

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2690 of 2000 (O&M)
Date of Decision: 21.12.2016

Rakesh Kumar Sharma

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Roopak Bansal, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. R.K. Hooda, Advocate,
for respondent No.3.

Mr. Shireesh Gupta, Advocate,
for respondent No.4.

RAJIV NARAIN RAINA, J.

1. I passed the final order qua dismissal and set aside the penalty imposed. The order reads:-

“This case was heard at a final hearing on September 9, 2016 but was partially decided in order to bring immediate relief of reinstatement to the petitioner, who has been kept out of service as Headmaster/Principal of the respondent School by a dismissal order effective from March, 2000, and for all the wrong reasons as explained hereafter in the course of the judgment. I have proceeded to quash the order of dismissal and allow the petition on the main substantive relief when informed that the petitioner will reach the age of retirement by the end of this year. He would have about three months to serve, if returned to office. However, the monetary aspects and consequential benefits flowing on reinstatement is a rather ticklish

question which I was unable to resolve without any assistance from the respondent society and thus left it pending decision, for which limited purpose the case has been adjourned to better and more fully understand the issue of relief grantable after a passage of 16 years of dismissal and 11 years since the Haryana Government took back the school from the private society. It was the private society which took the illegal and extreme step of dismissing the petitioner. For this the ex-management would require to be heard, as it is not represented today despite notice in the cause list, in order to understand its liabilities towards the petitioner incurred during its hegemony.

2. *The respondent-school was a Government school when the Haryana Government entered into a memorandum of understanding with a private society to run this and two other schools established in the Mewat area of Haryana by divesting itself of authority and power to administer and manage the the school. The Government let the society run the school through its own management. The petitioner was the Principal of one of these school with name changed to Delhi Public School, Mewat, Gurgaon.*

3. *After long years of service the petitioner was unfortunately issued a trumped-up charge-sheet by the management of the society on frivolous charges without any proper reasons or back-up evidence. An enquiry was instituted against him by the private management.*

4. *The Sub Divisional Officer (Civil) was deputed to conduct the enquiry and in a fair proceeding found him innocent of the charges levelled against the petitioner. The enquiry report is at Annex P-5 which exonerates him from alleged imputations of misconduct. He had committed no wrong. Nevertheless the management without even caring to agree or disagree with the enquiry report*

and that too without entering a dissent note in writing assigning reasons therefor, the authorities proceeded against the petitioner by issuing a show cause notice on January 7, 2000 calling upon him to explain why his services should not be dispensed with. The management received the reply and straightway decided to dismiss the petitioner from service prospectively from March 1, 2000 in a meeting held on February 16, 2000. It was mentioned in the notice that the dismissal order would be implemented w.e.f. March 1, 2000. It was. The petitioner has been in litigation against the dismissal order for which this petition was brought claiming reinstatement and consequential benefits.

5. Mr. Malik, learned Senior counsel appearing for the petitioner submits that the advance dismissal order dated February 16, 2000 is an illegal order for more than one reason. Firstly, the enquiry report made by a public servant went in favour of the petitioner and there is no reason recorded in writing regarding the findings arrived at by the SDM (Civil) of not being fair and proper or not being based on evidence adduced by the parties in the departmental proceeding.

6. The other reason which justifies setting aside of the impugned order is that no approval was taken from the Government before dismissing the petitioner from service, which prerequisite was the mandatory procedure prescribed when school changed hands.

7. The third reason which vitiates the impugned order and the proceedings that led to the adverse order is that no opportunity of hearing was afforded to the petitioner and thus the sacred rule of audi alteram partem was observed in the breach and for the reasons, the impugned order cannot be allowed to stand since it is not only illegal, arbitrary and perverse but also unconstitutional. The petitioner lost his livelihood as a result of

unfair practice and victimization for which curative directions are prayed.

8. *The petitioner was a regular Headmaster/Principal of the school who had been serving in that capacity since January 16, 1980 and on the date of dismissal had spent 20 years in service only to be unceremoniously thrown out of job without any just cause or legal justification.*

9. *This Court vide order dated December 17, 2004 issued an interim order in CM No.17559 of 2004 directing the respondents to keep one post of Headmaster/Principal of the school vacant till further orders. On March 15, 2005, another interim order was issued in the same application directing the respondents to show cause as to whether the department had filled up the post of Principal pursuant to the advertisement dated September 19, 2004 initiating selection process for direct recruitment of Principals. The State does not appear from record on file to have reverted back to the Court on the show cause notice. Be that as it may, on September 20, 2005, according to Mr. R.K.Malik he had brought to the notice of the Court two judgments of this Court in his client's favour rendered in CWP No.2068 of 2002 (Ms. Anjali Verma v. Mewat Model School Society & ors.), decided on November 29, 2002 (Annex P-10) and CWP No.17558 of 2000 (Vijender Singh & anr. v. State of Haryana & ors.), decided on January 23, 2002 (Annex P-11) which according to him covered his case and clinched the issue to his advantage arguing on the strength of dicta to justify setting aside the dismissal order.*

10. *Learned counsel for the respondent-Management has disputed this assertion but has lost during the pendency of the litigation the control of the school and is not represented at the hearing compelling me to adjourn the case to fix their responsibility to share the burdens of arrears*

of salary and if monetary liability can be mulct from them. Nevertheless, the motion Bench felt that the controversy to be determined would be short for decision and therefore, ordered the case to be listed for final hearing on November 7, 2005. Thereafter, 11 years have gone by and the patience of the petitioner must be worn thin, defeated by sheer default of time.

