

(2006) 08 P&H CK 0219
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10291 of 2005

Malkiat Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(4), 21, 23
Police Act, 1861 — Section 17, 18, 4, 7
Punjab Police Rules, 1934 — Rule 1.13

Citation : (2006) 08 P&H CK 0219

Hon'ble Judges : Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Sarwan Singh and A.S. Parmar, for the Appellant; Ashok Aggarwal, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

1. This judgment will dispose of 160 writ petitions being CWP Nos. 16308 of 2001, 14326, 12386, 18520, 13021, 15836, 16790, 17568 of 2004, 8288, 10216, 9505, 9558, 9595, 9489, 9409, 9590, 9029, 8009, 8294, 9336, 9057, 9439, 9154, 8442, 11008, 11002, 8241, 8145, 8010, 11026, 8397, 9335, 9301, 8828, 8775, 9333, 9812, 9827, 9331, 8660, 9074, 9274, 9286, 9334, 8242, 8632, 8496, 9432, 9337, 8709, 8499, 7979, 11498, 11484, 11335, 11661, 12130, 12122, 8886, 9585, 7846, 10122, 13711, 14477, 14454, 13586, 13706, 3694, 7519, 10791, 8183, 8188, 7773, 7518, 9663, 17256, 9895, 6782, 13356, 13025, 8161, 9902, 17428, 10151, 3839, 7980, 19411, 7850, 10468, 10221, 9491, 9795, 9433, 7916, 8892, 7969, 7794, 8646, 8460, 9329, 9453, 8488, 9837, 8956, 8191, 8082, 19318, 7532, 8114, 9177, 9970 17662, 19484, 9445, 9447, 13214, 11513, 8595, 8083, 8591, 9538, 9206, 8235, 9634, 8874, 8494, 6985, 13373, 8662, 8945, 12187, 8072, 7309, 8109, 8003, 11492, 11451, 10620, 7720, 19598, 19587, 9865, 8987, 9160, 9681, 8989, 9490, 8107, 7729 of 2005, 3873, 2795, 3997, 2693, 2600, 2603, 5471, 2362, 6519 and 294 of 2006, which involve common question arising out of decision dated 6.5.2005 for

relieving SPOs and further directing that if they are so willing, they be appointed as Home Guards Volunteers for which they have to report to the concerned District Commandant of Home Guards within one month of the date of relieving.

2. Facts stated in CWP No. 10291 of 2005 may be noticed. It has been averred in the writ petition that petitioner Malkiat Singh was recruited as Special Police Officer (SPO) in the year 1992. He was given training and allotted SPO number but was not given any appointment order in writing. His appointment was covered under Standing Order dated 26.7.1990 and instructions dated 19.11.1991. His appointment was referable to Section 18 of the Police Act, 1861. His work and conduct was satisfactory. He had been working without any break in service. He had studied upto 8th class. He was getting a salary of Rs. 2790/- per month. He met the physical standards laid down in Standing Order dated 26.7.1990. As per Clause 13 of the Standing Order, he was eligible for recruitment as constable after one year of service. The said standing order has been annexed as Annexure P.1. By subsequent instructions dated 19.11.1991, period of absorption as constable was reduced from one year to six months. In spite of assurance given at the time of recruitment and also by way of standing orders issued from time to time, the petitioner was not recruited as constable, though junior SPOs were so recruited as per list Annexure P.3. A new Standing Order dated 3.4.1997 was issued granting relaxation for recruitment of SPOs as constables. The said standing order is Annexure P.4. Large number of SPOs filed CWP No. 7451 of 1996 which was disposed of on 12.12.1996 directing the State to consider the SPOs for absorption as constables, as per criteria laid down in Annexures P.1 and P.2. The said writ petitioners were granted the relief but the petitioner was left out. Several SPOs were recruited in the year 2004 as constables by giving relaxation as per standing order No. 1 of 1997. The Hon''ble Supreme Court in its judgment dated 1.2.2001 in Civil Appeal. No. 4645 of 2000 (Ghan Sham Sunder and Ors. v. State of Punjab and Ors.), directed that suitability of SPOs be judged at a lesser standard having regard to their service. Punjab Home Guards is overflowing organisation with 25000 volunteers on its rolls. About 12000 Home Guards are called out for duty. The said service is only voluntary service. The petitioner will also lose his seniority if he joins as Home Guard and will be placed below 25000 Home Guards already on the rolls. Recruiting the petitioner as Home Guard will change all service conditions. The Government had regularisation policy as contained in circular dated 23.1.2001, Annexure P.10 for work charged/daily wagers who had completed more than 10 years of service.

3. Prayer is that direction for relieving the petitioner and deputing him to join as Home Guard be set aside and the direction be issued for absorbing the petitioner as constable from the date his junior SPOs were given appointment as constable.

4. The writ petition has been contested. In the written statement filed by the Superintendent of Police (H), Khanna, it has been stated that appointment of the petitioner was in terms of Section 17 of the Police Act, 1861 as daily wager.

