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

CWP-11749-2015

Date of decision : 16.05.2023

Sukhwinder Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. G.S. Bal, Senior Advocate with
Mr. Dilshad S. Gill, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

PANKAJ JAIN, J. (Oral)

By way of present writ petition, the petitioner has laid challenge to order dated 05.02.2015 (Annexure P-12) passed by respondent No.3 removing the name of the petitioner from list C-1 and reverting him from the post of Head Constable to Constable. Further challenge is to the order dated 04.05.2015 (Annexure P-14) dismissing the appeal preferred by the petitioner against order dated 05.02.2015.

2. Petitioner, who was working as Constable with the respondent-department was placed at Sr. No.235 in the roster point wise list of selected officials for basic proficiency test for the year 2011 and was sent to undergo the test. However, owing to certain errors, the said list was revised and the petitioner in the corrected list was placed at waiting list of general candidates at serial No.1. In view of the aforesaid development, the petitioner was called back in the midst of the course. The petitioner approached this Court by way of CWP

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No.7227 of 2011 which was decided vide order dated 26.08.2011 in the following terms:-

“The petitioners were deputed to undergo Lower School Course which commenced from 15.04.2011. While the petitioners were undergoing the said course the impugned order was passed recalling them from the said course. The aggrieved petitioners have approached this Court. While issuing notice to the respondents, this Court vide order dated 27.04.2011 directed the respondents that petitioners shall be allowed to complete the Lower School Course.

Learned counsel for the petitioner states that pursuant to the above said order dated 27.04.2011, the petitioners have already completed the said course.

That being so, the writ petition is disposed of as infructuous with a clarification that the petitioners shall be treated to have completed the Lower School Course for all intents and purposes through without prejudice to the rights of their seniors, if any.

Dasti.”

3. Petitioner was declared ‘pass’ vide P-5 and was ordered to be promoted as Head Constable vide P-6 dated 10.09.2012. However, on 24.07.2014, the petitioner was served with show cause notice as to why his name be not removed from list C-1 as he ought not have been deputed to Lower School Course at the first instance. The petitioner again approached this Court by way of CWP No.15598 of 2014, which was disposed off vide order dated 07.08.2014. The operative part of the order reads as under:-

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“After hearing the learned counsel for the petitioner, I am of the view that the instant writ petition can be disposed of by redressing the grievance of the petitioner without issuance of notice of motion to the other side. The apprehension of the petitioner that he is likely to be prejudiced on account of pre-judged decision indicated in the impugned order is justified. A notice which is issued to solicit the stand of the affected employee should be free from any conclusion. Therefore, the impugned notice is directed to be modified to the extent that it seeks a conclusion of the proceedings to revert the petitioner. The competent authority shall look into the grievance of the petitioner free from any bias and after affording a fair opportunity to the petitioner and taking into consideration all that he might have to say and the records of the case, pass an appropriate order. Needless to say the respondents while passing an order would give reasons for passing the same. The respondents would also give the material to the petitioner which has formed the basis of the show cause notice.”

4. The petitioner responded to the same which led to passing of the impugned order dated 05.02.2015 (Annexure P-12) having an effect of deletion of the name of the petitioner from the promotion list C-1. As a consequence thereof, his promotion order as Head Constable stands withdrawn. Thus, the petitioner preferred departmental appeal which also stands dismissed vide P-14.

5. Learned senior counsel representing the petitioner has drawn attention of this Court to order dated 28.08.2011 passed in CWP

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No.7227 of 2011 to submit that in the light of the said order and the fact that the petitioner was declared 'pass' vide P-5, his name ought not have been deleted from list C-1 and thus the consequential order of withdrawing the promotion also cannot be sustained.

6. Per contra, Mr. Dhir submits that since the very fact that the petitioner was included in the list of the selectives to undergo basic test was on account of error which stands later on corrected, no fault can be found with the impugned order. However, he is not in a position to dispute that vide P-4 passed by Writ Court, the petitioner was allowed to complete the Lower School Course and vide P-5, he has been declared to have pass the same.

7. I have heard counsel for the parties.

8. There is no dispute about the facts, the same being matter of record. The relevant rule that deals with the list C-1 reads as under:-

“13.8. List C. Promotion to Head Constables. - (1)
In each district a list shall be maintained in card index form (form 13.8(1)) of all constables who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. A card shall be prepared for each constable admitted to the list and shall contain his marking under sub-rule 13.5(2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the Constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector-General of Police at his annual inspection.

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(2) Promotions to Head Constable shall be made in accordance with the principle described in sub-rules 13.1(1) and (2). The date of admission to List C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comparing qualifications. In cases where other qualifications are equal, seniority in the police force shall be the deciding factor. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector- General, be promoted to Head Constable up to a maximum of ten per cent of vacancies.

Rule 13.8-A

13.8-A. Disqualification for admission to or retention in Lists A, B or C. - (1) the infliction of any major punishment shall be a bar to admission to or retention in lists A, B or C, provided that (a) for special reasons to be recorded by the Superintendent in each case, and subject to confirmation by the Deputy Inspector-General, this disqualification may be waived, and (b) after six months' continuous good conduct in the case of censure or confinement to quarters or on expiry of the period of reduction in the case of reduction for a specified period, a constable may be readmitted at the discretion of the Superintendent.

(2) Gazetted Officers shall look out for, and encourage their Inspectors and Sub-Inspectors to bring to notice, Constables who, by reason of their general character and ability or of special acts, are suited for inclusion in lists A, B or C, and shall, after satisfying themselves by necessary enquiries,

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make suitable recommendations to the Superintendent.”

9. Thus, the only requirement to be on list C-1 is that the Constable must have passed the Lower School Course. Admittedly, the petitioner has passed the same. So far as the consideration for promotion is concerned, the same has to be as per Rule 13.8(1) and (2)

10. In view of the fact that the petitioner has completed Lower School Course and was placed at Sr. No.1 in the waiting list of general category, his name should not have been deleted from list C. He has to be placed at the bottom of the said list below the incumbents who passed the course in the batch petitioner passed. He has to be considered for promotion as per law thereafter.

11. Resultantly, the present writ petition is allowed. Respondents are directed to conclude necessary exercise within a period of 08 weeks from the date of receipt of certified copy of the order.

12. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

16.05.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes