

CWP-22392-2016

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**273 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-22392-2016

Date of decision : 05.03.2019

Lakhwinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Ms. Maloo Chahal, DAG, Punjab.

JITENDRA CHAUHAN J. (ORAL)

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ of Certiorari for quashing the impugned order dated 18.11.2015 (Annexure P-2), passed by respondent No.3, whereby, the petitioner had been discharged from the post of Computer Operator.

It is contended that Panchayat Samiti, Dorangla, came into existence in the year 2004 and thereafter, various persons were appointed against different posts such as Computer Operator, Data Entry Operator, Clerk, Peon, Chaokidar, etc., who are still working in the Department. The petitioner was appointed as Computer Operator, however, under some political influence, she was not paid the salary and was not even allowed to mark her presence. Thereafter, the petitioner approached this Court by filing

CWP-22888-2015, for issuance of a direction to the authorities to allow her to mark presence in the attendance register and for release of her salary. During the pendency of the said petition, the salary of the petitioner was released and she was also allowed to mark presence. However, on account of the grudge being nursed by the respondent authorities, the petitioner was issued termination order dated 18.11.2015 (Annexure P-2). Thus, CWP-22888-2015 was dismissed as withdrawn with liberty to challenge the termination order vide order dated 04.08.2016. Hence, the instant petition.

It is submitted that on the complaint moved by Smt. Aruna Chaudhary, MLA, Block Dina Nagar, alleging irregularities committed in the appointments in question, enquiry was conducted and on the strength of enquiry report dated 21.09.2015, action against the petitioner alone was taken, whereas, rest of the persons appointed along with the petitioner are still continuing in service. Thereafter, one CWP-4333-2016 titled as Hira Singh Vs. State of Punjab and others, came to be filed by Senior Assistant Accountant, Block, BDPO, Dorangla, seeking direction to the respondents to take action on the enquiry report Annexure P-6, which was subsequently dismissed as withdrawn owing to the pressure being exerted on the petitioner therein. Thus, the petitioner has been discharged from service on the strength of enquiry report dated 21.09.2015, which has not been acted upon qua other employees.

On the other hand, learned State counsel submits that a complaint was made against the appointment of petitioner, which was marked to respondent No.2 for conducting enquiry. Respondent No.2

submitted his enquiry report vide memo No.1954 dated 23.09.2015 (Annexure R-2) and on the basis thereof, the petitioner was discharged from service after adopting due procedure of law. The petitioner has nowhere denied the findings recorded in the enquiry report, rather alleged that other employees against whom also the complaint has been made, have been allowed to work.

Heard.

Before delving further, it is apt to refer to the letter written by one Hira Singh, Senior Assistant Accounts, Office of BDPO Dorangla, District Gurdaspur to the Director, Rural Development and Panchayat Department, Punjab i.e. Annexure P-5 appended with CWP-4333-2016 titled as Hira Singh Vs. State of Punjab and others (Annexure P-5 colly.). The relevant portion of the letter reads thus:-

“Request is that appointment of Sh. Ramesh Kumar Clerk cum computer assistant and Sh. Tarsem Kumar Clerk cum cash collector in Panchayat Samiti Dorangla has been made in illegal manner. The appointment of Ramesh Kumar Clerk has been got done by Sh. Kishan Kumar P.A. To Minister Rural Development and Panchayat Department because Rajesh Kumar is real brother in law of Kishan Kumar P.A.. In a similar manner the appointment of Tarsem Kumar has been done at the instant of Sh. Charanji Lal who is Ex-P.A. Of Minister of Rural Development and Panchayat Department as Tarsem Kumar is related to him as nephew. (Son of uncle's daughter), who was earlier appointed as computer operator and subsequently as clerk cum tax collector by illegal ways. Both these

appointments have been made in illegal manner by connivance of P.As with staff at the lower level. Whereas the power to appoint clerks is with the government. The Panchayat Samiti or Executive Officer of the Panchayat Samiti is not competent to make the appointment.....”

It is not in dispute that the impugned action has been taken against the petitioner on the basis of enquiry report dated 21.09.2015, submitted in the complaint filed by Smt. Aruna Chaudhary, MLA, Block Dina Nagar. The relevant portion of the enquiry report is extracted below:-

“From the record, it is found that while making appointments, the executive officer did not make any advertisement in the newspaper it shows that appointments were not made in transparent manner. These appointment were made on contract/D.C. Rates but the salary was paid to the employees as per their wishes and after increasing from time to time, which is against the government instructions.”

A perusal of the above, clearly shows that all the appointments in question were found to be irregular by the enquiry officer. However, the respondents have chosen not to act upon the enquiry report against any of the persons so appointed, except the petitioner, apparently to show that action has been taken on the complaints moved against the illegal and irregular appointments. However, the petitioner cannot be allowed to be made a scapegoat. Once the enquiry report dated 21.09.2015 was not acted upon qua the other employees, there is no reason with the respondents only

to act against the petitioner. The action of the respondents is thus discriminatory and deserves to be set aside. Ordered accordingly.

In view of the above, the instant petition is allowed; impugned order dated 18.11.2015 (Annexure P-2) is quashed; and the respondents are directed to reinstate the petitioner within six weeks from the date of receipt of a certified copy of this judgment. The petitioner shall also be entitled to arrears of pay for the period she was forced to remain out of service within six weeks thereafter.

However, the respondents are directed to examine the issue of appointment of all the employees who joined services along with the petitioner. In case, on examination, if any irregularity is noticed in the selection procedure, the respondents shall take all remedial measures to rectify the same.

Allowed.

05.03.2019

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**(JITENDRA CHAUHAN)
JUDGE**

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