

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

CWP-13016-2021 (O&M)
Date of decision: 18.09.2024

Kapil Dev

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Yowan Sharma, Advocate for the petitioner.

Ms. Vibha Tewari, AAG, Haryana.

AMAN CHAUDHARY, J.

1. The petitioner, who had applied for appointment to the post of Statistical Assistant pursuant to the Advertisement dated 01.12.2015, secured 120 marks in the written examination, in the result that was declared on 29.12.2017. He, however was disqualified from appearing in the interview to be conducted on 12.01.2018, on the ground that his degree was not in the subject of Statistics, for vindication whereof he filed CWP-391-2018. This Court had provisionally allowed him to be interviewed by way of an interim order dated 11.01.2018. On seeking production of the result, the respondents apprised that he was granted 10 marks therein, taking his aggregate to 130 under the EBPG category, higher than the last selected candidate. Noticing this fact in the judgment dated 20.12.2018, it was directed to issue him the appointment letter forthwith alongwith Rs.25,000/- costs, the former was complied with on 05.07.2019, while the latter on 21.01.2022.
2. The future of the petitioner being in doldrums, he was constrained to approach this Court, which came to his rescue by provisionally

allowing him to appear, whereafter his merit position emerged, as per which his marks were more than the last selected candidate. In the counter filed, the respondents having accepted him to be qualified for the post in question, it being beyond any cavil that his exclusion from the process of selection was without he being at any fault.

3. The denial of even notional benefits that became legally due to the petitioner from the date of an appointee lower in merit, would amount to the State taking advantage of its own wrong and the prayer to that extent is what has been pressed, on instructions, by learned counsel. The action of the respondents thus, reeks of arbitrariness, while it being also violative of Articles 14 and 16 of the Constitution, with regard to which, a gainful insight can be drawn from **C. Jayachandran vs. State of Kerala**¹, wherein on account of an illegal and arbitrary grant of moderation of marks, the seniority of the appellant, who came to be appointed later on, was fixed notionally from the date the other candidates were appointed in pursuance of the same select list prepared on the basis of the common appointment process.

4. The petitioner in **Seema Rani vs. State of Punjab and another**², was granted appointment by the respondents during the pendency of the petition, though denying the claim for notional benefits from the date when other candidates had been appointed, which this Court granted while allowing her prayer, against which no challenge was made.

5. This Court in the case of **Dr. Rajneet Singh and others vs. State of Punjab, through its Principal Secretary and others**³, wherein a wrong was committed on behalf of the respondents by not recommending/appointing the petitioners, held them entitled to all consequential benefits, other than

¹ (2020) 5 SCC 230.

² CWP-16772-2010 decided on 07.08.2012.

³ CWP-11280-2007, decided on 02.07.2009.

salary, from the date of appointment of other persons selected in same selection process, which was not carried up in appeal.

6. Taking stock of the totality of facts and legal position, the present petition is disposed of with directions to the respondents to grant the petitioner notional benefits from the date of selection of other candidates, within a period of two months.

(AMAN CHAUDHARY)
JUDGE

18.09.2024
Hemant

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