

Si Shri Bhagwan vs State Of Haryana And Others on 28 March, 2025

Neutral Citation No:=2025:PHHC:043178

CWP-29381-2018 (O&M) & connected cases

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

302 (15 cases)

CWP-29381-2018 (O&M)
Date of Decision: 28.03.2025

SI Shri Bhagwan

...Petitioner

Versus

State of Haryana and others

...Respondents

Sr. No.	Case No.	With Petitioner(s)	Respondent(s)
2.	CWP-25527-2014 (O&M)	Ramesh Chand	State of Haryana and others
3.	CWP-16703-2019	Rajender Singh	State of Haryana and others
4.	CWP-19651-2019 (O&M)	Satbir Singh	State of Haryana and others
5.	CWP-20662-2015	Sunil Kumar	State of Haryana and others
6.	CWP-1848-2016	Hazir Khan	State of Haryana and others
7.	CWP-1865-2016	Jan Mohd.	State of Haryana and others
8.	CWP-22076-2017	Rajesh Kumar	State of Haryana and others
9.	CWP-24711-2016	Mangat Ram	State of Haryana and others
10.	CWP-25852-2017	Vinod Kumar	State of Haryana and others
11.	CWP-33473-2018	Virender Singh and others	State of Haryana and others
12.	CWP-372-2018	Prithvi Raj	State of Haryana and others
13.	CWP-8196-2016	Duli Chand	State of Haryana and others
14.	CWP-21226-2019 (O&M)	Bhim Singh	State of Haryana and others
15.	CWP-29631-2018 (O&M)	Tara Chandh	State of Haryana and others

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Present: - Mr. Jai Vir Yadav, Senior Advocate with
Mr. Suresh Kumar Redhu, Advocate for the petitioner(s)
Ms. Palika Monga, Deputy Advocate General, Haryana

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the above captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from CWP-29381-2018.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of notice dated 10.11.2018 (Annexure P-24) whereby respondent has proposed to withdraw his service benefits extended in Commissionerate, Gurgaon and order dated 14.09.2018 (Annexure P-23) whereby Commissioner of Police Gurgaon has been directed to take action in accordance with policy dated 07.10.2010 instead of policy dated 12.11.2012. He is further seeking direction to respondents not to disturb his seniority in Police Commissionerate, Gurgaon because he was confirmed as Head Constable w.e.f. 31.08.2006 in District Gurgaon.

3. The State of Haryana, for the purpose of administration has been divided into different Ranges which includes Gurgaon Commissionerate. The said Commissionerate was earlier known as Gurgaon Range and comprised of four Districts namely Gurgaon, Faridabad, Rewari and Mahendergarh. The State Government on 26.04.2005 carved out District Mewat from District Gurgaon. Similarly, District Palwal was carved out from District Faridabad on 03.01.2006. District Gurgaon was designated as Police Commissionerate, Gurgaon on 08.06.2007. District Faridabad was 2 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -3- also designated as Police Commissionerate, Faridabad on 01.08.2009. South Range, Rewari was formed on 01.08.2009 which comprised of District Rewari, Mewat, Mahendergarh and Palwal. On account of bifurcation of District Gurgaon and Faridabad into four Districts i.e. Gurgaon, Mewat, Faridabad and Palwal, the Police Officers posted in District Gurgaon and Faridabad came to be vertically bifurcated into four Districts. Few officers remained in Gurgaon or Faridabad and remaining formed part of new Districts i.e. Mewat and Palwal. A dispute arose with respect to lien of Head Constables and Constables. As per normal Rule, if an officer is shifted from one District to another, he holds lien on his parent District. As there was bifurcation of one District into two, the question arose with respect to lien of Constables/Head Constables. There was an opinion that lien should be linked with the date of passing B-I Test or date of confirmation. Another opinion was to link with the date of bifurcation of the District. To resolve the controversy, a Committee of 6 Officers which comprised of 5 I.P.S. and one H.P.S. was constituted. The Committee deliberated on different aspects and submitted its report to the Director General of Police, Haryana (for short 'DGP') who

approved the report. The report of the Committee became policy dated 07.10.2010 with respect to lien of Police Personnel in Police Commissionerate, Gurgaon, Faridabad, South Range Rewari. The relevant extracts of the report of the Committee are reproduced as below:

