

211-3

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

CWP No.3700 of 2021

Date of decision : 16.03.2023

Sukhwant Kaur

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Krishan K. Thakur, Advocate
for the petitioner.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Prayer is for issuance of a writ in the nature of certiorari seeking quashing of the impugned order dated 27th of January, 2021 (Annexure P-8) whereby the claim of the petitioner for grant of pay fixation, seniority as Constable from the date she completed six month's service as SPO has been declined.

2. Petitioner was enlisted as Special Police Officer in the year 1990 at Batala. The enlisted SPOs claimed absorption as Police Constables in terms of Section 18 of the Police Act. The issue was finally decided by Division Bench of this Court in **CWP No.7451 of 1996** titled as '**Lal Mohammad vs. State of Punjab and others**'.

3. The claim of the petitioner was considered and she was absorbed as Constable w.e.f. 13th of November, 1997 in the District

Cadre of Gurdaspur. The petitioner represented to the respondents claiming deemed date of regularization *viz-a-viz* SPOs junior to her were absorbed. Aggrieved by the inaction on part of the respondent-Authorities the petitioner approached this Court by way of CWP No.14782 of 2020 which was disposed off vide order dated 18th of September, 2020 with the direction to respondent No.2 to decide the legal notice dated 13th of September, 2020 served at the behest of the petitioner within a period of eight weeks. In compliance of the said directions dated 18th of September, 2020 impugned order (Annexure P-8) has been passed whereby the claim of the petitioner stands rejected observing that no SPO junior to the petitioner has been found in District Gurdaspur to whom deemed date has been granted and thus the petitioner is not entitled for deemed date. The absorption of SPOs as Constable depends on his/her passing of the suitability test which was to be adjudged by the Central Recruitment Board at the relevant time. The petitioner passed the suitability test in the year 1997 and was accordingly absorbed on 5th of December, 1997.

4. Counsel for the petitioner attacked the impugned order (Annexure P-8) to submit that the petitioner was never allowed to participate in the suitability test before 1997. The moment she was asked to compete she passed the test. The claim of the petitioner for grant of deemed date of absorption in the light of Lal Mohammad's

case (supra) cannot be denied by considering her seniority *viz-a-viz* persons absorbed in district Gurdaspur. Her seniority as Constable is not to be considered for absorption, rather it is her seniority as SPO that has to be considered.

5. Per contra, stand of the State has been spelled out in the impugned order itself which has been reiterated in Para No.9 of the preliminary submissions made in the written statement which read as under :-

“9. That in compliance with the directions of this Hon'ble High Court in the aforesaid writ petition, prior to decide the Legal Notice dated 13.02.2020 of the petitioner the relevant report was obtained from the office of Senior Superintendent of Police, Gurdaspur by the office of Director General of Police, Punjab, Chandigarh. The Senior Superintendent of Police, Gurdaspur vide his office letter No. 45714/CSC dated 22.12.2020 intimated “*Lady HC/PR Sukhwant Kaur No. 2456/Jal was enlisted as SPO on 20.08.1990 and allotted constabulary no. in district Gurdaspur on 05.12.1997. No junior SPOs than HC/PR Sukhwant Kaur No. 2456/Jal have been found in district Gurdaspur to whom deemed date has been granted*”. Subsequently, the legal notice dated 13.02.2020 of the petitioner was considered and the claim of the petitioner was rejected by the office of Director General of Police, Punjab, Chandigarh by passing a speaking order dated 27.01.2021 (Annexure P/8). A cop of this order was given to the petitioner.

Hence, the speaking order dated 27.01.2021 Annexure P/8 was rightly passed by the office of Director General of Police, Punjab, Chandigarh (respondent No.2) whereby the claim of the petitioner was rejected after consideration. Hence, the present petition of the petitioner is required to be dismissed.”

