

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

**Letters Patent Appeal No.500 of 2015 (O&M)
Date of Decision: April 07, 2015.**

The Director, Thakur Devi Takanram DAV Institute

.....APPELLANT.

VERSUS

Santosh Rani and another

.....RESPONDENT(s).

**CORAM:- HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Rajdeep Singh Cheema, Advocate
for the appellant.

S.S. SARON, J.

This appeal has been filed by the Director, Thakur Devi Takanram, DAV Institute of Physiotherapy and Rehabilitation, Yamuna Nagar against the judgment/order dated 22.01.2015 passed by the learned Single Judge, whereby the petition of respondent No.1-Santosh Rani has been allowed after setting aside the award dated 14.10.2010 (Annexure P-1) passed by the learned Labour Court, Ambala.

Respondent No.1-Santosh Rani served as a part-time ad hoc *Safai Karamchari* with the appellant initially on a consolidated salary of ₹749/- per month from the year 2001 till 10.07.2005. During her employment, she worked in the girls hostel and was getting monthly wages of ₹1,400/- per month. Her appointment was made from time to time on 89 days basis. She was given 19 extensions of 89 days each. According to the appellant, Santosh Rani-respondent No.1 had remained absent from duty from 10.07.2005 to

19.07.2005. She, however, to retrieve her employment, gave an undertaking that in case, she proceeds on leave in future, her service may be dispensed with. The appellant-management accordingly filed the case by making an endorsement on 20.07.2005. It was recorded that respondent No.1 had been warned about her behaviour and she can be relieved from duty without notice if there was repetition. Despite the case being filed, the appellant-management passed an order dated 22.08.2005 relieving her from duty on completing last of her 89 days' spell of appointment.

Respondent No.1 aggrieved against the order dispensing with her service raised an industrial dispute terming the order to be a "retrenchment". A demand notice was served upon the appellant for her reinstatement. The conciliation proceedings that were initiated did not bring any relief to her. Accordingly, the appropriate Government made a reference in terms of Section 10(1)(c) of the Industrial Disputes Act, 1947 (Act-for short) to the Presiding Officer, Labour Court, Ambala.

The Presiding Officer, Labour Court, Ambala vide award dated 14.10.2010(Annexure P-1) dismissed the claim of respondent No.1. It was inter-alia held that respondent No.1 cannot be held entitled to any relief whatsoever as the provisions of the Act were inapplicable in the case.

Aggrieved against the award, respondent No.1 filed a civil writ petition in this Court, which has been allowed by the learned Single Judge vide impugned order dated 22.01.2015. The learned Single Judge held the impugned award of the Labour Court to be unsustainable, besides, held respondent No.1 to be entitled for reinstatement. The arrears of back wages, however, were restricted for the period from the demand notice till the date of award and then from the date of award to the date of filing of the writ petition.

The parties were left to bear their own costs. The appellant, aggrieved against

the same, has filed the present appeal.

Mr. Rajdeep Singh Cheema, Advocate, learned counsel for the appellant submits that the appellant is not aggrieved against the reinstatement of the respondent No.1, however, it is submitted that the learned Single Judge erred in holding that the principles of Article 16 of the Constitution of India do not reach private managements and posts of their staff strength do not constitute public posts or have reference to Article 311 and Article 16 of the Constitution. Besides, the private bodies and private institutions i.e. D.A.V Educational Institution as in the present case function through societies and are not required by law to satisfy mandates of equal opportunities in Part-III of the Constitution. Learned counsel for the appellant submits that the said principle may apply to unaided institutions but not to the aided institutions as in the present case. It is submitted that in respect of aided institutions, the provisions of Haryana Affiliated Colleges (Security of Service) Act, 1979 (1979 Act-for short); Haryana Affiliated Colleges (Security of Service) Rules, 1993 (1993 Rules-for short) and Kurukshetra University Self-Financing Scheme Rules (Self-Financing Scheme Rules-for short) would apply and therefore, the learned Single Judge erred in holding that the concepts of Article 311 and Article 16 of the Constitution do not apply to private bodies.

After giving our thoughtful consideration to the matter, it may be noticed that provisions of 1979 Act provides for security of service to the employees of affiliated colleges. “Affiliated College” has been defined in Section 2(a) of 1979 Act to mean a college which is not run by the Central Government or the State Government or a local authority which is recognized by the Kurukshetra University under the Kurukshetra University Act, 1956 or is admitted to the privileges of the Maharishi Dayanand University under the Maharishi Dayanand University Act, 1975. The 1993 Rules have been framed

in exercise of powers conferred under Section 16 read with Sections 4 and 5 of 1979 Act for regulating the recruitment and conditions of service and conduct of the employees appointed under the 1979 Act. “Employees” has been defined in Rule 2 (c) of the 1993 Rules to mean any person who is in whole time employment of the Haryana Affiliated Colleges (Security of Service). The Self-Financing Scheme Rules apply to all the employees teaching and non-teaching engaged for and in connection with the affairs of running of self-financed courses and programmes, established and introduced under these rules by the University. The said Rules are for self financing for course in Arts, Science and Commerce in non-Government affiliated colleges. A noticeable feature under the 1979 Act, the 1993 Rules and the Self-Financing Scheme Rules is that these apply to affiliated colleges and do not make any distinction between aided and unaided institutions. In other words, these apply to aided and unaided institution, which are affiliated to Kurukshetra University, Kurukshetra or Maharishi Dayanand University, Rohtak as the case may be. Therefore, the contention of learned counsel based on the said rules, in our view, is not tenable and the principle as laid down by the learned Single Judge cannot be upset on the strength of the said contention. However, this aspect is not to be gone into in the facts and circumstances in the present case and may be in some other case. Since the appellant does not seriously assail the reinstatement of respondent No.1, we need not go into this aspect. Even otherwise, where the services of a ‘workman’ are dispensed with, a dispute affecting his rights and liabilities arises. In such a case, the workman has a right to resort to the provisions of the Act for redressal of any grievance regarding his services. In this situation, a workman is entitled to elect the remedies that are available to him. In the present case, the workman having elected the remedy of approaching the Labour Court under the Act, the rights

available to her under the Act would govern the conditions of her employment on the basis of which her rights and liabilities are to be determined. The concept of the applicability of Articles 16 and 311 of the Constitution, which are applicable to public posts, indeed cannot be applied to posts of private bodies and private institutions as held by the learned Single Judge.

Consequently, there is no merit in this appeal and the same is accordingly dismissed.

(S.S. SARON)
JUDGE

(SURINDER GUPTA)
JUDGE

April 07, 2015.
Sachin M.

Note: Whether to be referred to Reporter: v
Yes/No.