
(2015) 01 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : C.M. No. 54 of 2015 in C.W.P. No. 6801 of 2013

Gurdial Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 1 SCT 668

Hon'ble Judges : Mahesh Grover, J.

Bench : Single Bench

Advocate : Ashish Aggarwal, Senior Advocate, Dinesh Kumar, Raktim Gogoi, Kartik Gupta and Sanjiv Bansal, for the Appellant; Rita Kohli, Senior Advocate, Additional A.G., Hans Pal Virk, A.A.G., Gurminder Singh, Senior Advocate and R.P.S. Bara, Advocates for the Respo

Judgement

Mahesh Grover, J.—Reply filed to the application for vacation of stay is taken on record. This is an application for vacation of stay granted by this Court on 29.12.2014 when the Court was in recess.

2. To briefly state, there is a controversy pending where the inter-se seniority of the officers of the Punjab Police is being hotly debated.

3. The affected P.P.S. Officers are agitating over the anomalies in the seniority list, the implementation of which for future promotions to I.P.S. Cadre will adversely affect their career prospects.

4. A number of writ petitions have been filed and are pending adjudication, three of which merit a mention, i.e. C.W.P. Nos. 6801, 13203, 6430 of 2013.

5. All the issues being inter-related, were being heard by this Court and on occasions sufficient time was devoted to resolve the vexed issue finally as also on issues where interim applications were debated upon.

6. The anxiety of the officers who were resultantly declared juniors when the disputed seniority list was introduced, have demonstrated extreme anxiety often

bordering on misplaced enthusiasm to stall the further process of promotions. Before this Court, in all the three petitions, applications for grant of stay have been moved time and again.

7. No Court can grudge such a legitimate expression of anxiety because a person who sees another person steal a march over him, who in his perception does not merit so in terms of the interpretation he chooses to place on the rules would seemingly seek a justification. But when such efforts assume devious overtones to expose machinations betraying dishonest ventures, then the Court cannot but help deprecate such attempts.

8. C.M. Application No. 8832 of 2013 was filed by the petitioners in other connected case i.e. C.W.P. No. 3940 of 2013 which was declined by a Division Bench of this Court and against which an S.L.P. was preferred. However, the Hon''ble Supreme Court did not choose to interfere in view of the matter pending consideration before this Court.

9. This order of the Hon''ble Supreme Court came on 6.6.2013 and barely after a week, an application in C.W.P. No. 13203 of 2013 was filed. The case was listed during the period when the Court was in recess for a summer break. On 13.6.2013, the Vacation Bench granted the order of status quo which led to the filing of an application for vacation of the restraint order by the disputing parties affected adversely by the order. This Court then passed a detailed order while vacating the interim order the relevant of which is as follows:-

"The Court is now confronted with a situation where because of the order of June, 2013, the entire process has come to a standstill and as observed in the foregoing part of the order, this is not in the interest of the administration and governance and the people at large. The interest of the petitioner can be safeguarded and in the eventuality of being successful, he can be adequately compensated by appropriate orders and therefore, this Court is of the opinion that order dated 13.6.2013 needs to be modified to the extent that Union Public Service Commission shall conclude the process pertaining to all the pending lists from the year 2010 onwards.

Another reason which weighs with the Court to modify the order dated 13.6.2013 is that prior to this, in June 2013, a similar prayer had been made by one of the petitioners in C.M. No. 8832 of 2013 in C.W.P. No. 3940 of 2013 which was declined and the matter was then taken to the Hon''ble Supreme Court which also declined to interfere. It was thereafter that this instant petition was filed by another person by imposing him as a petitioner and the order of status quo passed. The previous order of the Division Bench and the order of the Hon''ble Supreme Court was evidently not in the notice of the Court which passed the order dated 13.6.2013.

The petitioner shall also be granted a consideration provisionally. His result shall be kept in a sealed cover and not disclosed except to the Court upon such a requisition being made. In so far as the outcome of the process of promotion is

concerned, needless to say that this shall be subject to the decision of the writ petition.

The Union Public Service is directed to conclude the process within a period of four weeks positively."

10. This order was never challenged during this interregnum and after September 2013, when the aforesaid order was passed vacating the order of status quo granted by the Vacation Bench, hearing was afforded to the parties on a number of occasions, but the result however, remained inconclusive. The Select Committee met on 12.12.2014 to make its recommendations. On 16.12.2014, an urgent mention was made to get CM. Application No. 15362 of 2014 listed with a similar prayer for restraining the respondents from giving effect to consideration for promotion to eligible incumbents as per the seniority list. After accepting the prayer for listing, the matter was heard by this Court on 16.12.2014 when the main matter was also argued at some length, and then posted for further proceedings on 23.12.2014 on which date it was adjourned further to 27.1.2015. The same application was again mentioned before the Hon"ble Acting Chief Justice with a prayer that since the application had remained undecided it be listed again for disposal. The application was then taken up on 24.12.2014 after the Hon"ble Acting Chief Justice passed orders for its listing, but the prayer was not granted and the application remained pending though the counsel was told verbally of the constraints in accepting his application as it would be contrary to the order of this Court dated 13.9.2013.

