

2024:PHHC:018724

**209 (3) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1) **CWP-25830-2019 (O&M)**
Date of Decision:09.02.2024

AMIT ARORA AND ANOTHER Petitioners
Versus

STATE OF PUNJAB AND OTHERS Respondents

2) **CWP-5841-2022 (O&M)**
MANJIT SAINI AND ORSPetitioners
Versus

STATE OF PUNJAB AND OTHERSRespondents

3) **CWP-25942-2019 (O&M)**
LAKHVIR SINGH AND OTHERSPetitioners
Versus

STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. H.S. Saini, Advocate for the petitioners
in CWP-25830-2019 & CWP-25942-2019.

Mr. Manpreet Singh Longia, Advocate for the petitioners
in CWP-5841-2022.

Mr. Deepanjay Sharma, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-25830-2019, CWP-5841-2022 and CWP-25942-2019 are hereby disposed of since issue involved in all the petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-25830-2019. There are two petitioners in CWP-25830-2019. The petitioner No.2 has passed away, thus, petition *qua* him, as conceded by counsel, has rendered infructuous.

2. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of order dated 09.08.2019 (Annexure P-9) whereby respondent relying upon Rule 18.2 of Punjab Civil Services (General and Common Conditions of Services) Rules, 1994 (for short '1994 Rules') has declined claim of the petitioner.

3. The petitioner on 03.06.2002 joined Punjab Police as Constable. The petitioner joined Punjab Armed Police (PAP) Cadre. In 2007, he was deputed to Commando Battalion. He, at a later stage, opted for District Police Cadre, thus, for all purposes Parent Cadre of the petitioner is District Police. In 2010, he was deputed to Intelligence Wing. The Punjab Police Act, 2007 came into force w.e.f. 28.02.2008. As per said Act, there are 4 Cadres i.e. (i) Punjab Armed Police (ii) District Police (iii) Intelligence and Investigation (iv) Technical and Support Services. The Officers appointed in one Cadre cannot be transferred to another Cadre. There is separate seniority list of each Cadre. The petitioner passed Lower School Course on 27.04.2013 and his name was recorded in List C-I on 30.05.2013. Director General of Police vide order dated 27.08.2013 ordered to promote 536 Constables and petitioner was one of them. His name appeared at serial No.64 in the list of promoted Constables. It is apposite to notice here that in Paragraph 5 of the order dated 27.08.2013, it was categorically mentioned that if any employee refuses to accept promotion, he in terms of 1994 Rules shall be debarred for all consecutive chances which may occur in future within a period of 2 years from the date of such refusal. The paragraph No.5 of order dated 27.08.2013 is reproduced below:

“The Punjab Civil Services Rules (General and Common Conditions of Service Rules) 1994 have been applicable w.e.f. 4.5.1994. As per rule 18(2), if any Govt. employee refuses to accept promotion, he shall be debarred by the appointing authority from consideration for promotion for all the consecutive chances, which may occur in future within a period of two years from the date such refusal to accept promotion.”

4. The petitioner was posted with Intelligence Wing and as per his wisdom vide communication dated 13.11.2013, he furnished an undertaking to the effect that he is ready to forego his promotion as Head Constable for the time being and he will not claim any seniority over and above his juniors in the Parent Department. He requested to promote him in the CID as Head Constable as per his seniority. The undertaking furnished by petitioner is reproduced as below:

“Undertaking

I, Constable Amit Arora No. 1267/Jalandhar, presently posted on deputation in CID Hq. Pb, Chg, was promoted as regular Head Constable after passing Lower School Course, it is parent department i.e. Distt. Vide their order No.84677-85 dated 19.10.2013 w.e.f:- 27.08.2013.

On account of my family circumstances, I am still ready to forego my promotion as Head Constable for the time being. I may be retained on deputation in CID in the present rank of Constable. I may be promoted in the CID as Head Constable as per my seniority as and when any vacancy is available in the CID. Further I will not claim any seniority over and above my juniors in my parent Department.”

5. The petitioner on 27.02.2014 came to be repatriated to his Parent Department. He was finally promoted to the post of Head

Constable w.e.f. 31.07.2015. The petitioner formed an opinion that despite his undertaking, he should be promoted at least from the date he was repatriated to his Parent Department because his name was mentioned in List C-I w.e.f 30.05.2013 and he had already passed Lower School Course. On the basis of said opinion, the petitioner preferred CWP No. 14280 of 2019 before this Court seeking direction to respondents to grant promotion from the date of entry of his name in List C-I. The said writ petition came to be disposed of vide order dated 27.05.2019. The relevant extracts of the order dated 27.05.2019 are reproduced as below:

“Learned counsel submits that for the grievance aired in the petition, petitioners have already served legal notice dated 10.09.2018, Annexure P-5. According to him, no response has been received thereof. Notice of motion. On the asking of court, Mrs. Ishneet Kaur, Assistant Advocate General, Punjab, who is present in court, accepts notice on behalf of official respondent(s). She submits that appropriate authority shall consider the matter and take appropriate decision within two months. Copy thereof shall be conveyed to the petitioners. In view of statement made by State counsel, no further direction is necessary. Petition is hereby disposed of.”

6. The respondent in compliance of aforesaid order has passed impugned order dated 09.08.2019 whereby claim of the petitioner has been declined. The impugned order is based upon Rule 18(2) of 1994 Rules.

7. Mr. H.S. Saini, Advocate, learned counsel for the petitioner submits that petitioner was having lien in his parent department. He was

deputed to Intelligence Wing as per choice of the respondent-department. It was not the petitioner who asked the respondent to post him in Intelligence Wing. The petitioner had cleared Lower School Course and his name was entered in List C-1 w.e.f 03.05.2013, thus, he cannot be denied benefit of promotion.

A Full Bench of this Court in '*Niranjana Singh Vs. State of Punjab*' 1997 SCC OnLine P&H 1460 and Single Judge Bench in '*Kartar Singh Vs. State of Punjab*' 1994 SCC OnLine P&H 531 has clearly held that an employee continues to hold lien on a post even while he has been deputed to discharge the duty of another post outside the Cadre. He has right in the parent department of seniority as well as promotion. His rights cannot be taken away just because he has been deputed to another department. If an employee on account of deputation in another department is denied benefit of seniority and promotion, it would amount to violation of Articles 14 and 16 of the Constitution of India. It would suffer from the vice of arbitrariness.

He further submits that promotion of the petitioner was governed by Chapter 13 of Punjab Police Rules, 1934 (hereinafter '1934 Rules') which are specific Rules. It is a complete code which governs appointment, transfer, promotion, punishment etc. The 1994 Rules are General Rules. There is no provision in 1934 Rules of forfeiture of right of promotion for 2 years in case of denial by the Officer as postulated by Rule 18.2 of 1994 Rules. The petitioners being Police Officers were governed by Punjab Police Rules and General Rules cannot be made applicable to deny benefit of promotion especially when chapter 13 of the

1934 Rules categorically deals with promotion.

In support of his contention, he relies upon Division Bench judgment of this Court in '*Aman Kumar Daweshar and others Vs. State of Punjab and other*', CWP No.14652 of 2011.

8. Mr. Manpreet Singh Longia, learned counsel for the petitioners in CWP-5841-2022 submits that respondent by order dated 22.04.2019, in terms of Rule 18.2 of 1994 Rules had debarred petitioner No. 2 for 2 years from promotion. The period of two years expired on 21.04.2021, thus, she may be considered for promotion as and when vacancy accrues. He further submits that petitioners No.1 and 3 had never furnished undertaking denying promotion, thus, Rule 18.2 cannot be invoked in their case. The respondent has extended benefit of promotion to various Police Officers who are part of PAP and are working with Intelligence Wing. The petitioners cannot be denied benefit of promotion just because they belong to District Police Cadre. The 1994 Rules, if applicable to petitioners, are equally applicable to employees who belong to PAP Cadre.