"5. The Committee has examined the division of liens in chronological order. First of all Gurgaon district was bifurcated into Gurgaon and Mewat districts on 26.4.05. All existing posts against police units like Police Stations, Police Posts, Office of DSP, CIA units in the area of newly created district of Mewat were already sanctioned from time to time as manpower was posted and working in the said police units on the date of creation of new

3 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -4- district i.e. 26.4.2005. The Committee has had detailed deliberations to decide the cut off date for bifurcation of existing Gurgaon district cadre into two cadres of district Gurgaon and district Mewat. The Committee finds that the date of creation of new district of Mewat i.e. 26.4.2005 is the most appropriate cut off date to bifurcate lien of police officials of these two units of Gurgaon and Mewat. Consequently, all Constables and Head Constables who were posted in the jurisdiction of new district i.e. Mewat on 26.4.2005 will have their lien with new district w.e.f. 24.4.05 whereas all Constables/ Head Constables posted in Gurgaon district will continue to have their lien with Gurgaon district. Similarly, Head Constables posted in these two districts on 26.4.2005, will be deemed to have been enlisted in List 'B' and passed their Lower School Course, have got their enlistment in List 'C' from the respective two districts i.e. district Gurgaon and Mewat, w.e.f. date of such enlistment.

6. A new Police District Faridabad (Rural) at Palwal, later on renamed as District Palwal, was created/carved out from erstwhile District Faridabad on 03-01-06. Therefore, as decided in previous case, all ORs (Ct and HCTs) who were posted in the jurisdiction of new Police District i.e. Faridabad (Rural) on 03-01-06, will have their lien with the new district, whereas all ORs posted in the remaining Faridabad district will continue to have lien with the Faridabad District. Similarly, Head Constables posted in these two districts on 3.01.06, will be deemed to have been enlisted in List 'B', passed their Lower School Course, and have got their enlistment in 'C' list from the respective two districts i.e. Faridabad and Faridabad (Rural) at Palwal w.e.f. date of such enlistment.

(ii) The Police Commissionerate, Gurgaon for the area falling within the limits and jurisdiction of revenue district of Gurgaon was established on 08-06-2007. The Police Commissionerate, Gurgaon was further designated as police range for the purpose of administration of Police force. The remaining districts i.e. Faridabad, Rewari, Mewat at Nuh, Mahendergarh at Narnaul and Faridabad (Rural) remained in the old Gurgaon Range, which was subsequently renamed as Faridabad Range on 01.02.08. Therefore all NGOs (ASIs/SIs) who were posted in the jurisdiction of district Gurgaon as on 08.06.07, will have lien with Police Commissionerate 4 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -5- of Gurgaon and all those NGOs who were posted in district of Faridabad, Rewari, Mewat, Narnaul and Faridabad (Rural) as on 08.06.07, will have their lien with Gurgaon Range (Later renamed as Faridabad Range). The enlistment of such NGOs (ASIs/SIs) in list 'D' and 'E' shall be deemed to have been done in the

Range of their lien w.e.f. date of such enlistment.

(iii) Police Commissionerate, Faridabad for the area falling within the limits and jurisdiction of revenue district of Faridabad was established on 01.08.2009. The Police Commissionerate of Faridabad was further designated as a Police Range for the purpose of administration of Police force. A new police range by the name of South Range with Hqr at Rewari consisting of districts of Rewari, Mewat at Nuh, Mahendergarh at Narnaul and Palwal (Police district Faridabad, Rural) was established w.e.f. 01.08.2009. All NGOs (ASIs/SIs) who were posted in the jurisdiction of district Faridabad on 01.08.09 will have their lien with the Police Commissionerate of Faridabad and all those NGOs who were posted in district of Rewari, Mewat at Nuh, Mahendergarh at Narnaul and Palwal on 01.08.2009 will have their lien with the new police range i.e. South Range. The enlistment of such NGOs (ASIs/SIs) in list 'D' and 'E' shall be deemed to have been done in the Range of their lien w.e.f date of such enlistment.

(iv) Henceforth, service matters of all Police Personnel (Constable to SI) posted in erstwhile Gurgaon Range shall be decided in accordance with division of cadres as mentioned above, by all Districts and Police Ranges, now in existence."

4. The respondent-DGP vide communication dated 14.09.2018 directed Commissioner of Police, Gurugram to fix lien of petitioner as per policy dated 07.10.2010. Commissioner of Police, Gurugram issued impugned notice dated 10.11.2018 calling upon the petitioner to show cause as to why service benefits given to him should not be withdrawn.

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5. The seniority of the petitioners is proposed to be disturbed in the wake of policy dated 07.10.2010 (Annexure P-10). The petitioners are assailing notices as well as said policy on the following counts:

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i.) The policy was framed by the DGP who is not a competent authority to frame policy with respect to seniority of police officials;

ii.) The impugned policy is contrary to policy dated 12.11.2012; and iii.) There cannot be two different policies in two different Ranges/Commissionerates.

6. This Court while issuing notice of motion on 20.11.2018 stayed proceedings pursuant to show cause notice dated 10.11.2018 (Annexure P-24).

7. In order dated 24.05.2022 arguments of petitioners were noticed and Additional Chief Secretary to Government of Haryana, Home Department was asked to assist the Court. The order dated 24.05.2022 reads as: -

"The sole grievance of the petitioners in this bunch of petitions would be variance in the two policies regarding lien to be maintained.

It is argued that policy dated 12.11.2012 had been formulated pertaining to the Executive Cadre as well as Executive Clerical Cadre which was to be made applicable throughout State of Haryana. However, Government has decided to retain the policy pertaining only to the Executive Clerical Cadre.

Learned counsel for the petitioners herein would contend that the two policies which are being adopted at the moment have caused a confusion and in case, the Government had decided to give 6 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -7- approval to policy dated 12.11.2012 or any other policy which is adopted and made applicable to the entire State of Haryana, the said confusion would not be prevalent.

It is noted that the policy is being made applicable at the behest of the DGP who would not be the competent person to issue directions thereunder.

Learned State counsel seeks some time to get necessary instructions in this regard.

Adjourned to 09.08.2022.

On the next date of hearing, let a responsible officer of the cadre of Additional Chief Secretary to the Government of Haryana, Home Department, be present in the Court to assist the Court on the point being raised.

A photocopy of this order be placed on the files of connected cases."

8. The respondent pursuant to aforesaid order has filed affidavit dated 23.01.2023 justifying competence of DGP to issue impugned policy and grounds for distinction with policy of 2012.

9. Mr. Jai Vir Yadav, Senior Advocate and Mr. Suresh Kumar Redhu, Advocate submit that service of the petitioners is governed by Haryana Police Act, 2007 (for short 'Police Act') read with Punjab Police Rules, 1934 (as applicable to State of Haryana) (for short 'PPR'). Rule 12.1, 12.3, 13.1, 13.7, 13.8 of PPR govern appointment, promotion, training and seniority of officers of subordinate ranks. The Rules have been made by the Legislature. The impugned policy has actually been framed by a Committee of Officers and for name sake approved by DGP. Even if it is considered as policy framed

by DGP, it is bad in the eye of law because he has no jurisdiction to frame policy with respect to lien of officers as it directly affects their seniority and promotion.

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The respondent has framed policy dated 12.11.2012 with respect to Ambala-Panchkula Commissionerate and Karnal Police Range. Lien in the policy dated 12.11.2011 has been linked with date of passing B-1 Test and date of confirmation as Head Constable whereas in the impugned policy, it has been linked with the date of creation of new Districts. The respondent cannot frame two different policies for two different ranges. It amounts to violation of principle of uniformity and consistency. Same rank of officers working in one State cannot be treated differently. The respondent framed policy for Executive Clerical Police Cadre with respect to their lien. The said policy was challenged before this Court by way of CWP No.3595 of 2013, ASI Vinod Kumar and others v. State of Haryana and others. A Division Bench of this Court vide order dated 17.05.2016 directed the respondent to revisit its policy decision and frame uniform criteria for all the Ranges and Commissionerates. Additional Chief Secretary, Home Department was directed to convene a joint meeting of the stakeholders including the Commissioners of Police/Inspector Generals of Police of different Ranges and revisit/remodulate the policy. In the wake of direction of this Court, respondent framed uniform policy for Executive Clerical Cadre with respect to their lien and seniority. In the wake of said judgment, the respondent was bound to frame uniform policy for Constables/Head Constables.

The impugned policy has been made applicable from retrospective effect whereas it is settled proposition of law that any instruction/circular cannot be retrospective if it adversely affects rights of the parties. The respondent at the time of bifurcation of District Gurugram and Faridabad did not seek option from affected officers. It was unilateral 8 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -9- decision of the respondent to depute the officers in the newly created Districts. The jurisdictional authorities have withdrawn already granted benefit of seniority on the direction of DGP. The lower authorities are bound to follow the direction of DGP who without authority has directed jurisdictional authorities to withdraw benefit of seniority already granted.

