

CWP-712-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 21.02.2024

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HC/PR Sukhwant Kaur(Belt No.2456/JAL City) ...Petitioner

Versus

State of Punjab and others ...Respondents

117 CWP-741-2024

Baljit Kaur & others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. K.K. Thakur, Advocate
for the petitioner(s).

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order both the above-said Writ Petitions are disposed of as issue involved in these petitions is identical. For the sake of convenience, facts are borrowed from CWP No. 712 of 2024.
2. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 21.09.2023 (Annexure P-11) to the extent, the petitioner has been denied arrears while granting benefit of deemed date of absorption as Constable.

3. The petitioner was appointed as Special Police Officer (SPO) on 21.08.1990. The Division Bench of this Court in **Lal Mohammad Vs. State of Punjab & others, 1997 (2) SCT 139**, had occasion to consider question of conversion of SPOs into Constables. The Court formed an opinion that the petitioner is entitled to absorption as Constable. In the said judgment, it was clarified that consequential relief regarding fixation of pay and seniority shall follow, however, the petitioners will not be entitled to arrears of salary to avoid unnecessary burden on the State. The said order was passed in view of the fact that number of SPOs had been appointed by State of Punjab and re-fixation of their pay with retrospective date would certainly create additional burden on the exchequer.

4. The judgment in the case of **Lal Mohammad (Supra)** was passed on 12.12.1996 and the petitioner in view of her facts and circumstances was appointed as Constable w.e.f. 05.12.1997. She continued to work as Constable till 2019 and in 2020 approached this Court by way of CWP No.14782 of 2020 seeking pay fixation and seniority from the deemed date on completion of six months' service as SPO. The said petition was disposed of with a direction to the respondents to decide representation of the petitioner. In the said order, it was observed that if claim of the petitioner is accepted, the consequential benefits, if any, be granted within a period of four weeks.

The respondents rejected representation of the petitioner which

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Court. The said petition was disposed of vide judgment dated 16.03.2023. This Court set aside the order passed by the respondents whereby claim of the petitioner was rejected. The respondents were directed to reconsider claim of the petitioner to enlist her as SPO in the District Batala. The relevant extracts of the order read as under:-

“10. Resultantly, the impugned order (Annexure P-8) is set aside. Respondents are directed to reconsider claim of the petitioner viz-a-viz persons junior to her enlisted as SPOs in the district Batala on 20th of August, 1990. The date of passing of suitability test also cannot have an effect of arresting deemed date of absorption of the petitioner as prior to 5th of December, 1997, as the petitioner was never granted opportunity to undergo the suitability test.

11. Resultantly, the present writ petition is allowed. Respondents are directed to grant deemed date of absorption to the petitioner from the date persons junior to her as enumerated in Annexure P-9 have been granted i.e. 13th of May, 1992. Necessary relief be granted to the petitioner within a period of eight weeks from the date of receipt of certified copy of this order.”

5. The respondents vide order dated 21.09.2023 (Annexure P-11) has appointed the petitioner as Constable w.e.f. 13.05.1992. The petitioner has not been extended arrears arising on account of re-fixation of pay.

6. Learned counsel for the petitioner submits that the petitioner is entitled to arrears because she was wrongly denied benefit of post of Constable w.e.f. 13.05.1992. There was no lapse on her part. The respondents after judgment of this Court in **Lal Mohammad's case**

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(supra) were supposed to appoint her as Constable, thus, she is entitled to arrears arising on account of re-fixation of pay.

7. Per contra, Mr. Dhir submits that while disposing of CWP No.3700 of 2021, the Court had not directed the State to pay arrears arising on account of pay re-fixation. The claim of the petitioner is hit by doctrine of *res judicata*. This Court in **Lal Mohammad's case (supra)** has also denied benefit of arrears. Thus, the petitioner is not entitled to arrears.

8. I have heard arguments of both sides and scrutinized record with their able assistance.

9. From the perusal of record, it comes out that the Division Bench of this Court in **Lal Mohammad's case (supra)** vide order dated 12.12.1996 directed the respondents to consider claim of the petitioners for absorption as Constable with effect from the dates their juniors were appointed as Constable. The Court did not extend the benefit of arrears. The relevant extracts of the order passed in **Lal Mohammad's case (supra)** read as under:-

“6. After hearing counsel for the parties and going through the record and the pleadings of the parties, we are of the opinion that this writ petition must succeed. Standing order, Annexure P-2 lays down the procedure for selection providing educational qualifications, minimum physical standards required and subject to being medically fit, after holding a written test and an interview. Under Clause 13 of the Standing Order, Annexure P-2, an S.P.O. becomes eligible for

