

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**LPA No. 894 of 2018 (O&M)**

Date of Decision: 09.07.2018

Punjab Urban Planning and Development Authority, Mohali through its  
Divisional Engineer (C-II) and another

.....Appellants

versus

Karamjit Singh and another

.....Respondents

**CORAM:**     HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE  
                 HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

**Present :**     Mr. Harit Sharma, Advocate, for the appellants.

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**KRISHNA MURARI, C.J.(oral)**

CM No. 2438-LPA of 2018

Heard. For the reasons mentioned in the application, delay of  
53 days in filing the appeal is condoned. Application stands disposed of.

**LPA No. 894 of 2018 (O&M)**

This intra-court appeal filed under Clause X of the Letters Patent is directed against the judgment and order of the learned Single Judge dated 07.02.2018 setting aside the order of termination of the petitioner (respondent No.1 herein) as also the award of the Labour Court rejecting the reference and directing to treat the petitioner under suspension and to calculate and disburse the subsistence allowance.

2.               Facts giving rise to the dispute can be summarized as under:-

Appellant-petitioner was appointed on the post of Chowkidar on daily wage basis w.e.f. 01.12.1995. The respondents framed a scheme of regularization for daily wage employees. The name of the petitioner-respondent No.1 alongwith other similarly situated employees was

considered and his services were regularized w.e.f. 26.12.2001. Certain persons challenged the process of regularization by filing Civil Writ Petition No. 15843 of 2002 wherein petitioner-respondent No.1 was also arrayed as a respondent alleging irregularities in the process of regularizations. While implementing the orders passed by this Court in the aforesaid writ petition, the matter of regularization of respondent No.1 was re-examined and it was found that his name was wrongly included in the list and the inclusion of his name was a result of connivance with some of the officials of the appellant. Accordingly vide order dated 22.05.2003 the services of respondent No.1 were terminated on the ground that the order of regularization was obtained in collusion with the erring officials. Respondent No.1 approached this Court by filing Civil Writ Petition No. 8354 of 2003 wherein an interim stay was granted on 27.05.2003. However, subsequently the matter was relegated to be considered by the Labour Court vide judgment and order dated 23.10.2003. Accordingly, a reference was made. However, the Labour Court dismissed the reference holding that there is no illegality in the order of termination dated 22.05.2003.

3. The award passed by the Labour Court as well as the termination order was challenged by respondent No.1 by filing the petition on the ground that his services were terminated without any charge-sheet or holding any disciplinary enquiry.

4. It is pertinent to point out at this stage that this factual position was not disputed by the appellants before the learned Single Judge. The case set up by the appellants was that a show cause notice was issued and the order terminating the services was passed after obtaining explanation from respondent No.1 and thus there was no violation of principles of natural

justice. Admittedly the services of respondent No.1 was regularized vide order dated 26.12.2001 and the same were governed by the Punjab Urban Planning & Development Authority Employees (Punishment and Appeal) Regulations, 1997 (hereinafter referred to as 'the Regulations of 1997') which contains a provision for initiation of regular departmental enquiry for the purpose of dismissal or termination. Learned Single Judge finding that the services of the petitioner-respondent No.1 stood regularized vide order dated 26.12.2001 which gave him a status of a permanent employee and thus without following the procedure prescribed by Regulations-1997 and without holding a regular disciplinary enquiry as per the prescribed procedure, the termination of services by issuing a show cause notice and calling for explanation was against the service regulations and thus not sustainable. Accordingly, the learned Single Judge held the termination order to be bad in law being in the teeth of service regulations and the Labour Court also committed a manifest error in law in rejecting the reference ignoring this aspect of the matter.

5. Learned Single Judge further held that respondent No.1 would be deemed to be under suspension since his termination has been set aside on technical grounds and in view of the law laid down by the Hon'ble Apex Court in ***Managing Director, ECIL, Hyderabad v. B.Kanunakar, 1993(4) SCC, 727***, denovo enquiry is to be held and accordingly directed the appellants to treat the petitioner under suspension w.e.f. 22.05.2003 and to calculate and disburse the subsistence allowance.

6. Learned counsel for the appellant vehemently contends that since it was a case of fraud which vitiates everything, as such, no disciplinary enquiry was required to be conducted. To substantiate the fact

that regularization was obtained by fraud, learned counsel for the appellant submits that disciplinary proceedings were initiated against the officials who recommended the petitioner's name for regularization and they have been punished in the departmental enquiry, as such, it stands established that regularization of petitioner (respondent No.1 herein) was a result of fraud and collusion. Admittedly, respondent No.1 was not associated with the said enquiry which was held against the officials of the appellants nor was he given any opportunity to defend himself in the disciplinary proceedings against the said officers nor any regular disciplinary proceedings were initiated against him wherein he could have defended himself. Merely issuance of show cause notice calling for an explanation from an employee who attained the status of a regular employee is not only dehors the regulations governing the service conditions but the procedure adopted also does not satisfy the test of natural justice.

7. Thus, even if certain officials were found guilty in a disciplinary enquiry held against them, the same cannot constitute a basis to hold the petitioner guilty without any opportunity to defend himself.

8. In view of the above facts and discussion, we do not find any flaw in the conclusion arrived at by the learned Single Judge that the termination of respondent No.1 was vitiated being dehors the service regulations and in violation of the principles of natural justice.

9. In so far as further direction to treat respondent No.1 under suspension and to pay subsistence allowance is concerned, the same is in line with the legal proposition settled by the pronouncement of the Hon'ble Apex Court in case ***Managing Director, ECIL, Hyderabad v. B.Kanunakar*** (supra) and catena of decisions that in case the termination or dismissal is set

aside on some technical grounds, the proceedings have to be started denovo from that stage and the period is to be treated under suspension. Thus on this count also, there is no infirmity in the judgment of the learned Single Judge.

10. As a consequence, the appeal stands dismissed in limini.

(KRISHNA MURARI)  
CHIEF JUSTICE

(ARUN PALLI)  
JUDGE

09.07.2018  
ravinder

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|---------------------------|---------|
| Whether speaking/reasoned | √Yes/No |
| Whether reportable        | √Yes/No |