11. It is thereafter that another C.M. Application No. 16026 of 2014 was moved in C.W.P. No. 6801 of 2013 again with a similar prayer; and an interim order was granted by this Court. Along with this application under Order 1 Rule 10 C.P.C. was moved to implead the U.P.S.C. as a party respondent which was accepted and notice issued to the newly added respondent.

12. Apart from the fact that the notification has now been issued by the U.P.S.C., the reason which prompted this application according to the petitioners, was a letter written by the Director General of Police on 10.12.2014 (Annexure P-28). In this letter, the author writes to the State Government that the seniority list has been wrongly framed and therefore, should not be effected till the anomalies are corrected.

13. The anomaly or its rectification, however, very significantly does not find mention in the letter and besides the contents of this letter seem to be out of synchronization with the stand of the State Government which has chosen to participate in the consideration afforded to the shortlisted candidates and was represented by the Chief Secretary as also the Principal Home Secretary resulting in a notification by the U.P.S.C.

14. A perusal of the aforesaid facts reveals a common thread of repeated attempts to seek a restraint order during the entire proceedings. At the cost of repetition, one order passed in C.W.P. No. 13203 of 2013 where stay was granted

on 13.6.2013, but vacated by this Court in September, 2013 and another the present one i.e. CM. No. 16026 of 2014 where stay was granted on 29.12.2014.

15. The third application was C.M. No. 15362 of 2014 in C.W.P. No. 13203 of 2013 which remained pending since the Court had made an endeavour to hear the main case itself just prior to the December-break of 2014 spending almost the entire day on it. It has also to be noticed that all the counsel who were representing the petitioners and the respondents, were duly present in the Court when the application i.e. C.M. No. 15362 of 2014 was pressed by the applicant and the Court negated it verbally on the premise that on 13.9.2013, it had expressed an opinion to decline the stay in matters which affected the administration and governance and the people at large. Yet, while granting the interim order, on 29.12.2014, the Co-ordinate Bench of this Court observed as follows:-

"It is unfortunate that the seniority dispute is lingering on for last more than one year. However, keeping in view the fact that the seniority list is under challenge and if the promotions to the IPS cadre are made on the basis of disputed seniority list then the claim of the petitioners qua those respondents who are selected to IPS shall become infructuous. In this process one day, the entire petition will become infructuous. The main petition is fixed for 27.1.2015.

The Director General of Police has already written letter dated 20.11.2014 (Annexure P-28), followed by letter dated 10.12.2014, requesting the Government of Punjab to first resolve the seniority dispute.

In the circumstances, notice of motion to the respondents for 27.1.2015.

In the meanwhile, the official respondents shall not finalize and implement the proceedings of the Departmental Selection Committee held on 12.12.2014 for promotion of PPS officers of Punjab to the post of IPS Punjab cadre out of the select list of 2013."

16. The observations of the Co-ordinate Bench (Kuldip Singh, J.) regarding the unfortunate situation arising out of the long pendency of the petition without any result, is taken by this Court as a self-chastening attempt prompting introspection in the manner expected of it. Nobody can have any quarrel with such an observation if they could withstand a reality check. But if comments are made out of context and without any supportive material, then this Court would say that it is unfortunate to make remarks which can be termed to be uncharitable, to say the least.

17. Rather what is more unfortunate than the long pendency of the petitions is that a restraint order is passed without issuing notice to the other side when the matter has been pending and debated for some time to the knowledge of the Court as nothing was concealed by the applicant in his application. So much so, the earlier two orders passed by this Court in C.W.P. No. 13203 of 2013 were on record. A cursory glance on the orders of this Court dated 13.9.2013 would have

shown that this Court had specifically negated the prayer for a restraint by observing that "this is not in the interest of the administration and governance and the people at large" which observations echo the sentiments of the Hon'ble Supreme Court in Prabhjot Singh Mand and Others Vs. Bhagwant Singh and Others, . For reference observations of the Hon'ble Supreme Court are extracted here below:-

"1. Leave is granted in all the SLPs. The Union of India and the Union Public Service Commission are parties before us. Although the Union of India has filed counter-affidavit, nobody has appeared on its behalf. The Union Public Service Commission is represented by Ms. Binu Tamta.

