

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CWP No.240 of 2015**

Amrinder Singh Tiwana ...Petitioner

Versus

State of Punjab and others ...Respondents

2. **CWP No.254 of 2015**

Rippanjit Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

Date of decision: **May 20, 2015**

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CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. Pankaj Gupta, Advocate for the petitioners.
(in both writ petitions)

Mr. Rakesh Garg, Sr. Advocate with
Ms. Nimarta Shergill, Advocate
for respondent Nos. 3 and 4.

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HARINDER SINGH SIDHU, J.

This order shall dispose of aforesaid two writ petitions as
in both common issues arise for adjudication. For facility of reference,
the facts are being taken from CWP No.240 of 2015.

This petition has been filed praying for quashing the order dated December 29, 2014 (Annexure P-6) issued by Patel Memorial National College - respondent No.4, whereby, the services of the petitioner have been dispensed with as being no longer required and he has been relieved from College duties.

It has been averred that Respondent No.4-College was established in the year 1966 and is run by the Patel Memorial Management Society (Regd.) - respondent No.3. It has been stated that due to inter-se dispute between the members of the Managing Committee, the Sub Divisional Magistrate (SDM) Rajpura, has been appointed as Administrator of the said Society. The College is affiliated to the Punjabi University Patiala. It is receiving 95 % grant-in-aid from the State of Punjab and its name figures in the list of Privately Managed Government Aided Colleges issued by the Director Public Instructions (Colleges) Punjab.

The petitioner was appointed as Assistant Professor in Journalism and Mass Communication in the College on July 26, 2010. It has been averred that as per the practice in the College, no formal appointment letter was issued to the petitioner. The petitioner has, since his joining on July 26, 2010, been continuously working as

Assistant Professor without any break. He has also been discharging the duties of Public Relations Officer in the College.

Suddenly, the petitioner received the order dated December 29, 2014 (Annexure P-6) passed by the Principal of the College stating that as per the directions of the Administrator/College Management, the services of the petitioner were not required in the College and as such he has been relieved from his duties w.e.f. December 29, 2014. It is this order that has been impugned in the present petition.

It is stated that the termination of the petitioner is illegal, having been made in violation of the mandatory provisions of the Punjab Affiliated Colleges (Security of Service) Act, 1974 (in short "the 1974 Act"). Aggrieved of the order, the petitioner had filed a statutory petition under Section 7(A) of the 1974 Act before the Learned Educational Tribunal, Punjab. But, as at the time of the filing of the petition, the Educational Tribunal was not functional because of a vacancy in the office of the Chairman, and since the matter was of urgent nature and did not brook any delay, the petitioner chose to impugn the order by filing the present writ petition.

Reply has been filed on behalf of respondents No.3 and 4

contesting the claim of the petitioner. It has been stated that the petitioner was appointed on purely adhoc basis in a walk-in interview, wherein no formal appointment letters are issued. The post, against which the petitioner is working, is wholly self-financed by the College and against this post, no grant-in-aid is received. The petitioner was being paid a consolidated salary by the respondent private college. Services of the petitioner could be terminated at any time without any reason being assigned as the petitioner is not governed by the 1974 Act. It has been stated that out of the total staff of eighty, only seven posts are covered by the Grant in aid Rules.

Detailing the background which led to the passing of the impugned order, it has been stated that there was a dispute between two groups of the teachers, which led to the filing of complaint by a particular teacher against the other group of which the petitioner was a part. The basic allegation in the complaint related to the damage caused to the car of the complainant by the other party who happened to be the Incharge of Bhangra Team of the College. Acting on the aforesaid complaint, the SDM-cum-Administrator convened a meeting with the Principal and all Heads of Departments. The DSP and Tehsildar, Rajpura were also present in the meeting. It was decided to

constitute a fact finding committee of 5 members to resolve the issue relating to the damage of the car of the complainant Sh. Arunjit Singh Tiwana, Assistant Professor (Eng.). A different committee comprising of six teachers as members was constituted to look into another set of allegations regarding sexual harassment levelled by Ms. Kitty Sodhy, Assistant Professor (Eng.) against the petitioner. In both the Committees the concerned parties including the petitioner were given an opportunity of hearing.

The first Committee submitted its report dated 14.11.2014 (Annexure R-3/5) wherein it was concluded that sufficient proof had not been produced before the Committee regarding the involvement/instigation by the petitioner and Professor Rippanjit Singh (petitioner in CWP No.254 of 2015) in the incident of car damage. It was recommended that the two students, who admitted to causing the damage be suspended from the college and the suspension be revoked only if they tendered an apology to the satisfaction of the complainant.

