

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

**RA-CW-144-2021 in
CWP-28820-2017
Date of decision : 09.01.2023**

Kalpna Devi

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajeshwar Singh Thakur, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

PANKAJ JAIN, J. (Oral)

Respondents by way of public notice dated 31.05.2016 invited applications for recruitment to the post of Constables (Males and Females). Total 7416 posts were put to recruitment. The petitioner applied for the same category reserved for scheduled castes. The petitioner was selected and was appointed on 29.12.2016.

2. After having worked for more than a year, the petitioner was served with a communication dated 28.11.2017 informing her that the merit list vis-a-vis selection in which the petitioner got appointed has been revised and the appointment of the petitioner stands annulled. Operative part of the order reads as under:-

“The below mentioned female employees were issued appointment letters on provisional basis in compliance of the office order No.14896/E-1(4) dated 26.10.2016 of the office of Hon'ble Director General of Police, Punjab,

Chandigarh, through Chairman, Central Recruitment Board, Punjab, by way of direct recruitment as Female Constables and were ordered to be issued Constabulary Numbers from the district i.e. Shaheed Bhagat Singh Nagar. They were issued the following Constabulary Numbers. Now, as per the office memo No.6855-82/E-1(4) dated 26.05.2017, 7359-87/E-1(4) dated 8.6.2017 and Memo No.8182-8210/E-1(4) dated 7.7.2017 issued by the Hon'ble Director General of Police, Punjab, Chandigarh, through Chairman, Central Recruitment Board, Punjab, and as per the revised result of District Police/Armed Police Cadres these female employees have been now shown to be kept in the waiting merit list. Therefore, the orders regarding appointment of the following female employees as Constables in the District Shaheed Bhagat Singh Nagar mentioned against their respective names are withdrawn and the names of these Female Employees are struck off from the Cadre of District Constables:-

Sr.No.	Name, Number and Rank of employee	Order of recruitment with date
1.	Recruit Female Constable Mamta No.1257/SBSN	75381-90/Sena Clerk Dated 22.11.2016
2.	Female Constable Bimla Bai No.1273/SBSN	82223-31/Sena Clerk Dated 29.12.2016
3.	Female Constable Kalpna Devi No.1274/SBSN	82233-41/Sena Clerk Dated 29.12.2016

Sd/-

Senior Superintendent of Police
Shaheed Bhagat Singh Nagar
Dated: 28.11.2017”

3. The petitioner filed present writ petition which was allowed in terms of order passed in the writ petition filed by one Jaspreet Kaur whose CWP No.263 of 2018 was allowed vide judgement dated 13.12.2019. Operative part of the order dated 25.02.2020, whereby the writ petition filed by the petitioner was allowed reads as under:-

“xx xx xx

On instructions from Shri Gurharpreet Singh, Constable, O/o Recruitment Cell, DGP, Punjab, learned State counsel submits that reply dated 26.03.2018, in the present case was filed by Shri Dayama Harish Kumar Om Parkash, IPS, Superintendent of Police, Shaheed Bhagat Singh Nagar, on behalf of respondents No.1 to 3. He submits that thereafter, a short affidavit dated 13.01.2020 was also filed by Shri J. Elanchezhian, IPS, Assistant Inspector General of Police, Personell-II, CPO, Punjab. In the latest affidavit, it has been submitted that the petitioner appeared in the recruitment process for filling up 7416 posts of Constables conducted in the year 2016. Learned State counsel further submits that another candidate namely Jaspreet Kaur, who was higher than the petitioner in merit, filed CWP-263-2018. The said writ petition has been disposed of by this Court vide judgment dated 13.12.2019.

This Court having examined the facts as submitted above, deems it appropriate to dispose of the writ petition in the same terms as judgment dated 13.12.2019, passed in CWP-263-2018.

Counsel for the petitioner however submits that he be given liberty to file an application for an

appropriate relief, in case the petitioner has any different submission to make.

Writ petition is disposed of as noticed above and with the liberty as prayed for.”

4. The operative part of the order passed in the writ petition filed by Jaspreet Kaur dated 13.12.2019 reads as under:-

“xx xx xx

5. I am unable to persuade myself to accept the vapid argument of the learned State counsel which is totally against the settled position of law that once the recruitment agency has concluded the entire selection process and merit list has been prepared thereafter and even the successful candidates have been appointed on their respective jobs, the appellate authority in ostensible exercise of clause 9 ibid, can reopen the entire selection process and that too by changing the criteria which was originally advertised.

6. In this context reference may also be had to the Clause 13(xvi) of the advertisement dated 31.05.2016 (Annexure P-3) which is reproduced herein below:

“(xvi) The candidate should take due care while filling up the Common Application Form. He/she is allowed to make changes in the CAF only till the time it is submitted. Once the Common Application Form has been submitted online, no changes whatsoever can be made thereafter. Therefore, the candidates are encouraged to fill the CAF carefully.”

7. The above position as advertised is in perfect consonance with the settled position of law. Therefore, under ostensible exercise of suo moto revision of merit list, candidates, who had once filled up their option in their particular

categories could not have been allowed to change the same. Same has been done herein under the garb of representations leading to revision of the merit list. This Court would refrain from making any comments with regard to the entire merit list and confines the above observation only qua the result of the petitioner who has approached this Court and the same shall not be construed, in any manner, to once again change the merit list that has been revised pursuant to the so call suo moto exercise of power.

8. In the premise, impugned order to the extent it changed the merit of the petitioner is set aside and the original merit of the petitioner is restored and respondents are directed that appropriate orders be passed by accommodating the petitioner in her category, subject of course, to vacancy being available as on today. In case no vacancy is available then the petitioner shall be accommodated on the next available vacancy in future, as and when it arises.

