

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

**CWP No.14785 of 2017
Date of decision : 16.01.2023**

Rajinder Kaur

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Kamaldip S. Sidhu, Advocate
for the petitioner.

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

PANKAJ JAIN, J.

Rajinder Kaur, the petitioner is aggrieved of the order dated 26th of May, 2016 passed by respondent No.3 whereby her claim to appointment on the post of Lady Constable has been rejected ignoring her merit despite the fact that the candidates lower in merit to her have been appointed.

2. Respondents invited applications vide Public Notice dated 29th of September, 2011 for recruitment to the post of male and female Constables. Petitioner being fully eligible submitted her application seeking recruitment as Lady Constable in Bathinda Zone, Bathinda. The criteria was also spell down in the Public Notice. The petitioner qualified physical efficiency test as per the norms but was discarded after recording her height as 5'3½" whereas her actual height is 5'4".

3. Ld. Counsel for the petitioner submits that criteria for physical efficiency test was later on relaxed by the respondents and a Public Notice was issued on 27th of November, 2011 inviting the candidates again for interview as per the relaxed criteria. The petitioner still could not find favour and did not figure in the Merit List. The aforesaid selection was challenged at the hands of Baljeet Kaur and another in CWP No.773 of 2012. The same was decided vide order dated 31st of January, 2013. This Court held as under :-

“The case was listed before this Court on 13.01.2012 when notice of motion was issued to the respondents and vide the interim order two posts of lady Constables were ordered to be kept vacant for the petitioners. The basic question which needs to be answered in the present with petition is whether the respondents could have, after having advertised the criteria on 3.10.2011 (Annexure P-8), proceeded to change the same when the selection process has been initiated. The answer to this question is nothing else but No. This is apparent and by now is a well settled position in the light of the various judgments which have been passed by the Supreme Court, reference of which was made by the counsel for the petitioners in **Amlan Jyoti Borooah, Rakhi Ray and others, Pramod K. Pankaj and Mamata Mohanty's cases (supra)**. The process, therefore, initiated after changing the criteria by the respondents vide communication dated 12.11.2011 cannot but be said to be not in consonance with law. This Court does not intend to quash the selection process as such on this ground for the reason that no other candidate except these two have approached this Court laying challenge to the revised criteria so framed by the respondents for going about the

process of selection. Further, no prejudice would be caused to any selected candidate as two posts have already been kept vacant for the petitioners vide interim order dated 13.1.2012. That takes care of the objection raised by the counsel for the State that the selected candidates are not a party and, therefore, the writ petition cannot proceed.

The assertion of the counsel for the respondents that the same benchmark was made applicable to all candidates who had participated in the selection process and, therefore, no prejudice was caused to the petitioners cannot be accepted in the light of the legal position that the criteria cannot be changed midway and prejudice has indeed been caused to the petitioners as the zone of consideration had been enlarged. This is apparent from the fact that as per the initial criteria which was advertised, only 365 candidates having cleared the physical efficiency test would have completed for the 600 posts of Constables advertised whereas with the revised criteria, which was introduced vide communication dated 12.11.2011, the number of candidates who had cleared the second stage of selection had been enlarged to a great extent which had actually diminish the chances of selection of the petitioners. The prejudice being clear from the above contention of the counsel for the respondents, cannot be accepted. Another contention which has been raised by the counsel for the respondents was that there are large number of candidates who have in the final selection got higher marks than the petitioners and, therefore, prejudice would be caused to such candidates. This contention of the counsel for the respondents again cannot be accepted in the light of the fact that the initial criteria which was advertised by the respondents was required to be followed by them and, therefore, when that criteria had been given effect to, the candidates who had cleared the said process of second stage could not be equated with those candidates who had now cleared the second stage of physical efficiency test on the diluted

standards as per the communication dated 12.11.2011.

A contention has further been pressed into service to this effect that there would be similar candidates who would probably have been left out of the selection, who are not party to the case and, therefore, their claim would be adversely affected. There is a waiting list also and those candidates would also be adversely affected. This contention of the counsel for the respondents again cannot be accepted for the reason that none has approached this Court with any grievance with regard to the selection criteria adopted by the respondents and, therefore, had there been any prejudice, they would have approached the Court with the same.

In view of the above, the present writ petition is allowed. Direction is issued to the respondents to consider the claim of the petitioners for appointment as per the initial criteria which was advertised on 3.10.2011 and if the petitioners make the grade, as per the said criteria, out of the candidates who had cleared the second stage, as per the then fixed criteria, appointment letters be issued to them within a period of one month. It goes without saying that the petitioners shall also be entitled to all the consequential benefits, except for the financial benefits.”

4. The matter was taken in *Intra* Court Appeal by the State in LPA No.1108 of 2014 which was dismissed vide order dated 11th of August, 2014. Similarly situated persons again came before this Court in CWP No.4332 of 2012 which was decided vide order dated 4th of November, 2015. The same reads as under :-

“The writ petitioners, in the present set of cases, seek quashing of the lists dated 04.02.2012 and 03.02.2012 (Annexures P-9 and P-10) whereby, merit list of lady constables was prepared for Bathinda Zone.

The arguments were heard on 06.10.2015 in the present set of cases and the following order was passed:-

“Arguments partly heard.

To come up on 19.10.2015, for remaining arguments.

