

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111 (7 cases)

CWP-16421-2022
Date of Decision : 18.04.2024

AMARJEET SINGH AND OTHERS

... PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

2.

CWP-23358-2022

MOHAN LAL AND OTHERS

... PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

3.

CWP-23360-2022

KANWALJIT SINGH

... PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

4.

CWP-23374-2022

SUKHA SINGH AND OTHERS

... PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

5.

CWP-4207-2023

KULDEEP SINGH AND OTHERS

... PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

6.

CWP-4228- 2023

NARINDER SINGH AND OTHERS

... PETITIONERS

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

7.

CWP-4324-2023

DHARMINDER SINGH

... PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.B.S.Sidhu, Advocate
for the petitioners.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this order, CWP Nos. 16421, 23358, 23360 & 23374 of 2022
and CWP Nos. 4207, 4228 & 4324 of 2023 are disposed of as the issues

involved and prayer sought are common. For the sake of convenience, the facts are borrowed from CWP-16421-2022.

2. The petitioners through instant petition under Articles 226/227 of Constitution of India are seeking setting aside of order dated 06.04.2022 (Annexure P-7) whereby their claim to count their service as SPOs for the purpose of grant of local rank has been rejected.

3. The particulars of petitioner No.1-Amarjeet Singh are hereby noticed. He joined respondents as Special Police Officer (SPO). The State Government as per Section 17 of Punjab Police Act, 1861 (for short, '1861 Act') has power to appoint SPOs. The respondent assigned constabulary number to various SPOs on the basis of their service especially participation in anti-terrorist front. On account of appointment of juniors as Constables, many SPOs approached this Court by way of civil writ petitions. CWP No.7451 of 1996 titled as "Lal Mohammad vs. State of Punjab and others" came to be adjudicated vide judgment dated 12.12.1996. A Division Bench of this Court formed an opinion that respondent should consider claim of petitioners for absorption as Constables with effect from the date of their juniors have been appointed. The relevant extracts of the judgment are reproduced as below :

"We dispose of this petition with a direction to the respective Senior Superintendent of Police to consider the claim of the petitioners for absorption as Constables with effect from the date their juniors have been so 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 SPOs/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.

Directions issued above be carried out within six months from the receipt/production of a certified copy of this order.”

4. Pursuant to aforesaid judgment, the respondent considered 16,000 SPOs for absorption as Constables. 4647 SPOs were found suitable and came to be selected as Constables in the year 1997. The petitioners were not found suitable as they failed to clear suitability test. The respondent time to time with relaxed conditions considered case of various SPOs who could not clear minimum eligibility test in 1997 and subsequent years. The petitioners cleared eligibility test during 2002-04 and respondent thereafter assigned constabulary number to them. The petitioner-Amarjeet Singh was granted constabulary number on 05.04.2010.

5. The respondent filed review application No. 711 of 1999 in CWP No.7883 of 1999. A Division Bench of this Court while disposing of CWP No.7883 of 1999 had opined that if a person makes the grade, he would be deemed to have been notionally appointed on the day when his immediate junior was appointed because of the previous selection. The respondent sought modification of the said observation. The review application came up for consideration on 04.08.2000. The Court clarified its earlier order. The order dated 04.08.2000 is reproduced as below :

This order will dispose of R.A. No. 711 of 1999 in CWP 7883 of 1999 and R. A. No. 710 of 1999 in CWP 8112 of 1999.

Vide our judgment, dated September 09, 1999. rendered in CWP No. 7883 of 1999, we had also disposed of CWP No. 8112 of 1999. We had observed that the petitioners, who were earlier not found fit regarding physical standards etc. for absorption from the post of S.P.O. to the post of Constable may be given one more chance to show their physical fitness and also undergo physical aptitude tests etc. Further it was mentioned in the judgment as under:-

"It may further be added here that if such a person makes the grade, he would be deemed to have been notionally appointed on the day when his immediate junior was appointed because of the previous selection(s)...."

This review application has been filed on behalf of the official respondents that the aforesaid observations/directions may be deleted as these will create an anomalous situation inasmuch as the persons who were already selected when the petitioners were rejected would become junior if now the petitioners are found fit for absorption and the date of absorption is to date back to the date of their earlier rejection as per aforesaid directions. It may further be mentioned that in the earlier part of the judgment we had also observed as under:-

"If such a person does make the grade for sa constable, he will be kept being absorbed as a below the last candidate who is already on the waiting list."

According to us, the portion of the judgment mentioned earlier, which the applicant wants to be deleted, if allowed to stand, would run contrary to the observations, quoted above in the judgment. We do feel that there is some ambiguity. Our intention in the Judgment was that such persons, who might

have been rejected on the ground of physical fitness or physical aptitude test may be given one more chance to get absorbed as a Constable, and it was never our intention that they should also rank senior to the persons, who stood already selected.

In view of the above, we modify our judgment dated September 09, 1999 and delete the following lines from the judgment:-

"It may further be added here that if such a person makes the grade, he would be deemed to have been notionally appointed on the day when his immediate Junior was appointed because of the previous selection(s).....

