

**HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.11230 of 2014

Date of decision: December 17, 2015

B.D. SHARMA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

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Present:- Mr. Vikas Malik, Advocate for the petitioner.

Mr. D.K. Mittal, DAG, Haryana.

**Mr. R.K. Malik, Sr. Advocate, with
Ms. Rimple Soni Kadyan, Advocate,
for respondent No.2 and 3.**

Mr. Shiv Kumar, Advocate for respondent No.4.

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HARINDER SINGH SIDHU, J.

The petitioner joined respondent No.4 School as a PTI Teacher on 20.03.1978. His appointment was approved by the District Education Officer, Faridabad.

On account of some complaints regarding misconduct and disobedience, disciplinary proceedings were initiated against him. He was placed under suspension vide order dated 25.07.2005. Charge-sheet was issued to him on 6.8.2005. On finding his reply unsatisfactory, the Managing Committee appointed enquiry officer vide letter dated On 24.01.2006. Based on his report and after issuing further show cause notice, his services as PTI were terminated vide order dated 24.01.2006.

He submitted a representation/appeal to respondent No.3 and the District

Education Officer vide order dated 05.04.2006 allowed the appeal and set aside the order of termination dated 24.01.2006, inter-alia, on the ground that the Management did not give the petitioner opportunity to defend his case properly nor prior approval of the penalty as required under Rule 51(4) of the Haryana School Education Rules, 2003 ("2003 Rules") was obtained. The Managing Committee of the School was directed to reinstate the petitioner. Thereafter, the society-respondent No.4 filed an appeal before the Director General, School Education, Haryana against the decision of the District Education Officer. The said appeal was dismissed on 09.01.2008 on the ground that prior approval of the Director as required under Rule 51(4) of the 2003 Rules had not been obtained before terminating the petitioner. Despite the dismissal of the appeal, the petitioner was not allowed to join his duty, instead, the Managing Committee of the School filed review application before the Director General, School Education, Haryana, which was also dismissed vide order dated 27.10.2012.

After the rejection of the review petition filed by respondent No.4, the petitioner again approached the Managing Committee to take him back in service. When no action was taken on the said representation, the petitioner filed CWP No.10053 of 2013 which was disposed of vide order dated 10.05.2013 with a direction to respondent No.3 to take a decision on the representation regarding reinstatement of the petitioner within a period of four months. In compliance with the order, respondent No.3 has passed an order dated 23.04.2014 (Annexure P-7) declining his representation. It has been noted that General Body of the School Management where the petitioner was working made a request on

27.03.2006 for de-aiding the school upto 10th class w.e.f. 01.04.2006. The Director General, School Education, Haryana in exercise of powers conferred under Rule 62(3) of the Haryana School Education Rules, 2003 granted permission for de-aiding the school w.e.f. 01.04.2006 with certain conditions. After being de-aided, the school was closed down w.e.f. 01.04.2007. Accordingly, there is no question of the petitioner being allowed to join, as the institute has already been closed down.

Meanwhile, against the order dated 27.10.2012, whereby, the review application of respondent No.4 was declined by the Director General, School Education, Haryana, respondent No.4 filed an appeal before the Principal Secretary to Govt. of Haryana, School Education Department, Haryana, Chandigarh which was disposed of vide order dated 01.03.2014 (Annexure P-6). The order dated 27.10.2012 passed in review petition was set aside.

In his order the Principal Secretary noted that Rule 51(4) of the 2003 Rules, relying on which the termination order had been set aside by the District Education Officer, Faridabad and the appeal dismissed by the Director School Education, Haryana, was not attracted in case of disciplinary proceedings. He further took note of the fact that the Director School Education Haryana vide order dated 19.03.2009, in exercise of his powers under Section 8(3) of the Haryana School Education Act, 2005 had granted approval w.e.f., 31.03.2006 for the discharge of employees of the School.

Keeping in view the peculiar facts that the school was closed w.e.f. 01.04.2007, it was held that the most efficacious remedy is that the petitioner be treated to be in service till 31.03.2007. The petitioner was

held to be treated in service as on 31.03.2006 (This is wrongly typed as 31.03.2006 in the impugned order but needs to be read as 31.03.2007 as the school was closed w.e.f., 1.4.2007) and he was held entitled for retiral benefits w.e.f. 01.04.2007. It was directed that the suspension period be treated as duty period for all intents and purposes and balance of pay and allowances excluding subsistence allowance already paid, shall be paid to him.

Aggrieved of the aforesaid orders (Annexure P-6 and P-7), the petitioner has filed the present writ petition.

