

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

109+110

**LPA No.844-2021 (O&M) with
LPA Nos.840 to 843 of 2021 (O&M)
LPA Nos.879 to 881 of 2021 (O&M)
Decided on : 24.11.2021**

State of Punjab & others

... Appellants

Versus

Bikramjit Singh

... Respondent

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

Present: Ms.Monica Chhibber Sharma, Sr.DAG, Punjab,
for the appellants.

G.S. Sandhawalia, J. (Oral)

This judgment shall dispose of 8 appeals bearing LPA-840 to 844-2021 and LPA-879 to 881-2021. However, to dictate judgment, facts have been taken from LPA-844-2021 titled *State of Punjab & others Vs. Bikramjit Singh*.

Challenge in the present set of appeals, is to the judgment passed by the Learned Single Judge dated 25.03.2021 whereby 8 writ petitions had been decided and in effect, order dated 11.10.2018 (Annexure P-13) of termination of service of the writ petitioners, namely, Bikramjit Singh and Lakhbir Singh as Constables, was set aside. However, they have not been granted the benefit of pay on the principle of 'No work no pay' for the period they remained out of service and the said period was to be treated as *dies-non*, for which they were held not entitled to any pecuniary and pensionary benefits.

Similarly, the speaking order dated 08/20.08.2018 (Annexure R-1) passed in compliance of the order of the Learned Single Judge dated 16.01.2018, passed in CWP-11606-2015 along with other connected matters had been set aside whereby the claim of the other 6 applicants for the post of Police Constables against the 2% posts reserved in the quota of 'Wards of Police Personnel', had been rejected on the ground that there was no provision for any reservation provided in the advertisement dated 29.09.2011 (Annexure P-2) on the basis of which, the candidates were seeking consideration. Resultantly, it had been provided that letter of appointment would be issued to the said 6 persons against the 2% quota of the 'Wards of Police Personnel'.

The reasoning which has been given by the Learned Single Judge while allowing the writ petitions, has been questioned by the State, primarily on the ground that once there was an interim order passed by this Court in CWP-13493-2010 on 15.09.2011 wherein no further appointment had to be made against the 2% quota, the applicants could not seek consideration qua the advertisement which had been issued on 29.09.2011. It is submitted that a corrigendum was issued and mention was made of withdrawing the 2% quota. Reference is made to the communication dated 04.10.2011 (Annexure P-7) which was sent by the Director General of Police to the Director, Public Relation Officer and the changes were to be got published in the newspapers. It is submitted that once the advertisement itself does not contain the benefit of the policy then the directions for appointment and for consideration against the said 2% quota, is not justified.

The said argument, at first blush, is attractive, but on a deeper delving into the controversy, it would be noticed that no material was placed before the Learned Single Judge that the corrigendum was given effect to by publication in the newspapers. The Learned Single Judge has, rather, recorded that the respondents have not published any advertisement in the 'Tribune' whereby there was no mention of keeping any reservation for the 2% quota of 'Wards of Police Personnel'. It has also been recorded that they have not produced on record any advertisement which they claim was published in the 'Tribune', to the said effect. Similarly, a finding has been recorded that there is no document to show the actual publication of any corrigendum in the vernacular newspapers 'Ajit' and 'Punjab Kesri' and therefore, the stand of the State had rightly not been accepted and now also it has been argued on the same lines.

It has, accordingly, been recorded by the Learned Single Judge that the appointment orders were not wrongfully obtained in any manner against the reserved vacancy and they cannot be blamed and penalized for submitting the application against the 2% quota of 'Wards of Police Personnel'. Therefore, the discharge order dated 11.10.2018 (Annexure P-13) was held not justified in the facts and circumstances. Regulantly, qua the other 6 Constables, it has been recorded that their appointments had been kept on hold on account of the pendency of CWP-13493-2010 titled *Ranjit Singh Vs. State of Punjab & others*, along with other connected matters and they are liable to be considered against the 2% quota and issued letters of appointment and the order dated

08/20.08.2018 (Annexure R-1) was, accordingly, held not to be justified wherein it was recorded that no post was kept reserved in the quota of 'Wards of Police Personnel'.

Applications have also been filed under Order 41 Rule 27 CPC for placing on record Annexures A-1 & A-2, to contend that there was no reservation provided in the advertisement which has now been sought to be placed on record as Annexure A-1. It is pertinent to mention that specific averments were made in para Nos.5 & 6 of the writ petition which were not specifically rebutted in the written statement qua the 2% quota of reservation and now, what is sought to be placed on record was never placed on record before the Learned Single Judge. Rather a perusal of Annexure A-2 also shows that a corrigendum that is stated to be issued provides under Clause 2 that no relaxation benefit was to be given to the wards of police personnel. Nothing has been shown that this corrigendum was ever published in the newspaper(s) and it has also been noticed in the impugned order that only a communication was addressed to the Director, Public Relation Officer, Punjab on 04.10.2017. Resultantly, the applications does not fall under the provisions of Order 41 Rule 27 CPC as they cannot be used to fill up lacuna, as has been held by the Apex Court in **Satish Kumar Gupta & others Vs. State of Haryana 2017 (4) SCC 760**. Relevant portion of the judgment reads as under:

“19. The other part of the impugned order permitting additional evidence and remanding the case for fresh decision is uncalled for. No case was made out for permitting additional evidence on settled principles under Order XLI

Rule 27 of CPC. The provision is reproduced below:-

“27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case. There was no ground for remand in these circumstances.”

