Punjab and others

... Respondents

(2)

LPA No. 608 of 2021 (O&M)

Bimla Bai

... Appellant

Versus

State of Punjab and others

... Respondents

Decided on : 17.11.2021

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Sudeep Mahajan, Advocate for the appellant
in LPA No.468 of 2021.

Mr. Gagneshwar Walia, Advocate for the appellant
in LPA No.608 of 2021.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose off two letters patent appeals
i.e. LPA Nos.468 and 608 of 2021. The facts are being taken from
LPA No.468 of 2021 'Mamta Vs. State of Punjab and others'.

The present letters patent appeals arise out of a common order
dated 01.04.2021 of the learned Single Judge passed in CWP No.28763 of
2017, which have been filed by the dissatisfied writ petitioners, separately.

The writ petitioners-appellants had sought for setting aside the order dated

28.11.2017 (Annexure P-10), whereby cancellation of their appointment as Female Constables had been issued on the ground of revision of the merit list.

The grouse of the writ petitioners was also that the order was passed without granting any opportunity of being heard and they had been working for a period of over a year. The learned Single Judge held that the writ petitioners were recruited on temporary basis and on account of the certain errors the select list had been revised. The writ petitioners had then been placed at Sr. No.3 and 7 in the wait list, which was prepared in May, 2017. Therefore, keeping in mind that the period of validity of the wait list as such had not been prescribed and the fact that no person lower in merit than the writ petitioners had been appointed, the writ petition was disposed of. It was further held that the petitioners were appointed purely on temporary basis and, therefore, dispensing of the service could not be faulted with when regularly selected candidates who were more meritorious had been appointed. Reference was also made to the other orders passed, but the same were distinguished on the ground that the candidates were placed higher in the wait list and in the absence of any right, the writ of certiorari was not issued and neither a mandamus directing the respondents to allow the writ petitioners to continue to work on the post of Constables.

Counsels for the appellants have taken us diligently through the paper-book in order to point out that the appointment was a regular appointment after medical examination was conducted in pursuance of an

offer of appointment made earlier on 19.11.2016 (Annexure P-5) and 29.12.2016 (Annexure P-6). Thereafter the formal order of appointment was issued on 22.11.2016 (Annexure P-7) and, therefore, the withdrawal of the earlier order on account of revision of the merit list was without any basis and was also in violation of the principles of natural justice.

Counsel for the State on the other hand has justified the order of the learned Single Judge by submitting that once the merit list had been revised, the appellants had been pushed down out of the zone of consideration and, therefore, the benefit of appointment had rightly been withdrawn. However, the factum that the withdrawal was done without giving an opportunity of hearing could not be denied.

A perusal of the paper-book would go on to show that in pursuance of the advertisement dated 31.05.2016 (Annexure P-1), online applications were invited for direct recruitment to fill up the vacancies of male and female constables both in District Police Cadre and Armed Police Cadre of Punjab Police in the Pay Band of Rs.10300-34800 + Grade Pay Rs.3200/- and other allowances as admissible. During the period of probation period of three years the selectees' were not entitled to any grade pay, annual increments or any other allowances, except T.A. as per State Government instructions dated 15.01.2015. The number of vacancies advertised were 7416, out of which 1164 posts had been advertised for female candidates in the District Police Cadre. Applications were called by online process with clear instructions that as per various clauses of the advertisement that applications once submitted

and uploaded had to be complete in all respects with relevant proofs of categories and cut-off-date was 21.06.2016. The final selection was to be prepared as per Clause 17 of the advertisement by Each Range/Zonal/Commissionerate Recruitment Board of all candidates, on the basis of marks obtained by the candidates, after taking into consideration i.e. (i) Height (ii) Educational Qualifications and (iii) Interview-cum-Personality Test. As per Clause 20 (xiii), which contained general instructions, application forms without the supporting documents, photograph or signatures, were liable to be rejected

It is not disputed that the appellants as such applied in their category, which is SC (RO) and in pursuance of the selection process in which interviews were dispensed with, provisional offer of appointment to the posts were given to the appellants on 19.11.2016 (Annexure P-5) and 29.12.2016 (Annexure P-6), respectively.

A perusal of the same would go on to show that as per Clause 4 their services were to be governed by the Punjab Police Act, 2017 and the Punjab Police Rules, 1934 and it was on temporary basis as such and the period of probation was three years. The seniority was to be maintained as per standing order No.1 of 2016 under the relevant rules and orders and instructions. The candidate was to undergo medical fitness test by the concerned authorities and services were to be governed by the New Pension Policy Scheme 'Defined Contributory Pension Scheme'. The offer of appointment was apparently accepted and by virtue of the same on account of medical certificates given by the candidates,

conducted by the Medical Officer, Civil Hospital, Shaheed Bhagat Singh Nagar, the Senior Superintendent of Police of the said District issued the appointment orders giving the belt numbers also to the appellants on 22.11.2016 (Annexure P-7). It is, thus, apparent that the appellants were appointed in a regular selection process and it cannot be said that their services could be dispensed with without adverting to the Punjab Police Rules. Therefore, the finding of the learned Single Judge that they have no legal right to continue on the said posts cannot be justified and upheld.