10. Per contra, Ms. Palika Monga, Deputy Advocate General, Haryana, submits that there was no provision in PPR with respect to lien of Police Officers on account of bifurcation of Districts. If a District is merged/de-merged with a Range or a Police Officer is transferred from one District to another, problem does not arise, however, issue arose on account of bifurcation of District Gurugram and Faridabad into two Districts each. As PPR were silent, the DGP invoked its power

under Section 50(p) of Police Act. A Committee was constituted to submit its report with respect to lien of officials who came to be vertically bifurcated on account of division of one District into two. The DGP has issued impugned policy in exercise of power conferred by Section 50(p) of Police Act. The DGP was quite competent to frame impugned policy, thus, ground of petitioners to challenge policy on the ground of competence is unsustainable.

With respect to contradiction between policy of 2010 and 2012, learned State counsel further submits that policy dated 07.10.2010 adverted to situation arising on account of bifurcation of one District into two whereas there was no such issue with respect to Ambala-Panchkula Commissionerate and Karnal Range. The officers forming part of Ambala- Panchkula Commissionerate and Karnal Range remained part of their parent District, thus, there was no question to link their lien with the date of bifurcation of District. The situation in the case of Gurugram Range was 9 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -10- entirely different as compared to situation of Karnal Police Range. The respondent has wrongly claimed parity with Executive Clerical Cadre. The Executive Clerical Cadre personnels are always posted in District Police Offices, hence, no Executive Clerical Cadre personnel was posted in District Mewat and Palwal which were carved out from District Gurugram and Faridabad respectively. In view of the directions of this Court passed in ASI Vinod Kumar (supra), the Government vide letter dated 04.07.2017 decided to retain policy dated 12.11.2012 regarding fixation of lien and seniority of Executive Clerical Cadre and made it applicable throughout the State. The criteria of place of posting of Constables/ Head Constables is different from Executive Clerical Cadre personnels, thus, policy applicable to Executive Clerical Cadre personnels cannot be made applicable to Constables/Head Constables.

11. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance. Statutory Provisions

12. From the perusal of record, it comes out that service of petitioners is governed by Police Act and Rules made thereunder. The State Government made Haryana Police (Non-Gazetted and Other Ranks) Service Rules, 2017 (for short '2017 Rules') which came into force w.e.f. 08.05.2017. 2017 Rules are inapplicable to the petitioners because those Rules are applicable to officers directly recruited after publication of the Rules and who have passed their Lower School Course after publication of 2017 Rules. The petitioners joined service much prior to 2017 Rules and passed Lower School Course prior to publication of aforesaid Rules, thus, their service is governed by PPR.

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Section 96 of Police Act provides that PPR shall be deemed to have been framed under this Act till new Rules are framed. The State Government till date has not framed Rules under Police Act, thus,

services of the petitioners are subjected to PPR. Section 92 of Police Act empowers State Government to make Rules for carrying out purposes of the Act. Thus, State Government can make any Rule for carrying out purposes of the Act. As per Section 93, State Government has power to remove difficulties, if arise, in implementation of the Act. The difficulty may be removed by way of notification in the Official Gazette. Sections 92, 93 and 96 of the Police Act are reproduced as below:

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"92. Power to make rules.- (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session. If the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

93. Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by notification in the Official Gazette, make such provisions, as it deems necessary or expedient for removing the difficulty.

(2) Every notification issued under this section shall, as soon as may be after it is issued, be laid before the State Legislature.

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96. Repeal and Saving.- (1) The Police Act, 1861 (Act 5 of 1861), in its application to the State of Haryana, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or any proceeding instituted under the Act so repealed and the rules made thereunder, shall be deemed to have been done or taken or instituted under this Act.

(3) All references in any enactments to any of the provisions of the Act so repealed shall be construed a reference to the provisions of this Act.

(4) The Punjab Police Rules framed under the Police Act, 1861 (Act 5 of 1861), as applicable to the State of Haryana, shall be deemed to have been framed under this Act till new rules are framed under this Act."

13. Section 3 of Police Act provides that there shall be one police service constituted by the State. Section 4 provides that police service shall consist of such numbers of various ranks and have such organization or cadres as the State Government may determine. Sub-Section (3) of Section 4

provides that pay, allowances, service conditions, mode of recruitment of police personal shall be such as prescribed from time to time. Sections 3 and 4 of Police Act are reproduced as below: -

"3. Constitution of police service.- There shall be one Police service for the State, constituted by the Police service State Government under this Act. Notwithstanding anything contained in any other law or any of the provisions of this Act, members of the police service shall be liable for posting anywhere in the State and outside the State as ordered by the competent authority and to any branch of the service in the State, including any of its specialised wings.

