

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 110

CWP-27625-2022

Date of decision : 02.12.2022

ASI Umesh Kumar and another

..... Petitioners

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Dr.S.K.Redhu, Advocate, for the petitioners.

Mr.Jagbir Malik, Addl.A.G., Haryana.

DEEPAK SIBAL, J. (ORAL)

Through the present petition the petitioners seek issuance of a writ in the nature of certiorari to quash letter dated 09.05.2022 as also two orders both dated 29.08.2022 through which their claim to rank them seniors to their juniors as Constables has been rejected.

On 06.08.2004 the State of Haryana advertised to fill up 425 posts of Constables. The petitioners applied for appointment against the advertised posts and were selected. Certain candidates selected with the petitioners were offered appointment and they joined but before the petitioners could be offered appointments elections were declared resulting in the clamping of the model code of conduct by the Election Commission of India stalling the petitioners' appointments. Seeking appointments and consequential seniority the petitioners approached this Court through CWP-4812-2005-*Anil Kumar and others vs. State of Haryana and others* in which petition, on being put to notice, the then Advocate General, Haryana appeared before this Court and stated that the State, subject to the petitioners' medical fitness and verification of their antecedents, had taken a decision to offer them appointment. On the basis of the afore statement the petitioners' petition was disposed of with a further

direction that in case, any person(s) lower in merit to the petitioners had been appointed on an earlier date(s) to the petitioners, the petitioners shall be at liberty to make a representation to the State seeking consequential relief of being appointed from the date(s) persons lower in merit to them had been appointed and in case such representation was made by them within one month from the date of the disposal of the petitioners' writ petition, the respondents were directed to take a final decision thereupon within two months thereafter by passing a speaking order.

In terms of the afore referred statement made by the then Advocate General the petitioners were offered appointments and all of them joined as Constables on 15.09.2005. After over 16 years of their appointment, on 01.10.2021, petitioner No.1 made a representation to the respondents stating therein that he should be given seniority not from the date of his appointment but from 16.12.2004 which was the date when, according to him, candidates who had been selected alongwith him and were lower in merit had joined service and that at that time he was not offered appointment on account of imposition of the model code of conduct by the Election Commission of India for which he could and should not be faulted. The claim of petitioner No.1 was rejected leading to the serving of separate legal notices dated 25.06.2022 on his behalf as also on behalf of petitioner No.2 upon the respondents on which no favourable order was passed by the State on the ground that the petitioners' plea was highly belated. Such action of the State is under challenge through the instant petition.

Learned counsel for the petitioners submits that the petitioners' plea could have not been rejected by the respondents on the ground of delay as on account of wrong fixation of their seniority the petitioners were getting lesser pay than their batch-mates every month and therefore it was a recurring

cause of action.

Learned counsel for the petitioners has been heard and with his able assistance the record has been perused.

In the year 2004 the State of Haryana advertised to fill up 425 posts of Police Constables. The petitioners were selected against such advertised posts. Though some of the candidates selected alongwith the petitioners were offered appointments and they joined on 16.12.2004 but no offer of appointment was made qua the petitioners on account of imposition of the model code of conduct by the Election Commission of India. Aggrieved by such inaction on the part of the State the petitioners knocked the doors of this Court through CWP-4812-2005-*Anil Kumar and others vs. State of Haryana and others* which petition of theirs was disposed of on 11.07.2005 through the following order: -

“Mr.Hooda has filed an affidavit in Court today, of Mr.K.K.Sharma, IPS, Deputy Inspector General of Police, Training & Litigations, Haryana. It has been stated in the said affidavit that the department has taken a decision to offer appointments to 17 selected candidates including the petitioners subject to their medical fitness and verification of character and antecedents (except those selected candidates who have already been declared medically fit and character and antecedents verified as good). All the selected candidates would be physically measured as provided in the rules/instructions to the satisfaction of the appointing authority.

In view of the statement made in the affidavit, petition is disposed of.

In case, the persons lower in merit to the petitioners have been appointed from the date(s) earlier to the petitioners, the petitioners shall be at liberty to make a representation to the respondents seeking consequential relief of being appointed from the date(s) persons lower in merit to them were appointed. In case such a representation is made within a period of one month from today, the respondents shall take a decision thereon in accordance with law, within two months thereafter by passing a speaking order.”

A perusal of the afore quoted order passed by a Division Bench of this Court clearly reveals that the petitioners' petition was disposed of on the statement made by the then Advocate General, Haryana that the State had decided to offer appointment to the petitioners, of course, subject to their

medical fitness and verification of character and antecedents. While disposing of the petitioners' petition this Court had further directed that in case, any person lower in merit to the petitioners had been appointed on an earlier date(s), the petitioners would be at liberty to make a representation seeking consequential relief of being appointed from the date(s) persons lower in merit to them were appointed and in case such representation is made within one month from the date of the disposal of the petitioners' writ petition the respondents were directed to take a final decision on the same within two months thereafter through a speaking order.

It is not denied that in pursuance to the afore statement of the then Advocate General, Haryana the petitioners were offered appointment and they joined as Constables on 15.09.2005. However, as per the liberty granted by this Court, within one month of their joining, they did not claim seniority over other persons who may have been selected alongwith them but appointed earlier. Rather, to raise such a claim they slept for 16 years. No explanation whatsoever is forthcoming either from the record or from the learned counsel for the petitioners as to why the petitioners slept for 16 years to claim seniority.

The argument raised by learned counsel for the petitioners that since the petitioners over the years are getting lesser pay than their juniors and therefore it is a recurring cause qua them is required to be considered only to be rejected. A perusal of the record reveals that through the present petition the petitioners who were appointed on 15.09.2005 seek seniority w.e.f. 16.12.2004 i.e. the date when according to them persons having lesser merit who were selected alongwith them had been appointed. Thus, their cause of action, if any, accrued on 15.09.2005 itself. In the year 2005 itself they were aware of the fact that certain persons who had been selected alongwith them had been offered appointment on 16.12.2004 as only after coming to know of such fact

had they filed CWP-4812-2005 in which on the prayer made by them a Division Bench of this Court had permitted them to claim seniority through a representation to be filed by them within one month of the disposal of their writ petition. They did avail of the liberty but only after an unexplained delay of 16 years.

In the light of the above, the petitioners' claim is found to be stale. It suffers from delay and laches and therefore, this Court is not inclined to entertain the same in the exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

Dismissed.

02.12.2022
shamsher

[DEEPAK SIBAL]
JUDGE

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