

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

CWP No.145 of 2017 (O&M)

Date of decision : 16.01.2023

Harman Preet Singh and others

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vivek K. Thakur, Advocate
for the petitioners.

Mr. Charanpreet Singh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Petitioners have invoked writ jurisdiction of this Court under Article 226/227 of the Constitution of India seeking writ in the nature of mandamus in form of directions to the respondents to consider their candidature in the category of wards of Police Personnel against the post put for recruitment pursuant to Public Notice bearing No.01 of 2016 (Annexure P-1).

2. As per the facts pleaded in the writ petition, Public Notice bearing No.01 of 2016 was issued whereby applications were invited for the posts of Constables (males/females) in the District Police Cadre and Armed Police Cadre of Punjab Police for recruitment of about 7416 posts. All the petitioners are wards of Police Personnel. Vide Guidelines issued in the year 1996, 2% posts in direct recruitment

were resolved to be reserved for the wards of deserving policemen. However, there were no guidelines in place for certification w.r.t. to such category. Petitioners applied for the aforesaid posts. However, in view of the fact that there was no certification w.r.t. to them being wards of Police Personnel and there was no procedure for procuring such certificate, the petitioners applied against the General Category. All of them successfully cleared physical examination. However, they could not make up to the cut-off of 28 marks procured by the last selected candidate in General Category. While selection process was in process Director General of Police issued Guidelines dated 12th of September, 2016 to streamline certification 2% reservation for wards of Police Personnel in direct recruitment. The same have been placed on record at Annexure P-3. The petitioners applied under the said guidelines and were issued certificates which have been placed on record at Annexure P-5 (Colly.) After procuring the Certificates, the petitioners moved representation before the authorities to consider them in the reserved category meant for wards of Police Personnel vide Annexure P-5. Provisional Merit List of the selection was published on 2nd of January, 2017. The positive case pleaded by the petitioners is that from the provisional merit list it is evident that certain other candidates who got their certificates after issuance of Guidelines dated 12th of September, 2016 were allowed to change their

category and avail the benefit of reserved category of wards of Police Personnel. Denial of the same relief to the petitioners amounts to hostile discrimination against them and, thus, is in violation of Articles 14 and 16 of the Constitution of India. The petitioners being similarly situated to the other persons are entitled to be considered for the posts reserved for wards of Police Personnel.

3. While issuing notice of motion on 10th of January, 2017, this Court passed the following order :-

“Learned counsel for the petitioners contends that pursuant to an advertisement issued on 31.05.2016, the petitioners applied for appointment to the posts of Constables. Before the finalization of the selection process a notification dated 12.09.2016 came into effect which issued guidelines for grant of 2% reservation for wards of Police Personnel in direct recruitment in Punjab Police. After issuance of the said notification, the petitioners herein were issued that certificate by the Dy. Inspector General of Police, Rupnagar Range, Rupnagar. However, the said certificates are not being considered and the benefit of the 2% quota is not being given to the petitioners herein. It is further contended that several posts are still lying vacant and persons lower in merit than the petitioners herein, have been brought on the provisional list.

Notice of motion returnable by 07.03.2017.

In the meantime, let three posts be kept vacant for the petitioners till the next date of hearing.”

4. During the pendency of the instant writ petition the petitioner filed replication wherein the following assertions have been made :-

“1. That the petitioners would like to submit that it is correct that they have applied against the General and Backward Class categories, pursuant to the Advertisement dated 31.05.2016, and Standing Order No. 1 of 2016. A copy of the said Advertisement dated 31.05.2016 is annexed herewith as **ANNEXURE P-8**. However, the petitioners would like to submit that on 12.09.2016, Office of the Director General of Police, Punjab, Chandigarh issued instructions for issuance of the Certificate for claiming 2% reservation in quota for “Wards of Police Personnel” and in pursuance to the said instructions, the petitioners submitted their respective applications for issuance of the Certificates to avail the benefit of 2% reservation in quota for “Wards of Police Personnel” and thereafter, they have been issued the Certificates by the respective Deputy Inspector General of Police, i.e. D.I.G., Rupnagar Range, Rupnagar, D.I.G., Bathinda Range, Bathinda and DIG Range Patiala and thereafter, the petitioner No. filed application for getting the benefit of 2% reservation meant for the “Wards of Police Personnel” on 25.10.2016 and the same has been duly forwarded by the Senior Superintendent of Police, S.A.S. Nagar (Mohali) to the Director, Bureau of Investigation-cum-Chairman, Central Recruitment Board, Punjab Police Headquarters, Chandigarh, which is further substantiated from the letter dated 26.10.2016 issued by the Director, Bureau of Investigation-cum-Chairman, Central Recruitment Board, Punjab Police Headquarters, Chandigarh. Copies of the application dated 25.10.2016, letter dated 25.10.2016 and letter dated 26.10.2016 are annexed herewith as **ANNEXURES P-9 and P-10 (Colly)**.”

It is pertinent to mention here that the answering Respondents have adopted a different yardstick for the recruitment of the similarly situated candidates. They have granted the benefit of 2% reservation of “Wards of Police Personnel” to Manjinder Singh, Registration no. 209115381 and to Amanpreet Singh, Registration No. 719199926336, who have

also applied in General Category and they have been granted the benefit after changing their category from General Category to the “Wards of Police Personnel”, whereas in the reply of the answering Respondents, they have specifically stated before this Hon’ble Court that the Board had decided to not to entertain any plea for the change of category and the same shall applied uniformly in cases of all the candidates without any discrimination and in para No. 11 of the Reply, the Respondents have categorically submitted that the candidates, who have not applied in the category of “Wards of Police Personnel” and applied in their respective category, were not entertained after 12.09.2016, whereas in case of Manjinder Singh, he applied in the General Category and got the Certificate on 12.10.2016, whereas in the case of Amanpreet Singh, he was allowed to change the category after the said date, which is clear from the information supplied to the petitioners, under the Right to Information Act, 2005.

That the petitioners would like to point out before this Hon’ble Court that the Respondents are concealing the actual and factual position from this Hon’ble Court by filing the false Affidavit before this Hon’ble Court and even they have given the false information under the Right to Information Act, 2005, which is clear from the information provided to the Counsel for the petitioners on 08.06.2018, wherein they have specifically given the answer that they have not changed the category of any candidate in the selection process of recruitment of 7,416 Constables and with regard to the second question, they have submitted that they have granted the benefit of reservation meant for the “Wards of Police Personnel” to 141 candidates. Whereas it is pertinent to mention here that in the subsequent information provided to the petitioners under The Right to Information Act, 2005, vide letter dated 12.10.2018, they have submitted that they have not changed the category of Amanpreet Singh from ‘General

Category’ to the “Wards of Police Personnel” and in the information provided to the petitioners on 01.04.2019, they have stated that the category of Manjinder Singh has been changed on the basis of the Application submitted by Manjinder Singh before the declaration of the result and they have supplied the application form of Manjinder Singh and the Order passed by the Director General of Police, Punjab and the Order of appointment of Manjinder Singh dated 20.06.2017, which itself shows that the appointment to Manjinder Singh has been given much after the appointment given to the other candidates. Therefore, the question of taking the decision with regard to the change of category before the declaration of result does not arise. Whereas in the case of Amanpreet Singh, they have also supplied the information under the Right to Information Act, on 25.04.2019 stating therein that the appointment letter issued to Amanpreet Singh cannot be provided whereas they have provided the Application Form of Amanpreet Singh, which clearly shows that he applied against the ‘General Category. Copies of the information provides to the petitioner under the Right to Information Act, 2005 vide various letters from time to time are annexed herewith as ANNEXURE P-11 (Colly). Whereas the other Applications filed by the petitioners for supply of information under The Right to Information Act, 2005 are pending with the Respondents.

That the petitioners would like to submit that the recommendations to appoint Amanpreet Singh against the 2% quota of “Wards of Police Personnel” have been made on 02.04.2017 i.e. much after the declaration of result and recruitment of candidates, whereas the Order of appointment has been issued on 16.05.2018, which further falsified the stand of the Respondents in the Written Statement as well as the information provided to the petitioners under The Right to Information Act, 2005. Copies of the letters dated 02.04.2017 and the Order of

appointment of Amanpreet Singh dated 16.05.2018 are annexed herewith as **ANNEXURES P-12 and P-13** respectively.

2. That in reply to para No. 2 of the 'Preliminary Objections', it is submitted that the posts in the category of "Wards of Police Personnel" are still lying vacant, whereas it is denied that the category of no candidate was changed to "Wards of Police Personnel" after declaration of provisional Merit List on 26.10.2016, whereas the petitioner No. 1 is having the applications and letters showing that he has applied on 25.10.2016 and the Respondents have changed the category of Manjinder Singh and Amanpreet Singh much after the declaration of result. Therefore, the petitioners are also entitled to get the benefit of reservation, which was granted to the similarly situated candidates, like the petitioners and the action of the Respondents is violative of Articles 14 and 16 of the Constitution of India."