The second Committee submitted its report Annexure R-3/7 dated 4.12.2014 concluding that the complaint has been lodged on flimsy grounds and none of the allegations against the petitioner and

Prof. Rippanjit Singh regarding sexual harassment have been proved. However, the Committee recorded general observations regarding the behaviour and conduct of both groups of teachers i.e., the complainants Ms. Kitty Sodhi and Prof. Arunjit Singh Tiwana on one side and the petitioner and Professor Rippanjit Singh on the other side. It was observed that :

“.....the wholesome fabric of mutual trust and confidence and cooperation had been torn to pieces by the boisterous, uncompromising revengeful and haughty of these four teachers- Prof. Ms. Kitty Sodhi, Prof. Arunjit Singh Tiwana, Prof. Amrinder Singh Tiwana and Prof. Rippanjit Singh who are bent upon turning the college into arena to settle a score on one another. They are even inciting groupism among the teaching and non-teaching staff, which is damaging for the institution.”

The Committee recommended strict action against them all. The Principal accepted the proposal of the Committee and recommended that all the four teachers be relieved of their duties from the College immediately and good experience certificates may also not be given to them as a deterrent. This recommendation was forwarded to the Administrator through the HRD Committee. The petitioners were given an opportunity of hearing on 18.12.2014 in the presence of the HRD Committee, which thereafter, endorsed the recommendation of the Principal in the interest of the Institution. It

was thereafter that the impugned order relieving the petitioner was passed.

Learned counsel for the petitioner has raised the following contentions:-

- i) The order has been passed in violation of the provisions of 1974 Act which requires that no employee shall be dismissed or removed or reduced in rank except after conducting 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. In the case of the petitioner no enquiry has been conducted nor any opportunity of hearing was granted before terminating the services.*
- ii) The petitioner was not associated with the inquiry committee.*
- iii) There are no adverse findings against the petitioner by the Committee. In fact the first Committee found that the allegations have not been proved and the second Committee recorded that the allegations were lodged on flimsy grounds.*
- iv) As per the note dated 10.12.2014 on behalf of the HRD Committee (Annexure R-3/7) it was recommended that the teachers be relieved of their duties for a specified period and meanwhile a proper review regarding the issue should be taken. However, the petitioners have been relieved by*

stating that their services are no longer required.

v) The petitioners are being replaced by ad hoc teachers which is contrary to the settled law that an ad hoc employee cannot be replaced by another adhoc employee.

Learned Senior Counsel for respondents No. 3 and 4 has argued that petitioners were appointed on ad hoc basis on non-aided posts. Section 6 of the 1974 Act specifically states that the provisions of Section 3, 4 and 5 will not apply to the termination of any employee who is appointed for temporary period only, hence the protection of the aforesaid sections is not available to the petitioner. He further states that the petitioners and others named in the Committee reports had by their conduct vitiated the atmosphere in the College. Their continuance was not in the interest of the students and the Institution. Hence, they were relieved of their duties by a simplicitor order of discharge which was perfectly legal as the petitioner had no right to the post. He further states that though no opportunity of hearing was required to be given in the case of petitioners being ad hoc employees, but they were given opportunity of hearing before passing the impugned orders.

In order to appreciate the contention of the Ld. Counsel for

the parties, it would be necessary to refer to the relevant provisions of the 1974 Act.

The Preamble to the Act states that it is an Act to provide for the security of service to employees of affiliated colleges. Section 2(a) defines “affiliated college” to mean a college associated with and admitted to the privileges of University constituted or established under any law for the time being in force but does not include a Government college or college established or maintained by such a University.

As per Section 2(e) employee means a person in the employment of an affiliated College but does not include a work charged employee.

The safeguards and the procedures for dismissal and removal are provided for in Sections 3 to 5.

“3. Dismissal, removal or reduction in rank not to be ordered except after inquiry:

No employee shall be dismissed or removed or reduced in rank except after 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.

4. Procedure to be observed before dismissal or removal- (1) The penalty of dismissal or removal from service shall not be imposed unless the same is approved by the Director.

2) Where after the inquiry referred to in section 3 , it

is proposed to impose the penalty of dismissal or removal from the service, the proposal shall be referred to the Director alongwith the relevant record and intimation about the proposal having been so referred shall be sent to the employee concerned also, simultaneously.

3) The employee may, within a period of thirty days of the receipt of the intimation referred to in sub section (2) make a representation against the proposed penalty to the Director who may, by an order in writing give his approval to the imposition of the proposed penalty of dismissal or removal from service, as the caes may be , or refuse to give approval if the proposal is found to be malafide or by the way of victimisation or not warranted by the facts and circumstances of the case.

