
(2014) 09 SC CK 0121

In the Supreme Court Of India

Case No : Civil Appeal Nos. 10662-10663 of 2010

Sucha Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Citation : (2015) 1 SCT 77

Hon'ble Judges : J.S. Khehar, J;Abhay Manohar Sapre, J

Bench : Division Bench

Advocate : Nidhesh Gupta, Sr. Advocate, Tarun Gupta, Advocate for S. Janani, AOR (NP), Advocates for the Appellant; Nikhil Nayyar, A.A.G., Aakansha, Adv. for Jagjit Singh Chhabra, AOR (NP), Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The State of Punjab issued an advertisement on 30.09.1993 seeking to recruit constables. The above advertisement did not disclose the number of vacancies that would be filled up from the selection process. Consequent upon the conclusion of the selection process, appointments of constables came to be made during the period from 1993 to 1995. The afore-stated appointments were sought to be assailed on the ground that appointments were made without reference to the merit list. A challenge to the appointments was also raised on the ground that some appointments were made of persons, who have not even participated in the selection process. The aforesaid challenge made through Writ Petition No. 12860 of 1996, was allowed by a Division Bench of the Punjab and Haryana High Court (hereinafter referred to as the "High Court"), while disposing of a bunch of writ petitions, wherein Writ Petition No. 12860 of 1996 was the lead case. It came to be noticed in the judgment rendered by the Division Bench on 17.10.1996 that the aforesaid selection process was with reference to 5159 vacancies (which were anticipated by the State Government). It also emerged, that as against the afore-stated vacancies, 2915 posts were filled up by regularizing SPOs vide an order dated 21.12.1993. And that, out of the selection

process conducted in response to the advertisement dated 30.09.2013, 2234 vacancies were filled up from candidates belonging to the general line. In the course of its determination, the Division Bench of the High Court arrived at the conclusion, that appointments of constables had been made in violation of the merit/select list. It is therefore, that the following directions came to be issued on 17.10.1996, while disposing of Writ Petition No. 12860 of 1996 (and connected petitions):

"We therefore dispose of the writ petitions with the following directions:

(i) The Department shall publish the merit list in newspapers (Punjabi Tribune, Dainik Tribunal (Hindi edition) and Punjabi Kesri (Punjabi edition) having wide circulation in the State of Punjab.

(ii) The Department shall take steps to dispense with the service of those who have been appointed by passing the merit. This would necessarily involve giving of show cause notice to such persons and passing of appropriate orders after giving opportunity of hearing to such persons. This exercise shall be completed within next three months.

(iii) The consequential vacancies which may become available shall be filled by appointing candidates strictly in accordance with the merit keeping in view the reservation, if any and;

(iv) In view of the statement made by learned Deputy Advocate General, Punjab that there is prohibition on future recruitment, we direct the department that in case any appointment is made in relaxation of the ban imposed by the Government, then merit list prepared by the department shall be taken into consideration while appointing the candidates. This shall be subject to any policy decision regarding the currency of the panel prepared on the basis of selection already made. With respect to the SPOs. we leave it open to the Government to take policy decision regarding their appointments."

2. Alleging non-compliance of the directions issued by the High Court, some of the Appellants in the bunch of cases filed contempt petitions. Sarabjit Singh and others preferred C.O.P.C. No. 802 of 1997. The Director General of Police, Punjab filed an affidavit in response to the contempt petition. Paragraph 2 thereof is being extracted hereunder:

"2. It is denied that the Respondents were required to allot constabulary numbers to all the Petitioners. After receipt of the Hon"ble High Court judgment, steps were taken to dispense with the services of 71 candidates who had been allotted constabulary numbers by-passing the merit. Also, those candidates who were above them in the merit list and had earlier not been allotted constabulary numbers were appointed as constables. It is further submitted that though the exact number of available vacancies are not mentioned in the advertisement, 5159 vacancies are anticipated. Out of these vacancies 2925 were consumed for appointment as constables out of SPOs. Remaining vacancies of 2234 available

for general line candidates and vacancies falling vacant subsequently have been filled up from the merit list and candidates upto Sr. No. 3069 totalling 2587 candidates have been appointed whereas the Petitioners appeared at Sr. No. 3062, 3659, 3842, 3038, 4276 and 4231 respectively. The name of the Petitioner Sarabjit Singh at Sr. No. 1 and Petitioner No. 4 Harjinder Singh fall in the merit list up to 3069, therefore they have been allotted constabulary numbers 13/1104 and 80/1070 respectively. No candidate lower in merit out of the list of selected candidates has been appointed. A policy decision has been taken on 30.05.97 that the merit list prepared in this selection process is over 3 years old and hence stands invalidated. Thus, the order of the Hon'ble court has been fully implemented. A perusal of the factual position depicted in the above affidavit reveals, a meticulous compliance of the directions issued by the High Court in its order dated 17.10.1996."

3. Having complied with the directions issued by the High Court, the affidavit also pointed out that a policy decision had been taken by the State Government on 30.05.1997 disbanding the select/merit list prepared in furtherance to the selection process held in response to the advertisement dated 30.09.1993. This determination was made on account of the fact that more than three years had expired. With the disposal of the contempt petition, wherein it came to be concluded, that the judgment rendered by the Division Bench of the High Court on 17.10.1996 had been complied with, the controversy on merits came to be closed.