6. I have heard counsel for the parties and have gone through records of the case.

7. In order to appreciate the issue in hand directions issued in the case of Lal Mohammad's (supra) and subsequent order passed by Director General of Police, Punjab dated 2nd of July, 1999 need to be read co-jointly. In Lal Mohammad's case it was held as under :-

“We dispose of this petition with a direction to the respective Senior Superintendent of Police to consider the claim of the petitioners for absorption as Constables with effect from the date their juniors have been so appointed. In case the petitioners are found suitable, orders of their appointment be issued. Consequential reliefs regarding fixation of pay and seniority shall follow. Keeping in view the large number of SPOs/Auxiliary Constables involved in these cases, we will not order payment of arrears of salary to avoid unnecessary burden on the State Government at this stage.

Directions issued above be carried out within six months from the receipt/production of a certified copy of this order. No costs.”

Instructions based on above directions read as under :-

“From

The Director General of Police,
Punjab.

To

All Senior Superintendent of Police in Punjab,
Addl. DGP, PAP, Jalandhar

Memorandum No.16318-40/E-3
Dated, Chandigarh the : 2/7/1999.

Subject:- Absorption from deemed date.

Reference this office memo No. 3228-51/E-3 dated 6.2.98, on the subject noted above.

2. As mentioned in the aforesaid letter, the Hon'ble High court of Punjab & Haryana in CWP No, 7451 of 1996 has issued directions to consider the claim of the petitioners for absorption as constables w.e.f. the dates persons juniors to them were so appointed and in case, the petitioners are found suitable, orders of their appointment be issued.

3. you were requested vide memo no. 3228-51/E-3 dated 6.2.98 to get the pay of the petitioners only refixed from the date persons junior to them were enlisted as constables in their respective district and accordingly, the petitioners of CWPs were granted deemed dates. Now it has been decided to give deemed dated to all the test passed SPOs with effect from the date their juniors SPOs were appointed as constables in their respective districts. You are, therefore, requested to supply information in respect of those juniors SPOs of your district who were enlisted as constable in your district/ unit on out of turn basis, as compared to those who have now been enlisted in PAP (from the list of qualified SPOs). The information regarding the junior SPOs (who were allotted constabulary number in your district on out of turn basis) be supplied to the Addl. D.G.P./PAP Jalandhar within 3 days positively through a G.O. of your district, accompanied by the concerned dealing hand.

FOR THE ADDL. D.G.P./PAP, ONLY :- Earlier the deemed dates were granted to the petitioners of (various CWPs) only. However, now the deemed dates may be granted to all suitable S.P.Os (from the dates persons junior to them were enlisted as contables in their respective districts). Reference point of a junior SPO who was first (earliest) allotted a constabulary number, out of turn, compared to the suitable SPO, individually, be taken from the concerned district/unit. The date on which such a junior SPO was allotted constabulary number be fixed as

the deemed date of appointment for the non-petitioners also.

Sd/-
For Director General of Police,
Punjab.”

8. Counsel for the petitioner is right in contending that it is the seniority of the petitioner as SPO which has to be considered while considering her claim for absorption as Constable and not her seniority as Constable. Claim of the petitioner for absorption from the deemed date has to be considered *viz-a-viz* SPOs enlisted along with the petitioner at Batala irrespective of their subsequent allotment. The reasoning given in the impugned order by the State that the name of the petitioner merits rejection as no SPO junior to the petitioner has been found in District Gurdaspur who has been granted deemed date cannot be sustained.

9. In terms of the directions issued in Lal Mohammad's case and subsequently implemented by the Instructions issued by DGP the claim of the petitioner has to be considered *viz-a-viz* persons at par/junior to her as SPOs and not as Constables.

10. Resultantly, the impugned order (Annexure P-8) is set aside. Respondents are directed to reconsider claim of the petitioner *viz-a-viz* persons junior to her enlisted as SPOs in the district Batala on 20th of August, 1990. The date of passing of suitability test also cannot have an effect of arresting deemed date of absorption of the petitioner

as prior to 5th of December, 1997, as the petitioner was never granted opportunity to undergo the suitability test.

11. Resultantly, the present writ petition is allowed. Respondents are directed to grant deemed date of absorption to the petitioner from the date persons junior to her as enumerated in Annexure P-9 have been granted i.e. 13th of May, 1992. Necessary relief be granted to the petitioner within a period of eight weeks from the date of receipt of certified copy of this order.

March 16, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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