

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-544-2022(O&M)
Reserved on: 29.01.2024
Pronounced on: 03.02.2024

Sandeep Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Mr. R.K. Malik, Senior Advocate with
Mr.Varun Veer Chauhan, Advocate for the appellant

Mr. Deepak Balyan, Additional Advocate General, Haryana

AMAN CHAUDHARY, J.

1. The present intra-court appeal, under Clause X of the Letters Patent has been filed challenging the judgment dated 01.12.2021, whereby the civil writ petition preferred by the appellant came to be dismissed.
2. Learned Senior counsel for the appellant would submit that the writ petition for grant of deemed date of appointment, seniority, and notional increment from date of persons juniors in merit to the petitioner was wrongly dismissed only on ground of delay and latches. Reliance is placed on Full Bench judgment of this Court in **Saroj Kumar vs. State of Punjab** 1998(3) PLR 123. It is the further submission that though the facts stated in the petition of similar relief having been granted to other Constables were admitted, yet the learned Single Judge did not properly appreciate the same and denied relief. He on instructions, states that the appellant gives up his claim for any monetary benefits for the period, till his joining.

3. Learned counsel for the respondents, on the other hand, submitted that the learned Single Judge has rightly dismissed the petition on the ground of the appellant having remained a passive fence sitter and thus was not entitled to the prayer made.

4. Having heard learned counsel for the parties, we do not agree with the view taken by the learned Single Judge.

5. As is evident, an FIR was registered against the appellant, who was selected as Constable (Driver), on the ground of possessing fake/bogus driving licence, however, he was acquitted of the charges and consequently, allowed to join by allotting Constabulary number on 02.02.2011.

6. The *inter-se* seniority, as per Rule 12.2 of Punjab Police Rules, 1934, is to be reckoned in the order of merit as determined by the selecting body.

7. The claim of the appellant for seeking seniority from the date of appointment of persons lower in merit in the same selection, was projected by him to the respondents based on orders passed in the case of other similarly situated. Notably, in para 13 of the writ petition, the names of 9 Constables, were mentioned, who were granted the benefit of deemed date of appointment, seniority and fixation of notional increments viz.a viz. the persons who were below them as per the select list, to which there was no specific denial in the written statement, but for resisting the claim of the appellant, on the ground of it being time barred, thus, not at par.

8. A reliance was also placed by the appellant on the case of **Constable Sanjay Kumar vs. State of Haryana and others**, CWP-5963-2014 decided on 21.07.2016, where objection raised was that the representation was filed after a delay of 4 years, the learned Single Judge observed that it cannot defeat the claim of the petitioner as he was only seeking parity with similarly

situated employees, even though he had accepted his appointment and held him to be entitled to seniority on the basis of merit as determined in the selection panel. Further, in case of Constable Yashpal Singh, who was given late appointment in the year 2010 due to the pendency of an FIR, sought for re-determination of his seniority and granting of consequential benefits, this Court directed the competent authority to pass a speaking order, after which vide order dated 09.08.2018, he was granted notional appointment w.e.f. 06.07.2008 from the date his immediate junior shown at Sr.No.79 was appointed, however was not entitled to any arrears of pay and allowances from the said date till 01.07.2018.

9. The appointment of the appellant was based on the merit list prepared by the authorities after conducting due process of selection. It was only on account of an FIR having been registered, that as a matter of fact, the appointment of the appellant was deemed to be held in abeyance but not cancelled. Being acquitted therein, consequently, he on the basis of the original select list, was allotted the Constabulary number. Once the sting because of which the appellant was not appointed stood removed, the rule of seniority to be determined *inter se* the selected candidates, which is based on the merit position of the batch in the selection, would prevail. Thus, his seniority had to *ipso facto* be considered alongwith his batch and in no manner below or with that of subsequent batches. As a sequitur, it was incumbent upon the Department itself to have granted him all the benefits, including seniority, rather than he having to make any representation in that regard. As an analogy, even in the case of setting aside of an order of dismissal, the reinstatement of the employee relates back to the date of passing of the said order and his position as it existed on the said date is restored, irrespective of the fact that in the interregnum, other persons may have been selected and joined.

10. In **Man Singh vs. State of Haryana and Others**, (2008) 12 SCC 331, Hon'ble the Supreme Court by observing that every employee is to be treated fairly and equitably, held that, "We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness."

11. The non-grant of seniority to the appellant from the date of his entitlement as per the merit in the select list, will have an adverse affect on not only throughout his service career but even far reaching consequences as regards his pensionary benefits are concerned and viewed from such perspective, it can be termed as a recurring cause of action.

12. Conspectus evaluation of the aforesaid leads us to the conclusion that the judgment impugned declining relief to the appellant requires to be and is accordingly, set aside. He is held entitled to grant of notional seniority from the date persons lower in merit have been placed, as per the select list, however, no monetary benefits would be payable for the said period, as was also the statement made on his behalf. Expeditious compliance be made, preferably

within a period of one month from the date when a web-print of this judgment is received and this Court be informed.

13. Pending applications, if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE
03.02.2024
gsv/mkk

(AMAN CHAUDHARY)
JUDGE

Whether speaking / reasoned: YES / NO

Whether Reportable : YES / NO