

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Date of Pronouncement: 23.02.2017

1. CWP No. 23475 of 2015

Jarnail Singh

...Petitioner

Versus

State of Punjab & Others

...Respondents

2. CWP No. 23527 of 2015

Charanjit Singh

...Petitioner

Versus

State of Punjab & Others

...Respondents

3. CWP No. 23494 of 2015

Balwinder Singh

...Petitioner

Versus

State of Punjab & Others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

**Present:- Mr. J. S. Khiva, Advocate
for the petitioner(s).**

**Mr. Avinit Awasthi, AAG, Punjab
in CWP No. 23475 of 2015.**

**Mr. L. S. Virk, AAG, Punjab
in CWPs No. 23527 and 23494 of 2015.**

JAISHREE THAKUR, J.

This common order shall dispose of above noted three writ petitions as the issues involved therein are identical in nature. However, for the sake of convenience, the facts are being extracted from CWP No. 23475 of 2015.

2. The instant writ petitions have been filed seeking reinstatement as Punjab Home Guards and for quashing of the impugned order dated 04.08.2015, whereby, the claim of the petitioners has been rejected.

3. The petitioner joined as Punjab Home Guard on 05.09.1990 and was issued an Identity Card No. 21476. The petitioner lost his identity card and lodged the DDR No. 5 dated 16.08.1992 to that effect (***Annexure P-1***). By order dated 01.01.1994, the petitioner was discharged from his services on the ground that he absented himself from duty on 01.11.1993 while serving at Police Station Budhlada, District Mansa. Thereafter, the petitioner approached the respondents on several occasions asking that he be allowed to join duty along with other Home Guards but no heed was paid to the request of the petitioner. In the year 2013, other Punjab Home Guard volunteers, who had been discharged along with the petitioner on the same ground, were reinstated by the respondents but the case of the petitioner was not considered. Thereafter, the petitioner sought information under the RTI Act from the respondents as to on which date the petitioner joined service and on which date he was discharged therefrom. Information was also sought as to why the petitioner was not reinstated in service along with the other Home Guards who had also been discharged on similar grounds. Aggrieved against not being given similar treatment as other Home Guards, who were re-employed in service, the petitioner filed ***CWP No. 5326 of 2015*** which was disposed of by directing the respondents to consider the claim of the petitioner within a period of three months from the date of receipt of the certified copy of the order. Pursuant thereto, the impugned order dated 04.08.2015 has been passed rejecting the claim of the petitioner on the ground that there is no provision in the government instructions to

reinstate the Home Guard who was discharged from service.

4. Counsel for the petitioner urges that there has been active discrimination that has been meted out to the petitioner. He brings to the notice of the Court several instances of similarly situated persons, who were working with the Punjab Home Guards, being reinstated/recalled by the respondent No. 2.

5. Per contra, learned counsel appearing on behalf of the respondents submits that the petitioner herein has absented himself from duty without any leave or information on his own. Moreover, there is no provision for reinstating a person once he has been discharged.

6. I have heard learned counsel for the parties and gone through the record of the case with the assistance of the counsel.

7. The argument that has been raised by the counsel for the respondents that there is no provision for recalling a person on duty is belied by **Annexure P-7** itself wherein ten persons are recalled for duty by an order dated 07.03.2013. Similar is the order that has been passed which is Annexure P-8, wherein, approval has been given by the Punjab Government, vide memo No. 12/21/2012-1/SR/60068/1 dated 04.06.2013, for re-enrolling 349 Home Guards. The reply, that has been filed, does not inspire much confidence. A reading of **Annexure P-7** itself shows the list of different Home Guards, who were terminated from duty, being recalled. Therefore, the argument raised that there is no provision for recalling is nullified by the documentary evidence.

8. As far as the argument raised that the case of the petitioner cannot be considered on account of the fact that he remained absent from duty is again rejected. As put forward in the preliminary objection, certain

persons were recalled on duty after considering the reasons for their absence. Therefore, it is clear that the department in its wisdom chooses to recall in service as per its own whims and fancies. The Constitution of India in its very preamble ensures equality in treatment to all. Article 14 prohibits any action which would tantamount to denial of equality and to safeguard the rights, the Court must step in and ensure that all are treated equally and are entitled to equal protection under the law within the territory of India.

9. Parity between similarly situated persons has to be maintained and the action of arbitrarily picking a person for recalling to duty while ignoring others is to be deprecated. As far back as 1984, the Supreme Court in ***Sengara Singh and others vs. State of Punjab and others, (1983) 4 SCC 225*** was faced with a situation where 1100 police personnel were dismissed from service on account of their going on a mass strike. However, 1000 of them were reinstated later on. Against the discrimination that was meted out, the employees, who were not reinstated, came to file a writ petition which was not entertained by the High Court. The Apex Court while disposing of the writ petition had sought clarification as to the reasons for discrimination which did not come forth. Thereafter the Apex Court while dealing with the issue held as under:

“9. What then should be done ? The appellants have been accused of participating in a procession taken out by the members of the Police Force for ventilating their grievances about their service conditions. May be that still having not reached the stage of tolerance for formation of associations amongst police personnel, the demonstrators may be looked upon with disfavour. But approaching the matter from this angle, all the 1100 dismissed members of the Police Force were guilty of same misconduct namely

indiscipline to the same extent and degree as the present appellants. Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or over looked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and, therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action.

10. xxxx xxxx xxxx xxxx

11. Is there any doubt about the relief sought by the appellants ? They sought reinstatement on the ground of equality of treatment with persons similarly situated. The prayer for reconsideration of the case was a step to be taken for reinstatement. We, therefore, reject the contention of Mr. Sharma, learned counsel that we should remit the case to the High Court.

12. Logically the appellants must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. Accordingly, the appellants would be entitled to reinstatement in service. Therefore, both the appeals succeed and are allowed and the order of the High Court dismissing the writ petitions is quashed and set aside. The State of Punjab is directed to reinstate the appellants subject to the same conditions set out at Annexure P-II subject to which the other dismissed

personnel of the Police Force were reinstated. They should be reinstated as directed herein forthwith from today. Their services should be treated as continuous and the period between the date of the dismissal and the reinstatement shall be treated as leave if available and admissible or leave without pay if leave of any kind is not available. To the extent they are treated as on leave they should be paid leave salary. Respondents shall pay cost of the appeals in both appeals quantified at Rupees 2500/- in each case.”

(emphasis supplied)

10. The law is well settled in this regard that similarly situated persons are entitled to similar relief and in case the same is not followed then there should be valid and cogent reasons for treating them differently.

11. Here, as per the record which is available with the Court, it is clear that similarly situated persons have been called back on duty as Home Guards despite the fact that they were discharged on account of absence. The petitioners herein are entitled to be treated in a similar fashion.

12. Hence, the above noted writ petitions are allowed and the impugned order is quashed with a direction that the petitioners would be entitled to be recalled for service as Home Guards in case they fulfill the eligibility criteria.

February 23, 2017
Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No