4. Organization and composition of Police service.- Subject to the provisions of this Act,-

(1) the police service shall consist of such numbers in various ranks and have such organization or cadres as the 12 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -13-

State Government may, by general or special order, determine and shall include the members of the Indian Police Service allocated to the State;

(2) the direct recruitment to various gazetted and non- gazetted ranks in the police service shall be made through a State Level Police Recruitment Board or District Level Police Recruitment Boards by a transparent process, adopting well codified systems which shall be framed under this Act;

(3) the pay, allowances, service conditions, mode of recruitment of the police personnel shall be such as may be prescribed from time to time;

(4) police personnel shall at all times remain accountable to the law and responsive to the lawful needs of the people and shall observe codes of ethical conduct and integrity."

[Emphasis supplied]

14. Section 9 of Police Act provides for creation of Police Ranges. It provides that State Government, may by notification, divide the entire State into one or more Police Ranges. Each range shall comprise of two or more Police Districts. Section 10 provides that State Government in consultation with DGP may declare any area to be a Police District. The administration of police throughout that District shall vest with Superintendence of Police. Sections 9 and 10 are reproduced as below: -

"9. Creation of police range.- The State Government may, by notification in the Official Gazette, divide the geographical area of the State into one or more police ranges. Each range, comprising two or more police districts, shall be headed by an officer of the rank of Inspector General of Police who shall supervise the police administration of the range and report to the Director General of Police.

10. Police districts.- The State Government, in consultation with the Director General of Police, may by notification in 13 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -14- the Official Gazette, declare any area within the State to be a police district. The administration of the police throughout such district shall vest in the Superintendent of Police of a district who may be assisted by as many Additional, Assistant or Deputy Superintendents of Police, as deemed necessary and are notified."

15. Rule 12.1 of PPR prescribes authorities empowered to make appointments. Rule 12.1(4) provides that Inspectors shall be borne on provincial roll. Sub-Inspectors and Assistant Sub-Inspectors shall be borne on range rolls. Head Constables and Constables in each District shall be borne on District rolls and shall receive District constabulary number. Rule 12.1(5) provides that Punjab Civil Service Rules shall be applicable with respect to General Conditions of Service such as pay, pension, leave, joining time and travelling allowance. Relevant extracts of Rule 12.1 are reproduced as below: -

"12.1 Authorities empowered to make appointments.-

(1) to (3) XXXX XXXX XXXX XXXX

(4) Inspectors shall be borne on a provincial roll and shall

receive provincial constabulary numbers. Sergeants shall be borne on a separate provincial roll and shall receive separate provincial constabulary numbers.

Sub-inspectors and Assistant Sub-Inspectors shall be borne on range rolls and shall receive range constabulary numbers.

Head Constables and constables in each district shall be borne on district rolls and shall receive district constabulary numbers.

(5) In matters relating to general conditions of service such as pay, pension, leave, joining time and traveling allowance, the subordinate ranks of the Police force of the State of Punjab shall be governed by the Punjab Civil Service 14 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -15-

Rules, for the time being in force, in so far as they are not inconsistent with the provisions contained in these rules."

[Emphasis Supplied]

16. Rule 13 of PPR deals with promotion of Subordinate Rank Officer. Rule 13.1 provides that promotion from one rank to another and from one grade to another in the same rank shall be made by selection tempered by seniority. For the purpose of regulating promotion amongst enrolled police officers, six promotion lists i.e. A, B, C, D, E and F will be maintained. Lists A, B, C, D and E shall be maintained in each District. List 'E' shall be maintained in the office of DIG and list F shall be

maintained in the office of IG. Relevant extracts of Rule 13.1 are reproduced as below: -

"13.1. Promotion from one rank of another.- (1) Promotion from one rank to another, and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted. This rule does not affect increment within a time-scale.

(2) Under the present constitution of the police force no lower subordinate will ordinarily be entrusted with the independent conduct of investigations or the independent charge of a police station or similar unit. It is necessary, therefore, that well-educated constables, having the attributes necessary for bearing the responsibilities of upper subordinate rank, should receive accelerated promotion so as to reach that rank as soon as they have passed the courses prescribed for, and has been tested and given practical training in the ranks of constable and head constable.

