

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 11331 OF 2019
DATE OF DECISION : 26.11.2019

Harpreet Singh and others

...Petitioners

versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Vijay Pal, Advocate,
for the petitioners.

Mr. P. S. Bajwa, Addl. AG, Punjab.

ARUN MONGA, J. (ORAL)

1. It is a case where for no fault of theirs, the petitioners have been forced to knock the doors of this Court challenging the order dated 17.01.2019(Annexure P-10) for termination of their services.

2. The background in which the *lis* has arisen is to be noticed first. In the year 2013-14 respondents issued an advertisement for filling up 30 posts of Junior Draftsman. Petitioners successfully participated in selection process under General Category and were issued appointment letters on 05.07.2014 and 19.09.2014(Annexure P-3 Colly.).

3. Trouble began when one Avtar Singh, who also participated in the selection process under Backward Class Category(BC Category) against the two posts reserved for the BC category and was placed at Sr.No.1 of the waiting list, filed CWP No. 324 of 2015 staking his claim on the reserved category post. He contended that the two selected candidates of BC

Category had secured higher marks than the last selected candidates in general category. Said BC candidates were thus entitled to be considered under the general category, which was not done by the respondents.

4. The respondents in response to the writ petition *ibid* admitted their inadvertence and issued appointment letter dated 15.12.2016 to Avtar Singh. However, as a bolt from blue, the respondents simultaneously issued show cause notices to the petitioners for dispensing with their services. The petitioners replied to the notices, leaving themselves at the mercy of respondents and prayed for adjustment against the vacant posts. Their requests did not find favour with the respondents. Ultimately, the respondents terminated the services of the petitioners vide impugned orders dated 17.01.2019 (Annexure P-10), leading to the filing of the instant petition.

5. In the return filed apropos instant writ petition, it is candidly stated that the candidates belonging to reserved category, though higher in merit were inadvertently placed in their respective reserved categories. Instead they ought to have been placed in the merit list of general category candidates, as per reservation policies dated 10.07.1995, 30.12.2004, 09.11.2009 and 11.09.2015(Annexure P-11 colly.). As a corrective measure, the reserved category candidates, being higher in merit to the present petitioners belonging to general category, were placed in merit list of general category. Resultantly, the petitioners who were lower in merit were thrown out of zone of consideration. They were issued show cause notices and after affording due opportunity of personal hearing to them, their services were rightly terminated. Hence, dismissal of writ petition has been sought.

6. I have heard learned counsel for the parties and have gone through the paper-book with their able assistance.

7. Concededly, the petitioners in original round of selection were found meritorious and appointed as Junior Draftsman in the general category. Position that emerges from record is that due to certain erroneous preparation of the merit list of the reserved category candidates, who ought to have been placed in general category since they obtained more marks than the last selected candidate in general category, the department had to re-calibrate the merit list of the reserved category candidates viz.a.viz the general category candidates which resulted in ouster of the petitioners from the general category after having rendered four years of service.

8. In view of the fact, as reflected from letter/ memo dated 10.01.2017 (Annexure P-13) issued by Executive Engineer of the department that 81 posts of Junior Draftsman were/are lying vacant, I am of the opinion that it would not be in the interest of justice to displace the petitioners from service in the general category owing to the re-drawing of the merit list of the reserved category candidates for no fault of the petitioners. Particularly, when the petitioners had already served for four years to the satisfaction of the department and nothing adverse has been pleaded qua their services.

9. Not only equity is loaded in favour of the petitioners but even otherwise, it is not the case of the department that the petitioners have got their appointment by way of any unfair means or forgery or having misrepresented the facts. The petitioners were duly selected and offered appointments by the department itself. After their having worked for four years, the said appointments were cancelled admittedly due to an error

committed by the department. I am not able to persuade myself as to why the petitioners should be made to suffer for the mistake of the department in the preparation of initial merit list.

10. My aforesaid view finds support from the case of **Harinder Pal Singh Vs. State of Punjab & Ors.** (CWP No. 18419 of 2013, decided on 03.11.2014), wherein in an identical situation my Senior Brother, Rajeev Narain Raina, J. speaking for this Court held as below:-

“xxx. But at the same time the petitioner cannot be denied his rightful due and place in filling the advertised vacancies in his category resulting from the process of shifting Varun Kumar (R&O) to the general category in accordance with law.

Denial of such rights to the petitioner as have been violated in the present case amount to a constitutional tort committed by public servants in the appointments’ process. Amends made by Court to undo the wrongdoing of the officers of the State would burden the State with the cost of one extra post beyond the advertised vacancies till the service career lasts. Wrongful action of Government functionaries will also result in breach of principles laid down in Hoshier Singh v. State of Haryana, AIR 1993 SC 2606: 1993 Supp (4) 377 where the Supreme Court declared for the first time that the Public Service Commission cannot recommend names in excess of the number of vacancies advertised or mentioned in the requisition. Any appointments in excess of the advertised number would be arbitrary as it would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts. If the said additional posts are advertised subsequently those who became eligible for appointment in the meanwhile would be entitled to apply for the same. This inflexible principle was evolved for the first time by the

Supreme Court in Hoshier Singh has been proliferated in a line of decisions that followed. However, the view was softened a little in Prem Singh v. Haryana State Electricity Board, (1996) 4 SCC 319 and chain of cases by observing at p. 331, para 25:-

"The State could deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment."

11. Harinder Pal Singh's case (supra) has also been relied upon by this Court in **Guneet Pal Singh Sodhi Vs. Punjab State Power Corporation Ltd. & Anr.** 2015(2) RSJ 57.

12. In view of the aforesaid discussion and the reasoning contained therein, the impugned order dated 17.01.2019 (Annexure P-10) vide which services of the petitioners have been terminated is set-aside with a direction to the competent authority/respondents that the petitioners shall be re-instated in service subject of course to the post of Junior Draftsman being available as on today. Provided, of course there is nothing adverse otherwise found against them for the period they rendered their services. It is also made clear that the petitioners on being appointed as per directions of this Court, shall not be entitled to receive any back wages for the period they were out of job but would be entitled to continuity of service. Needful

be done within two months of receipt of certified copy of this order.

13. Disposed in aforesaid terms.

(ARUN MONGA)
JUDGE

November 26, 2019
Jiten

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No