9. Per contra, learned State counsel submits that petitioners have furnished undertaking to the effect that they do not accept promotion. Rule 18.2 of 1994 Rules is applicable to all the Classes i.e. A, B, C and D Class employees who are working with State of Punjab. The petitioners belong to Class C, thus, they are governed by 1994 Rules. The Government in 1994 has introduced General Conduct Rules which are applicable to all the employees. There is no contradiction between Punjab Police Rules and General Conduct Rules, thus, petitioners besides Punjab

Police Rules are subject to 1994 Rules. In the Punjab Police Rules, the mode of promotion has been prescribed but nowhere consequences have been provided where an employee refuses to accept promotion. The principle of overriding of specific rule over general rule is applicable where there is contradiction and in the absence of contradiction, every Police Officer is subject to 1934 Rules as well as 1994 General Rules.

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

11. The claim of the petitioners is that promotion of Police Officials is governed by Punjab Police Rules and they cannot be subjected to 1994 General Rules. Chapter 13 of the 1934 Rules deals with promotion starting from the post of Constable to the post of Inspector. The petitioners are claiming promotion from the post of Constable to Head Constable and Rule 13.8 deals with promotion to the post of Head Constable. For the ready reference Rule 13.8 is reproduced as below:

“13.8 List C. Promotion to head constables.

(1) In each district a list shall be maintained in card index from (Form 13.8 (1) of all constable who have passed the Lower School Course at Phillaur and are considered eligible for promotion to Head Constable. A card shall be prepared for each constable admitted to the list and shall contain his marking under sub-rule 13.5 (2) and notes by the Superintendent himself, or furnished by Gazetted Officers under whom the constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector-General of Police at his annual inspection.

(2) Promotions to Head Constables shall be made in

accordance with the principle described in sub- Rules 13.1 (1) and (2). The date of admission to List C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comparing qualifications. In cases where other qualifications are equal, seniority in the police force shall be deciding factor. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector-General, be promoted to Head Constable up to a maximum of ten percent of vacancies.”

From the perusal of above quoted rule, it is evident that jurisdictional authorities are required to maintain, at District level, a register of all Constables who have passed Lower School Course and are eligible for promotion to the post of Head Constable. The Rule prescribes conditions which a Constable has to comply with for promotion to the post of Head Constable. It further prescribes mechanism of promotion as soon as a candidate becomes eligible. In this way, Rule 13.8 prescribes mode, manner and procedure of promotion from the post of Constable to Head Constable. The rule does not deal with a situation which arises on account of refusal by an employee to accept promotion. On compliance of essential conditions, an employee becomes eligible to promotion. He is promoted as soon as vacancy arises. The authorities as per applicable rules are bound to promote an employee, however, no authority can compel an employee to accept promotion. There may be so many reasons for denial of promotion e.g. there are various Departments where promotion entails transfer from the present place of posting. Many employees do not prefer to leave their station and they deny promotion.

The Punjab Police Rules are silent to advert with the situation but 1994 Rules, which are applicable to all Government employees who are under the administrative control of the Punjab Government and whose pay is debit-able to the consolidated fund of the State of Punjab, advert with this situation. Punjab Police Officers are under the administrative control of Punjab Government and their pay is debit-able to the consolidated fund of the State of Punjab.

12. Rule 1.2 of the 1994 Rules provides that these rules shall be applicable to Class A, B, C & D employees. The relevant extracts of the said Rule for the ready reference are reproduced as below:

“1.2 (1) Except as otherwise provided in rule 1.4 infra or in any other rule or rules these rules shall apply to all Government employees belonging to the categories mentioned below, who are under the administrative control of the Punjab Government and whose pay is debit-able to the Consolidated Fund of the State of Punjab: -

(1) Members of State Services, Group "A" and Group "B";

(2) Members of State Services, Group "C";

(3) Members of State Services, Group "D";

(4) Holders of Special Posts; and

(5) any other Government employee or class of Government employees to whom the competent authority may, by general or special order, make them applicable:”

13. Indubitably, being Police Officers, the petitioners are amenable to 1994 Rules. They are also subject to Punjab Police Rules. It is settled proposition of law that a specific provision or a specific enactment overrides the general provision or general enactment and at the same moment, it is axiomatic in legal jurisprudence that a person may be

subjected to different enactments provided there is no overlapping or contradiction and both have been enacted by competent Legislature. In case of overlapping or contradiction, specific provision overrides the general provision. The general provision has to give passage to specific provision. Hon'ble Supreme Court in ***J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.***, 1960 SCC OnLine SC 16 has categorically held that in case of conflict, specific provision would override the general provision. This judgment is consistently followed by courts in India. The relevant extracts of the judgment read as:

9. *There will be complete harmony however if we hold instead that clause 5(a) will apply in all other cases of proposed dismissal or discharge except where an inquiry is pending within the meaning of clause 23. We reach the same result by applying another well known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly (quoted in Craies on Statute Law at p.m. 206, 6th Edn.) Romilly, M.R., men-*

tioned the rule thus: "The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply". The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned : De Winton v. Brecon [28 LJ Ch 598], Churchill v. Crease [5 Bing 177], United States v. Chase [135 US 255] and Carroll v. Greenwich Ins. Co. [199 US 401].

10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that clause 5(a) has no application in a case where the special provisions of clause 23 are applicable.

14. Article 309 of the Constitution of India permits Union as well as State Legislature to make appropriate legislation to regulate recruitment and conditions of service of their employees. Proviso to Article 309 provides that it shall be competent for the President in case of posts connected with affairs of Union and Governor in case of posts connected with affairs of State to make rules regulating the recruitment and conditions of service. The Rules made by President or Governor hold the field till provisions are made by appropriate legislature.

The 1994 Rules have been made by Governor in exercise of power conferred by proviso to Article 309 of Constitution of India. The petitioners have not challenged validity of 1994 Rules. The question for

the consideration of this Court is:

Whether petitioners notwithstanding being governed by Punjab Police Rules, 1934 can be subjected to 1994 Rules?

15. The Punjab Police Rules were made prior to implementation of Constitution of India. As per Article 366 (10) of the Constitution of India, these are called as ‘existing law’. Article 366 (10) is reproduced as below:

“existing law” means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;”

16. Article 254 of the Constitution of India deals with inconsistency between laws made by Parliament and laws made by the Legislature of State. It provides that if any provision of a law made by the Legislature of State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, the law made by the State Legislature shall be void. A Constitution bench in ***Pankajakshi Vs. Chanderika (2016) 6 SCC 157*** had occasion to advert whether Section 41 of Punjab Courts Act, 1918 is repugnant to Section 100 of Code of Civil Procedure Code. The Bench disapproving judgment in ***Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262*** held that in case of inconsistency between ‘existing law’ and law made by Parliament, the ‘existing law’ would prevail. The relevant extracts of the judgment read as:

24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under: (SCC p. 270, para 10)

“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] : (SCC p. 276, paras 27-29)

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

‘100. Second appeal.—(1) Save as otherwise expressly provided by any other law for the time being in force....’

These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’ (Noticed again for convenience.)

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, 1977 SCC OnLine P&H 188: AIR 1978 P&H 137 : (1978) 80 PLR 1] cannot be sustained and is thus overruled.”

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by

which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.

26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262]. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil

Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.

17. In the case in hand, this Court from the perusal of chapter 13 of Punjab Police Rules especially Rule 13.8 does not find any inconsistency between 1934 Rules and 1994 Rules. An employee is appointed against a contract but as soon as he is appointed, he holds a post and is governed by statutory provisions made by competent legislature. The 1994 Rules have been made by Governor in exercise of power conferred by proviso to Article 309 of the Constitution of India. It is apt to notice here that Rules made by Governor in exercise of power conferred by Article 309 are not a piece of delegated legislation but a piece of plenary legislation. An employee holding a post can be subjected to any statutory provision made by the competent legislature unless and until said provision is declared ultra-vires. There is no challenge to 1994 Rules, thus, petitioners being employees of State Government cannot claim that they cannot be subjected to 1994 Rules. This Court does not find any contradiction between 1994 Rules and 1934 Rules, thus, claim of the petitioners that their promotion is governed by Rule 13.8 of 1934 Rules and they cannot be subjected to Rule 18.2 of 1994 Rules is misplaced and misconceived. The contention of petitioners deserves to be ignored.