The application stands disposed of accordingly.

6. Rule 13.2-A of the Punjab Police Rules, 1934 (for short '1934 Rules') which was inserted by State Government vide notification dated 11.09.1982 provides that Inspector General of Police in the interest of better functioning of the Force may grant to an enrolled police officer next higher rank as a local rank. Rule 13.2-A of 1934 Rules is reproduced as below :

13.2-A. Power to grant local rank. - (1) *Notwithstanding anything contained in these rules, if the Inspector General of Police considers it necessary so to do in the interest of better functioning of the force, he may, for reasons to be recorded, grant to an enrolled police officer next higher rank as a local rank;*

Provided that the grant of only a non-gazetted rank shall be permissible under this rule.

(2) *The local rank referred to in sub-rule (1) shall, in the first instance be granted for a period not exceeding six*

months which may from time to time be extended for a like period after recording reasons for each such extension.

(3) An officer of the force holding a local rank -

(a) shall exercise the command and be vested with the powers of an enrolled police officer holding that rank;

(b) shall not be entitled to any extra pay and allowances for holding such rank;

(c) shall not be entitled to claim any seniority over other enrolled police officers by virtue of having held such a local rank.

7. For the proper and uniform implementation of the said Rule, the State Government time to time issued office order which included latest office order dated 23.01.2020. The order dated 23.01.2020 prescribes terms and conditions as well as eligibility criteria for assigning local rank of ASI. It provides that a Constable/Head Constable (Local rank)/Head Constable may be assigned local rank of ASI after he has completed 24 years of service on 1st January of calendar year. The relevant extracts of order dated 23.01.2020 are reproduced as below :

2. Vide Government Letter dated 07.07.2018 it has been clarified that Constable/Head Constable (Local Rank) /Head Constable will be given Local Rank on the following conditions :-

1. Constable/ Head Constable (Local Rank)/Head Constable should have completed 24 years of service on 1 January of calendar year-

2. Constable /Head Constable (Local Rank)/Head Constable who will be given ASI (Local Rank), he will be given promotion as per his seniority as Head Constable /ASI.

3. *The Officer designated as ASI/Local Rank will have this rank as his personal.*

4. *The officer designated as ASI/LR will be entitled as dress of the said post.*

5. *After being as ASI/LR, he will not be entitled for higher salary and allowances.*

6. *After being designated as ASI/LR his seniority under the cadre of Head Constable will remain unchanged.*

3. *As per the instructions 8741 District Cadre, 1425 Armed Cadre, 35 PAP Constable (LR)/H Phillor and 10 PRTC Janakkhera Constable /Head Constable (LR)/ Head Constable whose 24 years services have been completed is being given the Local Rank of ASI on that condition that their Service record should be clean. List of above employee attached herewith his being sent to you for further necessary action.*

8. The petitioners have completed 24 years of service from the date of joining as SPOs, however, they have not completed 24 years of service as Constables. The respondent by impugned order dated 06.04.2022 (Annexure P-7) has rejected their claim on the ground that they have not completed 24 years service as Constables, thus, they cannot be assigned local rank in terms of rule 13.2-A of 1934 Rules. The relevant extracts of order dated 06.04.2022 are reproduced as below :

“7. None of the petitioners has completed 24 years of regular service the rank of Constables and Head Constables as required as per the eligibility conditions laid down in the policy for grant of local rank of Asst. Sub Inspector.

8. 8741/District Cadre, 1425/Armed Cadre, 35/PPA & 10/PRTC Jahan Khelan Constables/Head Constables who had completed eligibility conditions as laid down in the Govt., Policy dated 07.07.2018 were granted Endst. No. 6/68/2017-5113/6H3 (MS)/3530 dated 07.07.2018 were granted local rank of ASI vide this office order No. 855-93/E-1(5) dated 23.01.2020

9. None of the petitioners has completed 24 years regular service of Constables/local rank of Head Constables and therefore they are not eligible for grant of local rank of ASI in term of circular/letters dated 23.01.2020. It is submitted that no junior official of the petitioners has been granted local rank of Asstt. Sub Inspector vide this office order no. 855-93/E- 1(5) dated 23.01.2020

10. The petitioners can not claim local ranks on the basis of their juniors to whom local rank has been granted by DGP, Pb under rule 13.2 (A) of the Punjab Police Rules, 1934. Rule 13.2 (A) provides power to grant local rank to Inspector General of Police considers it necessary so to do in the interest of better functioning of the force, he may, for reasons to be recorded, grant to an enrolled police officer next higher rank as a local rank;

In view of the above it has been decided as under :-

- a) *None of the petitioners has completed 24 years regular service of Constables/local rank of Head Constables as required as per the and eligibility conditions laid down in the policy for grant of local rank of Asstt. Sub Inspector. Hence their claim for grant of local rank of ASI is hereby rejected.*

b) *The petitioners can not claim local ranks on the basis of their juniors to whom local rank has been granted by DGP, Pb under rule 13.2 (A) of the Punjab Police Rules, 1934. Hence, their claim for grant of local rank of ASI is hereby rejected.*

11. *It is made clear that the present orders is issued in compliance of the Hon'ble High Court order dated 06.12.2021 in the peculiar facts and circumstances of the case in hand."*

9. Mr.B.S.Sidhu, Advocate submits that for the purpose of counting of 24 years of service, the period served by petitioners as SPOs should be counted. The juniors of the petitioners have been assigned local rank of ASI which amounts to discrimination and violation of Article 14 of the Constitution of India. A Co-ordinate Bench of this Court in CWP No.5648 of 2017 titled as **"Sukhmander Singh and others vs. State of Punjab and others"** vide order dated 16.03.2023 has directed the respondents to absorb the petitioners therein from the date their juniors have been absorbed.

