

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

CWP No.20902 of 2013(O&M)
Date of decision: **June 30, 2015**

Guru Gobind Singh Khalsa College, Sarhali ----Petitioner

Versus

State of Punjab and ors. ----Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Sameer Sachdeva, Advocate for the petitioner.
Mr. Ajaib Singh, Addl. A.G., Punjab
Mr. Ravinder Sharma, Advocate for respondent No.5.

HARINDER SINGH SIDHU, J.

The petitioner Guru Gobind Singh Khalsa College, Sarhali has filed this petition praying for directions to quash the order dated 3.5.2013 (Annexure P-11) passed by the Educational Tribunal, whereby, the petition filed by respondent No.5 for setting aside the order dated 7.7.2011, vide which, the services of respondent No.5 had been terminated during the probation period, has been quashed and it has been directed that he would be deemed to be in service w.e.f. 10.07.2009 when he initially joined the petitioner-college.

The petitioner is a private aided college. In 2009, it invited applications for filling up the posts of Lecturer (English). In response to the said advertisement, various candidates including respondent No.5 applied. Respondent No.5 was successful and appointment letter dated 1.7.2009 (Annexure P-1) was issued to him. As per the

terms and conditions of the appointment, the post was permanent, with one year probation period which was extendable by another one year. The appointment was subject to approval to be granted by the Guru Nanak Dev University, Amritsar. Respondent No.5 joined on 10.07.2009. His appointment was approved by the University on 10.08.2009.

It has been averred that the conduct of the respondent No.5 was not found satisfactory and he indulged in activities, which were objectionable. Hence, his services were terminated on 7.7.2011 during the period of probation. It is stated that a lenient view was taken in order to ensure that the future prospects of respondent No.5 are not adversely affected. The petitioner college acted sympathetically and passed a simpliciter order of termination. Respondent No.5 filed CWP No.12728 of 2011 challenging the said order of termination, wherein, notice of motion was issued on 21.07.2011. However, meanwhile respondent No.5 felt sorry for his misbehaviour and repeatedly apologized and even tendered a written apology dated 27.7.2011(Annexure P-4). Because of that , the petitioner-college agreed to offer him a fresh appointment against the post lying vacant. It is stated that in view of the understanding, respondent No.5 did not even file any process fee in the said writ petition. In view of the settlement, he moved civil miscellaneous application No.10374 of 2011 in the pending writ petition on 1.8.2011 praying for withdrawal of writ petition. In this application, it was specifically averred that he had been offered a fresh appointment in

the college and therefore, he wishes to withdraw the writ petition. However, on 09.08.2011 he withdrew the said application. As per the agreement with him and in an absolutely bonafide manner, the counsel for the petitioner college on 20.09.2011 stated before the Court that the case of respondent No.5 for appointment afresh on the post of Assistant Professor would be considered within a period of three months. In view of this statement, the post was re-advertised and respondent No.5 was selected and appointment letter dated 1.6.2012 (Annexure P-6) was issued to him. He, however, refused to accept the said appointment letter. The writ petition came up for hearing on 31.10.2012 and the letter of appointment was handed over to respondent No.5 in Court.. However, in view of the preliminary objections raised by the petitioner-college to the maintainability of the writ petition because of an alternative remedy being available before the Educational Tribunal, respondent No.5 was permitted to withdraw the writ petition with liberty to avail the alternative remedy before the Educational Tribunal. In terms of the aforesaid remedy, the petitioner filed application under section 7-A (12) of the Punjab Affiliated Colleges (Security of Service) Act, 1974 (hereinafter referred to as the "1974 Act"), praying for quashing the termination order dated 7.7.2011 and further praying for directions that he be allowed to join his duties by accepting the joining report dated 17.11.2012 submitted by him.

The Tribunal has disposed of the said petition by passing the order dated 3.5.2013 which has been impugned in the present

petition.

The learned Tribunal has rejected the contention of respondent No.5 that on account of continuation of his service beyond the one year probation period specified in the appointment order, he had become a permanent and confirmed employee of the college. The Tribunal held that there is no law of automatic confirmation and there must be an express or implied consent from the management to draw the inference of confirmation. Regarding the order of termination, learned Tribunal acknowledged the right of the management to terminate the service of a probationer in accordance with law. It was however, held that this is not an absolute right. Learned Tribunal held that the right of the management to terminate the services of an employee would only flow if the management is in a position to show, prima-facie, either from the record or otherwise, that the work and conduct of the employee, in this case respondent No.5, was unsatisfactory. The Ld. Tribunal further held that in the present case this aspect was missing. What weighed with the Ld. Tribunal to conclude as above was, first, that the termination order nowhere made a mention that the work and conduct of respondent No.5 was unsatisfactory from the date of his initial appointment upto the date of passing of the termination order and that no material was placed before the Tribunal nor any complaint against respondent No.5, either from the management, staff or students was referred to on the basis of which, the management could pass such an order. It was stated that even

