

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.19835 OF 2017

KULBIR KAUR

..Appellant

VERSUS

STATE OF HARYANA & ORS.

Respondents

O R D E R

1. For the post of recruitment of Assistant Sub Inspectors, upto the post of Inspectors, a separate cadre was created of male and female in the State of Haryana. This separate cadre was sought to be merged in a common cadre on 09.07.1993.

2. The advertisement, in respect of which the appellant was recruited, was issued on 07.12.1992 before the merger of the cadre, seeking to recruit 100 persons including two women. The recommendation for appointment was made by the SSB Board Haryana on 31.12.1993 while the appointment letter was issued to the appellant on 21.01.1994 for the Rohtak Range stated to be based on a common cadre.

3. Intervening development was a challenge laid to this merger of cadre by women police officers who had been promoted under the separate cadres. The effect of the joint cadre

would have been that they would have been reverted back and de-confirmed and the male officers would have been promoted. This was sought to be challenged by the women officers and they succeeded in their endeavour in Civil Writ Petition No. 15640 of 1994 where the Division Bench opined that there was no illegality in the process of creation of the separate cadre and further that even if the joint cadre was created, it would operate only prospectively and the petitioners-therein who had been promoted would not be affected.

4. The police authorities in their wisdom issued an office order dated 11.04.1996 withdrawing the earlier office memorandum dated 09.07.1993.

It was observed as under:-

"No. 10161-65/B-3 dated 11.04.1996.

Subject:- B-1 test for Lady Constables.

Memo.

Please refer to this office memo No. 14401-30/B-3 dated 09.07.1993, on the subject noted above.

2. In view of the judgment of Hon'ble High Court of Punjab & Haryana passed in CWP No. 15640 of 1994 - Iqbal Kaur SI and other V/s State of Haryana and others on 14.08.1995, the instructions issued vide this office memo under reference are hereby withdrawn. There shall be a separate cadre of Lady Police and lady police officials recruited against the post of lady police officials shall get their promotion against the post sanctioned for lady police officials and

they shall have no right of promotion against the posts sanctioned for male police officials. These instructions shall come into force with immediate effect.”

5. The result of the aforesaid order was that once again the separate cadre came into existence.

6. The grievance of the appellant was and is that since the appointment letter was issued *qua* the appellant and one other person Sunita Rani prior to the aforesaid judgment at the time when the joint cadre was formed, they should be treated as part of the joint cadre and thus persons who were lower in the merit list in that recruitment cannot be promoted to the post of Inspector over the appellant by reason of bifurcation of cadre into men and women.

7. We may note for record that the present appeal was tagged with the case of Sunita Rani which was however, dismissed, on 29.04.2016 but the appellant survived to fight another day. Subsequently, the leave was granted in the present appeal on 24.11.2017.

8. Another development which took place after the pronouncement of the judgment by the High Court was that on a representation of the appellant, an order was passed by the then Director General of Police, Haryana on 09.09.2004 finding

merit in the plea of the appellant and seeking to give the benefit of seniority to the appellant on the basis of her original merit despite the separation of the cadre of male and female.

9. Thus an order was issued on 15.04.2005 to that effect but that order was withdrawn subsequently after issuance of a show cause notice on 21.10.2005. It is thereafter that the appellant had filed the Writ Petition which was dismissed by the impugned order dated 10.04.2008.

10. We have heard learned senior counsel for the appellant and learned counsel for the respondent. We do have some sympathy for the appellant but then it is not always possible to translate sympathy into a relief in the absence of clear legal rights.

11. It is no doubt true that in the recruitment process in pursuance to the advertisement dated 07.12.1992, the appellant obtain position of merit at serial no. 6. This recruitment process was however at a time when separate cadre were in operation. The joint cadre was created post examination but prior to the issuance of the appointment letter. Thus the appointment letter was issued in conformity with the then prevalent norms of a joint cadre. The affected

women cadre in pursuance to this order of joint cadre dated 09.07.1993 succeeded in the Writ Petition filed by them.

12. More than that the Director General issued an order dated 11.04.1996 really in two parts. The first part related to the effect of the judgment but in the second part the creation of the joint cadre itself was withdrawn and cancelled. It is difficult for us to accept the proposition advanced by learned senior counsel for the appellant which would imply that there would be a separate cadre till 09.07.1993, a joint cadre thereafter till 11.04.1996 and thereafter again a separate cadre.

13. This would result in if we may say a cadre chaos. No doubt, as submitted by the learned senior counsel for the appellant, there appear to be only two women officers recruited in pursuance to the advertisement dated 07.12.1992 but that may not make a difference on the principle of law which would be applicable. Merger and separation of a cadre are a part of the exigency of service which arises and though in the present case it may have worked to adversely effect the further promotion of the appellant, it assisted other women officers in maintaining their seniority as per the separate cadre.

14. We are thus unable to persuade ourselves to give any

relief to the appellant. We may however observe that keeping in mind the peculiar facts and circumstances of the case and looking to the fact that the separation of cadre in the case of these two persons seem to be working against their interest despite being women officers and higher in merit, if the respondents find in their wisdom that there can be some benefit extended to the appellant, or Sunita Rani for that matter, such a course of action can be explored by the respondents.

15. The appeal is dismissed leaving parties to bear their own costs with aforesaid observations.

....., J.
[SANJAY KISHAN KAUL]

....., J.
[HEMANT GUPTA]

New Delhi.
April 4, 2019.

ITEM NO.112

COURT NO.12

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.19835 of 2017

KULBIR KAUR

Appellant(s)

VERSUS

STATE OF HARYANA & ORS.

Respondent(s)

IA 28379/2019 - Intervention/Impleadement.

Date : 04-04-2019 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Mr. P.S. Patwalia, Sr. Adv.
Mr. Jagjit Singh Chhabra, AOR
Mr. Saksham Maheshwari, Adv.
Mrs. Natasha Dalmia, Adv.

For Respondent(s) Mr. Devender Kumar Saini, AAG
Mr. Shekhar Raj Sharma, Adv.
Dr. Monika Gusain, Adv.

Mr. Kamal Mohan Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Application for impleadment is dismissed.

The appeal is dismissed in terms of the signed order.

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

(POOJA ARORA)
COURT MASTER

(ANITA RANI AHUJA)
COURT MASTER

(Signed order is placed on the file)