

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT  
CHANDIGARH**

**CWP No.11195 of 1994  
Date of decision:06.01.2015**

Satyawati

...Petitioner

**Versus**

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

**Present:** Mr.R.K.Malik, Sr. Advocate with  
Mr.Mandeep Singh, Advocate for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana,  
for respondents No. 1 to 3.

Mr.C.B.Goel, Advocate for respondent No.4.

**RAMESHWAR SINGH MALIK, J. (Oral)**

Feeling aggrieved against the alleged inaction on the part of respondent authorities, petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus, directing the respondent authorities to pay the arrears of salary to the petitioner, from the amount of grant-in-aid which was to be released in favour of respondent No.4. Petitioner also sought a direction against the respondent-management to reinstate the petitioner with all consequential service benefits.

Notice of motion was issued and pursuant thereto, written statement on behalf of respondents No. 1 to 3 was filed. A separate written statement was filed on behalf of respondent No.4.

Learned senior counsel for the petitioner submits that petitioner was appointed as JBT w.e.f. 16.7.1979. Services of the petitioner came to be terminated by the respondent-management vide order dated 6.7.1992 (Annexure P-2) without seeking prior approval of the respondent-department and also without keeping in view the seniority of the petitioner. Petitioner filed her statutory appeal which came to be accepted by the competent authority, i.e. respondent No.3 vide order dated 29.3.1993 (Annexure P-7), whereby termination order (Annexure P-2) was set aside, directing the respondent-management to reinstate the petitioner in service. He further submits that the respondent-management did not challenge the order dated 29.3.1993 (Annexure P-7) passed by respondent No.3 and the same became final in favour of the petitioner. Once the order passed by respondent No.3 had become final in favour of the petitioner, as argued by learned senior counsel for the petitioner, respondent No.4 was duty bound to reinstate the petitioner in service, it being a grant-in-aid institution. Service of the petitioner was governed by the Haryana Aided Schools (Security of Service) Act, 1971 ('1971 Act' for short) and the statutory rules made thereunder. He also refers to the order dated 13.1.1995 passed by a Division Bench of this Court directing the respondent-management to pay the salary for a period of six months to the petitioner. He would next contend that since during the pendency of this writ petition, petitioner has been reinstated in service by the respondent-management, the only relief which is to be granted to the petitioner, is a direction to the respondent authorities for paying the arrears of salary to the petitioner for the period she has not been paid the same. He prays for allowing the present writ petition.

On the other hand, learned counsel for respondent No.4 submits

that since petitioner did not work during this period, she was not entitled for any other amount because of the principle of “No work no pay”. While referring to the termination order dated 6.7.1992 (Annexure P-2), learned counsel for respondent No.4 submits that since number of students was not sufficient to retain the petitioner in service, respondent-management was left with no other option except to terminate the service of the petitioner. He next contended that it was also pointed out in the order itself that if the number of students increased in future, she will be granted appointment on preferential basis.

Learned counsel for the State submits that since it was the action of respondent-management, it is only the respondent-management who is and should be held responsible for paying the arrears of salary to the petitioner. The authorities of the respondent-State were not at fault in this regard.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the case in hand, the present writ petitions deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that service conditions of the teachers including the petitioner were governed by the 1971 Act and the statutory rules made thereunder. The relevant provisions contained in Sections, 3, 5 and 5-A of the 1971 Act, which are relevant for the purpose of instant case, read as under:-

**3. Procedure of punishing employees of aided schools:-**

(1) No employee shall be dismissed or removed or reduced

*in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such enquiry to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such enquiry.*

*Provided that this section shall not apply where an employee is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge involving moral turpitude.*

*(2) No order of dismissal or removal or reduction in rank of an employee shall take effect unless it has been confirmed by the District Education Officer who may refuse to do so, if in his opinion, the provisions of sub-section (1) have not been complied with.*

*(3) An employee against whom an order of the nature specified in sub section (1) is passed without complying with the provision of sub section (1) or sub section (2) may, within a period of thirty days of the date of communication of the order, make an application to the District Education Officer challenging such an order on the ground that he is an employee to whom the provisions of sub-section (1) and sub section (2) apply and the District Education Officer may, after giving the parties an opportunity of being heard and after making such further enquiry as he may think fit, make an order refusing the application or setting aside the impugned order.*

*(4) Any person aggrieved by any decision or order made by the District Education Officer under this section, within a period of thirty days from the date of communication to such person of the decision of order, prefer an appeal to the Director who may after giving the parties an opportunity of being heard, and after making such further enquiry, if any, as he may consider necessary, pass such order as he thinks fit, confirming, modifying or reversing the decision or order*

*appealed against.*

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**5. Director's power to stop, reduce or suspend aid.** - *It shall be lawful for the director to stop, reduce or suspend the aid of an aided school for the violation of any of the provisions of the Act or of any rules made thereunder or of any order passed under this Act by the managing committee, manager or any other authority charged with the administration thereof.*