in the written statement filed by the management, there were no pleadings regarding the details of the alleged acts of misconduct or unsatisfactory record. The apology letter placed on record in the written statement filed by the petitioner was held to be not a genuinely executed document. This inference by the Ld. Tribunal was arrived at, on the basis of the fact that this letter was written in Punjabi, whereas respondent No.5 was a Lecturer in English taking MA classes. Thereby, the Tribunal concluded that it was improbable that he would write a letter in Punjabi. The Tribunal further held that the glance of the letter shows that the signatures of respondent No.5 had been obtained on a plain piece of paper, over which the writing has been manipulated by the management. It was also held that there was a serious interpolation in line no.4 where respondent No.5 wrote that he wanted a pardon for his mistake. Instances of those mistakes have not been spelt out and there is no endorsement from the side of the management on this letter that the apology had been accepted. A further consideration that weighed with the Learned Tribunal was that despite the termination order having been issued on 7.7.2011, respondent No.5 was permitted to continue teaching the students till 31.3.2012 for which period he was also paid the salary. This was held to be an unfair practice adopted by the management. The Learned Tribunal also held that as notice of motion had been issued in the writ petition filed by the petitioner, the second appointment letter was issued on 1.6.2012 to avoid any adverse order from the Court. Accordingly, learned Tribunal concluded that

the termination order was illegal and unjustified.

Learned counsel for the petitioner has asserted that the order of the Tribunal is illegal. He has contended that the Learned Tribunal has misconstrued the legal position regarding the rights of a probationer. He states that it is well settled that a probationer has no right to the post and his services can be terminated at any time during the period of probation for unsuitability, without any cause shown. He has further argued that the inferences about the apology letter written by respondent No.5 being a fabricated document are wholly unwarranted and at no stage in the earlier proceedings did he make any such averment that the apology letter was a forged or a fabricated document or was given under coercion.

On the other hand, learned counsel for respondent No.5 has argued that the action of the petitioner- management in terminating him is wholly illegal and the Management was playing hide and seek with him and did not allow him to join till he gave up his previous claims. Hence, the learned Tribunal has rightly set aside the order of termination.

I have heard Ld. Counsel for the parties and have gone through the records. I am of the considered view that the order of the Ld. Tribunal cannot be sustained.

Respondent No.5 joined the petitioner college on 10.7.2009. His services were terminated on 7.7.2011. As per Section 2-A of the 1974 Act, the probation period could be upto two years. Admittedly, the termination order was within a period of two

years of his appointment. The Ld. Tribunal has rightly held that there is no automatic confirmation of the service of respondent No.5 and his termination was within the period of probation.

Where the Ld. Tribunal, in my view, has gone wrong, is in holding that the order of termination is wrong because there is nothing on record to show that the work and conduct of respondent No.5 was unsatisfactory and the order Annexure P-5 also does not mention so. This is totally contradictory to the settled legal position that a probationer has no right to the post and his services can be terminated at any time without the necessity to show any cause for the same.

A short and very illuminating discussion for the purpose of probation and the rights of the employer vis-a-vis an employee on probation is found in the decision of the Hon'ble Supreme Court in **Ajit Singh v. State of Punjab, (1983) 2 SCC 217**, where the Hon'ble Supreme Court observed as under:

“6. This requires examination of the genesis why period of probation is prescribed. And how the period of probation has been understood in service jurisprudence.

7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is

*given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus penitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to (see *Parshotam Lal Dhingra v. Union of India*). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to*

employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer.”

Thus, the petitioner was not required to either mention in the order of termination nor otherwise produce material to show that the work and conduct of respondent No.5 was unsatisfactory nor was the petitioner required to produce any record in the shape of complaints from the management, staff or teachers to this effect. The suitability or not of an employee for confirmation is in the realm of the subjective satisfaction of the employer. Hence the order of the Ld. Tribunal setting aside the order of termination on the above ground is unsustainable.

However, it needs to be taken note of that in the written statement filed by the petitioner before the Ld. Tribunal, it had been categorically mentioned in para 3 that the act and conduct of respondent No.5 (herein), was never satisfactory as he had indulged in such acts which were objectionable and due to that his services were terminated. No reasons were given in the impugned order, so that no stigma is attached to him. It has been stated that on account of the repeated apologies tendered by him, it was decided to give him appointment once again. In paragraph No.4 of the written statement, it has been stated that respondent No.5 is not a person of moral behaviour. When in view of the apology tendered by him, he was given appointment once again, he started showing his actual face and tried to browbeat the management by imposing conditions

even with regard to his re-appointment and demanded continuity of service with all consequential benefits.