Clause in Standing Order dated 30.10.1990 ?Further avenues of Promotion? as supplemented by instructions dated 19.11.1991 only provided for eligibility and the petitioner was not found suitable after being considered in July 1997. Out of 16000 SPOs, 4647 SPOs were found suitable and were appointed as constables. Selection was again made out of the remaining unsuitable SPOs with a reduced standard of suitability in line with judgment of Hon''ble the Supreme Court in Ghan Sham Sunder's case (supra) but the petitioner was again not found suitable for the post as he could not pass the test. The claim for appointment as constable without passing suitability test was not accepted by this Court in judgment delivered on 28.11.2002 in CWP No. 13782 of 2001(SPO Jarnail Singh v. State of Punjab and Ors.) but a direction was issued for grant of last chance to persons who had earlier failed to qualify. In the year 2003, fresh Central Recruitment Board was constituted and parameters for suitability of SPOs for absorption as constables were relaxed but the petitioner could not qualify in the suitability test. Finally on 16.3.2005, a decision was taken by the State Government to relieve 2647 SPOs including the petitioner. They were, however, given option of joining as Home Guards Volunteers if they were so willing.

5. We have heard learned Counsel for the parties and perused the record of the case.

6. Main contention on behalf of the petitioners is that having worked for a long period of 15 years and also the background in which the petitioners joined service during terrorism days when no one else was willing to join police force, they were entitled to be appointed as constables or in the alternative, continued as SPOs and could not be deputed as Home Guards without protection of their existing pay or other service conditions.

7. Learned Counsel for the petitioners cited number of decisions in support of their claim for regularisation. We are not referring to the said decisions in view of change of law after the decision of the Hon''ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

8. On the other hand, learned Counsel for the State submitted that the police service was governed under the Punjab Police Rules, 1934 framed under the provisions of the Indian Police Act, 1861. Under Rule 1.13 of the said rules, there was cadre of Gazetted Police Officers u/s 4 of the Act and Enrolled Police Officers u/s 7 of the Act. The said cadre did not include SPOs. Though, the State Government had sanctioned enlistment of the petitioners as SPOs, the same was a temporary arrangement having regard to the situation then prevailing with the object of recruiting them as constables in due course, if they were found suitable. Their appointment was on daily wages and there was no promise held out to them that they will continue as SPOs if they were not selected as constables. Situation having become normal and inspite of repeated opportunities, the SPOs having not qualified for recruitment as constables, the Government has taken a decision to relieve them from the said posts and with a view to rehabilitate them, they were deputed as Home Guards at their option. On

behalf of the State, reliance has been mainly placed on recent judgment of the Hon''ble Supreme Court in Umadevi's case (supra). Following questions arise for consideration:

(i) Whether the petitioners have acquired a right on account of service of about 15 years to be appointed as constables without being subjected to any suitability test?

(ii) Whether the petitioners have right to continue as SPOs on being regularised in service?

(iii) Whether the petitioners could be deputed as Home Guards without protection of their existing pay or other service conditions?

9. It is necessary to notice the Standing orders issued from time to time and judicial proceedings that have taken place on the subject. Standing Order dated 5.10.1990 states that the State Government had approved enlistment of 9160 SPOs and to give them incentive and further induction as constables. Conditions governing their appointment and further avenues of promotion were specified. In the said order, it was also mentioned that the SPOs will be paid allowances of Rs. 30/- per day or such rates as may be fixed by the Government. There are provisions for relaxation and avenue of promotion as constables. In instructions dated 19.11.1991, it was mentioned that no direct recruitment of constables should be made and appointment should be made as SPOs and minimum period for their absorption as constables was reduced to six months. Absorption was to be in accordance with seniority and suitability.

10 In Standing Order No. 1 of 1995, instructions were issued for recruitment of SPOs as constables as per procedure laid down therein. Standing Order No. 1 of 1997 was issued for a similar purpose which was followed by recruitment Standing Order No. 2 of 1997 and Standing Order No. 3 of 2005.

11. Reference may now be made to judgment of this Court dated 12.12.1996, judgment of the Hon''ble Supreme Court dated 1.2.2001 and judgment of this Court dated 28.11.2001:

(i) In judgment dated 12.12.1996 in CWP No. 7451 of 1996 (Lal Mohamed and Ors. v. Punjab State), following directions were issued:

We dispose of this petition with a direction to the respective Senior Superintendent of Police to consider the claims of the petitioners for absorption as constables with effect from the dates persons junior to them were appointed. In case, the petitioners are found suitable, orders of their appointment be issued. Consequential relief regarding fixation of pay and seniority shall follow. Keeping in view the large number of SPOs/Auxiliary constables involved in these cases, we will not order payment of arrears of salary to avoid unnecessary burden on the State Government at this stage.

Directions issued above be carried out within six months from the receipt/

production of a certified copy of this order No costs.

