

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

Date of decision : 11th of April, 2023

CM-5462-CWP-2023 in CWP-4455-2022

Kulwant SinghPetitioner

Versus

State of Punjab and another ...Respondents

CM-5318-CWP-2023 in CWP-4807-2022

Sukh Ram SinghPetitioner

Versus

State of Punjab and another ...Respondents

CM-5302-CWP-2023 in CWP-10916-2022

Sukh Ram SinghPetitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajesh Tushar, Advocate for
Mr. Ravi Sharma, Advocate for the applicant/petitioner.

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

CM-5462-CWP-2023 in CWP-4455-2022

CM-5318-CWP-2023 in CWP-4807-2022

CM-5302-CWP-2023 in CWP-10916-2022

These are the applications for preponing the date of
hearing of the main case and to decide the same being covered by the
judgment dated 29th of January, 2008 (Annexure P-8) in CWP No.5520

of 2012 titled as 'Darshan Singh vs. State of Punjab and others' as well as further covered with judgment dated 17th of January, 2023 in CWP No.4644 of 2019 (Annexure A-1).

State Counsel does not dispute the facts as the matter is covered by the aforesaid judgments.

Consequently, the present application is allowed. Main case(s) is preponed and is taken on Board today itself.

CWP-4455-2022, CWP-4807-2022 and CWP-10916-2022

In the bunch of these writ petitions, the petitioners claim writ in the nature of certiorari seeking quashing of the orders whereby their claim to be considered for promotion as Deputy Superintendent of Police has been denied and further prayer is for issuance of writ in the nature of mandamus directing the respondents to promote the petitioners as Deputy Superintendent of Police along with consequential benefits with interest w.e.f. the date the persons junior to them in the final seniority list dated 22nd of January, 2018 have been promoted.

2. Petitioners have relied upon judgment passed by this Court in **CWP No.4644 of 2019** titled as '**Inspector Gurdeep Singh and others**' decided vide order dated 17th of January, 2023 which is further based upon judgment rendered by this Court in **CWP No.5220 of 2012**

titled as '**Darshan Singh vs. State of Punjab and others**' decided vide judgment dated 29th of January, 2008. Darshan Singh was further based upon judgment rendered in the case of '**Parsa Singh vs. State of Punjab**' - **CWP No.3258 of 2003** which was disposed off by this Court directing the respondents to reconsider the claim of Parsa Singh for promotion to the rank of Deputy Superintendent of Police without taking into consideration policy instructions dated 29th of December, 2020 and it was further ordered that in case the petitioner is found suitable for promotion to the rank of Deputy Superintendent of Police he shall be granted promotion as such w.e.f. the date persons junior to him were promoted. Decision rendered in Parsa Singh's case (supra) was challenged by the State before the Apex Court in Civil Appeal No.4235 of 2006 which stands dismissed on 3rd of March, 2011 and it is not disputed that the judgment in Parsa Singh's (supra) stands implemented. It was in the light of these facts that this Court in CWP No.4644 of 2019 titled as '**Inspector Gurdeep Singh and others**' held as under :-

“6. Today, State Counsel has not disputed the fact that the case of the petitioner is squarely covered by judgment rendered by this Court in *Darshan Singh's* case (supra) wherein it has been held as under :-

“By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner(s), inter alia, seek(s) issuance of a writ in the nature of Certiorari for quashing order dated 08.11.2011 (Annexure P-7), rejecting the claim of the

petitioner for promotion as Deputy Superintendent of Police.

Contentends that the officials junior to the petitioner have been promoted ignoring the rightful claim of the petitioner. The petitioner had been serving the Department since 21.02.1974, with an unblemished career and retired on 31.05.2011 as Inspector. He refers to Rule 13.1 of the Punjab Police Rules, 1934, to contend that the main factors governing the selection are efficiency and honesty. He further states that in similar circumstances, one Inspector Parsa Singh, approached this Court by way of filing CWP-3258-2003, decided on 15.01.2004 and he was granted the benefit of promotion in pursuance of the orders passed by this Court. It is further averred that the decision not to promote the petitioner on the basis of average reports is vitiated by the fact that they are never communicated to the petitioner.