It transpires that admittedly as per the advertisement (Annexure P1) and the terms of the instructions, the eligibility criteria was relaxed regarding the physical efficiency test. Therefore, a fresh set of ineligible candidates were allowed to participate at a subsequent point of time on the basis of the directions issued by the official-respondents, in the midst of the selection process. The said ineligible candidates have, thus, on the basis of their educational qualifications and the marks obtained in the interview, stolen a march over the original candidates who had made the cut and would have been selected against the 600 vacancies for Bathinda zone since they were lessor in number than the ones advertised. Since the State had issued directions, thereafter, for changing the fixed criteria and the ineligible persons (private respondents) have been selected over and above them, who have unnecessarily stolen a march over the eligible petitioners and would, thus, have to be shunted out.

Faced with this situation, counsel for the State prays for time to address arguments as to whether the change of criteria can be justified, in the facts and circumstances and whether or not the petitioners, who had approached this Court immediately in the year 2012, after the result had been declared in December, 2011, can be adjusted against any vacancies available.

Photocopy of this order be placed on the record of each connected case.”

Today, Mr. Harsimran Singh Sethi, Addl. A.G., Punjab has placed on record the letter dated 03.11.2015 of the Director

General of Police (Litigation Branch, CPO) wherein, in pursuance of the above said order, request has been made that the writ petitions be disposed of in terms of the order dated 31.01.2013 passed in CWP No. 773 of 2012 titled as Baljeet Kaur and others vs. State of Punjab and others. The said letter is taken on record as Annexure 'A'. In Baljit Kaur's case (supra), the following directions were issued:-

“In view of the above, the present writ petition is allowed. Direction is issued to the respondents to consider the claim of the petitioners for appointment as per the initial criteria which was advertised on 3.10.2011 and if the petitioners make the grade, as per the said criteria, out of the candidates who had cleared the second stage, as per the then fixed criteria, appointment letters be issued to them within a period of one month. It goes without saying that the petitioners shall also be entitled to all the consequential benefits, except for the financial benefits.”

In such circumstances, the present writ petitions, in view of the letter dated 03.11.2015, are allowed in the same terms as above.”

5. Petitioner submits that pursuant to the orders passed by this Court a revised merit list was prepared which she procured under Right to Information Act, 2005. The same is placed on record at Annexure P-8. The name of the petitioner finds mention at Serial No.217 and she has secured 27 marks in BC Category. In BC Category, revised merit list has been prepared after the decisions passed by this Court in CWP No.4332 of 2022 titled as 'Veerpal Kaur and others vs. State of Punjab'

and others (supra). The name of the petitioner figures at Sr.No.36 yet she has been denied the appointment whereas candidate at Sr. No.37 namely Swarnjeet Kaur daughter of Jagdish Singh who also secured 26 marks but at merit No.219 i.e. lower to that of petitioner has been appointed as Lady Constable. Likewise Chandpreet Kaur who was placed at Sr. No.45 in BC category and at Sr. No.250 in the Merit List of 300 female candidates has also been given appointment. Likewise, she refers to appointment given to one Baljeet Kaur who was at merit No.625 and had secured only 24 marks and was at Sr. No.112 in the BC category.

6. Respondents in their affidavit do not dispute the factual assertions made by the petitioner on the basis of record. The only impediment pleaded is the delay. It has been claimed that the petitioner being fence-sitter cannot be granted benefit as claimed for. All those petitioners who approached this Court by way of different writ petitions were granted benefit in terms of the orders passed by this Court. The petitioner having delayed her claim cannot be held entitled for the relief.

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

8. A bare perusal of the order dated 28th of December, 2015

shall reveal that the authorities pursuant to the orders passed by this Court constituted a Committee to re-examine the cases of the petitioners who approached this Court by way of different writ petitions. Admittedly, in view of such directions the Committee consider the cases of various writ petitioners and granted them relief vide order dated 28th of December, 2015 (Annexure P-7). The present petitioner approached the respondents on 2nd of April, 2016 by way of a detailed representation placed on record at Annexure P-10. Thus, in view of the aforesaid admitted facts, can it be said that the claim of the petitioner seeking appointment being higher in merit to the candidates appointed as late as 28th of December, 2015 is delayed? While issuing notice of motion, this Court observed :

“Learned counsel for the petitioner submits that the petitioner secured 27 marks in the BC category and the candidates who secured less marks have been given appointment. Learned counsel further contends that posts are still lying vacant. Neither any waiting list has been prepared nor claim of the petitioner has been considered on merit and the same has been rejected only on the ground of delay.

Notice of motion for 24.10.2017.”

9. Thereafter on 30th of September, 2022, following order was passed :-

“Learned counsel for the petitioner herein would contend

that having secured more marks than the last selected candidate in the BC category, the petitioner is still being denied the appointment. He submits that there are 42 posts still lying vacant as per the information received from the RTI Act.

Learned State counsel seeks some time to get necessary instructions in this regard.

Adjourned to 15.12.2022.”

10. The respondents have granted relief to less meritorious candidates pursuant to order 28th of December, 2015 thus this Court is of the considered opinion that the claim raised by the petitioner cannot be said to be barred by delay and laches. The claim raised by the petitioner vide representation dated 2nd of April, 2016 ought to have been considered on merits rather than being rejected merely on the ground of delay. The petitioner admittedly being higher in merit to the candidates appointed, cannot be denied appointment as the same would be in teeth of her Fundamental Right to Equality. Resultantly, impugned order dated 26th of May, 2016 (Annexure P/11) passed by respondent No.3 is ordered to be quashed.

11. Respondents are directed to consider the claim of the petitioner in light of Annexure P-4 passed by the Writ Court and Annexure P-7 passed by the Authorities, within three months from the date of receipt of certified copy of this order. In case, the petitioner is found to be eligible, she shall be entitled for all consequential benefits

from the date juniors to her have been appointed except for financial benefits which are being denied on the principle of 'No Work No Pay'.

January 16, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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