

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

**CWP NO. 26802 OF 2018
DATE OF DECISION :25.03.2021**

Bikramjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

AND

CWP No. 27457 of 2018

Lakhbir Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

AND

CWP No. 38027 of 2018

Ramandeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

AND

CWP No. 29808 of 2018

Jashandeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

AND

CWP No. 29810 of 2018

Harcharan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

AND

CWP No. 38030 of 2018

Harpreet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

AND

CWP No. 38033 of 2018

Harwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

AND

CWP No. 38037 of 2018

Gursimerjeet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sapan Dhir, Advocate and
Mr. Pradeep Kumar Kapila, Advocate,
for the petitioner (s)

Ms. Kanica Sachdeva, AAG, Punjab.

ARUN MONGA, J.

These writ petitions are being decided vide instant single order as material questions of facts and law involved for adjudication therein are common.

2. Relevant factual narrative, as per CWP No.26802/2018, succinctly is as under:

2.1 Punjab Government accorded sanction vide policy instructions dated 11.09.1996 (AnnexureP-1) to 2% posts for the wards of deserving policemen of the following categories, in direct recruitment of constables, Sub Inspectors and Inspectors out of the direct recruitment quota previously meant for handicapped persons.

Relevant of policy is as below:

The term “deserving” will cover wards of the following police personnel:

(i) Who have suffered casualties of one or more the following relatives:

- 1. Father*
- 2. Mother*
- 3. Sister/Brother*
- 4. Son/Daughter*
- 5. Any other dependent family member*

(ii) Who has suffered permanent disability on the action against terrorist or attack by terrorist.

OR

(iii) Who has been awarded President’s Police Gallantry or Police Medal for Gallantry bravery in actions against the terrorists.

OR

(iv) Who has taken part in atleast 3 encounters with terrorist.

OR

(v) Who otherwise in the opinion of the Director-General of Police has been in forefront of the fight against terrorism.

The “wards” proposed to covered widow, son, dependent daughter, dependent brother sister or any other dependent family member.”

2.2 In the year 2010, CWP No. 13493/2010 and a few other connected writ petitions were filed in this Court invoking the above said policy seeking mandamus to appoint the concerned petitioners, against the reserved 2% posts for the wards of specified categories of deserving policemen. This Court *suo motu* expanded the scope of writ proceedings vide an order dated 15.09.2011, which reads as under:

“Let there be a show cause notice to the State Government to explain the legal sanctity behind providing 2% reservation for the wards of policemen for recruitment as Constables. Assistant Sub Inspectors and Inspectors out of direct recruitment quota which is apparently contrary to the decision of this Court in the case “Jagtar Singh and others v. State of Punjab and others” 2006 (3) SLR 781 ?

List on 20.01.2012

Meanwhile, it is directed that till further orders, no appointment against the above stated 2% reserved posts shall be made in any rank.

Let a copy of this order be handed over to the learned Deputy Advocate General, Punjab for information and necessary compliance.”

2.3 In the interregnum, Respondent No. 2 vide an advertisement (Annexure P-2) (Colly) published in “The Tribune” dated 29.09.2011 invited applications for direct recruitment of 3726 constables wherein 2% posts for wards of deserving policemen were reserved. Petitioner fulfilled the qualifications, was eligible, applied for and was selected on merits for appointment as a constable against 2% reserved posts for the wards of deserving policemen as shown in the list of selected candidates Annexure P-2(Colly).

2.4 Subsequently, aforesaid CWP No. 13493/2010 and the other connected writ petitions were finally disposed of by this Court vide judgment dated 11.03.2015 Annexure P-2directing as under:

“The only hitch before the State Government is because of the order dated 15.09.2011 in which the question was raised as to whether 2% reservation can be maintainable in view of the Division Bench judgment in the case of Jagtar Singh and others (supra). As I have already held that there is no quarrel with the judgment of Judgment of Jagtar Singh and others (supra), but had there been the reservation only on the basis of ‘descent’ because the reservation on the basis of ‘descent’ as provided under Article 16 (2) of the Constitution of India has already been struck off by the Supreme Court in the case of Yogender Pal Singh and others (supra), then the said

reservation could not have been claimed by the selected candidates but the reservation has been provided by virtue of a policy, referred to above, which has not been challenged either by the petitioner or the respondents, therefore, keeping in view the law laid down by the Supreme Court in the case of Secretary to the Govt. and another (Supra), it is directed that the said policy would operate and the respondents/State shall consider the case of the petitioners in the remaining writ petitions, namely, CWP No.5147 of 2014, CWP No.20588 of 2013, CWP No. 24695 of 2012 and CWP No.21160 of 2012 for the purpose of issuing appointment letters to them in accordance with law.