It is not disputed that initially in the advertisement of 2010, the policy dated 11.09.1996 (Annexure P-1) provided 2% reservation, which was subject matter of challenge in Ranjit Singh's case (supra) and interim order dated 15.09.2011 had been passed that till further orders, no

appointment against the above-stated 2% reserved post shall be made in any rank. The advertisement in question was issued on 29.09.2011 (Annexure P-2) wherein 2% posts for 'Wards of Deserving Policemen' were reserved. Nothing was mentioned in the advertisement that the appointments or the applications of the persons applying against the said 2% reservation were to be subject to the decision of the writ petition. In such circumstances, the writ petitioners had applied against the said posts under the reserved category.

The writ petition in Ranjit Singh's case (supra) was eventually disposed of on 11.03.2015 (Annexure P-3) upholding the said policy on the strength of the judgment of the Apex Court in **Yogender Pal Singh Vs. Union of India 1987 (1) SLR 379**. Rather directions were issued keeping in view the fact that an interim order had been passed that the State would consider the case of the petitioners in the writ petitions which had been filed by the candidates who had been waiting for their appointment. It was also further directed that persons who had not been issued appointment letters because of the order passed by this Court on 15.09.2011, their cases were also ordered to be considered while considering the case of the writ petitioners.

The office of the Director General of Police then issued letter dated 10.04.2015 (Annexure P-4) for issuance of appointment letters against the 2% quota of 'Wards of Police Personnel', by noting that the policy was to operate and the State shall consider the case of the petitioners in terms of the writ petition, for the purpose of issuing appointment letters along with the others. The 2 candidates, namely,

Bikramjit Singh and Lakhbir Singh were diligently issued appointment letters on 28.05.2015 (Annexure P-5) by the SSP, Ferozpur. It was mentioned in the appointment order that he had been selected earlier but was not allowed to join duties due to interim orders and was eligible.

The change of heart, apparently, took place when several other writ petitions were filed in this Court and the lead case of which was CWP-11606-2015 titled *Amandeep Singh Vs. State of Punjab & others* in which instance of Lakhbir Singh was given and other candidates also sought similar consideration. Directions were, accordingly, issued on 16.01.2018 (Annexure P-9) that the competent authority would examine the cases of the petitioners and come to conclusion whether they are at par with Lakhbir Singh and consequential benefits were to be granted to them. If it was found that Lakhbir Singh had been appointed in violation of the policy, the respondents were directed to take necessary action against him.

Despite its own letter dated 10.04.2015 (Annexure P-4) whereby benefits to others who had applied had to be granted, the State preferred to issue show cause notice on 13.07.2018 (Annexure P-10) to the 2 persons who had been appointed. Reply to the same was given on 18.07.2018 (Annexure P-11), placing reliance upon the policy of the State dated 11.09.1996 and that the show cause notice was passed on a pre-determined mind. The same eventually led to passing of the order of discharge dated 11.10.2018 (Annexure P-13) by the SSP, Ferozepur on the ground that permission had been granted by the DGP, Punjab to terminate his service. Qua the other 6 persons, the order dated

08/20.08.2018 (Annexure R-1) was passed, rejecting their claim for appointment.

A perusal of the order of discharge would go on to show that the reasoning given is that the persons had obtained reservation under 2% quota of 'Wards of Police Personnel' by wrong means, which is in total contrast to the initial order of appointment dated 28.05.2015 (Annexure P-5), which was in pursuance of the directions issued by the Director General of Police on 10.04.2015 (Annexure P-4) that their cases have to be considered as per the directions issued in Ranjit Singh's case (supra). Similarly, the reasoning given in the order dated 08/20.08.2018 (Annexure R-1) was that there was no mention of the reservation policy which had wrongly been published and thereafter corrigendum had been published, for rejecting the claim on the ground that there was no mention of reservation in the advertisement in the year 2011.

This aspect has already been highlighted above and also by the Learned Single Judge that there is nothing to show that the communication addressed to the Director of Public Relation, Punjab was given effect to by publication in the local newspapers. Thus, the argument raised that the reservation was not there in the advertisement, is without any substance. The policy of reservation had already been given affect vide notification dated 11.09.1996 and rather directions had been issued in Ranjit Singh's case (supra) to consider the cases of the persons who were eligible, in terms of the policy. The interim order dated 15.09.2011 whereby no appointment were to be made till further orders, also merged in the final order passed in the said writ petition, which was

disposed of on 11.03.2015 (Annexure P-3).

Thus, the candidates were fully eligible and had duly applied in accordance with law and have a legal right for claiming issuance of writ of mandamus, as per the settled principles. Therefore, the Learned Single Judge has not gone wrong in any manner in directing to consider the cases of the 6 writ petitioners against the post of Police Constables. Similarly, the order of discharge dated 11.10.2018 (Annexure P-13) has rightly been quashed. The interest of the State had also been protected regarding the principle of 'No work no pay' and therefore, this Court is of the opinion that the directions issued by the Learned Single Judge do not suffer from any infirmity or illegality, which would warrant interference by this Court in the present letters patent appeals.

Resultantly, in view of the above discussion, the present appeals along with all misc. application(s) for additional evidence are dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

November 24, 2021
Sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No