

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

CWP No. 19031 of 2011

Date of Decision: 25.03.2013

Harsimran Singh

.....Petitioner

Versus

State of Punjab & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr. Jagbir Malik, Advocate
for the petitioner.

Ms. Monica Chibber Sharma, DAG, Punjab.

AUGUSTINE GEORGE MASIH, J.(ORAL)

Petitioner has approached this Court impugning the order dated 21.7.2010 (Annexure P-4) enlisting him as Constable instead of Assistant Sub Inspector and for quashing the order dated 10.8.2011 (Annexure P-10) passed by the Director General of Police, Punjab-respondent No.2 rejecting his claim for conversion of the appointment of petitioner as an Assistant Sub Inspector from that of a Constable.

Father of the petitioner late Sh. Gurdeep Singh died on 23.5.2009 in harness, who was working as an Assistant Sub Inspector in the Punjab Police. The case of the petitioner for appointment on compassionate grounds is covered by the policy instructions dated 21.11.2002 (Annexure P-1), issued by the State of Punjab, which was in force on the date of death of his father. As per the said policy, mother of the petitioner submitted an application, which was received in the office of the Senior Superintendent of Police, Hoshiarpur on 13.10.2009. The case of the petitioner for

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appointment as an Assistant Sub Inspector was duly considered by the Senior Superintendent of Police, Hoshiarpur and was recommended & forwarded vide communication dated 15.1.2010 (Annexure P-3) to the Deputy Inspector General of Police, Jalandhar Range, Jalandhar.

Thereafter another application was submitted by the mother of the petitioner, which was submitted by her on 8.3.2010, wherein it was requested that the petitioner be appointed to the post of Constable. This application of the petitioner was processed by the respondents and he was accordingly offered an appointment to the post of Constable on 21.7.2010. Although, the petitioner was fully eligible for appointment to the post of Assistant Sub Inspector but in the facts and circumstances of the family, petitioner accepted the said offer but reiterated his claim for consideration for appointment to the post of Assistant Sub Inspector, which case of the petitioner had earlier been recommended by the competent authority. Immediately after joining as Constable, petitioner submitted a representation for considering his claim for appointment to the post of Assistant Sub Inspector dated 12.10.2010 (Annexure P-6), which representation of the petitioner was not being considered by the respondents forcing him to approach this Court by filing CWP No. 3246 of 2011 titled as Harsimran Singh vs. the State of Punjab and others. The said writ petition was disposed of by this Court vide order dated 22.3.2011 directing the respondents to consider the claim of the petitioner as submitted by him through his representation within a period of three months in the light of the order dated 10.8.2010 (Annexure P-5) vide which similarly placed employees have been enlisted as Assistant Sub Inspector under the priority list instructions by the Director General of Police, Punjab. Referring to the

said order, counsel for the petitioner contends that at Sr. No.5 name of Amanjit Singh has been mentioned, who was son of a Constable and has been appointed as an Assistant Sub Inspector. The claim of the petitioner was thereafter considered by the respondents and the impugned order dated 10.8.2011 (Annexure P-10) has been passed rejecting the claim of the petitioner. Petitioner has, thus, approached this Court by impugning his enlistment as an Constable vide order dated 21.7.2010 (Annexure P-4) and the order dated 10.8.2011 (Annexure P-10) rejecting his claim for appointment to the post of Assistant Sub Inspector on the ground of discrimination as dependents of the similarly placed deceased government employees have been granted benefit of enlistment as an ASI which benefit has been denied to the petitioner.

On the other hand, counsel for the respondents submits that the claim of the petitioner is not covered by the policy/ instructions for recruitment under the priority list instructions dated 21.11.2002 (Annexure P-1). She contends that the petitioner can only be appointed against the post of a Constable being a Group-C and only in the exceptional circumstances, in case of valour and gratitude a candidate can be appointed as an Assistant Sub Inspector on consideration of a deserving case. She on this basis contends that the petitioner cannot be appointed to the post of Assistant Sub Inspector.

Counsel for the petitioner, on the other hand, asserts that the petitioner has been discriminated against and he has referred to the order dated 10.08.2010 (Annexure P-5) whereby eight persons who are similarly situated like the petitioner have already been enlisted as Assistant Sub Inspectors under the priority list instructions while the claim of the

petitioner is being denied. Reference has also been made to the case of Amandeep Singh whose father was a Constable and similarly that of Narinder Pal Singh, who was a son of an ASI. Both these candidates have been enlisted as ASIs. Reliance has also been placed upon the judgment passed by this Court in CWP No. 21444 of 2010 titled as Harwinder Singh vs. State of Punjab and others, decided on 30.1.2013, where similar writ petitions as preferred by the petitioner stands allowed by this Court directing the respondents to appoint them on the post of Assistant Sub Inspector on the grounds of discrimination which was meted to them.