On the other hand, learned State counsel refers to impugned order (Annexure P-7), to contend that the petitioner scored 11.25 marks on the basis of Annual Confidential Reports of last five years, whereas, the instructions dated 06.09.2001 of the Government provide that a candidate is required to have a minimum of 12 marks as per the prescribed grading system to be eligible for promotion to the post in question. However, she very fairly concedes that the case of the petitioner is at par with said Parsa Singh.

I have heard learned counsel for the parties and have gone through the case file.

In ***Raghubir Singh Vs. State of Haryana, 2012(1) RSJ 355***, this Court has held as under:-

“3. This fits with a logic that if a particular appraisal and a grading have a bearing on promotion prospects, then any relative grading which denies eligibility for consideration must be taken as adverse and hence, ought to be communicated. An 'Average' entry normally may not be taken as adverse, but in a situation where a mere 'Average' entry would be taken as not fulfilling a benchmark for promotion, it has an immediate ramification for promotion and hence, no such appraisal could be taken into reckoning if it is not communicated. Consequently, the decision not to promote the petitioners on the basis of 'Average' reports is vitiated by the fact that they were not communicated and hence, the petitioners were bound to be favourably considered for promotion from the date when the respective juniors were promoted.”

In the case in hand, the petitioner was never communicated

the remarks which had adverse bearing on his promotional prospects, therefore, the ground - possessing less marks than the minimum required to be eligible for promotion - taken by the respondents in denying the promotion to the petitioner stands vitiated.

In Parsa Singh's case (supra), persons junior to the petitioner therein were promoted to the rank of Deputy Superintendent of Police, on the ground that he did not have the requisite 12 marks in the ACRs for the last five years. Said Parsa Singh approached this Court and his writ petition was disposed of by observing thus:-

“In view of the above, we hereby direct the respondent to reconsider the claim of the petitioner for promotion to the rank of DSP and in doing so, not to take into consideration the policy instructions dated 29.12.2000. In case the petitioner is found suitable for promotion to the rank of DSP, he shall be granted promotion as such with effect from the date persons junior to him were promoted. The aforesaid exercise be carried out expeditiously and without any delay. The petitioner shall also be entitled to all the consequential benefits arising therefrom.

The writ petition is allowed in the aforesaid terms”

Feeling aggrieved, the State of Punjab preferred Civil Appeal No.4235 of 2006 (SLP (C) No.10701 of 2004) which was dismissed by Hon'ble the Supreme Court vide order dated 03.03.2011. Consequently, said Parsa Singh has been granted the benefit of promotion from the rank of Inspector to Deputy Superintendent of Police.

Learned State counsel has conceded that the case of the petitioner is at par with said Parsa Singh.

In these circumstances, the instant writ petition is allowed in terms of the decision of this Court rendered in Parsa Singh's case (supra).

Allowed.”

7. State Counsel does not dispute that the aforesaid judgments rendered in Darshan Singh's case (supra) and that rendered in case of Parsa Singh vs. State of Punjab - CWP No.3258 of 2003, stand implemented. Rather the judgment rendered in Parsa Singh's case has attained finality up to Apex

Court in Civil Appeal No.4235 of 2006.

8 In view of above, the present writ petitions are allowed in terms of Darshan Singh's case (supra). The impugned order dated 25th of January, 2019 annexed with the writ petitions at Annexures P-1, P-2 and P-4 respectively, are hereby quashed.

9. Respondents are directed to reconsider the claim of the petitioners for promotion to the rank of Deputy Superintendent of Police from the date persons at par with them/junior to them have been promoted, expeditiously within a period of four weeks from the date of receipt of certified copy of this Court.

10. The petitioners shall also be entitled for all consequential benefits.”

3. Counsel for the parties are *ad idem* that the matter is squarely covered by the aforesaid order and be disposed off in the same terms.

4. Ordered accordingly.

5. Writ petitions are disposed off in terms of **CWP No.4644 of 2019** titled as '**Inspector Gurdeep Singh and others**' (supra).

6. Pending application(s), if any, shall also stand disposed off.

April 11, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No