

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

**Civil Writ Petition No. 66 of 2013(O&M)
Date of Decision : 25.09.2019**

Meena Singla & Anr.

... Petitioners

versus

Punjab Backward Classes Land Development & Finance Corp. & Ors.

... Respondents

CORAM:-HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Puneet Gupta, Advocate
 for the petitioners.

 Mr. J.R. Syal, Advocate for
 respondents No.1 and 2

 Mr. P.S. Bajwa, AAG Punjab.

ARUN MONGA, J(ORAL)

1. The petitioners herein, *inter alia*, seeks quashing of order dated 24.08.2012(Annexure P-9) declining their request for taking them back in service after their termination, as was done by the respondents in the case of similarly situated employees whose services were terminated and were taken back in service.

2. In an earlier round of litigation, the petitioners herein had challenged termination order dated 11.07.1997 vide which their services were dispensed with, by filing CWP No. 10541 of 1997. The said writ petition was dismissed vide order dated 29.11.2001 passed by Single Bench of this Court. Single Bench judgment was challenged by way of intra-Court appeal vide LPA No. 518 of 2002 and the same too met with similar fate.

The operative part thereof reads hereinbelow:-

“9. It is well settled that unless the employee has acquired right to continue in service, the order of termination per se

cannot be held to be punitive so as to attract Article 311 of the Constitution. During the period of probation service of the employee can be terminated based on performance of the employee unless the discretion is exercised arbitrarily and malafide. Mere fact that unsatisfactory work and conduct is taken into account is not enough to infer that order of termination is stigmatic. Reference may also be made to judgments of the Hon'ble Supreme Court in State of W.B. and others v. Tapas Roy, (2006) 6 SCC 453 and Municipal Committee, Sirsa v. Munish Ram, AIR 2005 SC 792.

10. Learned counsel for the petitioners submitted that this order may not debar the petitioners from making a representation to the petitioners. We find that after upholding the termination learned Single Judge in the concluding para observed as under:-

“During the course of arguments, learned counsel for the petitioners has pointed out that three other similarly situated employees namely Anju Prashar, Jagtar Singh and Umesh whose services had also been terminated during the period of probation have been taken back in service on a representation made by them and, therefore, the petitioners also deserve to be taken back in service. He pointed out that there are still vacancies existing in the respondent-Corporation. The petitioners are at liberty to approach the Corporation for this purpose. Needless to say that in case any such representation is made by the petitioners, the respondent shall consider the same sympathetically in accordance with law. The decision shall not be influenced by the alleged misconduct which has admittedly not been enquired into.”

3. Backed up with above liberty, the petitioners have filed the present writ petition on the ground of hostile discrimination as well as seeking parity qua the similarly situated persons, who were appointed along

with them, stating that those persons were taken back in service after being terminated on the ground that no advertisement was issued qua the posts against which they were appointed, whereas, the petitioners have been denied the similar benefit, ostensibly on the ground that their services were terminated on account of misconduct.

4. In the return filed on behalf of respondents No.1 to 3, following pointed stand has been taken in preliminary objections No.7 and 8:-

“7. That the petitioners time and again are pleading that the facts and circumstances of their case are similar with that of three other persons namely Anju Prasher, Jagtar Singh and Umesh Kumar, who were appointed along with them. The services of the aforesaid three persons were terminated as their appointments were found to be made in an illegal manner by the then Executive Director of the Respondent Corporation, because the posts against which they were appointed were not advertised. Copy of the order office order dated 09.09.1997 issued to aforesaid three persons is annexed herewith as Annexure R-4. All the three persons submitted an appeal to the then Secretary to the Government of Punjab-cum-Chairman Backfinco, who passed the following order on the file :-

“A careful perusal of the file reveals that these appointments against 16 regular posts were made after conducting a proper interview and type test. Even though only 11 posts were advertised, these were at least 16 posts available. The 16 persons ultimately selected were properly selected for the regular posts. Had these been adhoc vacancies it may perhaps been whether the competence of the ED to dispense with the services of some when they were no longer required. However we cannot throw out regular employees in this cavalier fashion. The stand of the Corporation that the appointments were invalid/ illegal does not appear to reason. It is permissible to fill up the vacancies from a

valid waiting list.

Moreover, we have already intimated to the Welfare committee of the Vidhan Sabha as at X on pg.11 that of the 16 vacancies filled 5 are by SCs and one by a BC. We cannot back track now.

I accordingly accept the appeal of Jagtar Singh(SC), Umesh Kumar(SC) and Anju Prasher. The other 2 have been dismissed on disciplinary grounds as such this decision does not affect their position in the Court or our stand in the same.

The intervening period from the date of termination of their services to the date of reinstatement will be treated as leave of the kind due.”

ED may issue orders accordingly.

8. *That consequently, a direction was received, from the under Secretary, Department of Welfare, Government of Punjab, vide memo dated 20.04.1998, as Annexure R-5 and in pursuance thereto, the aforesaid three persons were reinstated in service, vide order bearing No. PBCC/Admn/EA2/ 18672-75, dated 21.8.1998, copy of which is annexed herewith as Annexure R-6 along with its true translation. While accepting the appeal of these three persons, the Secretary, Welfare-cum-Chairman, Backfinco clearly indicated that the decision taken by her will not affect the petition of petitioners pending in the Hon'ble High Court. The case of the present petitioners is, therefore, not similar to the aforesaid three employees, who were taken back in service on an appeal preferred by them to the appropriate authority.”*

5. On a perusal of the stand taken in the written statement viz-a-viz replication filed by the petitioner, the conceded position that emerges is that even though all five persons were selected by way of same selection process, without issuing advertisement, but termination qua the other three so-called similarly situated persons was set aside on different ground as

compared to the petitioners. Petitioners do not controvert that their services were terminated owing to the misconduct vide order dated 11.07.1997. The said order was unsuccessfully challenged by the petitioner and the same has since attained finality, I am of the view that the petitioners are not entitled to seek parity because of the finding of misconduct against them during period of probation, which is not the case with other three so-called similarly situated persons.

6. No ground for interference is made out in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Writ petition is dismissed.

7. No order as to costs.

25.09.2019

Jiten

(ARUN MONGA)
JUDGE

- | | | |
|----|-----------------------------|---------|
| 1. | Whether speaking/ reasoned: | Yes/ No |
| 2. | Whether reportable: | Yes/ No |