18. The petitioners in the light of judgments of Full Bench of this Court in **Niranjan Singh** (Supra) and **Kartar Singh** (Supra) have pleaded that an employee continues to hold lien on a post in parent cadre while he has been deputed to discharge the duties of another post outside

the cadre. He is entitled to seniority and promotion in his parent cadre. There is no question of second opinion that an employee while on deputation holds lien on a post in his parent cadre. He is entitled to further promotion and seniority. He cannot be denied benefit of seniority and promotion merely because he has been deputed to another department. If it is held that an employee on account of deputation would not be entitled to promotion or seniority, no employee would agree to leave his parent cadre and work on deputation in another Cadre. The relevant extracts of the full bench judgment of this court in **Niranjan Singh** (supra) read as:

4. There is another aspect of the matter. The special provisions governing the police force are contained in the Punjab Police Rules. In respect of matters regarding which no provision has been made in the Police Rules, the members of the force like the other employees working in connection with the affairs of the State are governed by the provisions contained in the Punjab Civil Services Rules. Rule 1.2 of these rules specifically provides that the provisions of the Punjab Civil Services Rules apply to the government employees who are under the “administrative control of the Punjab Government and whose pay is debitable to the Consolidated Fund of the State of Punjab”. Rule 2.35 of these rules defines ‘lien’ to mean “the title of a government employee to hold substantively, either immediately or on the termination of a period of absence, a permanent post, including a tenure post, to which he has been appointed substantively”. Furthermore, provisions have been made in Chapter III (Rules 3.11 to 3.17) to inter alia protect the rights of a person who has been substantively appointed to a post. In Rule 3.15, it has been specifically provided that “a government employee's lien on a post may, in no circumstances, be termin-

ated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.” Thus, an employee who has been confirmed on a post and has acquired a lien thereto, cannot be deprived thereof even with his consent. In other words, once an employee is confirmed, he acquires a lien. This lien shall be maintained and he shall not be deprived thereof even with his consent till he acquires a lien in accordance with the rules on another post.

5. *Thus, on a perusal of the rules, it appears that a person who holds a post substantively acquires a lien. The benefits which ensue by virtue of this lien cannot be taken away by the unilateral act of transfer. This view is also supported by precedent. An almost similar question had come up for consideration before a learned Single Judge of this Court (Jawahar Lal Gupta, J.) in Kartar Singh v. State of Punjab, CWP No. 15009 of 1993, which was decided on June 2, 1994. The learned Judge had inter alia held that the petitioners having not been confirmed in the District Police had retained their lien in the Armed Police. They were, thus, to be deemed to have continued and their rights for promotion were thus, protected. Similarly, in Gursewak Singh v. State of Punjab, CWP No. 10910 of 1995, T.H.B. Chalapathi, J. speaking for the Bench, had observed that “when the petitioner was transferred from one unit to another unit, his rights in his parent unit cannot be taken away and they have to be protected. When the juniors working in the Punjab Armed Police are deputed for Upper School Course, the said benefit cannot be denied to the petitioner as the petitioner continues to be on the rolls of the Punjab Armed Police on notional basis though his services have been transferred or deputed to the District Police, Patiala”. We affirm the view taken in these two decisions.*

6. *In view of the above, we answer the question posed at the outset as follows:*

The unilateral act of transfer by the department of a member of the Police Force from one cadre to another cannot affect his seniority or right to be considered for being deputed for the course or promotion.

7. *What is the position in the present case? The petitioner had admittedly joined the Punjab Armed Police in the year 1981. He had acquired a lien in the cadre when he was transferred to the District Police in March 1994. His lien was never terminated.*

8. *Thus, his rights in the parent cadre were duly protected. Still further, the Division Bench had, by an interim order, directed that the petitioner shall be allowed to attend the Upper School Course. During the pendency of the case, the petitioner has already completed the course. In view of the above, the writ petition is allowed. The petitioner shall be entitled to the benefits which may become due to him on account of retention of his lien in the Punjab Armed Police.*

