

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 6096/2023

Tejram S/o Shri Sumer Singh & Ors.

----Petitioners

Versus

State Of Rajasthan & Ors.

----Respondents

For Petitioner(s)	:	Mr. R.N. Mathur, Senior Advocate, assisted by Mr. Tanveer Ahamad
For Respondent(s)	:	Mr. Bhuwadesh Sharma, AAG with Mr. Vishnu Dutta Sharma Mr. Sameer Khan Mr. Virendra Lodha, Senior Advocate, assisted by Mr. Udit Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

01/08/2025

1. Matter comes up on an Interim Application No.2/2025, moved by and on behalf of the respondents - State Authorities seeking to vacate *ex-parte* interim stay order dated 19.04.2023.
2. Heard respective counsels for both the parties.
3. Vide interim stay order dated 19.04.2023, implementation of impugned order dated 27.03.2023 was stayed and further, it was directed that no qualifying test for promotion on the respective posts, pursuant to the impugned order, shall be ensued. This interim order was passed in respect of five writ petitions. Other four writ petitions except present-one, have later-on been withdrawn. As far as present writ petition is concerned, the grievance of writ petitioners is that while granting promotion in the year 2013-14 from the post of Constable to Head Constable, petitioners have been arbitrarily discriminated and promotion to

the other similarly situated employees have been granted, due to which, avenues of petitioners for further promotion on next higher posts like Assistant Sub Inspector, Sub Inspector and Inspector etc., would be adversely affected.

In the instant writ petition, writ petitioners have questioned the promotion list dated 27.03.2023 stating *inter-alia* that firstly re-determination of vacancies for promotion from the post of Constable to Head Constable in the year 2013-2014 have not been done properly and secondly, in case requisite number of vacancies were not available, the sufficient number of supernumerary posts for promotion on the post of Head Constable should have been created by the Government, so as to maintain equality in promotion among similarly situated employees. Hence, the petitioners are claiming to treat them at par with the similarly situated person, who have been promoted, for promotion to the post of Head Constable in the year 2013-2014 and it has been urged that petitioners have already cleared the qualifying examination of promotion and fall in merit to get promotion in the year 2013-2014.

4. Learned Additional Advocate General appearing for the State contends that initially, order dated 27.03.2023, which has been impugned by the writ petitioners herein, was passed in compliance of the judgment dated 27.09.2022, passed by the Rajasthan High Court in bunch of writ petitions, lead case being S.B. Civil Writ Petition No.5926/2022 titled as 'State of Rajasthan & Ors. Versus Krishna Kumar'. Nevertheless, since contempt proceedings were initiated for not complying with the directions of the High Court in its true spirit, a Review Board of High Level Committee was

constituted and as per its recommendations, revised promotion list dated 04.05.2024 has been issued. In the revised promotion list, 18 supernumerary posts under Rule 18 of the Rajasthan Service Rules, have been created by the State Government to adjust the eligible candidates for promotion from Constable to Head Constable against the determined vacancies of the year 2013-2014. Hence, in the light of revised promotion list dated 04.05.2024, the interim stay order dated 19.04.2023 deserved to be vacated. It has been urged by learned Additional Advocate General that due to operation of such interim stay order, the entire promotional exercise on various posts in Police Subordinate Services, such as on the posts of Head Constable, Assistant Sub Inspector, Sub Inspector and Inspector, have come to a standstill, which is creating hardship to the other employees awaiting for their promotion.

However, during the course of arguments, learned Additional Advocate General, having instructions from the Police Commissioner, Commissionerate, Jaipur, who is present in person in the Court, submits that at most, the vacancies for promotional posts of Head Constable, in the year 2013-2014, from Constable to Head Constable, equivalent to the number of writ petitioners, may be ordered to be kept vacant, and the interim stay order dated 19.04.2023 be modified accordingly.

5. Learned Senior Counsel appearing on behalf of the writ petitioners submits that petitioners have passed the qualifying examination and possess the eligibility to get promotion from the post of Constable to Head Constable in the year 2013-2014, but since proper determination of vacancies were not made, they have

been arbitrarily discriminated and deprived from promotion. Learned Senior Counsel submits that in the revised list of promotion dated 04.05.2024 as well, respondents created only 18 supernumerary posts whereas as per record, number of vacancies is much more than filled. Nevertheless, even if it is assumed for a moment that sufficient number of vacancies were not available, more supernumerary posts of HC should have been created equal to the number of eligible and similarly situated candidates, in order to avoid any hostile discrimination with them, hence, it is established that petitioners have illegally been deprived from promotion and have been arbitrarily discriminated by the respondents, with the other similarly situated employees, who have been given promotion in the revised promotion list dated 04.05.2024, by creating only 18 supernumerary posts.