(ii) In judgment dated 1.2.2001 in Ghan Sham Sunder and Others Vs. State of Punjab and Others, , the Hon"ble Supreme Court observed:

3. ...It is too well known that efficiency is the prime criterion for absorption in government service. But at the same time, it cannot be lost sight of the fact that in the year 1990, namely, on 26.7.1990 as well as on 19.11.1991 the two circulars issued by the State government did not indicate that the persons who were being appointed as Auxiliary Constables would be subjected to any further suitability test for being appointed as Constables though they were required to have a satisfactory conduct to be tested by the DSP. It is also apparent from the facts alleged that several people prior to the 1995 circular have been appointed as Constables without undergoing the suitability test. The circular of 1995 has not been assailed by the present appellants and therefore notwithstanding the circulars being in force it would be difficult for a court to issue a mandamus to appoint these appellants without going through the process of selection, as indicated in the 1995 circular...

(iii) In judgment dated 28.11.2002 in SPO Jarnail Singh v. State of Punjab and Ors. CWP No. 13782 of 2002, it was observed:

It is not disputed before us that the petitioner in the above case and even in the connected cases have served the State for all this period and during their service they have been rendered ineligible for number of other employment under the State. Some kind of preferential treatment or grant of concession to these petitioners would be an equitable obligation of the State in the facts and circumstances of the present case.

On behalf of the respondents it was contended that in the event the State is directed to make appointment of suitable SPOs to the constabulary cadre for all the posts (100% of the posts available for direct recruitment), the interests of the State would suffer serious prejudice. Even the public interest would suffer as the State would not be able to provide employment to the eligible candidates on the basis of direct recruitment. The State would also suffer as it may not be able to get young and qualified persons with better suitability and acumen for the post of constables at the appropriate time. In order to balance the equity between the interests of the State and, the petitioners, who have been serving the State, we consider it appropriate to direct the respondents to provide to the suitable SPOs, at least 50% reservation of the total vacancies/posts available with the respondents for direct recruitment to the constabulary cadre of the Punjab Police.

In view of the above discussion, we dispose of these writ petitions and direct the State to comply with the directions indicated supra as expeditiously as possible. We leave the parties to bear their own costs.

Re:Q. No. (i):

12. In the above background and particularly in view of judgment of the Hon''ble Supreme Court, it cannot be held that the petitioners have a right to be appointed as constables irrespective of any selection process. It is not the case of the petitioners that they have not been subjected to suitability test as per directions given in the above judgments, rather in repeated tests, they failed to qualify. Question No. (i) has, thus, to be answered against the petitioners.

Re:Q No. (ii):

13. It is necessary to briefly notice the observations of the Hon''ble Supreme Court in Umadevi's case (supra).

14. The above judgment considered the issue on a reference to Bench of five Hon''ble Judges. The order of reference being:

1. Apart from the conflicting opinions between the three- Judge Bench decisions in Ashwani Kumar and Others Vs. State of Bihar and Others, , State of Haryana and others Vs. Piara Singh and others etc. etc., and The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., on the one hand and State of Himachal Pradesh Vs. Suresh Kumar Verma and another, , State of Punjab and others Vs. Surinder Kumar and others, and B.N. Nagarajan and Others Vs. State of Karnataka and Others, on the other, which have been brought out in one of the judgments under appeal of the Karnataka High Court in State of Karnataka v. H. Ganesh Rao (2001) 4 KLJ 466 (DB) decided on 1.6.2001 the learned Additional Solicitor General urged that the scheme for regularisation is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution and, therefore, these cases are required to be heard by a Bench of five learned Judges (Constitution Bench).

2. On the other hand, Mr. M.C. Bhandare, learned Senior Counsel, appearing for the employees urged that such a scheme for regularisation is consistent with the provisions of Articles 14 and 21 of the Constitution.

3. Mr. V. Lakshmi Narayan, learned Counsel appearing in CCs Nos. 109-498 of 2003, has filed the GO dated 19.7.2002 and submitted that the orders have already been implemented.

4. After having found that there is conflict of opinion between the three-Judge Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before the Hon''ble the Chief Justice for appropriate orders.

15. Considering the above question, it was observed:

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in

nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain ? not at arm's length ? since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them.

After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where

they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India.

It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in

the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16.

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

51. The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture.

16. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right.

17. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment.

18. There right to employment, if it is a part of right of life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner

recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.?

19. In view of the above observations, contention that the petitioners had acquired a legitimate expectation or a right to continue in service as SPOs can also not be accepted. The said question is answered against the petitioners.

Re: Q. No. (iii):

20. Learned Counsel for the petitioners contended that they could not be deputed as Home Guards as this will be changing their service conditions to their disadvantage. Their pay and service conditions are required to be protected.

21. This argument could be accepted if it could be held that the petitioners had a right to continue as SPOs. Since it has been held that they have not acquired any right to continue as SPOs and they could be relieved from the posts occupied by them, their being deputed as Home Guards at their option cannot be held to be illegal. The said question stands answered accordingly.

22. In view of the above, these petitions are liable to be dismissed. Before parting with the judgment, we cannot ignore that the petitioners have rendered about 15 years of service and they may have become overage and are not getting any terminal benefit. Even though, strictly speaking, the petitioners are not entitled to succeed, the State Government is not debarred from giving credit for the service rendered by them in such a way as may be considered appropriate, either by way of giving relaxation in age or qualifications for any other service and/or from compensating them in such other manner as may be considered appropriate.