5. The respondents have responded the same by way of reply by way of affidavit of J. Elanchezhian, IPA, Assistant Inspector General of Police, Personnel-II, C.P.O. Punjab as under :-

"1. That contents of the para no. 1 of the preliminary objections are admitted to the extent that candidate Manjinder Singh, Regd. No. 209115381 has applied in General category whereas he has given his application on 13.10.2016 before the declaration of result 26.10.2016 to Chairman Central Recruitment Board to consider his case in wards of police personnel category as his certificate of wards of police personnel category was issued on 12.10.2016 by Deputy Inspector General of Police, Patiala Range, Patiala. But, inadvertently his application got misplaced as such his category could not be changed as his application could not be found inspite of a thorough search. Again he appeared before the office of Director General of Police, Punjab on

28.11.2016 and 11.04.2017 respectively and his case was approved by the Director General of Police, Punjab on 26.04.2017.

It is further submitted that category of Candidate Amanpreet Singh has not been changed. He has been considered as a special case Annexure R-1 on the basis of recommendation given by Senior Superintendent of Police, Bathinda.

It is pertinent to mention here that ASI Avtar Singh father of the petitioner Harmanpreet Singh has given application on 25.10.2016 to the Senior Superintendent of Police, S.A.S Nagar (Mohali) along with the certificate of wards of police personnel category issued by Deputy Inspector General of Police, Rupnagar Range, Rupnagar on 24.10.2016. The letter was received from Senior Superintendent of Police, S.A.S Nagar (Mohali) on 25.10.2016 (Annexure P-10) and report was demanded vide letter no. 2223/C.R.B dated 26.10.2016 (Annexure P-10 Colly). The report from Senior Superintendent of Police, S.A.S Nagar (Mohali) was received on 27.10.2016, just after the declaration of result. Hence, the category of Harmanpreet Singh could not be changed after the declaration of result.

2. That in reply to para no. 2 of the preliminary objections, it is submitted that candidate Manjinder Singh, Regd. No. 209115381 has given his application on 13.10.2016 before the declaration of result 26.10.2016 to Chairman Central Recruitment Board to consider his case in wards of police personnel category as his certificate of wards of police personnel category was issued on 12.10.2016 by the Deputy Inspector General of Police, Patiala Range, Patiala. But, inadvertently his application got misplaced as such his category could not be changed as his application could not be found inspite of a thorough search. Again he appeared before the office of Director General of Police, Punjab on 28.11.2016 and 11.04.2017 respectively and his case was approved by the Director General of Police, Punjab on 26.04.2017.”

It is further submitted that category of Candidate Amanpreet Singh has not been changed. He has been considered as a special case on the basis of recommendation given by Senior Superintendent of Police, Bathinda.”

Thereby admitting the assertions made by the petitioners.

6. In view of the aforesaid facts, it is evident that the petitioners are the wards of Police Personnel. The Public Notice provided for 2% reservation for the said category. The candidates could not apply in the said category as the Regulations for Certification of such category were not in place. Regulations for issuance of Certificates were admittedly issued during the time selection process was in the midst. As per the Regulations, all the petitioners have been certified to be the wards of Police Personnel and, are thus, entitled for reservation in the said category. However, the question is that : *once the petitioners applied in the general category can they be allowed to change the category after procuring certificates which would entitle them to claim the benefit of reserved category ?*

7. As a general proposition of law once the candidate has applied in a particular category he is precluded from changing the same and has to be considered in the said category only. However, in the present case, the petitioners applied in the General Category not by choice but by compulsion as there was no process for certifying them

to be the one belonging to the reserved category. Once the legal handicap got removed during the pendency of the selection process they applied for such certificate. By being in possession of such certificate, the fact that they belong to the reserved category can't be disputed. Once the respondents have allowed other candidates to change their category, denial of the same to the petitioners would necessarily amount to discrimination against the petitioners.

9. Consequently, the petitioners are also held to be entitled for consideration in the category reserved for wards of Police Personnel. Resultantly, the present writ petition is allowed.

10. Respondents are directed to consider the claim of the petitioners on the strength of the Certificates appended as Annexure P-5 (Colly.) in the category reserved for wards of Police Personnel. In case the petitioners are found entitled, they shall be appointed within a period of three months from the date of receipt of certified copy of this order. Their appointments shall relate back to the date their juniors were appointed in the same category. Petitioners will not be entitled for any monetary benefit for the said period on the principle of 'No Work No Pay'. However, all the notional benefits shall be granted to them including seniority, increment etc. and for all intents and purposes their appointment shall relate back to the date their juniors have been appointed pursuant to Public Notice (Annexure P-1).

11. Ordered accordingly.

January 16, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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