

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 11764 of 2013(O&M)

Date of Decision: September 21 , 2015.

Guru Nank Ayurvedic Medical College and Research Institute, Ludhiana

..... PETITIONER (s)

Versus

The Educational Tribunal, Punjab and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. H.S.Lalli, Advocate
for the petitioner.

Mr. Pankaj Gupta, Advocate
for respondent No.5.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Instant writ petition has been preferred by Guru Nank Ayurvedic Medical College and Research Institute, Ludhiana for quashing of order dated 03.04.2013, Annexure P11 passed by Educational Tribunal, Punjab.

Brief facts of the case are that, services of respondent No.5 – Sandesh Kumar who was working as Lecturer were terminated vide order dated 03.03.2012 by the petitioner-Institute. CWP No.5471 of 2012 was preferred by

respondent No.5, which was transferred to the Educational Tribunal, Punjab for adjudication of the lis between the parties. Respondent No.5 – Sandesh Kumar claimed to have been appointed as a Lecturer of Sanskrit in the petitioner-college on 01.11.2000. His services were thereafter regularized and he was promoted as Reader on 17.11.2005. However, his services were terminated on 03.03.2012 by the petitioner-Institute allegedly in a *mala fide* manner with a sole purpose of appointing another person at a lesser salary. It was pleaded by him that no notice whatsoever was afforded to him. There was no complaint regarding his work and conduct and said order was passed without getting approval from the DPI (Colleges). Respondent No.5 – Sandesh Kumar's case was contested by the petitioner-Management on the ground that his appointment to the post of Reader was purely provisional. It was informed by respondent No.3 – the Central Council of India Medicine vide letter dated 09.07.2010, Annexure P1 that Sandesh Kumar lacked qualification for promotion as a Reader. As per the institution's stand he was working, as on-date as Lecturer only – at best “an approved Lecturer”. Order of termination was sought to be justified on the ground that said respondent was indulging in the practice of fortune telling and practising as an astrologer (Jyotishi). Many complaints were also received from the students.

Learned Tribunal on considering the facts and circumstances of the case formulated the following two points:-

POINT No.1: What is the effect of promotion of the petitioner from the post of Lecturer to Reader?

POINT No.2: Whether the provisions of Sections 3, 4 and 5 of the Punjab Affiliated Colleges (Security of Service) Act, 1974 are

required to be complied with by the management before passing the impugned order Annexure P4?

In respect to Point No.1, it is categorically held that respondent No.5 was working on the post of Reader at the time of his termination though no evidence was recorded whether Sandesh Kumar was holding the essential qualifications for the post of Reader.

In respect to Point No.2, order of termination was set aside while holding that though there is no requirement of seeking prior approval before terminating his services but a rational procedure to be evolved by the Management, should have been followed for taking disciplinary action before terminating the services of their employee, who had admittedly been working for 12 long years. Admission of the institute that the petitioner was at best “an approved Lecturer” was duly noted. Action of the management was held to be irrational and thereby, set aside.

Learned counsel for the petitioner – Institute primarily contends that the impugned order dated 03.04.2013, Annexure P11 passed by the Tribunal is liable to be set aside specifically to the extent that it wrongly records respondent No.5 – Sandesh Kumar to be working as a Reader at the time of termination of his services. While referring to Annexures P1 and P2, it is submitted that respondent No.5 – Sandesh Kumar was, in fact, working on the post of Lecturer. Annexure P1 is communication dated 09.07.2010 to the Principal of the petitioner-Institute by the Central Council of Indian Medicine holding respondent No.5 to be ineligible to be posted as a Reader. Annexure P2 is a communication dated 29.07.2010 by the Institute to the Secretary, Central

Council of Indian Medicine communicating that respondent No.5 has been duly shifted to the post of Lecturer. It further submitted that there are specific complaints and allegations against respondent No.5 as contained in para 9 of the writ petition. It is on these counts that his services were terminated therefore, impugned order deserves to be set aside.

Learned counsel for respondent No.5 fairly accepts and concedes that respondent No.5 was, in fact, working on the post of Lecturer on the date of termination of his services. He has rejoined on the post of Lecturer itself pursuant to order dated 03.04.2013 of the Tribunal and is working on the said post since then.

In view of the fair stand taken by learned counsel for respondent No.5, finding of the learned Tribunal that respondent No.5 was working on the post of Reader at the time of termination of his services is, thus, set aside.

However, there is no merit in the submission of learned counsel for the petitioner – Institute to the extent that termination order dated 03.03.2012 deserves to be upheld. It is not disputed that there was no complaint against respondent No.5 from the year 2000 upto 2012. Work and conduct of respondent No.5 was found to be satisfactory. Some of the alleged complaints referred to apart from being subsequent to the impugned order, were never put to the employee before taking action for termination of his services. It is not in dispute that no show cause notice whatsoever was served upon respondent No.5 prior to the order of termination. Neither was any procedure to ensure adherence to principles of natural justice adopted before taking such an action.

There is no infirmity or illegality in the finding of the Tribunal that a rational procedure for taking disciplinary action has to be evolved by the

management itself. Submission on behalf of the petitioner-Institute that discipline of the institute is spoiled, cannot be a reason for by-passing principles of natural justice.

Keeping in view the facts and circumstances, there is no infirmity or illegality in the finding of the Tribunal on Point No.2 which warrants interference by this Court. Order dated 03.03.2012, Annexure P9 terminating services of respondent No.5 has been rightly set aside by respondent No.1 – Educational Tribunal, Punjab. As discussed earlier and in view of the specific stand of respondent No.5, learned Tribunal's finding on Point No.1 is set aside. Respondent No.5 is held to be working on the post of Lecturer and not Reader.

However, petitioner management is at liberty to take action against respondent No.5 in case of any complaints against him or on account of any misconduct on his part in accordance with law and by observing the principles of natural justice.

This writ petition is accordingly disposed of.

September 21 , 2015.
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(LISA GILL)
JUDGE