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(3) For the purposes of regulating promotion amongst enrolled police officers six promotion lists- A,B,C,D,E and F will be maintained.

Lists A, B, C, and D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8 and 13.9 and will regulate promotion to the selection grade of constables and to the ranks of head constables and assistant sub- inspector. List E shall be maintained in the office of Deputy Inspector-General as prescribed in sub-rule 13.10 (1) and will regulate promotion to the rank of sub-inspector. List F shall be maintained in the office of the Inspector-General as prescribed in sub-rule 13.15(1) and will regulate promotion to the rank of inspector.

Entry in or removal from A,B,C,D or E lists shall be recorded in the order book and in the character roll of the police officer concerned. These lists are nominal rolls of those officers whose admission to them has been authorised. No actual selection shall be made without careful examination of character rolls.

XXXX XXXX XXXX XXXX"

[Emphasis Supplied]

17. Rule 13.7 prescribes procedure for selection of Constables for preparation of List 'B' which precedes their promotion to the rank of Head Constable. As per Rule 13.7 read with Rule 13.8, a Constable is promoted to the rank of Head Constable if his name is recorded in List 'B' and he passes Lower School Course.

18. Learned counsel for the parties are ad idem that every Constable has to undergo Lower School Course and seniority for the purpose of promotion to the rank of Head Constable is maintained on the basis of order of merit in Lower School Course. They get support from Rule 12(5) of 16 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -17- 2017 Rules for making aforesaid submission. For the ready reference Rule 12(5) of 2017 Rules is reproduced as below: -

"12. Seniority of enrolled police officers:-

(1) to (4) XXXX XXXX XXXX XXXX (5) The seniority of all Lower School Course pass Constables shall be determined as per merit achieved by them in the Lower school course; which shall then become the foundation for preparing the subsequent gradation lists and further promotions to higher ranks."

Judicial Precedents

19. The petitioners are assailing policy dated 07.10.2010 on the ground of competence. Scope of interference in such matters has been dilated on by different Courts including Hon'ble Supreme Court. Thus, it would be apt to notice judicial precedents.

20. Hon'ble Supreme Court has time and again adverted to scope of judicial interference in policy matters. A Constitutional Bench of Hon'ble Supreme Court in Vivek Narayan Sharma Versus Union of India; 2023 LiveLaw (SC) 1, while adverting to question of legality of demonization of currency of denomination of 500/- and 1,000/- has considered the scope of judicial review. The Hon'ble Supreme Court has considered its judicial precedents and concluded that it is not function of the Court to sit in judgment over matters of economic policy and they must necessarily be left to Government of the day to decide.

21. In S.G. Jaisinghani v. Union of India, (1967) 2 SCR 703, Supreme Court has held that absence of arbitrary power is the first essential of the rule of law upon which whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon, executive 17 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -18- authorities must be confined within clearly defined limits. Discretion must be guided by rule of law. It must not be arbitrary, vague and fanciful.

Supreme Court in E.P. Royappa v. State of T.N., (1974) 4 SCC 3 while dealing with claim of petitioner to the post of Chief Secretary in the State of T.N. in terms of Indian Administrative Service Rules, 1954 evolved the doctrine of arbitrariness and its application to State action as a distinct doctrine on which State action may be struck down as being violative of the rule of law contained in Article 14 of the Constitution of India. The relevant extracts of the judgment read as: -

"85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground

based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all- embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined"

18 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -19- within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

22. In State of Tamil Nadu and another v. P. Krishnamurthy and others, 2006 (4) SCC 517, while dealing with Validity and scope of Rule 38A of the Tamil Nadu Minor Mineral Concession Rules, 1959, Supreme Court in Para 12 expounded grounds to challenge subordinate legislation as below:

"Whether the Rule is valid in entirety?

15. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a sub-ordinate legislation can be challenged under any of the following grounds:-

a) Lack of legislative competence to make the sub-ordinate legislation.

