

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

COCp-905-2017 (O&M)
Date of decision: 13.01.2023

Sikander Pal Singh

... Petitioner

Vs.

N.S. Kalsia and ors.

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Chanchal K. Singla, Advocate
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

The petitioner alleges violation of the order dated 25.07.2016, vide
which following directions were issued: -

*“Accordingly, in view of the law position as discussed above, the
present writ petition is allowed and the respondents are directed
to consider the case of the petitioner in view of **Constable Karam
Chand’s case (supra)** as well as **Constable Balraj Singh’s case
(supra)**. The respondents are directed to send the petitioner
forthwith to attend the course in view of the law as discussed
above as well as Rules applicable to the dispute in hand.”*

Learned counsel for the petitioner submits that the writ petition was filed praying for issuance of a writ of certiorari for setting aside the order dated 19.08.2012, vide which the petitioner was debarred from appearing in basic proficiency course (B1 course) and the order dated 18.11.2013 passed by appellate authority dismissing the appeal.

The stand taken by the respondents in the said writ petition was that a Constable, who has been chargesheeted in departmental inquiry or a vigilance inquiry or a criminal case, is not eligible to appear in basic proficiency course, therefore, the petitioner was restrained from appearing in the test on 20.08.2012, as departmental inquiry was initiated against him. The writ Court, while referring to a judgment of this Court in **Balraj Singh Constable Vs. State of Punjab, 1992 (1) RSJ 188** and **Constable Karan Chand Vs. State of Punjab and ors., CWP No.582 of 1992, decided on 15.07.2013**, observed that in **Balraj Singh**'s case (supra), it is held that if a Constable is placed under suspension, he cannot be debarred from appearing in basic proficiency test. Similar is the view taken in **Constable Karan Chand**'s case (supra) that any instruction issued by the department cannot override the provisions of the Act. In the light of aforesaid two judgments, direction was issued to send the petitioner to attend the course.

It is further submitted that thereafter, State filed a review application, which was dismissed on 12.07.2017, finding that no ground for

review is made and even the LPA filed against the said order was also dismissed vide order dated 10.07.2019. Similar was the fate of SLP. It is also submitted that though the petitioner was sent to attend the lower school course, however, further promotion is not granted on the ground that he has not cleared basic proficiency course (B1 course). Learned counsel has referred to the order dated 10.07.2019 passed in LPA-2239-2016 (The State of Punjab and ors. Vs. Balkar Singh), vide which a Constable, who had appeared in the basic proficiency course (B1 course), was kept in waiting list and on clearing the lower school course, a direction was issued to promote him.

Reply by way of affidavit of SSP, Patiala is on record, according to which, by passing a speaking order, the petitioner was permitted to appear in the lower school course and has qualified for the same, however, till date, even after expiry of a long period, despite the department holding basic proficiency course (B1 course), in the intervening years, the petitioner has chosen not to appear to qualify the same and therefore, cannot be promoted.

In reply, learned counsel for the petitioner submits that similar stand was taken in written statement filed in CWP, review application, LPA and SLP, which was not considered by the concerned Courts.

After hearing learned counsel for the parties, only point to be considered by this Court is whether there is willful disobedience of the directions dated 25.07.2016 or not. The directions are very clear that the

respondents will send the petitioner forthwith to attend the course in terms of the rules applicable and the petitioner was permitted to undertake the lower school course and has qualified for the same. There is no such direction in the order dated 25.07.2016 that in the absence of not appearing/qualifying the basic proficiency course (B1 course), he will be granted promotion.

Accordingly, no willful disobedience is made out.

Dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

13.01.2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No