

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

110**CWP-25491-2023****Date of decision: 30.04.2024****BALWINDER SINGH AND OTHERS****....PETITIONERS****Vs.****STATE OF PUNJAB AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Fateh Singh Dhillon, Advocate for the petitioners.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioners through instant petition under Article 226 of the Constitution of India are seeking setting aside of communication dated 31.05.2023 (Annexure P-9) whereby respondent had denied to fill up 195 posts of Constables.

2. A batch of four petitions titled as 'Raju Singh and others Vs. State of Punjab and others, (CWP-3801-2015) came up for consideration before this Court. The petitioners therein were initially appointed as Special Police Officer (for short 'SPO') during 1992-1994 in terms of Section 17 of Punjab Police Act, 1861. The respondent absorbed them as Constables during 2002-2004 in Armed Battalions. They claimed that they should be absorbed in District Police Cadre. This Court vide interim order dated 09.08.2016 (Annexure P-5) directed the respondents to keep in abeyance 195 posts of Constable in District Police Cadre, out of 4915 posts advertised for the said cadre. It is apt to mention here that at the time of passing of interim order dated 09.06.2016, process of appointment of 4915 Constables was in progress. The appointment of 4915 posts was through direct recruitment mode. The order dated 09.08.2016 is reproduced as below:

“In terms of the information required vide previous order dated 29.7.2016, an additional affidavit dated 08.8.2016 of Harjinder Singh, IPS, Assistant Inspector General of Police, PAP, Jalandhar Cantt filed on behalf of respondent Nos.1 to 3 in court today is taken on record.

Due to paucity of time, hearing is deferred to 22.10.2016.

In the meantime, 195 posts of Constables for appointment in the District Police Cadre shall be kept in abeyance out of 4915 posts advertised for such cadre.

To be shown in the urgent list.”

3. The aforesaid writ petition came up for final hearing on 04.07.2019 and this Court by even dated order disposed of batch of four petitions. The Court noticed that 8000 vacancies of Constables in various districts of the State are lying vacant and by interim order, 195 vacancies have been kept in abeyance. It was also noticed that as per internal communication, 500 Constables who have joined Commando Battalions prior to 30.07.2019 are eligible for transfer to district police. The list of 500 Constables included petitioners. The matter was disposed of with a direction to adjust the petitioners in the District Police Cadre on priority basis. The relevant extracts of order dated 04.07.2019 are reproduced as below:-

“It is further to be noted that in Madan Lal's case (supra), the respondents, as per the undertaking given before this Court, have transferred more than 1341 constables to District Police. These transfers were also made after the promulgation of the new Act i.e. after 20.02.2008. The respondents cannot set different standards for similarly situated persons, without there being any rationale for doing the same. It has also been brought to the notice of the Court that more than 8000 vacancies of Constables in various Districts of the State are still lying vacant. Moreover, vide interim order dated 09.08.2017, 195 vacancies have already been kept in abeyance for the petitioners in the present batch of petitions.

Another argument raised is with regard to the petitioners not having undergone commando training. In this regard, it is evident that the respondents had taken a policy decision on 18.08.2009 (Annexure P-5), laying down certain conditions for transferring the Constables to District Police. As per condition No.3, the Constables absorbed from SPOs will not be sent for commando training in view of their age which is equally true in case of the petitioners as well. Therefore, the stand taken by the respondents is contrary to their on policy decision of 18.08.2009. Moreover, there is nothing on record to show that the petitioners were ever directed to undergo commando training.

During the pendency of the instant writ petition, in an inter-departmental communication dated 10.07.2015 (Annexure P-12), addressed to ADGP, Armed Battalions, Jalandhar Cantonment, the office of the IGP, Commando Battalions, Punjab, Bahadurgarh, stated that 500 Constables who have joined commando battalions prior to 30.07.2009, are eligible for transfer to district police. All the petitioners in the present petitions are included in the said list of 500 Constables and have been shown to be eligible for transfer to District Police.

In view of the above discussion, the instant petitions are allowed and the respondents are directed to adjust the petitioners in the District Police on priority basis, within a period of three months from the date of receipt of a certified copy of this judgment.

Allowed.”

4. This Court, while disposing of CWP-3801-2015, had directed the respondents to adjust petitioners therein within a period of 3 months from the date of receipt of certified copy of the judgment.

5. The petitioners therein, on account of non compliance of aforesaid order, preferred COCP No. 242-2020 before this Court. The respondent-State preferred Intra-Court Appeals against aforesaid order dated 04.07.2019 before the Division Bench. A Division Bench of this Court which was seized of appeals against judgment of Single Judge vide order dated 02.03.2021

(Annexure P-7) asked Contempt Court to adjourn the matter beyond the date fixed by it. The order dated 02.03.2021 is reproduced as below:-

“LPA-610-2020(O&M), LPA-611-2020(O&M) & LPA-612-2020(O&M)

List for consideration on 25.03.2021.

Hon’ble Contempt Court is requested to adjourn the matter beyond the date fixed by this Court.

A photocopy of this order be placed on the file of each connected cases.”

6. On account of aforesaid order, Contempt Court disposed of COCP-242-2020 vide order dated 22.03.2023 with liberty to petitioners to revive the same after decision in LPA, if so required.

7. The petitioners participated in the selection process initiated through advertisement No. 1 of 2016 dated 31.05.2016 (Annexure P-1). The respondents by said advertisement had invited applications for direct recruitment. The respondent has filled up advertised vacancies, however, till date kept 195 posts vacant on the ground that by interim order dated 09.08.2016, this Court had directed to keep 195 posts of Constables in abeyance.

8. Mr. Pawan Kumar, DAG, Punjab submits that in view of order dated 09.08.2016 passed by this Court in CWP-3801-2015, the respondent cannot fill up 195 posts which are lying vacant since 2016. The State has preferred LPA before Division Bench against judgment dated 04.07.2019 of this Court and matter is pending before Division Bench.

9. The stand of respondent-State seems to be misconceived. This Court vide order dated 09.08.2016 directed the State to keep 195 posts of Constable of district police cadre in abeyance. The said posts were part of 4915 posts advertised by advertisement No. 1 of 2016 dated 31.05.2016. The petitioners therein had not participated in the direct recruitment process. They, at

that point of time, were part of PAP cadre as Constables. They were claiming that they should be transferred from PAP cadre to district police. The said writ petition stands disposed of vide order dated 04.07.2019. While disposing of writ petitions, this Court has noticed interim order dated 09.08.2016, however, there was no direction to respondents to adjust petitioners therein against said 195 posts whereas it was noticed that there is a list of 500 Constables, who were part of PAP and respondent has concluded that they are eligible for transfer to district police. Name of petitioners therein figured in the list of 500 Constables conceded by respondent eligible for transfer to district police. This Court did not ask to absorb aforesaid petitioners against 195 posts in question. Thus, there was no question to keep aforesaid 195 posts vacant after disposal of writ petition No. 3801 of 2015. The respondent was duty bound to consider all those candidates who participated in the selection process which was initiated vide advertisement No. 1 of 2016. There is no reason to keep aforesaid posts vacant.

10. Accordingly, respondents are hereby directed to fill up 195 posts from those candidates who are eligible and are appearing in the merit list.

11. Let the needful be done within 6 months from today.

12. It is hereby made clear that petitioners would be considered as per their merit and would not get any priority only because of approaching this Court by way of present writ petition. It is further clarified that 195 candidates who would be appointed in terms of order of this Court, shall not be entitled to back wages or any other service benefits. For all purposes, their date of joining would be date of appointment.

13. Disposed of accordingly.

30.04.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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