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b) Violation of Fundamental Rights guaranteed under the Constitution of India.

c) Violation of any provision of the Constitution of India.

d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

e) Repugnancy to the laws of the land, that is, any enactment.

f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

16. The Court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or nonconformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity." In Cellular Operators Association of India and others v. Telecom Regulatory Authority of India and others, (2016) 7 SCC 703, Supreme Court while declaring Regulation framed under Telecom Regulatory Authority of India Act, 1997 as ultra vires the Act held that the impugned Regulation is manifestly arbitrary and unreasonable. Findings

23. Learned State counsel has contended that impugned policy has been framed by DGP while exercising power conferred by Section 50(p) of Police Act. For the ready reference, Section 50 of the Police Act is reproduced as below: -

"50. Regulations.-

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50. The Director General of Police shall be competent to make regulations or issue orders, not inconsistent with the provisions of this Act or the rule framed thereunder

regarding.-

- (a) prevention and investigation of crime;
- (b) maintenance of law and order;
- (c) regulation and inspection of the police organization and of the work performed by the police officers;
- (d) regulating the issue and use of arms and ammunition;
- (e) wearing of uniform;
- (f) prescribed the places of residence of the members of the police service;
- (g) institution, management and regulation of any Non-Government fund for the purpose connected with the police administration or welfare of police personnel;
- (h) regulation, deployment, movements and location of the police;
- (i) assigning duties to officers of all ranks and grades, and prescribing the manner and the

conditions subject to which, they shall exercise and perform their respective powers and duties;

(j) regulating the collection and communication of intelligence and information by the police;

(k) prescribing the records registers and forms to be maintained and the returns to be submitted by different police units and officers;

- (l) community policing;
- (m) functioning of police stations and other units;
- (n) training of the police force and management of training institutions;
- (o) generally, for the purpose of administering this

Act and for rendering the police more efficient, and preventing abuse of power or neglect of duties by them;

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(p) covering any aspect of police administration which is not covered under the provisions of this Act or rules framed thereunder."

[Emphasis Supplied]

24. From the perusal of above quoted section, it is evident that DGP has power to make regulations or issue orders not inconsistent with the provision of the Act and Rules framed thereunder,

regarding any aspect of the police administration which is not covered by the Act or Rules made thereunder. As per aforesaid Section, DGP is empowered to make regulations or issue orders. Learned State counsel is claiming that impugned policy may be treated as 'Order' though it cannot be called as 'Regulation'. The petitioners are assailing impugned policy/order on the ground of competence of DGP.

25. Article 309 of the Constitution of India permits Union as well as State Legislature to make appropriate legislation to regulate recruitment and conditions of service of their employees. Proviso to Article 309 provides that it shall be competent for the President in case of posts connected with affairs of Union and Governor, in case of posts connected with affairs of State to make rules regulating the recruitment and conditions of service. The Rules made by President or Governor hold the field till provisions are made by appropriate legislature. Article 309 read as: -

"309. Recruitment and conditions of service of persons serving the Union or a State Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

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Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."

The Punjab Police Rules were made prior to implementation of Constitution of India. As per Article 366 (10) of the Constitution of India, these are 'existing law'. Article 366 (10) is reproduced as below:

"existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, byelaw, rule or regulation."

26. From the perusal of PPR, Police Act and 2017 Rules (not directly applicable to petitioners), it is evident that petitioners are Members of 'service'. PPR are in the form of complete Code which govern each and every attribute of police officials. There are specific Rules for appointment, promotion, transfer, disciplinary proceedings, superannuation, misconduct, punishment, appeal/revision etc. The question of lien is directly linked with seniority and promotion of the officers. On account of creation of new Districts i.e. Mewat and Palwal, lien of many officers came to

be disturbed which directly affected their seniority and promotion, thus, question of lien is integral part of service conditions. The afore-cited Rules make it clear that appointment and promotion of police officers is governed by Rules. There is no specific Rule with respect to lien on account of carving out of new 23 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -24- District. Section 92 of Police Act empowers State Government to make Rules for carrying out purposes of the Act. Section 93 empowers State Government to remove difficulties. The respondent has exercised powers under Section 50(p) of Police Act. This Court is of the considered opinion that impugned policy could not be framed under Section 50(p) of Police Act, on account of following reasons: -

i.) Article 309 of the Constitution of India provides that subject to provisions of the Constitution, Acts of the appropriate Legislature may regulate recruitment and conditions of service of persons appointed to Public Service and posts in connection with affairs of the State. Entry 41 of the State List of 7th Schedule read with Article 246 of the Constitution of India empowers the State Government to make law with respect to State Public Services and State Public Service Commission. Proviso to Article 309 empowers President to make Rules regulating the recruitment and conditions of service of persons appointed to service and posts in connection with affairs of the state.