4) Any party aggrieved by an order of director under sub section (3) may file an appeal to the Educational Tribunal, which may after giving to the parties an opportunity of being heard pass such order as he may deem fit.

*5 Procedure to observed before reduction in rank-
(1) Where after the inquiry referred to in section 3, it is proposed to impose the penalty of reduction in rank the employee shall be given a reasonable opportunity of making representation on the penalty proposed to be imposed and no order of reduction in rank shall be passed unless such an opportunity has been given.*

2) An employee against whom an order of reduction in the rank is passed may, within the prescribed period and in the prescribed manner, file an appeal to the Educational Tribunal and it may after examine the record and giving to the parties an opportunity of being heard set aside the order of reduction in rank, if the same is found to be malafide or by way of victimization or not warranted by the facts and circumstances of the case.

6. Section 3,4 and 5 not apply in certain cases: The

provisions of section 3,4 and 5 shall not apply-

- i) to the termination of service of any employee who is appointed for a temporary period only.*
- ii) to the termination of service of any employee appointed on probation during or at the end of the period of probation, on account of his work or conduct being unsatisfactory.*
- iii) to an employee who is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on criminal charge;”*

Section 6 of the Act specifically states that the provisions of section 3, 4 and 5 shall not apply to the termination of service of any employee who is appointed for a temporary period only. The petitioner was appointed pursuant to the advertisement Annexure R-3/1. As per this advertisement, candidates were invited for a walk-in interview for appointment to various posts purely on ad-hoc basis till the end of the session. No doubt, the services of the petitioner were continued for more than one session, but that does not change the nature and character of his appointment which would continue to be ad hoc/ temporary. Hence, the provisions of Sections 3, 4 and 5 of the 1974 Act are not attracted to the case of the petitioner.

It is settled law even in the case of Government servants who have the protection of Article 311 of the Constitution, that a temporary employee has no right to the post and his services are liable

to be terminated at the end of the contract or even before that as per the terms and conditions of his appointment or the relevant statutory provisions. Here, the petitioner was working on a non-aided post and did not have the protection of any statute or rule, violation whereof, can be pleaded. As already noticed, the protection of Sections 3 to 5 of the 1974 Act is not available to the petitioner as he was a temporary employee. Hence, there is no force in the argument of the Ld. Counsel for the petitioner that his relieving is contrary to the provisions of the 1974 Act.

It was next argued that the petitioner was not associated with the enquiry proceedings. This fact has been disputed by the respondents. In the written statement filed on behalf of respondents 3 and 4, it has been specifically stated that the first Committee gave an opportunity to the concerned parties before giving its report dated November 14, 2014. In respect of the second Committee constituted to look into the allegations of sexual harassment, it has been stated that before submitting the report dated 4.12.2014, the petitioner was given full opportunity of hearing. Moreover, all the four teachers which included the complainants and the petitioner (including the petitioner in CWP 254 of 2015) were also given opportunity of hearing

by the HRD Committee, before it recommended action in terms of the recommendation of the Principal of the College. It is, thus, clear that the petitioners were duly heard regarding the allegations against them levelled by their colleagues.

What needs to be noted is that this was not a regular enquiry under the service rules for initiating departmental action. The petitioner was working on ad hoc basis. Complaints were received from his colleague, a fellow teacher regarding his involvement in causing damage to her car and a later complaint regarding causing sexual harassment to her. To go into these allegations, the management rightly constituted two committees comprising teachers who submitted their reports. Though, nothing conclusive was found against the petitioner, but the Committee concluded that both sets of teachers i.e., the complainants and the petitioners (in both these petitions) were indulging in groupism among the teaching and non-teaching staff, which was damaging for the institution.

The fact that nothing conclusive had been found against the petitioners and that the second complaint has been concluded to be lodged on flimsy grounds would not make any material difference. Nor would it make any difference that at one point, it was suggested

that they be relieved of their duties for a specified period only and the entire issue be reviewed.

It has not been disputed that the order relieving them was passed by the competent authority. Hence, the view expressed at some stage by one functionary during the processing of the case was not binding on the competent authority. After hearing the petitioners the unanimous view of the HRD Committee was to endorse the recommendation of the Principal to relieve the petitioners in the interest of the Institution. This was accepted by the Administrator. No fault can be found with this.

