

CWP-10307-2002 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10307-2002 (O&M)
Date of Decision: April 01, 2019

Darshan Lal

... Petitioner

vs.

State of Haryana and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms.Abha Rathore, Advocate
for the petitioner.

Mr. Sunil Kumar Vashisth, Deputy Advocate General,
Haryana.

Mr. Vishal Gupta, Advocate
for respondent No.2.

ARUN MONGA, J (ORAL)

The present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of *certiorari* to quash the termination order dated 14.06.2002 (Annexure P4), whereby, the services of the petitioner were terminated, after he had rendered 11 years of unblemished service.

2. Succinctly, the factual backdrop is that the petitioner was appointed on 16.08.1991 as Assistant Cook-cum-Tandooria and was taken as a Trainee, initially for a period of two years. However, vide letter dated 14.06.2002 (Annexure P4), the services of the petitioner were terminated, on the ground that the qualifying marks obtained by him, did not entitle him for appointment, and consequently, he was relieved from service.

3. Per contra, the stand taken by the respondent(s) in the written statement is that though the petitioner belongs to SC(B) category and has

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got qualifying marks, none of the 4 vacancies were meant for SC(B) category. The qualifying marks for the general category were 70 and as such, the petitioner was not considered for appointment. It is further submitted that as per the roster for reservation, the vacancies at roster point Nos. 96 & 97 would go to general category, while the vacancy at roster point No. 98 was for BC(B) category. The vacancy at roster point No. 98 though, it was for BC(B) category but due to non-availability of BC(B) category candidate, the general category candidate was offered the appointment. It is further submitted that alongwith the petitioner, two other candidates belonging to SC(B) category, namely Rahubir Singh son of Dharam Pala and Balbir Singh son of Sh. Baru Ram also participated in the selection process but they were also not offered appointment because no post meant for SC(B) category was vacant, as per roster.

4. I have gone through the rival pleadings and heard the learned counsel appearing for the petitioner and learned counsel appearing for the contesting respondent No.2-Haryana Tourism Corporation.

5. Learned counsel for the petitioner has drawn my attention to order/judgment passed in an earlier writ petition, instituted by the petitioner(s) alongwith other similarly situated persons, titled as **Dharambir and others vs. State of Haryana through Commissioner and Secretary, Department of Tourism and another**, bearing CWP-18474-1996, decided on 01.06.1999 (Annexure P3). The Court had directed as follows:-

“In the result, the writ petition is allowed and a direction issued to the corporation to absorb petitioners f1 to 51 against the advertised posts if they are eligible for the same. This direction

will not apply in the case of petitioner 21 who have since withdrawn from the case. The corporation will be at liberty to fill up the remaining vacant posts from the open market as advertised. No costs.”

6. Against the above directions issued by this Court, the respondent-Corporation went in an intra Court Division Bench appeal bearing LPA No. 866 of 1999, and the same was disposed of with the following observations:-

“Without prejudice to the stand of the respondents on facts alleged in the appeal, by consent of parties, the impugned judgment dated 1.6.1999 is modified to the extent that the writ petition would stand allowed and a direction issued to the Corporation to consider for absorption petitioners No.1 to 51 against the advertised posts, if they are eligible for the same.

In the above terms, the appeal is disposed of.”

7. Learned counsel for the petitioner submits that pursuant to the above direction, the petitioner appeared for interview and even though he was found suitable, his services were illegally terminated. She further submits that not only the stand taken in the impugned order is factually incorrect, even otherwise, the case of the petitioner is squarely covered by a Full Bench Judgment rendered by this Court in case titled as **Virender Singh vs. Haryana Tourism Corporation Ltd.** reported as 2005 (2) SCT, 837, wherein, it has been clearly held that once it is established that the services are governed by Industrial Disputes Act, 1947, then, any retrenchment, in violation of Section 25-F of the Act, *ibid*, cannot be sustained and as a necessary consequence, the services of the retrenched

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employee are to be restored with consequential benefits. She further submits that it is not the case of the respondent(s) that the petitioner was hired under the Apprentices Act, 1961 and, therefore, without dwelling any deeper into the matter, petition has to be allowed.

8. Per contra, learned counsel for respondent No.2-Corporation submits that it cannot be disputed that the services of the petitioner are/were governed by 1947 Act, as he was not employed under the 1961 Act, and therefore, concedes that the Full Bench judgment is applicable in the present case.

9. Furthermore, I am in agreement with the arguments of learned counsel for the petitioner that the case of the petitioner is fully covered by the subsequent judgments rendered by this Court in CWP-4422-1998, titled as **Mahender Singh and others vs. State of Haryana and others**, followed by a Division Bench judgment of this Court rendered in LPA No. 156 of 2018, titled as '**Haryana Tourism Corporation vs. Murali Dhar and others**', the relevant paragraphs of the respective judgments are extracted herein below:-

CWP-4422-1998

“The petitioners not having been relieved at even the end of two and half years, and having continued as Trainee Waiters till November 1997, when they were relieved vide the impugned orders, then it has to be inferred by this Court, without doubt, that they actually successfully completed their training at the end of two years itself, with no extension letter given to them due to unsatisfactory completion and after the end of two years, they were actually no longer apprentices, even if they are deemed to have been appointed under the terms of the

Apprentices Act, 1961.

Therefore, as was held by the Full Bench in Virender Singhs' case (supra), thereafter, the petitioners continued to be workmen with the respondent Corporation in terms of Section 2(s) of the Industrial Disputes Act, 1947.

Hence, they could not have been relieved from work without compliance of Section 25-F of the aforesaid Act.”

LPA No. 156 of 2018

“The learned Single Judge, while granting relief, had referred to a Full Bench judgment of this Court in Virender Singh v. Haryana Tourism Corporation Ltd., 2005(2) S.C.T. 837, where under identical circumstances, the person, who was appointed as Trainee Waiter, was granted relief opining that there was no mention of the provisions of the Apprentice Act, 1961 in the appointment letter as Job Trainee or Practical Trainee Waiter and further even the apprentices are covered under the provisions of the Industrial Disputes Act, 1947 (for short, 'the 1947 Act'). The petitioner before this Court in Full Bench had completed more than 240 days, hence, his termination was found to be in violation of the 1947 Act. The case in hand is also similar. Therefore, we do not find any error in the order passed by the learned Single Judge granting continuity of service. However, as fairly stated by learned counsel for respondents No. 1 and 2, they will forego the back wages granted.

Accordingly, the order passed by the learned Single Judge is modified only to the extent that respondents No. 1 and 2 shall be reinstated back in service with continuity, however, without any back wages.

The appeal stands disposed of accordingly.”

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10. Perusal of abovesaid judgments, *ibid*, shows that the case of the petitioner is better than the employees in the said cases as they had rendered only 04 years of service while the petitioner has rendered 11 years of service, and, therefore, the petition is to be allowed in terms of the benefits given vide the said judgments to the similarly situated employees.

11. I am in full agreement with the view taken by the Co-ordinate Bench of this Court in Mahender Singh's case, *supra*. Accordingly, the present petition is allowed. The impugned order 14.06.2002 (Annexure P4) is set aside with a direction to the respondents to reinstate the petitioner with continuity of service.

12. It is, however, made clear that the petitioner shall be entitled to 40% of the back wages with continuity of service w.e.f. the date his services were terminated.

13. The writ petition is allowed in above-said terms.

April 01, 2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No