From the conjoint reading of Entry 41 of State List of 7th Schedule, Article 309 and its proviso, it is evident that the State Government has power to make law regulating recruitment and conditions of service of persons appointed to public services and posts in connection with affairs of the State. Question of lien is directly linked with seniority and promotion of police officers which is also evident from the impugned orders. Seniority and promotion are integral part of conditions of service. As State Government, as per Constitution of India, is empowered to regulate conditions of service, the DGP could not make policy regulating conditions of service of Subordinate Officers.

24 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -25- ii.) PPR, as stated hereinabove, fall within definition of 'existing law' as contemplated by Article 366(10) of the Constitution of India. Competent Legislature has power to amend existing law, however, no law can be made by any authority which is contrary to existing law. As per Constitution Bench judgment in *Pankajakshi v. Chanderika*, (2016) 6 SCC 157, in case of inconsistency between existing law and law made by the Parliament, the existing law would prevail.

Rule 13 of PPR specifically provides for promotion from the rank of Constable to Head Constable. Rule 13.3 provides that at the level of District, List A, B, C and D shall be maintained and these lists will regulate promotion to the selection grade of Constables and to the ranks of Head Constables and Assistant Sub-Inspectors. It means promotion from the rank of Constable to Head Constable is governed by List A, B, C, D and E. The respondent, contrary to Rule 13.1, has framed impugned policy governing the promotion from the rank of Constable to Head Constable. iii.) Rule 13.1 of PPR provides that promotion to the rank of Constable to Head Constable shall be made by selection

tempered by seniority. The respondent, during the course of hearing, has conceded that seniority is determined on the basis of merit in the Lower School Course. The respondent by impugned policy has linked lien with the date of bifurcation of District which is directly affecting seniority of Constables/Head Constables. Thus, it is contrary to mandate of Rule 13.1. iv.) The impugned policy is virtually decision of a Committee comprising of different officers. DGP has approved report of the Committee, however, he has not made any regulation or issued orders whereas under 25 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -26- Section 50(p) of Police Act, he has power to make regulations or issue orders. The respondent has not even mentioned in any part of the impugned policy or covering letter produced by respondent that it has been framed under Section 50(p) of Police Act.

v.) Section 4(3) of Police Act provides that pay, allowances, service conditions, mode of recruitment of Police Personnel shall be such as may be prescribed from time to time. Power under Section 4 can be exercised by State Government. Lien being directly linked with seniority/promotion is integral part of service conditions, thus, any provision with respect to service conditions can be made either by way of Rules framed under Section 4(3) of Police Act or would be governed by PPR or Civil Service Rules. There is no question to regulate conditions of service by way of orders issued by the DGP.

vi.) As per Section 50, power of DGP is subject to provisions of Police Act as well as Rules made thereunder. From the preceding paragraphs, it is evident that respondent has issued impugned order contrary to Police Act, PPR as well as Constitution of India. vii.) The respondent, during the course of hearing, has conceded that impugned policy cannot be called as 'Regulations' made by DGP, however, may be called as 'Order'. As per Section 50(p) of Police Act, DGP has power to issue orders covering any aspect of police administration. Impression 'police administration' has not been defined under Police Act or PPR, however, from the reading of Section 8, 9 and 10 of Police Act, it is evident that police administration means creation of Police Commissionerates, Police Ranges and Police Districts for the purpose of 26 of 27 Neutral Citation No:=2025:PHHC:043178 CWP-29381-2018 (O&M) & connected cases -27- administration. Thus, in the name of police administration, the respondent has no power to issue orders under Section 50(p) governing service conditions of the subordinate rank officers.

viii.) From the perusal of different clauses of Section 50 of Police Act, it is evident that DGP has power to control, manage and regulate members of service for the maintenance of law & order and proper administration. He has no power to regulate conditions of service of police officers.

27. In the wake of above discussion and findings, this Court is of the considered opinion that impugned policy/order has been issued by DGP beyond his jurisdiction, thus, it is invalid. Consequently, impugned notice(s) issued relying upon policy/order dated 07.10.2010 are hereby set aside. Since the petitions are allowed on the ground of validity of policy/order dated 07.10.2010, other issues raised by the petitioners are not adverted to.

28. Present petitions are allowed in above terms.

29. Before parting with the judgment, this Court would hasten to add that it has adjudicated question of validity of policy/order dated 07.10.2010 issued by DGP, thus, reply and presence of State Government was inevitable. There was no need to hear officials other than petitioners who had obtained benefits from the said policy/order.

30. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

28.03.2025
Mohit Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

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