

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.2168 of 2016 (O&M) in
CWP No.17052 of 2014
Date of Decision : 19.01.2018.

State of Haryana and others.

... Appellants

Versus

Jagbir Singh.

.... Respondent

**CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA**

Present: Ms. Tanisha Peshawaria, DAG, Haryana.
Mr. Manoj Kakkar, Advocate for the respondent.

B.S.WALIA, J.

1. LPA Nos.2168, 2436 and 2151 of 2016, have been filed against common order dated 18.11.2015 deciding CWP Nos.17052, 17054 and 20220 of 2014 on the ground that similar issues of fact and law were involved. However, as would be evident from the succeeding paragraphs of this judgment, the position is otherwise. Therefore we propose to deal with the facts of each case. LPA No. 2168 of 2016 is accompanied with an application seeking condonation of 153 days delay in filing and 50 days delay in refilling. LPA No. 2436 of 2016 is accompanied with an application seeking condonation of 292 days delay in filing and 30 days delay in refilling the LPA while LPA No. 2151 of 2016 is accompanied with an application seeking condonation of 226 days delay in filing the LPA.

2. CWP Nos. 17052 of 2014, 17054 of 2014 & 20220 of 2014 were disposed of by holding the respective respondent/writ petitioner entitled for adjustment on the post of Computer Instructor, Office Secretaryship Instructor (Hindi) and Office Secretaryship Instructor (Hindi) (OSS) in terms of order dated 21.01.2013, passed by Hon'ble the Supreme Court in SLP No.9230-31 of 2009, SLP No.16389-16415 of 2009, SLP No.18074 and 18094 of 2009 along with all consequential benefits as had been allowed to other similarly situated employees adjusted as per the orders of Hon'ble the Supreme Court.

3. **LPA No.2168 of 2016-State of Haryana & ors vs. Jagbir Singh, LPA No. 2436 of 2016- State of Haryana and another vs. Dilbag Singh and LPA No. 2151 of 2016- State of Haryana and another vs. Sandeep Kumar.**

Impugned order has been challenged inter alia on the ground that the facts had been taken only from CWP No. 17052 of 2014 whereas facts of CWP Nos.17052, 17054 and 20220 of 2014 of 2014 were totally different, that services of the respondent/writ petitioner in CWP Nos.17054 and 20220 of 2014 had been terminated on account of being surplus in accordance with orders dated 24.01.2008 in CWP No. 5289/2007, while service of writ petitioner in CWP No.17052 had been dispensed with on 08.04.2011 due to non-satisfactory work and performance, Contempt Court vide its order dated 18.01.2012 in COCP No.3135 of 2011 had prima facie found that the termination of respondent-Jagbir Singh was in terms of order dated 24.01.2008 in CWP No.5289 of 2007 and while absolving the respondents therein from contempt proceedings had held that the

respondent/writ petitioner could not be deprived of liberty to compete afresh as and when posts were advertised, name of the respondent/writ petitioners did not figure amongst the list of contractual staff fulfilling the requisite qualifications as per rules and as per stand before the Supreme Court Government was agreed to accommodate only eligible employees who were in service, that the writ petition had been allowed by relying upon documents filed with CM No.13881-CWP-2015 but no orders had been passed in respect of said CM, thereby depriving the appellant from controverting the facts stated therein. In the light of submissions made, counsel for the appellant prays for setting aside of the impugned order and for dismissal of the writ petition.

4. We have considered the submissions of learned counsel for the parties and are of the view that for the reasons recorded hereunder, LPA No. 2168 of 2016 is bereft of merit and is liable to be dismissed while LPA No. 2436 of 2016 and LPA No. 2151 of 2016 are liable to be allowed.

5. The petitioner's in CWP No. 17052, 17054 and 20220 of 2014 respectively were appointed as Computer Instructor, Office Secretaryship, Instructor (Hindi) and Office Secretaryship Instructor (Hindi) (OSS) on contract basis in November 2006. CWP No.5460 of 2007, CWP No. 5414 of 2007 along with other connected writ petitions including CWP No.5289 of 2007, titled as 'Ashok Kumar and others vs. State of Haryana and others' were filed inter alia by respondent Jagbir Singh and Dilbag Singh and the same were disposed of by a Division Bench of this Court vide order dated 24.01.2008 by allowing the aforementioned two respondents and other similarly situated contractual employee/petitioners therein to continue

in service as per the terms and conditions in the agreement executed between the parties till regularly selected candidates were appointed with liberty to the authorities to take action as per rules in case the work and conduct of an employee was not satisfactory.

6. SLP was filed against the aforementioned decision in which eventually pursuant to the observations of Hon'ble the Supreme Court, an affidavit was filed on behalf of the State of Haryana, leading to Hon'ble the Supreme Court passing order dated 21.01.2013 on humanitarian ground's directing adjustment of the respondent's before it (which included the respondents herein), if eligible and fulfilling the requisite qualifications. Although, the respondents herein were respondents before Hon'ble the Supreme Court, yet they were not given the benefit of adjustment on the ground that they were not in service with respondent Jagbir Singh having been denied adjustment on the ground that his services had been terminated vide order dated 08.04.2011, therefore, on the date of passing of order by Hon'ble the Supreme Court i.e. 21.01.2013, they were not in service while services of respondent Dilbag Singh and Sandeep Kumar had been terminated on 17.09.2008.