With these observations, all the writ petitions, namely CWP No.5147 of 2014, CWP No. 20588 of 2013, CWP No. 24695 of 2012 and CWP No. 21160 of 2012 are hereby disposed of.

Before parting, it would be relevant to mention that in the 1st petition an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short “the CPC”) has been filed by some of the persons, who were also selected and tried to intervene in this petition. Though there is no such writ petition on their behalf but keeping in view the fact they are similarly situated persons with those candidates who had filed their separate writ petition, in which it is pleaded that they have been selected but appointment letters are not issued to them because of the order passed by this court on 15.09.2011, their cases be also considered by the State while considering the case of the writ petitioners.”

2.5 As a consequence, respondent No. 2 issued instructions vide letter dated 10.04.2015 Annexure P-4 to the concerned authorities directing that the candidates who had not joined duty and who were not issued appointment letters, be issued appointment letters as per the orders passed by this Court in CWP No. 13493/2010 and the other connected writ petitions.

2.6 Accordingly, petitioner was issued appointment letter dated 28.05.2015 (Annexure P-5) and joined duty. Some other similarly selected candidates were also issued appointment letters and joined duties.

2.7 However, a few other candidates, who were similarly selected against this reserved quota but were not issued appointment letters, filed writ petitions, including CWP No. 11606/2015. These were disposed of by this Court vide common order dated 16.01.2018 (Annexure P-9) in following terms:

“ In the circumstances, the instant writ petitions are disposed of with a direction to the respondents to examine as to whether the case of the petitioners is at par with said Lakhvir Singh. If upon examination, the competent authority comes to the conclusion that the petitioners are at par with Lakhvir Singh, the consequential relief be accorded to them within eight weeks from the date of receipt of a certified copy of this judgment subject to the following conditions :

- 1. All other candidates who applied for the post of Constable in 2% quota of wards of police personnel in the year 2011 will be considered subject to the conditions that they fall within requisite merit list of their respective district.*
- 2. The appointment letter would be issued from fresh date after their fulfilling the conditions of medical fitness, scrutiny of documents, character verification etc.*
- 3. They will be entitled for notional benefits for the purposes of seniority and no monetary benefits would be granted to them w.e.f 2011, as per the principle of ‘No work No Pay’. Their pay and other service conditions would be as applicable on the date of their appointment.*

*In case, it is found that said Lakhvir Singh had been appointed **in violation of the policy**, the respondents shall take necessary action against him.*

Disposed of.”

2.8 Show cause notice dated 13.07.2018 Annexure P-10 was issued by respondent No. 3 asking for the petitioner’s explanation before terminating his services. Its relevant parties as under:

“ Due to stay orders in Civil Writ Petition No. 13493 of 2010 tilted as Ranjit Singh v. State of Punjab, against the appointments for 2% quota, no 2% quota was kept reserved for the police wards in the advertisement of 2011. A corrigendum was also issued in this regard in the papers. Despite the same, you Lakhbir Singh No.672/Ferozepur and Bikramjit Singh No.77/Ferozepur have illegally applied by wrong means against the advertisement issued in September 2011 and obtained against 2% quota of police wards. By keeping in view

the decisions of the Hon'ble Punjab and Haryana High Courts in various writ petitions, the Worthy Director General of Police, Punjab, Chandigarh has granted permission to terminate your services. Therefore, before terminating your services, I am granting you an opportunity to give your explanation. In case you want to say something, then you are requested to submit a written reply to the undersigned within a period of 10 days from receipt of this notice.

You are also informed that in case, you do not submit any written reply within the stipulated period, then final order of punishment proposed against you shall be passed against you."

2.9 The petitioner submitted his detailed reply dated 18.07.2018 Annexure P/11 defending his appointment. He also filed CWP No. 18051/2018 challenging the show cause notice. The said writ petition was dismissed as premature vide an order dated 24.07.2018 passed by this Court.