I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

Earlier the case was heard on 30.1.2013, wherein it was asserted on behalf of the respondents that the mother of the petitioner had only applied for appointment of the petitioner for the post of Constable and there was no application on her behalf for appointment of the petitioner for the post of Assistant Sub Inspector. For that reason original records were called for. Today original records have been produced, according to which it is apparent that the mother of the petitioner had firstly applied for appointment of the petitioner on the post of an Assistant Sub Inspector, which was received by the office of the Senior Superintendent of Police on 13.8.2009 and the same was considered and forwarded by the Senior Superintendent of Police, Hoshiarpur vide communication dated 15.1.2010 (Annexure P-3). This is with regard to the first application, which was submitted by the mother of the petitioner. The second application which was submitted by the mother of the petitioner was received in the office of the Senior Superintendent of Police on 8.3.2010 which has been now processed

by the respondents and an appointment issued to the petitioner on the post of a Constable on 21.7.2010. Petitioner immediately submitted a representation to the respondents on 12.10.2010 (Annexure P-6) claiming appointment to the post of Assistant Sub Inspector. When the said representation of the petitioner was not being decided the petitioner approached this Court by filing CWP No. 3246 of 2011 titled as Harsimran Singh vs. the State of Punjab and others, in which a direction was issued to the respondents to decide the representation of the petitioner within a period of three months. In compliance thereto the claim of the petitioner has been rejected by the respondents vide order dated 10.8.2011 (Annexure P-10).

The reasons assigned for rejecting the claim of the petitioner for appointment to the post of Assistant Sub Inspector are that the mother of the petitioner had only applied for the post of Constable on behalf of the petitioner and on the ground that the petitioner had participated in the physical test for the post of Constable only. Both the grounds, which have been taken by the respondents for rejecting the claim of the petitioner cannot sustain in the light of the records which have been produced in Court today, according to which the mother of the petitioner had applied for appointment of the petitioner to the post of Assistant Sub Inspector which was submitted on 13.10.2009, which is prior to the subsequent application, which was submitted by her which was received in the office on 8.3.2010. Thereafter the petitioner has been appointed on the post of Constable on 21.7.2010, which post he took charge of on 17.9.2010. He immediately submitted a representation on 12.10.2010 and, therefore, there was no delay on the part of the petitioner in asserting his claim for appointment to the post of Assistant Sub Inspector. The claim of the petitioner was, therefore,

required to be considered in the light of the order dated 10.08.2010 passed by the Director General of Police, Punjab wherein similarly placed persons as the petitioner had been enlisted as Assistant Sub Inspectors under the priority list instructions. Reference can be made to persons mentioned at Sr. No. 3 Narinder Pal Singh son of late ASI Sawinder Singh and Amanjit Singh son of late Ct. Lakhvir Singh Sr. No. 5 . It is not the case of the respondents that the petitioner was not eligible for appointment to the post of Assistant Sub Inspector as he is a graduate.

However, the second ground, which has been pressed into service for rejecting the claim of the petitioner that the petitioner had only participated in the physical test of Constable and, therefore, was not entitled to the post of Assistant Sub Inspector, which fact is also found to be incorrect in the light of the policy paper for recruitment under the priority list instructions dated 18.11.2009 (Annexure P-7) wherein it is specifically mentioned under the head “Revised” clause 'b', that for wards of candidates who have cleared the test for enlistment as Constable/ASI which depicts that the physical test, which is to be cleared for enlisting them for the post of Constable and the Assistant Sub Inspector is the same. Petitioner has obviously cleared the physical test and for only that reason the petitioner had been enlisted as Constable. Both the grounds which have been pressed into service by the respondents for rejecting the claim of the petitioner for appointment as Assistant Sub Inspector having been found to be without any basis and factually incorrect, entitle the petitioner for the grant of his prays for quashing of the order dated 10.8.2011 (Annexure P-10). Petitioner is, thus, held entitled to the claim as made in the present writ petition.

The violation of Articles 14 & 16 of the Constitution as far as

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the claim of the petitioner is concerned it is apparent from the order dated 10.8.2010 (Annexure P-5) where the petitioner should have been treated similarly as the others. On this ground also the writ petition deserves to be allowed. That apart, the claim of the petitioner is further supported by the observations made by this court in CWP No. 21444 of 2010 titled as Harwinder Singh vs. State of Punjab and others, decided on 30.1.2013, where again various cases were referred to where compassionate appointments have been granted to persons who were similarly placed as the petitioner. The claim of the petitioner is fully covered by the policy instructions dated 21.11.2002 (Annexure P-1).

The present petition is, for the reasons mentioned above, allowed. The impugned order dated 10.8.2011 (Annexure P-10) is hereby quashed. Directions are issued to the respondents to consider the claim of the petitioner for appointment to the post of Assistant Sub Inspector and thereafter pass appropriate orders in accordance with law. This exercise be completed within a period of two months from the date of receipt of certified copy of the order. The petitioner shall be entitled to the consequential benefits, which shall be released to him within a further period of two months.

25.03.2013
'sp'

(AUGUSTINE GEORGE MASIH)
JUDGE