19. The petitioners are wrongly placing reliance upon afore-cited judgments because it is not a case of denial of promotion or seniority on account of deputation to another department. It is a case of denial of promotion for a particular period on account of refusal to accept by the employee himself. The State being a noble employer is always duty bound to promote its employee as per statutory rules and regulations. As noted above, Government employees are not governed by contract whereas they are governed by rules and regulations made by legislature. The State, as per applicable rules and regulations, is bound to extend benefit of seniority and promotion to its employee. Like a candidate belonging to scheduled caste cannot be compelled to accept post of General Category on account of securing higher marks than last selected

candidate in General Category, an employee cannot be compelled to accept promotion. Every employee is free to accept promotion, however, for the purpose of maintenance of law & order and better administration, the State of Punjab has framed specific Rule 18.2 in 1994 Rules which provides that if an employee does not accept promotion, he would be debarred for next 2 years. Neither the said Rule is under challenge nor this Court finds any infirmity in the said Rule.

20. The petitioner was promoted vide order dated 27.08.2013 (Annexure P-1) and in paragraph 5 of the said order, it was categorically mentioned that Rule 18.2 of 1994 Rules would be applicable and employee is free to refuse to accept promotion. It was also pointed out that he would not be entitled to promotion for next 2 years from the date of such refusal. The petitioner was very much aware of the fact that he would not be entitled to promotion for next 2 years. Despite such knowledge, the petitioner furnished undertaking to the effect that he does not want promotion and he will not claim any seniority over and above his juniors in the parent cadre. The petitioner is claiming that he is not bound by said undertaking because it was contrary to law. The principle of estoppel is not applicable against law. The petitioners have attempted to argue that undertaking should be ignored because it was against the law. There is no second thought that principle of estoppel is not applicable against law. No statement which is contrary to law can be relied upon, however, if a statement is in consonance with particular provision of law, it cannot be ignored and principle of estoppel is very much applicable. The petitioners had furnished undertaking in terms of Rule 18.2 of 1994 Rules and if the said undertaking is ignored, it would

amount to non-compliance of Rule 18.2 of 1994 Rules. The petitioners cannot be granted any benefit contrary to aforesaid Rule especially when in the promotion order it was categorically pointed out that they may refuse to accept promotion and in case of refusal they would be debarred from promotion for 2 years. The petitioners had furnished undertaking, thus, argument of petitioners that undertaking should be ignored is hereby rejected. All the petitioners who have furnished undertaking of refusal to accept promotion are rightly debarred for next two years.

21. The petitioners in their last limb of argument have pointed out that there are many Police Officers who are posted in Intelligence Wing and belong to PAP Cadre. The respondent in the case of Officers of PAP Cadre has protected their seniority and promotion. Despite being posted with Intelligence Wing, they have been extended benefit of promotion. In support of his contention, the petitioners in CWP No.5841 of 2022 relied upon Annexure P-5 which clearly indicates that one Constable namely Kashmir Singh was granted benefit of promotion despite he being posted with Intelligence Wing. It is not on record whether he had or not filed undertaking refusing promotion. As per petitioners No.1 & 3 of CWP No.5841 of 2022, they have not furnished undertaking still they are denied benefit of promotion. The respondent has not passed any speaking order with respect to denial of their promotion.

22. All the Cadres are manned and controlled by one authority i.e. Director General of Police. No Police Officer has right to work at a place outside his parent cadre. Every employee has right to work in his

parent cadre whereas it is discretion of higher authorities to post an employee on deputation in any other cadre. The respondent, if permits an Officer to continue to work outside his parent cadre, in the light of Full Bench judgment of this Court in *Niranjan Singh* (Supra), cannot deny benefit of promotion. Rule 18.2 is applicable to every employee whether he is working in his parent department or elsewhere on deputation. An officer may refuse to accept promotion either he is working in his parent department or elsewhere on deputation. One and only ground to debar from promotion for two years is refusal to accept promotion. The respondent cannot make discrimination between two employees on the ground that they belong to different cadre. The respondent cannot ask one set of employees to furnish undertaking of refusal to accept promotion and ignore another set of employees. Undertaking must be obtained from every employee who refuses to accept promotion. Thus, the respondents are hereby directed to re-consider case of all those petitioners who have not furnished undertaking of refusal to accept promotion, irrespective of whether they are working in their parent cadre or elsewhere on deputation.

23. Disposed of in the above terms.
24. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)

JUDGE

09.02.2024

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No