

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

**LPA No.606 of 2015 (O&M)
Date of Decision: 09.07.2015**

SD Girls Senior Sec.School, Karnal ... Appellant

VS.

Laxmi Devi & Ors. ... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI**

Present: Mr. SK Rana, Advocate for the appellant

Mr. Parminder Singh, Advocate for respondent No.1

Mr. Naveen Kaushik, Addl. AG Haryana

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal is directed against an interlocutory order dated 13.02.2015. However, the directions issued vide that order have some impact on the final outcome of the *lis* between the parties, hence the instant appeal has been entertained. Before we dispose of the appeal through a consent order, the facts may be noticed briefly.

(2) The first respondent is working as a Water Carrier (Group D post) since 15.02.1997 under the appellant-management in the school known as SD Girls Senior Secondary School at Karnal. The first respondent was placed under suspension on 03.04.2012 followed by a charge-sheet consisting 20 allegations. The appellant-management is said to have held an enquiry and pursuant thereto respondent No.1 was dismissed from service on

29.08.2012. Since the school receives Grant-in-Aid from the State Government, the provisions of Haryana School Education Act, 1995 are applicable whereunder the first respondent preferred an appeal against the order of dismissal.

(3) The District Education Officer-cum-Appellate Authority vide order dated 14.11.2012 disapproved the dismissal order and remanded the case to the Managing Committee for a fresh decision after giving appropriate opportunity of hearing to the first respondent. Thus, the enquiry proceedings were required to be conducted again.

(4) The order of the District Education Officer was challenged in appeal by the Management but the Director, Secondary Education dismissed the same on 04.11.2014. Meanwhile, the first respondent filed CWP No.5437 of 2014 before this Court and also approached the Education Tribunal for implementation of the order passed by District Education Officer-cum-Appellate Authority.

(5) It is in those proceedings that the learned Single Judge passed the impugned interlocutory order directing the appellant-management to reinstate the first respondent in service.

(6) Thus, while both the parties are still before one or the other forum agitating their respective rights, learned Single Judge has directed the reinstatement of first respondent in service.

(7) The aforesaid order is challenged by the management on the ground that before her dismissal from service, the first respondent was under suspension, therefore, she can be at best deemed to be under suspension after the dismissal order has been set aside on a technical ground like non-observance of principles of natural justice. On the other hand, the claim of first respondent is that once the dismissal order is non-existent and the management has been directed to hold fresh enquiry proceedings, she is entitled to be reinstated in service.

(8) We were informed by learned counsel for the management on the previous date that due to threat of contempt proceedings etc. respondent No.1 was allowed to join the service though she would still be deemed to be under suspension under Rule 105 of the Haryana School Education Rules, 2003.

(9) Counsel for respondent No.1, on the other hand, refers to the *proviso* to that Rule to contend that her appeal having been accepted on merits, she is entitled to be reinstated in service.

(10) Notwithstanding the rival submissions, the core question that arises for consideration is whether the first respondent is entitled to a fair trial before an impartial adjudicator with reference to the allegations leveled against her, some of which are indeed quite serious? Since the earlier enquiry held against the first respondent by the Secretary of the Managing Committee of the school was disapproved by the authorities under

the 1995 Act, learned counsel for the appellant, on our asking, very fairly put up a proposal on 29.06.2015 that the appellant-management was willing to get the domestic enquiry conducted by a retired Judicial Officer.

(11) Having been called upon to respond to the aforesaid proposal, learned counsel for respondent No.1 also very fairly states that he has no objection if the domestic enquiry is conducted *de novo* by Shri Vinod Kumar Jain, a former member of the Haryana Superior Judicial Service presently settled at Panipat. We may mention here that his name has been suggested by learned counsel for the first respondent. Learned counsel for the appellant too has no objection if the domestic enquiry is held by Shri Jain.

(12) In this view of the matter, we dispose of this appeal with the following directions:-

- (i) the appellant-management may issue fresh charge-sheet after re-visiting the previous charge-sheet of year 2012 so that some of the charges which the management may not insist upon can be dropped being unnecessary.
- (ii) The first respondent shall be deemed to be under suspension till the District Education Officer-cum-Appellate Authority passed the order dated 14.11.2012. She will be entitled to subsistence allowance only as per rules upto that period.

- (iii) The first respondent shall submit her reply to the fresh charge-sheet within a period of two weeks from the date it is received by her. On receipt of that reply, the appellant management, if it so decides, appoint Sh. Vinod Kumar Jain as the new enquiry officer and in that event, the enquiry officer shall decide the enquiry proceedings within a period of three months from the date of his appointment after giving adequate and reasonable opportunity of hearing to both the parties. The first respondent shall be permitted to engage Advocate, if she so desires.
- (iv) Further course of action shall depend upon the outcome of the enquiry.
- (v) If the nature of charges entailing major penalty are proved against the first respondent, in that case she shall be taken to be under deemed suspension from 14.11.2012 onwards also. However, in case of exoneration, she shall be entitled to full monetary benefits and/or other consequential benefits w.e.f. that date.
- (vi) The first respondent may be paid subsistence allowance, if already not paid, from 14.11.2012 onwards and it shall be paid to her till the conclusion of enquiry.

- (vii) If the first respondent is exonerated of the charges, she shall be entitled to full monetary benefits including full salary w.e.f. 03.04.2012 onwards.
- (13) In view of the above-stated agreed order, learned counsel for the first respondent has very fairly and rightly pointed out that the writ petition itself can be disposed of in above terms and so would be the fate of the contempt proceedings also which are disposed of as having been rendered infructuous.
- (14) Ordered accordingly.

(Surya Kant)
Judge

09.07.2015
vishal shonkar

(P.B. Bajanthri)
Judge