Learned Senior Counsel submits that in other four writ petitions which were connected on 19.04.2023, with the present writ petition, the petitioners therein got promotion on their respective posts, hence, they have withdrawn their writ petitions, but that withdrawal and consequential vacation of interim stay order dated 19.04.2023 therein, do not effect the case of the present writ petitioners to continue the stay order, which is essential to maintain for ensuring to get final relief of promotion by the petitioners from the post of Constable to Head Constable in the year 2013-2014 and to avoid hostile discrimination with petitioners.

6. The contention of learned Senior Counsel, appearing on behalf of private respondents, is that as per the record, only 425 vacancies, for promotion from Constable to Head Constable in the

year 2013-2014, were determined in the Police Department whereagainst three times Constables, who were eligible for promotion, have been considered, but since petitioners did not fall within that zone of consideration, hence, could not get promotion though admittedly, the private respondents have been given promotion.

Their submission is that in identical nature of other writ petition i.e. S.B. Civil Writ Petition No.8798/2023 titled as 'Raghunath Prasad & Ors. Versus The State of Rajasthan & Ors.', similar nature of interim stay order dated 02.06.2023, which was passed on the basis of present interim stay order dated 19.04.2023, has been vacated by the Coordinate Bench of this Court vide order dated 10.07.2025. Hence, the interim stay order dated 19.04.2023 also be vacated.

7. Having considered the rival contentions of learned Senior Counsels appearing for writ petitioners and for private respondents so also of learned Additional Advocate General appearing for respondents-State Authorities, this Court *prima facie* finds that the eligibility of writ petitioners, to get promotion from the post of Constable to Head Constable in the year 2013-2014, is not in dispute. Moreover, it is also not in dispute that petitioners have admittedly passed the qualifying examination for promotion, and need not to re-appear in the qualifying examination again. It is further undisputed that the promotion/selection list dated 27.03.2023 impugned herein, has been revised by the respondents – State Authorities and in the revised promotion list dated 04.05.2024, 445 constables have given promotion from the post of Constable to Head Constable in

the year 2013-2014 by creating 18 supernumerary posts of Head Constable.

8. The issues that the vacancies of Head Constable in the year 2013-2014 have been determined and filled, less in number than the vacancies available on record? or if determination of vacancies is proper, but the petitioners were not given promotion due to non-availability of vacant posts, then supernumerary posts should have been created by the State Government in sufficient number, instead of only 18?, are contentious issues, which shall be considered while hearing and deciding the writ petition finally on merits.

9. Be that as it may, prima facie, it appears that petitioner's eligibility for promotion on the post of Head Constable in the year 2013-2014, is not distinguishable than the persons, to whom promotion on the post of Head Constable in year 2013-2014 have been given in the revised promotion list dated 04.05.2024.

10. In view of above discussion, at this stage, in the opinion of this Court, since additional facts have come on record as interim stay orders dated 19.04.2023, passed in other four writ petitions has been vacated due to withdrawal of those writ petitions; in an another S.B. Civil Writ Petition No.8798/2023 titled as 'Raghunath Prasad & Ors. Vs. The State of Rajasthan & Ors.', interim stay has been vacated by the Coordinate Bench; impugned promotion list dated 27.3.2023 has been revised vide order dated 04.05.2024 and issue involved in the present writ petition is confined to consider discrimination with petitioners and to consider them for promotion from Constable to Head Constable, in the year 2013-2014, as such, in such changed circumstances, the continuance of

interim stay order dated 19.04.2023 is not warranted at all, hence, same is hereby vacated.

However, in order to safeguard the interest of petitioners, it is hereby directed that the posts of Head Constable, equal to the number of writ petitioners, out of the available vacant posts in the year 2013-2014, shall be kept vacant by the respondents until decision of this writ petition.

It is hereby further observed that, if the respondents-State authorities are sure that vacancies of Head Constable in the year 2013-2014 have correctly been determined and re-determination is not required, but petitioners could not be promoted due to non-availability of vacant posts of Head Constable, then in that eventuality, in order to remove anomaly and hostile discrimination among the similarly situated employees in grating promotion on the post of Head Constable in the year 2013-2014, the State Government shall be free to create sufficient number of supernumerary posts of Head Constable in the year 2013-2014, to grant promotion to the writ petitioners as well, without compelling them to again appear in the qualifying examination for promotion.

11. Interim Application No.2/2025 for vacation of the interim stay order dated 19.04.2023, as also stay application, are hereby disposed of.

12. Let the writ petition be listed before the Court on 20.08.2025. In the meanwhile, parties may complete their pleadings so that matter may be heard finally on merits.

(SUDESH BANSAL),J