



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

203-2

CWP-25436-2013

Date of Decision : 06.05.2024

NARINDERPAL SINGH

... PETITIONER

V/S

STATE OF PUNJAB & ORS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Vikas Kuthiala, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 07.11.2013 (Annexure P-15) whereby his appointment to the post of Assistant Sub Inspector (for short 'ASI') has been withdrawn and he has been asked to work as Constable.

2. The father of the petitioner was working with respondent as ASI who passed away on 20.09.2006 while on duty. The petitioner completed his bachelor's degree in 2007 and thereafter, he applied for the post of ASI on compassionate ground. The Deputy Inspector General of Police, Jalandhar vide communication dated 09.02.2008 forwarded his claim to Director General of Police, Punjab. It was not only petitioner who claimed appointment on compassionate ground whereas many similarly situated persons applied on the



said ground. The respondent offered post of Constable to the petitioner as well as other similarly situated persons. He was offered appointment letter on 13.07.2009 and he joined as Constable on 18.11.2009. The similarly situated persons preferred three petitions i.e CWP No.14623 of 2009, CWP No.15034 of 2009 and CWP No.14918 of 2009 before this Court claiming rank of ASI instead of Constable. During the pendency of aforesaid writ petitions, the respondent re-considered claim of petitioner and similarly situated employees. A screening committee was formed which vide report dated 20.04.2010 formed an opinion that the petitioner is entitled to post of ASI. The respondent issued him appointment letter dated 10.08.2010 (Annexure P-7). He on 10.10.2010 joined as ASI. Similarly placed employees also joined as ASI, thus, the aforesaid writ petitions came to be dismissed as infructuous vide order dated 17.10.2011.

3. The petitioner underwent Commando training of one year and six weeks. The respondent in 2013 formed an opinion that the petitioner as per policy was entitled to post of Constable and he has been wrongly granted rank of ASI. The respondent issued a show cause notice dated 22.10.2013 calling upon him to explain his position within 15 days from the date of receipt of show cause notice. The respondent without waiting expiry of 15 days, passed impugned order dated 07.11.2013 (Annexure P-15) whereby appointment of the petitioner to the post of ASI was withdrawn and he was asked to perform duty as Constable. This has led to present writ petition.

4. Mr. Rajiv Atma Ram, Sr. Advocate submits that the petitioner was appointed as ASI by DGP whereas show cause notice dated 22.10.2013 was issued by SSP and impugned order was also passed by SSP. The authority below the rank of DGP could not withdraw his appointment letter. The SSP has



further passed order without waiting expiry of 15 days period granted to file reply. The act of respondent amounts to violation of principles of natural justice.

Mr.Rajiv Atma Ram, Sr. Advocate, on instructions from petitioner who is present in Court, submits that petitioner would not claim past service benefits if in place of reversion, he is considered as ASI from the date of order passed by this Court.

5. Per contra, Mr. Aman Dhir, DAG, Punjab submits that the petitioner as per policy in vogue was entitled to the post of Constable and screening committee by mistake considered his case for the post of ASI. The mistake was multiplied by offering him letter of appointment. The competent authority in 2013 realised its mistake and impugned order came to be passed. The appointment on compassionate ground is neither fundamental nor vested right, thus, authorities were competent to recall order of appointment on the rank of ASI.

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

7. The conceded position emerging from record is that father of the petitioner was working with respondent as ASI and he died while on duty. As per policy for compassionate appointment, the petitioner was entitled to job. The petitioner was initially appointed on the post of Constable. He joined as Constable on 18.11.2009. In view of pendency of writ petition of similarly situated employees, the respondent constituted a screening committee which formed an opinion that the petitioner and others are entitled to post of ASI. The petitioner by DGP was offered appointment letter as ASI on 10.08.2010. He joined as ASI on 10.10.2010. He had undergone Commando training as ASI.



The impugned order has been passed by SSP and it was outcome of show cause notice dated 22.10.2013.

8. The petitioner was appointed ASI vide order dated 10.08.2010 passed by DGP who is head of the Force. The show cause notice dated 22.10.2013 calling upon the petitioner to explain his position was issued by SSP. The impugned order recalling order of appointment has been passed by SSP. There is substance in the argument of the petitioner that appointment order passed by DGP could not be revoked by SSP.

9. The petitioner was appointed as ASI on 10.08.2010. The said appointment letter was issued by DGP and it was on the basis of report of screening committee which was constituted by respondent. The order of appointment was passed by DGP i.e. head of the organisation. The petitioner joined as ASI on 10.10.2010 and since then he is working as ASI. The respondent after the expiry of 03 years from the date of appointment, formed an opinion that the petitioner should be appointed as Constable instead of ASI. The petitioner is part of an Armed Force and it is well known that rank in the Armed Forces is a very important factor. Reduction in rank is considered major penalty. Initially for a period of 03 years, the respondent permitted the petitioner to work as ASI and since 2013, he is working under the order of this Court. In this way, the petitioner has already worked for almost 14 years as ASI. He has gained a long experience of working as ASI though in view of interim orders of this Court, he had received salary of Constable.

10. A Constitution Bench of *Sivanandan C.T. and others Vs. High Court of Kerala and others* 2023 SCC OnLine SC 994 had occasioned to



consider validity of rules and appointment of Judicial Officers. Though the Court held that the respondents have made appointment in violation of law yet appointment of already selected candidates was not set aside. The relevant extracts of the judgment read as:

“58. The question which now arises before the Court is in regard to the relief which can be granted to the petitioners. The final list of successful candidates was issued on 6 March 2017. The candidates who have been selected have been working as District and Sessions Judges for about six years. In the meantime, all the petitioners who are before the Court have not functioned in judicial office. At this lapse of time, it may be difficult to direct either the unseating of the candidates who have performed their duties. Unseating them at this stage would be contrary to public interest since they have gained experience as judicial officers in the service of the State of Kerala. While the grievance of the petitioners is that if the aggregate of marks in the written examination and viva-voce were taken into account, they would rank higher than three candidates who are respondents to these proceedings, equally, we cannot lose sight of the fact that all the selected candidates are otherwise qualified for judicial office and have been working over a length of time. Unseating them would, besides being harsh, result in a situation where the higher judiciary would lose the services of duly qualified candidates who have gained experience over the last six years in the post of District Judge.

59. For the above reasons, we have come to the conclusion that it would not be possible to direct the induction of the petitioners into the Higher Judicial Service at the present stage. Many of the petitioners would have since joined the Bar and would be in active practice. It needs to be clarified that their having failed to gain selection to the Higher



Judicial Service in the process which was initiated on 30 September 2015, is not a reflection either on their merits or ability and shall not come in the way of their being considered for any other office, judicial or otherwise, in the future.”

11. Reversion of petitioner to the post of Constable would neither be in his interest nor in the interest of State as well as public at large because he has gained a long experience as ASI and State would lose that experience if he is reverted to the post of Constable.

12. Considering the length of service of petitioner as ASI, his concession with respect to date of appointment as ASI, his appointment by DGP and impugned order by SSP as well as judgment of Constitution Bench in **Sivanandan C.T.’s case (supra)**, this Court finds it appropriate to modify the impugned order to the extent that the petitioner would be considered as ASI with effect from today i.e. 06.05.2024. He since 2013 in view of interim orders of this Court, is getting salary as Constable. He, would not be entitled to salary as ASI for the past period, however, from today onwards, he would be entitled to salary as ASI.

13. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

06.05.2024

anju

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No