Learned counsel for the petitioner has contended that as per Rule 51(4) of the 2003 Rules, no teacher shall be removed by the Managing Committee without prior approval of the department. It is stated that the respondent-Management did not seek any approval from the department before terminating the services of the petitioner on 24.01.2006. Accordingly, that order was rightly set aside by the District Education Officer vide his order dated 05.04.2006 (Annexure P-2) and the appeal filed by respondent No.4 against that order was also rightly dismissed by the Director General, School Education, Haryana who dismissed the review petition as well filed by respondent No.4. He has further relied on a decision of this Court in **CWP No.17710 of 2009**, titled **'Smt. Raj Bala & others vs. State of Haryana and others'**, wherein, it was held that there can be no retrospective approval of termination. The petitioners in that case were similarly situated employees of the respondent School and their services were terminated by the Managing Committee in the year 2006. They, also, like the petitioner had filed **statutory** appeal before the District Education Officer who held their

terminations to be illegal for want of prior approval of the Director General, School Education, Haryana as required under Rule 51(4). The appeal of the Management to the Director General, School Education, Haryana met with similar fate. Thereafter, the Management challenged the aforesaid orders in various writ petitions i.e. CWP Nos. 14333, 14699, 14707, 14734 of 2007 which were dismissed vide order dated 17.11.2008. However, while dismissing the writ petitions, the Court left it open to the Management to approach the constituted authority under the Haryana School Education Rules, 2003 to secure prior sanction. The Government vide order dated 19.03.2009 granted approval for termination of their services w.e.f. 31.03.2006. This order was challenged by them by filing CWP No.17710 of 2009.

The question for consideration before the Court was whether the competent authority could grant approval retrospectively. Taking note of the fact that the termination of the petitioners therein without seeking prior approval under Rule 51(4) had been set aside by the DEO which decision was affirmed by the Director General School Education and the writ petitions filed by the Managing Committee had been dismissed, the Court held that it was not open to the competent authority to grant retrospective approval for their removal from the post of teacher. Accordingly, the petitioners therein were deemed to be validly terminated only w.e.f. 19.03.2009.

Learned counsel for the petitioner has stated that the case of the petitioner is identical and accordingly the impugned orders holding him to be entitled to be in service only till 31.03.2007 are illegal and he is also liable to be treated to be in service till 19.03.2009 at par with other

similarly situated employees in CWP No. 17710 of 2009.

Learned counsel for the respondent on the other hand argued that the ratio of the aforesaid judgment cannot be extended to the petitioner. He states that in CWP No.17710 of 2009, the Hon'ble Court was not apprised of the fact that the school had been closed w.e.f. 01.04.2007. He argues that in the face of this factual position, the petitioner cannot be deemed to be in service till 19.03.2009 i.e., even for a substantial period after the closure of the school. He further argues that vide the impugned order (Annexure P-6), the termination of the petitioner vide order dated 24.01.2006 has not been upheld and the petitioner has been treated to be in service till 31.03.2007, the date of closure of the school and held entitled for retiral benefits w.e.f. 01.04.2007.

Having heard Ld. Counsel for the parties, I am inclined to agree with the arguments of the Ld. Counsel for the respondents. The petitioner was aggrieved of the termination order dated 24.01.2006, which was set aside by the DEO, Faridabad on 5.4.2006. The Management was directed to re-instate the petitioner. He was to be treated to be on duty for all purposes. The appeal and subsequent review of the management was dismissed by the Director Secondary Education, Haryana vide his orders dated 09.01.2008 and 27.10.2012. The further appeal of the Management was disposed of by the Principal Secretary, Education, Haryana vide the impugned order dated 1.3.2014. Though the order dated 27.10.2012 of the DSE was set aside, but taking note of the fact that the School had been closed w.e.f., 1.4.2007, an efficacious and fair order as warranted in the circumstances was passed directing that the petitioner be treated to be

01.04.2007. It was further directed that the suspension period be treated as duty period for all intents and purposes and the balance of pay and allowances excluding subsistence allowance already paid, shall be paid to him.

By necessary implication, the termination order dated 24.1.2006 has not been sustained. Thus, the initial grievance of the petitioner against the termination order has been upheld.

The main grievance of the petitioner is that similarly situated colleagues who filed CWP No.17710 of 2009 have been held entitled to emoluments/ salary till the date of grant of approval for their termination i.e., 19.03.2009. And the petitioner should be given the same benefit. In this regard, I am inclined to agree with the argument of the Ld. Counsel for the respondent, that in CWP 17710 of 2009, the Court has not noticed the fact that the school had been closed w.e.f., 01.04.2007. Additionally, in that case the writ petition of the management against the order of the statutory authorities holding the 2006 order of termination of the employees by the management to be illegal had been dismissed. It was held that the same could not be validated by granting approval retrospectively.

But such is not the case here. Here the order of termination passed in disciplinary proceedings had been quashed. The said order has not been sustained even by the Principal Secretary. However the relief of payment of salary and allowances has been limited till 31.03.2007 when the school closed. The closure of the school is not under challenge in these proceedings. Nor is it pleaded that there is any violation by the management of the conditions of de-aiding. In these circumstances the

petitioner cannot claim that he should be paid the salary and allowances till 19.03.2009 on a par with the petitioners in CWP No.17710 of 2009.

Accordingly, there is no merit in this petition and the same is dismissed.

However, in view of the typographical error in the impugned order Annexure P-6, which has been candidly admitted by Sh. Ram Kumar Malik, Sr. Advocate for respondent No.4, it clarified that the petitioner is entitled to full salary up to 31.03.2007 with all consequential benefits admissible as per law.

Disposed of accordingly.

17.12.2015

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**(HARINDER SINGH SIDHU)
JUDGE**