2. Heard the learned counsel for the parties quite at length. As all these appeals are preferred against the interim orders passed by the High Court of Punjab and Haryana at Chandigarh, being orders dated 25.3.2008, 3.4.2008 and 10.4.2008 and having regard to the fact that a large number of contentions have been raised before us, we are of the opinion that the operative portion of the judgment may be pronounced here and now. Detailed reasons therefor, however, would be assigned later on.

3. The appeals are allowed, modifying the impugned orders of the High Court to the following extent:-

(a) That portion of the impugned orders whereby and whereunder the High Court has stayed the reversion of the writ petitioners, who are respondents in these appeals, shall stand vacated. However, they shall be adjusted against any of the 12 vacancies which are stated to be existing and in respect of which steps are being taken to send requisition to the Union of India for making appointment. The respondent writ petitioners will be entitled to continue against those vacancies only till appointment against those vacancies is notified by the Union of India.

(b) The appellants before us must be appointed to the cadre of IAS in terms of the seniority list dated 4.4.2007.

(c) The above directions shall, however, be subject to the ultimate result of the writ petitions which are pending before the High Court.

4. We in exercise of our jurisdiction under Article 142 of the Constitution of India, further direct the State of Punjab to send the requisition for filling up all the above mentioned 12 vacancies in the cadre of IAS, to the Union of India and the Union Public Service Commission, as expeditiously as possible and preferably within a period of three weeks from today. Both the Union of India and the Union Public Service Commission are hereby directed to consider the requisition sent by the State of Punjab in respect of the aforementioned 12 vacancies as expeditiously as possible and preferably within a period of 16 weeks from the date of communication of the requisition.

5. We would request the High Court to consider the desirability of disposing of

the pending writ petitions as expeditiously as possible, preferably within a period of three weeks from today."

EXTRACT OF THE OBSERVATIONS of the final judgment rendered by the Hon"ble Supreme Court in Prabhjot Singh Mand and Others Vs. Bhagwant Singh and Others, :-

28. The Tribunal refused to pass an interim order but observed that any action taken would be subject to the ultimate result of the original application. Thus, in a situation of this nature, the High Court should have considered the question as to whether respondent 1 had any prima facie case or is there any balance of convenience in his favour. It is not a case where the dispute is between the private parties. Appointment to the cadre of IAS is a matter of public interest. An interim order involving public interest in public law cases must receive different considerations.

29. The effect of the interim order vis-a-vis the clarificatory order passed by the High Court in the earlier writ application resulted in a piquant situation in the sense that whereas the appellants were entitled to be promoted to IAS, the Union of India in their counter-affidavit raised the questions of difficulties contending that unless the posts fall vacant, no appointment therein could be made.

30. It may be true that when an employee is reverted to a lower post, he would suffer civil consequences but then it was necessary not only in public interest, but also to give effect to the doctrine of comity and/or amity. The appellants were entitled to be promoted as of right subject to the result of the writ petition. They could not be denied promotion by another interim order passed in favour of the first respondent directing that they could not be reverted as a result whereof the vacancy would not occur."

18. Apart from this, by virtue of this order dated 13.9.2013, this Court had directed the U.P.S.C. to conclude the process within four weeks positively.

19. The restraint order passed on 29.12.2014 on an application filed by the applicant can be sustained only at the risk of inviting a huge embarrassment to itself. It is a paradox, as on the one hand, this Court on 13.9.2013 had directed the U.P.S.C. to complete the process within four weeks positively and on the other hand, by virtue of the order dated 29.12.2014 this Court restrained the official respondents not to finalize and implement the proceedings of the Departmental Selection Committee held on 12.12.2014 for promotions of the P.P.S. Officers of Punjab to the I.P.S. in Punjab cadre. If this order dated 13.9.2013 escaped the notice of the Co-ordinate Bench granting the interim order on 29.12.2014 then it equally failed to notice a similar application which had been moved prior to the vacations. Evidently, one could still give the benefit of ignorance of such a fact which ordinarily stood to be revealed if a notice had been issued to the other side, which course would ordinarily have been more prudent because the Court was functioning skeletally during recess when it

passed the restraint order. This Court is of the opinion that the order dated 29.12.2014 deserves to be vacated in view of the earlier order passed by this Court on 13.9.2013 which was in consonance with the observations of the Hon"ble Supreme Court in Prabhjot Singh Mand v. Bhagwant Singh and others (supra) as also for the resultant dichotomy of directions contained in both the orders and also for the reason that as per the settled position in law any promotions that are made during the pendency of the petition as per the disputed seniority would obviously be subject to the claims of the petitioners. In the event of their success, appropriate orders can be passed to safeguard their interests. Besides, even if the best case of the petitioners is accepted they would be entitled to a consideration and not promotion as a matter of right; their success depending upon factors of consideration. Ordered accordingly.

C.M. stands allowed.