The impugned order dated 28.11.2017 (Annexure P-10) withdrawing the appointment of the appellants alongwith one Lady Constable Kalpna Devi was issued by the Senior Superintendent of Police, Shaheed Bhagat Singh Nagar-respondent No.3, on the ground that result had been revised. Therefore, the appellants had slipped into the wait list and, therefore, appointments as such were cancelled from the district cadre. The said orders do not show that the writ petitioners were given any opportunity of hearing in any manner at the time of passing of the said order and, therefore, cannot be justified in that manner, as the principles of natural justice have been openly violated and cannot also stand the test of judicial scrutiny.

There are other reasons also for which the letters patent appeals are liable to be allowed, since Article 14 of the Constitution of India has also been openly violated. In similar circumstances, one Jagandeep Kaur who was appointed as a Lady Constable in Ludhiana in the Ex-serviceman B.C. quota had also been put in the wait list of the

B.C. quota on the basis of the revised result. The office of the DGP had issued the letter dated 08.12.2018 (Annexure P-14) to the Commissioner of Police that she should be allowed to continue in service by adjusting her against the vacant posts lying in the district in the post of constable. The same was given effect on 13.03.2018 (Annexure P-15) by the Commissioner of Police, Ludhiana by noting that her result had been rectified, but on account of the letter of the DGP, she was allowed to continue in service and, therefore, her removal order dated 21.12.2017 as such was recalled and she was allowed to remain in service.

No tangible explanation is forthcoming from the State to distinguish the case of the writ petitioners as to how a similarly situated person in a different district who had been similarly removed, but got adjusted by the DGP, whereas the writ petitioners on the other hand had not been similarly adjusted. In such circumstances, the order of withdrawal dated 28.11.2017 (Annexure P-10) also cannot stand judicial scrutiny.

Another reason to quash the withdrawal order is that as per the wait list, which is now prepared pursuant to the revised result, one Jaspreet Kaur was also similarly placed in May, 2017 in the wait list at Sr.No.1 (Annexure P-11). The writ petitioners namely Mamta and Bimla Bai were placed at Sr. No.3 and 7, respectively and Kalpna Devi at Sr. No.10, whose appointment order had also been withdrawn from District Nawanshahr, as per the impugned order dated 28.11.2017 (Annexure P-10) itself.

It has been brought to the notice of this Court that candidate at Sr. No.1 in the wait list namely Jaspreet Kaur had also filed CWP No.263 of 2018, which was allowed on 12.12.2019 (Annexure A-3) primarily on the ground that revised merit list could not be prepared and her name could not be struck off from the service rolls, once the recruitment agency had concluded the entire selection process and the merit list had been prepared thereafter. It was further held that ostensible exercise of the revision of the merit list was on account of the fact that certain candidates had been allowed to change their categories and the same could not be done leading to the revision of the merit list. However, the learned Single Judge had refrained from making any comments with regard to the entire merit list and confined the result qua the writ petitioner therein only.

It is not disputed that the Jaspreet Kaur, petitioner in the said case has been duly appointed thereafter, as averred in paragraph No.9 of the pleadings of the LPA. Rather Kalpna Devi in CWP No.28820 of 2017 also got the benefit of quashing the order dated 28.11.2017, which was challenged by the said writ petitioner before another Single Judge, on the strength of the order passed in Jaspreet Kaur's case (*supra*). It is also not disputed that Kalpna Devi was similarly placed as such with the appellants and, therefore, the order of the learned Single Judge as such could not be justified. Kalpna Devi was even lower in the wait list and was at Sr. No.10, whereas the appellants were in the wait list at Sr. No.3 and 7 and have now further moved up on account of Jaspreet Kaur having

been appointed.

Cumulative discussion would go on to show that the order dated 28.11.2017 cannot be sustained as such, since the learned Single Judge has missed the above factual narration while disposing of the writ petition on 01.04.2021 and denied relief to the writ petitioners.

Accordingly, the appeals are allowed and the order 28.11.2017 (Annexure P-10) is quashed. A writ of mandamus is issued directing the respondents to take back the writ petitioners in service in their category and they will be entitled to the restoration of their original seniority. However, they are not entitled as such for any financial benefits for the interregnum period on the principle of 'No Work No Pay'. The necessary exercise be completed within a period of 2 months from the receipt of certified copy of this order.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

November 17, 2021
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No