7. Counsel for the respondent Jagbir Singh contended that the list Annexure P/12, includes respondent-Jagbir Singh's name besides he fulfilled eligibility conditions for appointment and the same was evident from order dated 24.01.2008 in CWP No.5460 of 2007 and connected CWP No.5289 of 2006 wherein while taking note, inter alia of respondent Jagbir Singh being qualified and of his having been appointed in November, 2007 by a duly constituted selection committee, the writ

petitions were disposed of by permitting the writ petitioners therein (including respondent Jagbir Singh) to continue in service till the joining of candidates selected on regular basis.

8. Learned counsel further contended that services of the writ petitioner i.e. Jagbir Singh were terminated on 08.04.2011 on account of unsatisfactory work but said order of termination was set aside vide order dated 04.10.2011 in CWP No.6620/2011 on account of the same being violative of the principles of natural justice and though liberty was granted to the respondents therein to proceed against respondent Jagbir Singh in accordance with law, it was the admitted case between the parties that the liberty granted was not availed of. Counsel further contended that the order of Hon'ble the Supreme Court did not envisage the requirement of the respondent before it being in service in order to enable such employees to be made regular and the only requirement was of fulfilling requisite conditions of qualifications. Reference in this connection was made by counsel to the decision of a Single Bench of this Court in CWP No.8065 of 2012- 'Kismat and others vs. State of Haryana and others decided on 01.04.2014' wherein the learned single judge held that the stand of the State of Haryana that only eligible persons in service were to be made regular was not borne out from the record. Accordingly, it was held that non consideration of the claim of the petitioner therein for adjustment in terms of affidavit dated 13.07.2011 filed on behalf of the State of Haryana before Hon'ble the Supreme Court only on the ground that services of such respondents before the Supreme Court had been terminated after the disposal of the writ petition preferred by such employee was not

sustainable and accordingly order of termination of petitioners therein dated 12.05.2010 were quashed and the State was directed to consider the claim of such employees for adjustment in the light of orders of Hon'ble the Supreme Court dated 21.01.2013.

9. As regards respondent Dilbag Singh and Sandeep Kumar in LPA No. 2436 of 2016 i.e. State of Haryana and another vs. Dilbag Singh and LPA No. 2151 of 2016 i.e. State of Haryana and another vs. Sandeep Kumar it needs mention here that although projected at the time of hearing by Counsel for the respondent that all connected LPA's were similar, yet perusal of the record reveals otherwise. It also needs noticing that Hon'ble the Supreme Court was pleased to direct adjustment of the respondents before it who were eligible and fulfilled requisite qualifications in view of their having put in service of 4 to 5 years. Respondents in all LPA's were appointed on contract basis in November 2006 for a period of six months. In fact it is not the stand of the appellants herein that respondent-Jagbir Singh does not fulfill the eligibility conditions. In fact even in the fourth column at page No.175, it has been mentioned that respondent-Jagbir Singh was eligible. Services of respondent Jagbir Singh were terminated on account of unsatisfactory work vide order dated 08.04.2011 whereas service of respondent Dilbag Singh and Sandeep Kumar were terminated on 17.09.2008 on ground of being surplus. While order of termination of service was challenged by respondent Jagbir Singh and was quashed by a single bench of this Court in CWP No. 6620 of 2011 vide order dated 04.10.2011 on the ground of the same being in violation of the principles of natural Justice, on the other hand, neither respondent Dilbag Singh nor

respondent Sandeep Kumar challenged their order of termination dated 17.09.2008. Respondent Jagbir Singh continued making efforts for being taken back in service in terms of orders dated 04.10.2011 in CWP No. 6620/2011 though he was not successful. It is in the aforementioned circumstances that respondent Jagbir Singh invoked the jurisdiction of the writ court by way of CWP No. 17052 of 2014.

10. However, the other two respondents maintained a stoic silence. It also needs mention that pursuant to the order of Hon'ble the Supreme Court dated 21.01.2013 action was taken by the appellants to adjust employees fulfilling eligibility condition but restricting the benefit vide order dated 30.09.2013 to those employees who were in service as on the date of order by Hon'ble the Supreme Court.

11. Thus it is apparent that the case of the respondent in LPA No. 2436 of 2016 i.e. State of Haryana and others Versus Dilbag Singh and LPA No. 2151 of 2016 i.e. State of Haryana and Others Versus Sandeep Kumar is on a totally different footing and by no stretch of imagination can respondent Dilbag Singh and Sandeep Kumar claim parity with respondent Jagbir Singh or for that matter the other respondents before Hon'ble the Supreme Court. Neither had they put in 4 – 5 years of service as was taken note of by Hon'ble the Supreme Court for directing the adjustment of such employees nor did they challenge their order of termination dated 17.09.2008 and filed CWP No. 17054 of 2014 and CWP No. 20220 of 2014 on 21st August 2014 and 25th September 2014 respectively seeking adjustment in terms of orders of Hon'ble Supreme Court dated 21.01.2013 without challenging order of termination dated 17.09.2008. In the light of

LPA No.2168 of 2016 (O&M)

the position as noted above, LPA No. 2168 of 2016 is dismissed while LPA No. 2436 of 2016 and LPA No. 2151 of 2016 are allowed. Impugned judgment in CWP Nos. 17054 of 2014 and CWP No. 20220 of 2014 are set aside and the aforesaid writ petitions are dismissed. However, for the reasons as are mentioned in the applications, delay in filing and refilling in each of the LPA's is condoned.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

January 19, 2018
rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No