One cannot lose sight of the fact that the petitioners and the complainants who were relieved are teachers. Highest standards of behavior and conduct are expected from them. One need not emphasize on the importance and role of teachers which has been universally recognized all along. The Hon'ble Supreme Court has in various cases stressed the need and importance of discipline amongst the teachers and the need to maintain a serene atmosphere in the educational institutions. In **Manager, Nirmala Senior Secondary School v. N.I. Khan, (2003) 12 SCC 84, at page 86** :

“A teacher affects eternity. He can never tell where his

influence stops; said Henry Adam. Any educational institution for its growth and acceptability to a large measure depends upon the quality of teachers.

2. Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important.

3. The case at hand has some unfortunate shades as it involves alleged misconduct of a teacher and the purported desire of the management of an educational institution to keep him out of the institution to maintain the purity in educational sphere and serene atmosphere of the institution. The whole unsavoury episode started on 21-12-1995 when respondent N.I. Khan allegedly abused and attempted to assault a lady Principal of the appellant's educational institution in front of the school. That led to lodging of a first information report. Khan was placed under suspension on the same day. Subsistence allowance was sanctioned on 29-12-1995. A few days thereafter, in a second incident, Khan allegedly picked up a quarrel again and threatened to burn the school down. Again a complaint was lodged at the police station. Thereafter, began a legal battle involving not only the factual controversies, but also assertion of rights guaranteed and protected under Article 30(1) of the Constitution of India and the legal battle has continued unabated and reached this Court in these appeals..."

SCC 436, it was observed :

“Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.

18. ... we have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress.

* * *

31. *The Court in Meera Massey further observed as under:*
(SCC p. 104, para 24)

“24. University imparts education which lays foundation of wisdom. Future hopes and aspiration of the country depends on this education, hence proper and disciplined functioning of the educational institutions should be the hallmark. If the laws and principles are eroded by such institutions it not only pollutes its functioning, deteriorating its standard but also exhibits to its own students the wrong channel adopted. If that be so, how could such institutions produce good citizens? It is the educational institutions which are the future hope of this country. They lay the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed.”

Thus, in my view the respondent management rightly

relieved the complainants and the petitioners in the larger interest of the Institution as their continuance was disturbing the peaceful atmosphere of the institution. It would be important to emphasise that in an educational institution, the interests of the students would be paramount, and teachers who lose focus and create factionalism and vitiate the academic atmosphere should have no place therein.

The services of the petitioners were on ad hoc basis. They had no right to the post. Their services were liable to be dispensed with on the expiry of their term or even before that for non-suitability. If some allegations were made against them, the authorities concerned were not precluded from holding some preliminary fact finding enquiry, as has been done in this case. Order for discharge, pursuant to such fact finding report, would not be stigmatic. This legal position has been settled even in the case of government servants who enjoy the protection of Article 311 of the Constitution. The Hon'ble Supreme Court in Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, (2002) 1 SCC 520, at page 528 :

“21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-

scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

22. *The three factors are distinguishable in the following passage in Samsher Singh v. State of Punjab where it was said: (SCC p. 851, para 64)*

“64. Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an inquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection.”

(emphasis supplied)

23. *Thus in Benjamin case complaints had been received against a temporary employee. A notice had been sent to the employee to show cause why disciplinary action should not be taken against him. The inquiry officer was appointed but before the inquiry was completed, the services of the employee were terminated with one month's salary in lieu of notice. The Constitution Bench upheld the order of*

termination and drew a distinction between a preliminary inquiry and a departmental inquiry. It was held that a preliminary inquiry held to satisfy the Government whether there was no reason to dispense with the services of the temporary employee should not be mistaken for a departmental inquiry held to decide whether punitive action should be taken.

24. In State of U.P. v. Kaushal Kishore Shukla the employee had been appointed on a temporary basis for a fixed tenure. During the period of his service, adverse entries were made in his character roll. Complaints were also received by the auditors of the employer. A summary inquiry was held. It was found that the auditor's complaint was correct. The employee was transferred to another post. He did not join and the employer terminated his services. This Court, while upholding the order of termination, said that the mere fact that prior to the issue of the termination an inquiry was held against the employee did not make the order of termination into one of punishment.

32. We are also not prepared to hold that the enquiry held prior to the order of termination turned this otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge-sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the termination was in substance punitive exists here."

Ld. Counsel for the petitioners has further argued that after relieving them from service, the respondents are recruiting persons on ad hoc basis. He contends that this is illegal in view of the settled

legal position that ad hoc employees cannot be replaced by another set of ad hoc employees. There may not be need to go into this argument of the Ld. Counsel for petitioner because the present is not a simple case of replacing one set of ad hoc employees by another set of ad hoc employees on the expiry of the term of the earlier ad hoc employees. The petitioners have been relieved from service on account of the fact that their continuance was not found to be in the interest of the institution.