10. Per contra, Mr. Aman Dhir, DAG, Punjab, submits that this Court in **Lal Mohammad's case (supra)** and **Tilak Raj vs. State of Punjab and others** in **CWP No.7883 of 1999** directed the respondents to absorb SPOs who fulfill minimum eligibility criteria. The respondents were further directed to grant constabulary number on notional basis from the date their juniors have been appointed as Constables. By order dated 04.08.2000, this Court has clarified that if any person becomes eligible at a later point of time on account of non-compliance of eligibility criteria earlier, he would not be treated as senior to a

person who has already been appointed as Constable. The petitioners were appointed as Constables at a later stage because they could not clear eligibility test during 1997-2002. If the persons who have cleared eligibility test prior to 2002 are treated at par with the petitioners, it would amount to undue advantage to petitioners. This Court time to time has ordered to count period of service as SPO for the purpose of pension and other pensionary benefits, however, there is no direction to consider for the purpose of local rank.

11. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

12. The conceded position emerging from the record is that the petitioners were appointed as SPOs during 1992-1994. The respondents in compliance of directions of this Court time to time conducted physical/eligibility test to assign constabulary number to SPOs. The petitioners at the initial stage could not clear eligibility test, thus, they could not be appointed as Constables. The respondent time to time relaxed eligibility criteria and the petitioners came to be appointed as Constables during 2004-2010. Rule 13.2-A of 1934 Rules empowers IGP to assign local rank to police officers. The respondent, in terms of Rule 13.2-A of 1934 Rules, for the purpose of consistency and uniformity, has issued office orders. The petitioners are relying upon office order dated 23.01.2020 and the said order provides that a Constable or Head Constable may be appointed as ASI (local rank) if he has completed 24 years of service on 1st January of calendar year. The petitioners have not completed 24 years of service as Constables.

13. From the perusal of above-quoted Rule 13.2-A of 1934 Rules, it is evident that IGP has power to assign local rank. Higher rank of Constable is Head Constable and ASI for Head Constable. The respondent by office order dated 23.01.2020 has decided to assign local rank of ASI even to a Constable who has completed 24 years of service on 1st January of calendar year. The petitioners have not completed 24 years of service as Constables, however, they are pleading that their service as SPOs should be counted for the purpose of counting of service as Constables. The petitioners have not challenged validity of either Rule 13.2-A of 1934 Rules or order dated 23.01.2020, rather their claim is based upon aforesaid office order. The office order clearly provides that for assigning local rank of ASI, a person must have completed 24 years of service as Constable. The petitioners concededly have not completed 24 years of service as Constables. The petitioners though joined during 1992-94 as SPOs, however they could not clear eligibility test in 1997 or subsequent years though their colleagues cleared said test. They could clear eligibility test with relaxed criteria during 2002-04 and were assigned constabulary number during 2004-2010. The petitioners are not assailing assigning of constabulary number in 2004-2010. The petitioners concededly cleared eligibility test during 2002-04, however, they were assigned constabulary number after 2-4 years. As per respondent, petitioners could not be assigned constabulary number as soon as they cleared eligibility test on account of shortage of vacancy. Be that as it may, the petitioners through instant petition, are not assailing their date of assigning constabulary number. The petitioners had independent cause of action to assail their date of constabulary number, however, till date they have not challenged. As per office order dated 23.01.2020, they are entitled to local rank of ASI as

soon as they complete 24 years of service as Constables. Neither Police Act nor Rules made thereunder prescribe criteria or minimum conditions to grant higher rank as a local rank. It is only office order which prescribes terms and conditions as well as criteria for assigning higher local rank. The order dated 23.01.2020 unambiguously provides that an officer shall be assigned local rank of ASI if he has completed 24 years service as Constable on 1st January of calendar year. The petitioners concededly have not completed 24 years of service as Constables. This Court cannot ask the authorities to act contrary to office order which is foundation of claim of the petitioner and is not under challenge.

The petitioner is claiming that similarly situated persons have been assigned local rank, thus, there is discrimination with them. The alleged officers are not before this Court and this Court is bereft of particulars of those officers. The State is bound to act in accordance with Rules as well as office orders. In the absence of specific challenge to appointment of any such official, this Court neither can comment upon validity of appointment of those officers nor on the basis of illegality, if any, ask the respondents to act contrary to Rules/instructions qua petitioners.

14. In the wake of above discussion and findings, the present petitions deserve to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

18.04.2024
anju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>