2.10 Impugned order dated 11.10.2018 Annexure P/13 was then passed by respondent No. 3 terminating the services of the petitioner herein and also of LakhbirSingh, petitioner in connected CWP No.27457/2018.

2.11 Interim order dated 17.10.2018 was passed by this Court in the present writ petition (CWP No. 26802/2018) directing that the operation of the impugned order Annexure P/13 shall remain stayed qua the petitioner.

3. In their reply to the petition, respondents have pleaded that in the advertisement published in "The Tribune" on 29.09.2011, there was no mention of keeping any reservation for the wards of police personnel. Inadvertently, the news papers "Ajit" and "Punjab Kesri" on 28.09.2011 and 29.09.2011, respectively had printed wrong advertisements and published availability of vacancies under 2% quota meant for the wards of the police personnel. In order to rectify the same and make the position clear, a corrigendum was published highlighting that "no relaxation/benefit will be given to the wards of police personnel". This corrigendum was sent by the Director General of Police, Punjab (respondent No. 2) to the Director, Public

Relations, Punjab, Chandigarh vide memo dated 04.10.2011 for publication in the newspapers namely “Ajit” “Punjab Kesri” and “The Tribune”. Despite this, the petitioner herein and Lakhbir Singh applied for and were appointed under 2% quota for the wards of police personnel in violation of the terms and conditions of the advertisement dated 28/29.09.2011. Therefore, respondent No. 2 vide letter dated 03.07.2018 directed the concerned SSP (respondent No. 3) to take necessary steps with regard to the illegal appointments of the petitioner herein and Lakhbir Singh as constables. In this connection, detailed order dated 08.08.2018 Annexure R/1 was also issued by respondent No. 2. Show cause notices were issued to both these persons and after considering their replies, their services were rightly terminated. Preliminary objection was also taken that the aforesaid detailed order dated 08.08.2018, Annexure R/1, is binding on the petitioner, but has not even been referred to, let alone challenged by him and therefore, the petitioner is left with no claim for relief.

4. Petitioner filed rejoinder saying that order dated 08.08.2018 Annexure R/1 had not been conveyed to him and re-iterated the averments and claim in the writ petition.

5. I have heard the learned counsel for the parties and, with their able assistance, gone through the record.

6. Learned counsel for the petitioners vehemently contended that, in CWP No. 26802/2018 and CWP No.27457/2018, at the time of the publication of the advertisement, the policy for 2% reservation for the wards of deserving police personnel subsisted and was operative; the relevant advertisement specifically provided for this reservation; the petitioners fulfilled the criteria for being considered against this quota; they were duly

selected and, on vacation of the stay against appointments, they were rightly appointed. There was nothing wrong or illegal on the part of the petitioners in applying for the posts, their selection and appointments. Still, on totally wrong and untenable facts, show cause notices were issued to them and illegal orders were passed terminating their services.

7. In remaining petitions, learned counsel for the petitioners argued similarly. He contended that petitioners were rightly selected on the basis of merit and the rejection of their claim for appointment was illegal.

8. It has been argued by the leaned counsel for the respondents that there was no quota reserved for the wards of deserving police personnel in the relevant advertisement and yet the petitioners wrongly applied for, got selected and obtained appointments against that quota. As such, the petitioners, who thus got appointed, were rightly served with show cause notices and termination of their services was in accordance with law. Qua the remaining petitioners, it was contended that their claims for appointment was against reserved quota were rightly rejected.

9. Having applied my mind to the relevant facts and record and the submissions on behalf of the learned counsel for the parties, I am of the opinion that these bunch of petitions merit being allowed.

10. It is not disputed that at the time of publication of the relevant advertisement in September, 2011, the policy for reservation of 2% posts for the wards of deserving police personnel subsisted, though there was a stay order dated 15.09.2011 passed by this Court in CWP No. 13493/2010 and the other connected writ petitions directing that till further, no further appointment be made against this quota. The petitioners applied for and were selected on merits for appointment against this quota. These writ

were finally disposed of by this Court vide judgment dated 11.03.2015 Annexure P-2, upholding the policy decision/instructions of the State for this reservation. The aforesaid policy decision/instructions of the Government for reserving 2% posts in direct recruitment for the wards of deserving police personnel subsist and are operative. Their legality and validity are not questioned in the present writ petitions. As already noted, these were upheld by the learned Single Judge of this Court vide judgment dated 11.03.2015, Annexure P-2.