*Provided that before taking action under this section, the Director shall give a reasonable opportunity to such managing committees, manager or authority to show cause against the action proposed to be taken.*

1[“5]. **Power to make payment from aid-**

*In the case of non-compliance of an order of any authority, or of any directive, issued under this Act, it shall be lawful for the Director to pay, out of the aid payable to the aided school such sum of money as is found to be due to any employee from such school, the managing committee, manager or any other authority charged with the administration thereof”*

It is also not in dispute that respondent No.4 did not seek prior permission from the respondent authorities before terminating the services of the petitioner, in spite of the fact that respondent No.4 was duty bound to seek such prior permission. It is neither pleaded nor argued case on behalf of respondent No.4 that petitioner was a junior most teacher and her services were terminated because of that reason. It is again a matter of record that the termination order (Annexure P-2) passed by respondent No.4 was set aside by respondent No.3 vide his order dated 29.3.1993 (Annexure P-7). The operative part of order dated 29.3.1993 reads as under:-

*“On enquiry it was found that the charge is baseless*

*and is not based on record because while calculating the number of students for the sanctioned posts, the number of students in the entire Primary Section is taken into consideration and not that of the Class IV only. Earlier also during the period July, 1991 last year the number of students of 1<sup>st</sup> Class was equal to that of this year but no need was felt for passing such relieving orders at that time.*

*In view of the above, when the number of students falls short and relieving of an employee is necessary, then the junior most official is to be relieved and that too after obtaining prior approval of the department but in the above said case neither the seniority of the official was kept in view nor proposal/order of relieving was got approved from the department.*

*In these circumstances, the above relieving orders be treated as cancelled and the teachers be reinstated and intimation to this effect be given to the department immediately.”*

Respondent-management never challenged the above-said order dated 29.3.1993 (Annexure P-7) passed by respondent No.3 and the same became final in favour of the petitioner. Once it is so, respondent-management was under legal obligation to immediately reinstate the petitioner in service, in meticulous compliance of the order dated 29.3.1993 (Annexure P-7). Petitioner was very much ready and willing to join the service. However, she was kept out of service only because of serious inaction on the part of the respondent-management as well as on the part of the authorities of the respondent-Department.

When petitioner was not being reinstated in service, respondents No. 2 and 3 though issued some communications directing respondent No.4 to reinstate the petitioner in service, yet no effective action was taken against respondent No.4, so as to ensure early compliance of the

order dated 29.3.1993 (Annexure P-7). Having said that, this Court feels no hesitation to conclude that the petitioner was kept out of service only because of wholly unwarranted and serious inaction on the part of respondents and she could not be made to suffer for the fault of the respondents.

Had the official respondents taken appropriate effective steps against respondent No.4 at the relevant point of time, petitioner would have been reinstated in service in the year 1993 itself. However, it seems that nobody was feeling concerned about the strict compliance of the order passed by respondent No.3 vide Annexure P-7. In the process, sufferer was only the petitioner. Under these circumstances, it can be safely concluded that petitioner was never at fault in this regard and the respondents cannot be permitted to draw any benefit out of their own wrong.

Admittedly, the respondent-management was running a grant-in-aid school and it was duty bound to ensure the meticulous compliance of the provisions of law contained in 1971 Act and the statutory rules made thereunder. Since respondent No.4 has failed in its duty to ensure meticulous compliance of the relevant provisions of law and official respondents also did not take appropriate effective steps against respondent No.4 at the relevant point of time, they are bound to pay the arrears of salary to the petitioner along with interest. It is so said because under the above-said circumstances, petitioner cannot be made to suffer because of unbecoming and arrogant behaviour of respondent No.4 and indifferent attitude as well as serious inaction of respondents No. 1 to 3.

It is pertinent to note here that if the orders passed by the competent authority of the respondent-department are not complied with by the private management running grant-in-aid educational institutions, the

system would not work smoothly. Further, it does not behove any of the educational society running grant-in-aid institutions, to challenge the authority of the State on the one hand and keep on receiving grant-in-aid from the same authority on the other hand. In the present case, even the order passed by the competent authority was not challenged by the private management, i.e. respondent No.4, however, the order passed by the competent authority was not being complied with, for the reasons best known to the respondent-management. This action of the official respondents as well as private respondent has been found to be patently illegal and the same cannot be sustained.