*recruitment as Constable after one year of service provided his work and conduct was found satisfactory by the District Superintendent of Police, who is required to make selection out of the eligible S.P.Os for appointment as Constables in accordance with their seniority and suitability. Standing order, Annexure P-3 reduced the minimum period of service from one year to six months for appointment as Constables for amongst the S.P.Os. A combined reading of the Standing Orders, Annexure P-2 and P-3, makes it clear that the recruitment as Constables from amongst the S.P.Os. was to be made on the basis of their recruitment as S.P.Os. In order of merit and keeping in view their efficiency and suitability. Positive stand of the petitioners is that their case was not considered for appointment were considered as Constables while appointing persons junior to them. In the written statement filed, respondents have not stated that the cases of the petitioners for appointment as Constables while appointing persons junior to them. From the pleadings of the parties, it is clear that the cases of the petitioners were not considered for appointment as Constables while appointing persons juniors to them as Constables. In similar circumstances, a learned Single Judge of this Court in **CWP 812 of 1994 (Balwinder Kumar and others v. State of Punjab and others) decided on 6.9.1995**, issued the following directions:-*

“The writ petition is disposed of with the direction that the respective District Superintendents of Police shall consider the

claims of the petitioners for absorption as Constables with effect from the date/s the person/s junior to them were appointed. In case, the petitioners are found suitable, orders of their appointment shall be issued. The consequential reliefs relating to the fixation of pay and payment of arrears of salary, shall follow. The needful shall be done within six months from the date of receipt of a copy of this order.”

7. *We dispose of this petition with a direction to the respective senior Superintendents of Police to consider the claims of the petitioners for absorption as Constables with effect from the dates persons junior to them were appointed. In case, the petitioners are found suitable, orders of their appointment be issued. Consequential reliefs regarding fixation of pay and seniority shall follow. Keeping in view the large number of S.P.Os./Auxiliary Constables involved in these cases, we will not order payment of arrears of salary to avoid unnecessary burden on the State Government at this stage.”*

10. The respondents time to time conducted tests to appoint SPOs as Constables. The petitioner qualified the test and came to be appointed as Constable w.e.f. 05.12.1997 and since then she is getting salary as Constable. She by way of CWP No.14782 of 2020 approached this Court seeking benefit of pay fixation and seniority from the deemed date as Constable. The petitioner was appointed as Constable in 1997 and she approached this Court in 2020 claiming pay fixation and seniority from the deemed date. The said petition was disposed of with a

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direction to decide legal notice of the petitioner and if claim of the petitioner is accepted, the consequential benefits shall be granted. The relevant extracts of the order dated 18.09.2020 read as :-

“Keeping in view the above facts, the present petition is disposed of with directions the Director General of Police, Punjab Police Headquarters, Sector 9, Chandigarh-respondent No. 2 to consider and decide the legal notice dated 13.02.2020 (Annexure P-6) served by the petitioners within a period of eight weeks from the date of receipt of certified copy of the order. Decision so taken be conveyed to the petitioners forthwith.

In case the claim of the petitioners is accepted, the consequential benefits, if any, be granted to them within a further period of four weeks thereafter.”

11. The claim of the petitioner seeking pay fixation and seniority from deemed date was rejected by speaking order. The petitioner again approached this Court by way of CWP No.3700 of 2021 which was disposed of vide order dated 16.03.2023. The Court ordered to grant deemed date of absorption to the petitioner as has been granted to the juniors. There was no direction to pay arrears arising on account of re-fixation of pay and grant of deemed date of absorption. The respondents by order dated 21.09.2023 has granted deemed date of absorption to the petitioner i.e. 13.05.1992.

The Division Bench of this Court while disposing of writ petition in **Lal Mohammad’s case (supra)** did not grant arrears of salary to avoid unnecessary burden on the State. The petitioner is getting salary as Constable since 1997 and she approached this Court in 2020 seeking

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pay fixation and seniority from the deemed date. There was inordinate delay on the part of the petitioner in approaching this Court. Nevertheless, the respondents were directed to decide her representation. The petitioner by order dated 18.09.2020 was made eligible to consequential benefits, however, no such relief was granted while disposing of subsequent CWP No.3700 of 2021. There was only direction to grant deemed date of absorption to the petitioners. The petitioner cannot be permitted to claim arrears from 1993 to 1997 especially when neither were granted in **Lal Mohammad's case (Supra)** nor petitioner approached this Court till 2020. Thus, the petitioners are not entitled to arrears from the deemed date of appointment to actual date of appointment as Constable i.e. 05.12.1997.

12. This Court vide order dated 18.09.2020 directed the respondents to decide representation of the petitioner. It was duty of respondent to pass correct order which was ultimately passed on 21.09.2023. Thus, the petitioner is entitled to arrears and other consequential benefits, arising on account of re-fixation of pay, for the period sprawled from the date of order dated 18.09.2020 to 21.09.2023.

13. Both the petitions stand disposed in above terms.

21.02.2024
monika

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes*