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

**CWP-15761-2016
Date of decision: 18.08.2022**

SUSHMA RANI AND ANOTHER

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. G. P. S. Randhawa, Advocate
for the petitioners.

Ms. Deepali Puri, Addl. A.G., Punjab.

JAISHREE THAKUR, J.

1. The petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India with a prayer for re-fixation of their seniority and refund of amount recovered from the petitioners for the period 12.04.1994 to 08.04.1998 with interest.

2. In brief, the facts as stated are that the petitioners had applied for the post of Computer Operators in the scale of Constable in response to an advertisement issued and were duly recommended as such , but on account of no vacancy in the rank of Constable in the district, the petitioners were appointed as Special Police Officers on 02.12.1993, till such time vacancy occurred. It is submitted that the petitioners were given due assurance that the petitioners would be allotted constabulary number as and when vacancy in the rank of Constable arose. The petitioners were then allotted constabulary number

against vacant posts of Constable on 12.04.1994, after due sanction from the office of the Director General of Police, Punjab. The petitioners and others similarly situated Constables were however, reverted back as SPO's in the year 1997, on account of a letter addressed by the Director General of Police, Punjab. This letter pertained to all those Constables, who were enlisted as SPOs after 31.10.1993. The petitioners were then allowed to work as Constable vide letter dated 08.04.1998 issued by the Director General of Police, Punjab. The petitioners herein are aggrieved against the downgrading of their seniority by taking them to be in service as Constables from April, 1998 instead of December, 1993, when they had applied for the post of Computer Operators in the scale of Constable. It is also pleaded that they would also be entitled to refund of the recovery made i.e. the additional amount as paid to a Constable as against the pay of an SPO. It is argued that similarly placed persons, who had been approved for appointment as Computer Operators in the scale of Constable, were directly appointed as Computer Operators in the scale of Constable against existing vacancies and were not appointed as SPOs. It is submitted that they have attained the seniority from the year of their recruitment and, therefore, the petitioners have been put at a disadvantage and recovery made on account of excess payment made could not have been made. It is also submitted that by letter dated 08.04.1998, it was decided to retain SPO's as Constables in terms of standing order No.2/1997 and they were allowed to continue as Constables. The names of the petitioners were mentioned in the list.

3. Mr. G. P. S. Randhawa, learned counsel appearing on behalf of the petitioners herein contends that the petitioners were approved for appointment as Computer Operators in the scale of Constable in the year 1993, however, on account of lack of vacancies, they were appointed as SPOs w.e.f. 02.12.1993

and later appointed as Constables in the year 1994. It is argued that the petitioners were downgraded to the rank of SPOs in 1997 without any fault of their, while some others have been allowed to retain their seniority. It is submitted that the petitioners served a legal notice in the year 2016 however, neither the seniority has been corrected as on date, nor has the refund been made of the excess salary recovered.

4. Mr. Pawan Sharda, DAG, Punjab, learned counsel appearing on behalf of the respondents-State submits that the claim of the petitioners herein for re-fixing of their seniority and refund of the amount recovered from them for the period from 12.04.1994 to 08.04.1998, is highly belated apart from being not maintainable. It is contended that the petitioners were appointed as SPOs by an order dated 02.12.1993 and were allotted SPO Nos. 52 and 50 respectively. Their appointment was made by granting relaxation in height to both the petitioners under Rule 12.15 (1) of the Punjab Police Rules, 1934 and were accorded approval for their enlistment as Computer Operators. They were to be absorbed as Constables as per the seniority and suitability. In the year 1996, SPO Lal Mohd. and other's filed 35 writ petitions (main CWP No.7451 of 1996, titled as Lal Mohd. and others versus State of Punjab and others) in this Court on the ground that they were not considered for the post of Constables while allotting constabulary numbers to their juniors. The writ petitions were disposed of on 12.12.1996 with a direction that all the District Superintendents of Police shall consider the claims of petitioners therein for appointment and absorption as Constables with effect from the date the persons junior to them were appointed. As the department was not able to allot constabulary numbers to all 4647 suitable SPO's appointed, instructions dated 28.08.1997 were issued to the effect that all SPO's, who were appointed as such up to 31.12.1993 are to

be adjusted as Constables and further SPO's appointed after this date, who have been appointed as Constables cannot be retained as Constables because they were junior to others in their original rank of SPOs. It is also argued that the petitioners were granted date of absorption with effect from 08.04.1998 without asking them to pass physical test or written test for the post of Constable.

5. I have heard the counsel for the parties and have also perused the pleadings of the case.

6. The basic relief as sought by the petitioners herein is to the effect that they ought to be given seniority from the date they were appointed as Constables i.e. from 12.04.1994 and not from 08.04.1998, apart from claiming the refund of the difference of the salary recovered during the period they worked as Constables, prior to their reversion to the rank of SPOs. The reliefs as sought cannot be entertained at this belated stage. The petitioners, who were initially appointed as SPOs by order dated 02.12.1993 were absorbed as Constable with effect from 12.04.1994. However, on account of orders passed by this Court in aforementioned Civil Writ Petition, wherein SPO's were given constabulary number ignoring the claim of persons senior to them, the petitioners were then reverted to the rank of SPO and thereafter, absorbed as Constables with effect from 08.04.1998. This was done by giving relaxation by the respondents-State ignoring the physical measurement test and the written examination, which would normally have been conducted for recruitment of Constables. The petitioners accepted the date of absorption as Constables and have kept silent for a period of almost 18 years. The petitioners cannot be permitted to seek re-fixation of their seniority taking the date of appointment as Constable as in the year 1994 without even impleading any of the persons, who

would be likely to be affected by re-fixation of the seniority. The claim of the petitioners would be barred by the period of limitation and, therefore, cannot be entertained at this belated stage. The law is well settled to the effect that a litigant has to be vigilant as to his own rights and in case, he does not agitate the same at the relevant time, no relief can be allowed.

7. It is also worthwhile to mention that the plea for refund of the recovery in difference of salary between that of SPO and a Constable, would again be hit by the law of limitation. In the first instance, the petitioners have not placed any document on the record to show that in fact, recoveries had been effected. Claim for recovery, if any, should have been instituted within a period of three years as prescribed by the law of limitation. The petitioners seems to have woken up only in the year 2016 to claim a refund of alleged recoveries made in the year 1998.

8. Therefore in view of the above, this instant writ petition stands dismissed being barred by limitation.

18.08.2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*