Thus there is no merit in the claim of the petitioners. The petitions are dismissed.

Having held as above, there is one aspect of the case that has caused me considerable concern. The petitioner has averred that he was not issued any appointment letter. Respondent No. 3 and 4 have also stated in their written statement that the petitioner was appointed on purely ad hoc basis in a walk-in interview wherein no formal appointment orders are issued.

A contract of employment or service, in absence of any statute, would be governed by the provisions of the Indian Contract Act. In absence of any statutory provision such a contract of service like any other contract must be preceded by an offer and acceptance,

the terms whereof would constitute the terms and conditions of service of the employee (**Sultan Sadik v. Sanjay Raj Subba, (2004) 2 SCC 377**). In the absence of any provision in the governing statute a contract of employment, like any other contract, may be either express or implied and where express may be oral or in writing. There is no provision in the 1974 Act or the Rules framed thereunder which specify the form and manner in which the contract of employment for ad hoc / temporary teachers is to be drawn up.

The question is, whether in the absence of any provision in the governing statute or rule or regulation, can appointments of teachers on ad hoc or temporary basis be made in affiliated colleges, without issuing any appointment letter. I am of the opinion that the answer to that question has to be in the negative.

The Hon'ble Supreme Court in **T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481**, stressed upon the need for speedy resolution of disputes between the teachers and the management and opined that requiring a teacher, even of private institutions to go to civil courts for the purpose of redressal of their grievances was not in the interest of general education. It was stressed that disputes between the management and the staff of

educational institutions must be decided speedily, and without the incurring of excessive costs. It therefore directed the setting up of Educational Tribunals in the States for hearing the appeals of the teachers against action by the management, by observing as under:-

“63. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the Government or the university are clearly loaded against the management. It was submitted that in some cases, the rules require the prior permission of the governmental authorities before the initiation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in the case of proven misconduct. While emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the management in the event of some punishment being imposed, it was submitted that there should be no role for the Government or the university to play in relation to the imposition of any penalty on the employee.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this

principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriate relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an Educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an Educational Tribunal in a State — the object being that the teacher should not suffer through the substantial costs that arise because of the location of the Tribunal; if the tribunals are limited in number, they can

hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the Government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.”

Consequent to the aforesaid directions, the 1974 Act has been amended and Section 7A has been inserted providing for constitution of Educational Tribunal to hear all cases of disputes between the Managing Committee and the employees. As defined in Section 2(e) an employee means a person in employment of an affiliated college but does not include a work charged employee. Thus, the Tribunal has jurisdiction to hear disputes of even ad hoc/ temporary employees.

In the absence of a written appointment letter incorporating the terms of the contract of service/ employment, it would be difficult for the Educational Tribunal to ascertain the nature and terms of the contract between the teacher/employee and the management if there is no agreement between them with regard thereto. In such

circumstances it would be difficult for the Tribunal to meaningfully, effectively and speedily adjudicate the dispute. Non-issuing of an appointment letter would leave the teacher at the mercy of the employer/ management and with no evidence of employment and the terms thereof in his hand. It would render his position precarious and highly untenable. In the absence of a letter of employment he would have no evidence of his teaching experience, which he would require should he seek employment elsewhere. This practice of non-issue of an appointment letter would defeat the objective of the Hon'ble Supreme Court that the teachers have a cost effective and speedy forum for adjudication of their disputes. Such attitude of the management robs the teachers of their dignity and undermines the exalted position of a teacher. It is a wholly unfair practice which cannot be countenanced. Accordingly, it has to be held that issuing a proper appointment letter to teachers including those appointed on ad hoc / contractual basis is implicit in the mandate of the Hon'ble Supreme Court in TMA Pai case(supra) directing the setting up of Educational Tribunals to adjudicate the disputes between the teachers and the management, as adjudication of such a dispute would be rendered difficult and time consuming in the absence of a document

evidencing the terms and conditions of appointment.

It may be appropriate if the State Government bestows its attention to this aspect and makes such a provision in the relevant Act and Rules. In this regard Section 20 of the Haryana School Education Act, 1995 which requires the Managing Committee of every recognized private school to enter into a written contract of service with every employee of the school may be usefully referred to.

A copy of this judgment be sent to respondent No.1 –
Principal Secretary, Department of Higher Education, Punjab.

MAY 20, 2015

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**(HARINDER SINGH SIDHU)
JUDGE**