9. To balance the equities and also in the interest of justice it is made clear that the petitioner shall be placed in bottom of the merit list in her category and shall not be entitled to restoration to her original seniority prepared at the time of pre-revision of the seniority list.”

5. State filed the present review application whereby it was claimed that:-

“xx xx xx

10. That it is pertinent to mention here that as per the Order of this Hon'ble Court dated 25.02.2020, the case of the petitioner Kalpna Devi was to be considered in the same terms as

judgment dated 13.12.2019, passed in CWP-263-2018. The petitioner is figured at sr. no. 10 in the waiting list of SC (R&O) category of District Police cadre Female as per revised merit list dated 20.05.2017 whereas Jaspreet Kaur petitioner of CWP No. 263 of 2018 was figured at sr. no. 1 in the waiting list of SC (R&O) female category and therefore Jaspreet Kaur has been given appointment. Accordingly, if case of the petitioner Kalpna Devi will be considered as per the case of Jaspreet Kaur, then Candidates from sr. no. 2 to 9 in the waiting list of SC (R&O) category will also claim appointment as they are senior to petitioner Kalpna Devi in the waiting list.”

6. In the meantime, two other candidates namely Mamta and Bimla Bai who were with the petitioner who suffered order dated 28.11.2017 (Annexure P-9) also preferred writ petitions against order dated 28.11.2017. The issue came for consideration before the Division Bench of this Court in Intra Court Appeal. The Division Bench in ***LPA No.469 of 2021*** while allowing the claim of Mamta and Bimla Devi affirmed the orders passed in Jaspreet Kaur and held as under:-

“xx xx xx

The impugned order dated 28.11.2017 (Annexure P-10) withdrawing the appointment of the appellants alongwith one Lady Constable Kalpna Devi was issued by the Senior Superintendent of Police, Shaheed Bhagat Singh Nagar-respondent No.3, on the ground that result had been revised. Therefore, the appellants had slipped into the wait list and, therefore,

appointments as such were cancelled from the district cadre. The said orders do not show that the writ petitioners were given any opportunity of hearing in any manner at the time of passing of the said order and, therefore, cannot be justified in that manner, as the principles of natural justice have been openly violated and cannot also stand the test of judicial scrutiny.

There are other reasons also for which the letters patent appeals are liable to be allowed, since Article 14 of the Constitution of India has also been openly violated. In similar circumstances, one Jagandeep Kaur who was appointed as a Lady Constable in Ludhiana in the Ex-serviceman B.C. quota had also been put in the wait list of the B.C. quota on the basis of the revised result. The office of the DGP had issued the letter dated 08.12.2018 (Annexure P-14) to the Commissioner of Police that she should be allowed to continue in service by adjusting her against the vacant posts lying in the district in the post of constable. The same was given effect on 13.03.2018 (Annexure P-15) by the Commissioner of Police, Ludhiana by noting that her result had been rectified, but on account of the letter of the DGP, she was allowed to continue in service and, therefore, her removal order dated 21.12.2017 as such was recalled and she was allowed to remain in service.

No tangible explanation is forthcoming from the State to distinguish the case of the writ petitioners as to how a similarly situated person in a different district who had been similarly removed, but got adjusted by the DGP, whereas

the writ petitioners on the other hand had not been similarly adjusted. In such circumstances, the order of withdrawal dated 28.11.2017 (Annexure P-10) also cannot stand judicial scrutiny.

Another reason to quash the withdrawal order is that as per the wait list, which is now prepared pursuant to the revised result, one Jaspreet Kaur was also similarly placed in May, 2017 in the wait list at Sr.No.1 (Annexure P-11). The writ petitioners namely Mamta and Bimla Bai were placed at Sr. No.3 and 7, respectively and Kalpna Devi at Sr. No.10, whose appointment order had also been withdrawn from District Nawanshahr, as per the impugned order dated 28.11.2017 (Annexure P10) itself.

It has been brought to the notice of this Court that candidate at Sr. No.1 in the wait list namely Jaspreet Kaur had also filed CWP No.263 of 2018, which was allowed on 12.12.2019 (Annexure A-3) primarily on the ground that revised merit list could not be prepared and her name could not be struck off from the service rolls, once the recruitment agency had concluded the entire selection process and the merit list had been prepared thereafter. It was further held that ostensible exercise of the revision of the merit list was on account of the fact that certain candidates had been allowed to change their categories and the same could not be done leading to the revision of the merit list. However, the learned Single Judge had refrained from making any comments with regard to the entire merit list and confined the result qua the writ petitioner therein only.

Accordingly, the appeals are allowed and

the order 28.11.2017 (Annexure P-10) is quashed. A writ of mandamus is issued directing the respondents to take back the writ petitioners in service in their category and they will be entitled to the restoration of their original seniority. However, they are not entitled as such for any financial benefits for the interregnum period on the principle of 'No Work No Pay'. The necessary exercise be completed within a period of 2 months from the receipt of certified copy of this order.”

7. Keeping in view the Division Bench Judgments in ***LPA No.468 of 2021 titled as Mamta vs. State of Punjab and others*** and ***LPA No.608 of 2021, titled as Bimla Bai vs. State of Punjab and others***, there is no ground to entertain the review application filed by the State and the same is ordered to be dismissed. The petitioner is held entitled to be retained in service in terms of the order passed by Division Bench in Mamta's case (supra). Since the order dated 28.11.2017 has already been ordered to be quashed, there is no need to pass any order in the subsequent CWP No.14209 of 2021 as the order dated 17.06.2020/19.06.2020 (Annexure P-15) has been rendered inconsequential.

**(PANKAJ JAIN)
JUDGE**

09.01.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No