I find no reason to disregard this assertion in the written statement of the management. Respondent No.5 has nowhere in his petition made any specific allegation of malafide against any particular person in the management. The petitioner college has been running for the last so many years. It had not been explained by respondent No.5 in his petition as to why after his selection, the management or the authorities turned inimical to him and wanted him out. In the absence of any compelling material shown by the respondent No.5 that the action in terminating him was wholly arbitrary, vindictive and for some ulterior purpose, in my view, it would not be possible to hold that the action of the petitioner in terminating his service during the period of probation is illegal.

The Ld. Tribunal has been at pains to point out that in its view the apology letter Annexure P-4 allegedly written by respondent No.5 is a fabricated document and is written after his signatures were obtained on a plain paper. Quite apart from the fact that the inferences of the Ld. Tribunal on this point are far-fetched and the sequence of events belies the claims of respondent No.5 that the apology letter Annexure P-4 is the result of fraud and fabrication, even if the apology letter is totally disregarded, it would still not invalidate the termination order of respondent No.5.

How the sequence of events belie the claim of respondent No. 5 is clear from the following:

His services were terminated on 7.7.2011. He filed CWP No.12728 of 2011 challenging the aforesaid termination, in which notice of motion was issued on 21.7.2011. The apology letter of respondent No.5, which he has disputed as being fabricated and a result of fraud, is dated 27.7.2011. On 1.8.2011 he filed Civil Misc. Application in the pending writ that he be permitted to withdraw the writ petition as the college has offered him fresh appointment. However, on 09.08.2011 he withdrew the said application. As per the agreement with him and in an absolutely bonafide manner, the counsel for the petitioner college on 20.09.2011 stated before the Court that the case of respondent No.5 for appointment afresh on the post of Assistant Professor could be considered within a period of three months. In view of this statement, the post was re-advertised and respondent No.5 was selected and appointment letter dated 1.6.2011 (Annexure P-6) was issued to him. He, however, refused to accept the said appointment letter. The writ petition came up for hearing on 31.10.2011 and the letter of appointment was handed over to respondent No.5 in Court and the writ petition was dismissed as withdrawn with liberty to him to agitate his grievances before the Tribunal. Thereafter, he filed the petition before the Educational Tribunal on 19.11.2012. When the apology letter was relied upon by the petitioner in its written statement before the Ld. Tribunal, respondent No.5 in his replication took the stand that it is a fabricated document and that the management had taken his signatures under duress for the purpose of regularizing him. This

plea clearly appears to be an afterthought of respondent No. 5. Respondent No.5 was all through aware that the new appointment offered would be a fresh appointment. He had expressly stated in CM No.10374 of 2011 which he had filed seeking permission to withdraw his writ petition, wherein, he had challenged his termination that he wanted to withdraw the petition as he had been offered a fresh appointment on a better scale. On 20.09.2011, counsel for the petitioner college stated before the Court that the case of respondent No.5 for appointment afresh on the post of Assistant Professor could be considered within a period of three months, which statement is recorded in the order of that date. Thus, respondent No.5 had all along been aware that he would be offered a fresh appointment. In the light of all this, his stand, for the first time in the replication that his signatures were taken under duress for the purpose of regularizing do not appear to be convincing.

One cannot lose sight of the fact that respondent No.5 is a teacher in a college. As stressed by the Hon'ble Supreme Court in **Kayastha Pathshala, Allahabad v. Rajendra Prasad, 1989 Supp (2) SCC 732** in educational institutions the courts must have regard to the interests of students as well as the institution and the court cannot focus only on the individual forgetting all else.

The fact that the respondent No.5 was permitted to continue working and teaching the students till 31.3.2012 has to be viewed in the light of the subsequent settlement between the petitioner and respondent No.5, whereby, the petitioner had agreed

to offer him fresh appointment. This cannot be a circumstance to invalidate the earlier termination order dated 7.7.2011.

Thus, this petition is allowed. The order of the Tribunal quashing the termination order dated 7.7.2011 and declaring that respondent No.5 would be deemed to be in service w.e.f. 10.7.2009 and consequently he be immediately permitted to join is set aside.

When notice of motion was issued in this case on 19.9.2013, it was ordered that in case respondent No.5 is given appointment from 1.6.2012, the monetary consequences, if any, flowing from the earlier appointment till the date of fresh appointment shall not be made admissible to him. It appears that during the pendency of this petition, respondent No.5 has not been permitted to join duty even in pursuance to the fresh appointment letter.

The Ld. Tribunal has quashed the fresh appointment letter dated 1.6.2012 as a necessary consequence of its order quashing the earlier termination order dated 7.7.2011. Accordingly, it has not opined on the rights of respondent No.5 flowing out of the fresh appointment letter. In view of this, the parties are at liberty to work out an amicable settlement on the issue of fresh appointment. In case of failure to arrive at such settlement, respondent No.5 would have liberty to pursue any appropriate legal remedy as may be available to him.

June 30, 2015

gian

**(HARINDER SINGH SIDHU)
JUDGE**