11. Crux of the allegations against the petitioner in the show cause notice dated 13.07.2018 for terminating his services is that due to stay order dated 15.09.2011 in CWP 13493/2010 against appointments for 2% quota, no 2% quota was kept reserved for the police wards in the advertisement of 2011; that a corrigendum was also issued in this regard in the papers and despite the same, he and Lakhbir Singh(Petitioner in CWP No. 27457/2018) had illegally applied by wrong means against the advertisement issued in September, 2011 and obtained the appointment against 2% quota of police wards.

12. Let us now see whether or not these allegations against the petitioner have been established on record.

13. Petitioner has filed relevant advertisement Annexure P/2 published in “The Tribune” on 29.09.2011. It clearly contains text inter alia , that as per instructions issued by the Government from time to time, 25% seats for Schedule Castes/Schedule Tribes, 12% seats for backward Classes, 13% for Ex-Servicemen, 2% seats for wards of Police personnel& 1% seat for wards of Freedom Fighters are reserved. Respondents have not filed any such advertisement, which according to them, was published in “The

Tribune” and had no mention of keeping any reservation for the wards of police personnel. They have also not produced on record any other advertisement, which they claim was published in “The Tribune” and had no mention of keeping any reservation for the wards of police personnel. Record thus supports the contention of the petitioner that advertisement Annexure P/2 published in “The Tribune” on 29.09.2011 contained text inter alia , that “as per instructions issued by the Government from time to time, 25% seats for Schedule Castes/Schedule Tribes, 12% seats for backward Classes, 13% for Ex-Servicemen, 2% seats for wards of Police personnel& 1% seat for wards of Freedom Fighters are reserved” and negates the contrary stand of the respondents.

14. As noted above, it is the own case of the respondents that the news papers “Ajit” and “Punjab Kesri” on 28.09.2011 and 29.09.2011 respectively had printed, wrongly though, advertisements and published availability of vacancies under 2% quota meant for the wards of the police personnel. They have not produced any document to show actual publication of any corrigendum in the newspapers “Ajit” “Punjab Kesri” and “The Tribune”, which they claim, highlighted that “no relaxation/benefit will be given to the wards of police personnel”. This Court is, therefore, unable to accept the stand of the respondents that a corrigendum was published in the newspapers namely “Ajit” “Punjab Kesri” and “The Tribune” highlighting that “no relaxation/benefit will be given to the wards of police personnel”.

15. It follows from the above observations that the relevant advertisements as published contained text inter alia to the effect that as per instructions issued by the Government from time to time, 25% seats for

Schedule Castes/Schedule Tribes, 12% seats for backward Classes, 13% for Ex-Servicemen, 2% seats for wards of Police personnel & 1% seat for wards of Freedom Fighters are reserved.

16. Admittedly, the petitioner fulfilled the qualifications and criteria to apply pursuant to advertisement Annexure P/2 for consideration against this reserved quota and was selected in November, 2011 on the basis of his eligibility and merit. He cannot, therefore, be faulted or penalized for wrongly submitting an application and his selection under this reserved category.

17. In CWP No. 13493/2010 and connected writ petitions, this Court had suo motu passed an interim order dated 15.09.2011 directing that till further orders, no appointment against 2% reserved posts for wards of deserving police personnel shall be made in any rank. It seems that owing to this stay order, the respondents had kept the petitioner's appointment on hold.

18. The aforesaid writ petitions were finally disposed of by this Court vide judgment dated 11.03.2015 Annexure P-2 upholding the provision for 2% reservation for wards of deserving police personnel and directing that the policy would operate and the respondents/State shall consider the cases of the concerned petitioners and other candidates for the purpose of issuing appointment letters to them.

19. It was after this judgment dated 11.03.2015 that respondent No. 2 issued letter dated 10.04.2015 Annexure P/4 directing issuance of appointment letters to the concerned candidates selected against this reserved quota. Petitioner was also issued appointment letter dated 28.05.2015 Annexure P-5 and joined duty.

20. In these circumstances, it cannot be said that the petitioner wrongly obtained appointment as constable against reserved vacancy. He cannot, therefore, be blamed or penalized for illegally or wrongfully obtaining the appointment against 2% quota of police wards.