4. A fresh controversy came to be raised through Writ Petition No. 18012 of 1997. It came to be asserted in the above writ petition, that a large number of appointments had been made in breach of the directions issued by the Division Bench of the High Court on 17.10.1996. It was sought to be asserted, that in terms of the directions issued by the Division Bench of the High Court, the Appellants, whose names figured in the select/merit list prepared in furtherance of the advertisement dated 30.09.1993 had a preferential right of appointment. For the simple reason, that those appointed did not figure in the select/merit list prepared in furtherance of the advertisement dated 30.09.1993. The claim raised by the Petitioners in Writ Petition No. 18012 of 1997 (and connected writ petitions) was not acceded to by the High Court. It is therefore, that an intra court appeals came to be preferred. L.P.A. No. 156 of 2008 was the main appeal which came to be dismissed by a Division Bench of the High Court, vide an order dated 7.7.2009. L.P.A. No. 210 of 2008 was disposed of in terms of the order passed in L.P.A. No. 156 of 2008. It is in this sense that the challenge before this Court emerges from the order passed in L.P.A. No. 156 of 2008, though, it is the order in L.P.A. No. 210 of 2008, which is pointedly the subject matter of challenge before us.

5. The controversy now raised by the Appellants before this Court has been narrow down, to the factual position depicted in para-M of the grounds raised before this Court. Paragraph M is being extracted hereunder:

"M. That furthermore, it is pertinent that subsequently also 902 other persons were accommodated and appointed via backdoor entry. It is submitted that even a Vigilance Enquiry was conducted into the appointments of these 902 persons. However, though the Petitioners have time and again sought information under the RTI regarding these appointments and this Vigilance Enquiry, yet no information has been provided by the Respondents. The Petitioner have been made to run from pillar to post with no result. It is clear that there has been arbitrary exercise of power by the Respondents. However, this fact has been ignored by the Hon"ble High Court. The impugned order is therefore vitiated and deserves to be set aside."

6. Interestingly, there seems to be an acknowledgment to the assertions made by the Appellants in Para M. The reply thereto at the hands of the State Government is also being extracted below:

"That in reply to this para it is submitted that 902 constables were recruited in Punjab Police during ban period (imposed by the State Govt.). Out of these 902 constables, 484 SPOs were given constabulary number in compliance with orders of Hon"ble High court and 45 officials were recruited on compassionate grounds. Thus 373 officials remained out of 902. Out of these 373, to were inadvertently counted twice, orders of one official was cancelled, one died, four were dismissed, 8 resigned from service, three officials did not join their duties and one official was again recruited on compassionate grounds. Now the figure of these officials is 353 and police department has submitted a memorandum for approval from council of Ministers to the State Government in connection with regularization of their services."

7. It is apparent from the reply, extracted hereinabove, that in respect of selection process conducted in furtherance of the advertisement dated 30.09.1993, it is acknowledged by the State Government, that 902 constables were appointed during the ban period. Out of those 902 constables, 484 SPOs were sought to be given constabulary numbers. Therefore, 484 SPOs were factually appointed as constables. Therefore, 353 constables were appointed irregularly, during the ban-period. It is those 353 appointments, which we are told are in violation of the directions contained in Clause (iv) of the order passed by the Division Bench on 17.10.1996. The Appellants assert a superior right over the above 353 appointees.

8. There can be no doubt about the fact that irregular appointments of the 353 appointments made during the ban-period is admitted by the State Government. Would that mean that the Appellants need to be appointed and the 353 appointments made during the ban-period must make way for the Appellants? We would wish the answer could have been in the affirmative. It is not ordinarily possible to overlook those who were selected and whose names appeared in the merit list being ignored, as against those who did not even participated in the selection process. One of the facts which cannot be ignored is, that the selection process commenced in the year 1993, 21 years have elapsed since then. Would it

be appropriate for us, set aside the appointment of 353 candidates, to make room for the Appellants, especially when the Appellants have not impleaded those 353 constables, who they alleged were appointed in violation of the directions issued by the High Court on 17.10.1996. The fact of the matter is that those 353 appointees have not even been afforded an opportunity to explain their position. They are unmindful of the fact, that such a challenge is pending before this Court. They have not even been called upon to show that their appointments were justified, and in consonance with law. In the scenario, noticed hereinabove, even though we were originally inclined to allow the learned Counsel for the Appellants to implead them as party-Respondents, and that could have been easily done, as their details could have been obtained from the State Government. But what persuaded us to dissuade ourselves from the aforesaid process is that, those 353 candidates who have been appointed during the ban-period must have by now rendered about one and a half decades of service. Their rights have been crystallized. It would not be appropriate at this juncture to summon them in a process of litigation, wherein their initial appointment as constables has been assailed. We, therefore, chose not to follow the aforesaid course. It is not possible for us to accept, that the claim of the Appellants seeking directions for their appointments against posts filled by 353 constables during the ban-period, can be accepted at this belated stage.

For the reasons recorded hereinabove, we find no merit in these appeals, and the same are accordingly dismissed.