The above-said observations made by this Court also finds support from two judgments of this Court in **CWP No. 6489 of 1992 (C.P. Sharma v. State of Haryana)** decided on 29.7.1993 and **CWP No.8092 of 1997 (Rajinder Singh v. State of Haryana and others)** decided on 6.11.1997. The relevant observations made by this Court in **C.P.Sharma's** case (supra), which can be gainfully followed in the present case, read as under:-

*“3. After going through the records of the case, I am of the view that there is merit in the sole point raised by Mr. Mahesh Grover, learned counsel for the petitioner and this petition must succeed. It is no stage whatsoever to go into the merits of the matter in retuning a findings as to whether the services of petitioner were terminated rightly or wrongly. Till such time, the order passed by the District Education Officer under the provisions of the Act which is binding upon the respondents is successfully challenged in an appellate forum, there is no choice with them but for to comply with the directions contained therein. I would not like to go into the questions as to whether the appeal filed by the respondent-school beyond the period of limitation is in fact competent appeal or not as it is within the jurisdiction of the appellant forum to consider the matter and condone the delay, if any,*

*application is filed or has already been filed on that behalf. Admittedly, no stay has been obtained by the respondent-school and, therefore, order passed by the District Education Officer is operative.*

*For the above-mentioned reasons, this petition is allowed and a direction is issued to the respondents to take the petitioner on duty within a month. Rights of the parties would be determined by the Appellate Authority but till such time respondent-school is able to get favourable order, it has no choice but for to appoint the petitioner on the post of Principal.”*

Similarly, the law laid down by the Division Bench of this Court in **Rajinder Singh's** case (supra), which aptly applies to the facts of the case in hand, reads as under:-

*“9. Section 3, sub-section (3) aforesaid enables an employee to make an application to the District Education Officer challenging an order of termination of his service. Sub-section (4) of Section 3 provides a right of appeal to such a person who is aggrieved by a decision or order made by the District Education Officer under this Section to the Director and the Director has been empowered to pass such order as he thinks fit confirming, modifying or reversing the decision of the appeal. Sub-section (5) of Section 3 provides that the order passed by the Director shall be final and binding on the parties. It cannot, thus, be said that the petitioner could not have approached to respondents No. 2 and 3 against the order of termination of his service ordered by the respondent No. 4. It is significant to note that respondent No. 4 instead of challenging the order passed by the Director-respondent No. 2 which is annexure P-7, has taken a stand of justifying the order of termination of the petitioner's services and insisting upon not to implement the order passed by the Director. In our considered view, this stand of respondent No. 4 is wholly unjustified and contrary to the provisions of law and,*

*particularly, the provisions of Section 3, sub-section (5) of Haryana Act, 1971 which specifically provides for the order of the Director becoming final and binding on the parties.*

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*However, as long as the order of the Director holds good, it has to be implemented and in the event of failure to implement the same, respondents No. 1 to 3 can impose sanctions by withholding the grant-in-aid to respondent No. 4 in order to enforce the order of the Director which is Annexure P-7. Sections 5 and 5-A of the Haryana Act, 1971, which provides as under, amply empower the Director to take necessary action regarding the stoppage, reduction and suspension of the aid.*

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*In view of the foregoing discussion, the writ petition is allowed to the extent that the respondents are directed to implement the order Annexure P-7 and to permit the petitioner to join his duties forthwith in compliance of the order of respondent No. 2 vide Annexure P-7. Respondent No. 1 i.e. Director, Secondary Education Haryana is directed to take action under Section 5 A of the Haryana Act, 1971 and ensure payment of the dues to the petitioner which have accrued as a consequence of revocation of order of termination of his services vide order (Annexure P-7) for the period petitioner was not gainfully employed. These directions shall be carried out within a period of two months from the receipt of copy of this order. No order as to costs.”*

Reverting back to the facts of the present case and respectfully following the law laid down by this Court in cases referred to hereinabove, it is held that the action of the respondents was patently illegal and the same

cannot be sustained, for this reason also.

During the course of hearing, when a pointed question was put to learned counsel for respondent No.4 as to why the order (Annexure P-7) passed by respondent No.3 was not complied with in time, he had no answer and rightly so, because it was a matter of record. Similarly, learned counsel for the State was also unable to point out any reason as to why the strict implementation of the order dated 29.3.1993 (Annexure P-7) passed by respondent No.3 was not ensured, because it was again a matter of record. In this view of the matter, it is unhesitatingly held that it were only the respondent authorities who were at fault, during all this period, till the reinstatement of the petitioner in service and the petitioner cannot be made to suffer for the fault of the respondents.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the action of the respondents was patently illegal. The petitioner is declared entitled to get the salary for the period for which she has not been paid, along with interest @ 9% per annum from the date the amount became due till the date of actual payment.

The respondent authorities are directed to do the needful within a period of three months from the date of receipt of a certified copy of this order. However, if needful is not done within the stipulated period, petitioner shall be entitled for the interest @ 12% per annum. It deserves to be clarified that whatever amount has been paid to the petitioner, the same shall be adjusted at the time of making the payment.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

**06.01.2015**  
**mks**

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**