21. Respondents pleaded that vide a detailed administrative order dated 08.08.2018,(Annexure R/1) respondent No. 2 held the appointments of the petitioner and Lakhbir Singh to be in violation of the terms and conditions of the advertisement. They thus deserved to be discharged from service. Accordingly, the Senior Superintendent of Police, Ferozepur directed vide letter dated 03.07.2018 to take necessary steps against these constables. However, the petitioner has not challenged the said order, owing to which he cannot get any relief. It is asserted in the petitioner's replication that this order dated 08.08.2018 Annexure R/1 was not communicated to him. Perusal of the document shows that it was not even addressed to the petitioner. No material has been produced to show that this order was communicated to the petitioner before filing of the writ petition. It cannot, therefore, be said that while filing the petition, the petitioner deliberately did not challenge the same. Be that as it may, even otherwise, absence of challenge there to would not relieve this Court of the duty to exercise its jurisdiction under Articles 226/227 of the Constitution of India to pass appropriate orders in the interest of justice.

22. Accordingly, it is held that the show cause notice dated 13.07.2018 Annexure P/10, order dated 08.08.2018 Annexure R/1 and the impugned order dated 11.10.2018 Annexure P-13 for termination of the petitioner's services cannot be sustained on facts and in law and deserve to be set aside.

23. Facts and the circumstances in CWP No. 27457/2018 filed by Lakhbir Singh are analogous. Therefore, similar orders are required to be passed in his case too. Accordingly, it is held that the show cause notice dated 13.07.2018 Annexure P/10, order dated 08.08.2018 Annexure R/1 and the impugned order dated 11.10.2018 Annexure P-13 for termination of the petitioner's services also cannot be sustained on facts and in law and deserve to be set aside.

24. Petitioners in CWPs No. 29808, 29810, 38030, 38033, 38037, 38027 of 2018 are similarly placed with the petitioners in CWP No.26802/2018 and CWP No. 27457/2018, except that the former have not yet been actually appointed and their claims for appointment have been rejected by the respondents. They, inter alia, seek mandamus directing the respondents to issue them the letters of appointment as constable. Thus being the position and for the foregoing reasons, the relevant orders rejecting their claim for appointment deserve to be set aside with direction to the respondents that subject to their eligibility at the time of selection in 2011 and fulfillment of other relevant procedural requirements, these petitioners be issued letters of appointment as constables against 2% quota meant for the wards of the police personnel.

25. Accordingly, these writ petitions are disposed of in following terms:

25.1. CWP 26802/2018-Bikramjeet Singh:

- (i) Show cause notice dated 13.07.2018 Annexure P/10, order dated 08.08.2018 (Annexure R/1) and the impugned order dated 11.10.2018 (Annexure P-13) for termination of the petitioner's services are set aside.

- (ii) On the principle of no work no pay, the period during which the petitioner remained out of service because of termination of his services till rejoining duty, will be treated as *dies-non* for which he will not be entitled to any pecuniary and pensionary benefits

25.2. CWP No. 27457/2018 filed by Lakhbir Singh:

- (i) Show cause notice dated 13.07.2018 Annexure P/10, order dated 08.08.2018 Annexure R/1 and the impugned order dated 11.10.2018 Annexure P-13 for termination of the petitioner's services are set aside.

- (ii) the period during which the petitioner remained out of service, because of termination of his services till rejoining duty, will be treated as *dies-non* for which he will not be entitled to any pecuniary and pensionary benefits

25.3. CWPs No. 29808, 29810, 38030, 38033, 38037, 38027 of 2018:

- (i) Relevant impugned orders dated 20.08.2018 (Annexure P-12) in CWP No. 29808/2018 and CWP No. 29810/2018, orders dated 08.08.2018 (Annexure P-10) in CWPs No. 38030/2018 and 38033/2018 and order dated 20.08.2018 (Annexure P-10) in CWP No. 38037/2018 rejecting the claim the petitioners for appointment as constables against 2% quota meant for the wards of the police personnel are set aside
- (ii) It is directed that subject to their eligibility at the time of selection in 2011 and fulfilling other relevant procedural requirements, the respondents shall issue letters of appointment to the petitioners as constables against 2% quota meant for the wards of the police personnel.

(iii) Needful as at (ii) be done by the respondents within two months of the receipt of certified copy of this order.

26. Pending applications, if any, also stand disposed of.

27. Petitions allowed, as above. No order as to costs.

25.03.2021.
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No