11. *Ms. Shruti Jain Goyal appearing for the State of Haryana maintains that the State government took control once again of the Delhi Public School, Mewat, Gurgaon, and having done so rechristened the school in the name and style of Mewat Model School, Gurgaon, Thus, the petitioner was returned to his original status as an employee in a Government School in case he in position. This takeover happened in the year 2005.*

12. *The petitioner has explained the defence taken by the private management of the society before 2005, when the school was yet to be taken back by the Government. There can hardly be any doubt even according to the learned law officer that the dismissal order could not take effect without due permission of the Court even in the previous status of the school, when it was run by the society. And for these reasons, there is sufficient merit in this case for it to be allowed and the prayer for setting aside the dismissal order appears to me to be perfectly justified and in order. If this is the factual position obtaining then the State should have taken Court into confidence that after 2005 there hardly was any legal justification in the State Government not to have taken a decision through its competent authority to declare the dismissal order null and void and accordingly to reinstate the petitioner in service as Headmaster/Principal in the school's new avatar. The High Court had not placed any fetters on the Government not to do so and to the contrary passed an interim order*

directing the respondent State to keep one post vacant, which order was implemented in deference to the interlocutory orders and still operates, a position which Ms. Goyal re-assures the Court obtains till date.

13. *In this situation, I see good enough reason to bifurcate this case in two parts; one, to forthwith order that the petitioner should be reinstated in service in the capacity last held call it Headmaster or Principal so that at least the petitioner can enjoy the status and have the satisfaction of holding the post of Headmaster till he would inevitably retire on superannuation on reaching the age of 58 years in December, 2016. He sadly has only a short run left in case he is reinstated to service. In case there is restitution he would honourably retire as Principal of the school he had served for two decades starting as a government servant when the school was a State run school. That is sufficient reason for State liability to continue to run when it took the school back from the hands of the society due to mismanagement. He State cannot successfully argue that it did not pass the dismissal order and, therefore, it is not responsible for the consequences. At least after 2005 the State should have itself made amends and should not have waited like a spectator to the litigation. Therefore, in order to serve the ends of justice in a substantial way, it is directed that the petitioner be reinstated in service forthwith. Accordingly, the petition is liable to be partially allowed. The dismissal order is declared null and void and it deserves to be directed that by legal fiction the same be treated as never having been passed, for the many reasons recorded above.*

14. *However, the question of what relief is due and grantable to the petitioner in pecuniary and non-pecuniary terms from the society and the State Government, the issue is posted to be taken up on*

another date where the State would address arguments as to which of the antecedent rights should be or not be made available to the petitioner in terms of the arrears of salary, seniority, promotion and right to pension and other benefits etc., if any, which the petitioner may have lost opportunity to access because of an illegal dismissal order. Whether these benefits ought to be given from the date of order of dismissal or from the date of filing of the writ petition or three years prior thereto will be examined at length after hearing both the parties and the former management, as these issues present ticklish problems, which cannot be easily resolved today when the matter came up for effective hearing after 16 years of its pendency and counsel the learned counsel seek time to address arguments on the limited issues remaining, as above.

15. I hasten to add that I am conscious that the main relief should ordinarily not be granted by court at an interim stage without deciding the entire case. But this is not an inflexible rule and partial decision-making is not unknown to court practice jurisprudence. Much would depend on the special facts of each case and from case to case and the pressing demands of justice baying. Had I waited to resolve the fiscal part of the reliefs claimed by the petitioner, he would inevitable cross the age of retirement and thus could win only a posthumous award. That I thought would be a travesty of justice making the predictable victory pyrrhic. I could not also wait for the more important reason that it would take some time to notify the respondent society to appear and to hear them on monetary relief for their wrongful acts which forced the petitioner out of service by committing substantive and procedural errors in the face of exoneration by the SDO(C) establishing innocence and want of jurisdiction to dismiss

without approval of the State Government since the school received grant-in-aid while in the hands of the private management. That is why I thought it fit to bifurcate the case into two distinct parts for resolution by stages; the more important I thought was of restoration of status and vindication of the honour of a beleaguered teacher who still had a few months left if reinstated, so that his valuable rights of which he was unlawfully deprived are restored to him, as much as possible at this distance of time, while keeping the honey for the bees to serve their winter.

16. As a result, the petition, as said before, is finally partly allowed to the extent the dismissal order is invalidated on certiorari to sub-serve immediately the ends of justice. The petitioner will be reinstated to service by mandamus. One post is lying vacant due to interim orders which presents hardly any difficulty to implement the interim and final orders forthwith and definitely by October 28, 2016. It is so ordered and directed to be done respondent State of Haryana.

17. For the remaining consequential prayers, the case is adjourned to 21.12.2016.

18. Let notice issue to the ex-management/society respondent/counsel for the date fixed.”

2. The Delhi Public School Society was not made a party and only the Director of the School was impleaded as the 4th respondent. The name of the school has been changed long ago and Mr. Shireesh Gupta, learned counsel who appears for the ex Director on notice issued by this court explains that though the dismissal order was passed by the Director but he was not personally responsible nor can be made liable in terms of money on a claim for arrears of salary as a result of setting aside the order and

reinstating the petitioner to service. Monetary claims, if any, may not lie against the Director personally but against the Society which once ran the school. However, no final opinion is expressed on the point since this Court is inclined to think that having passed the order dated September 30, 2016 and the fact confirmed by the counsel for respondent No.3 that the order has been implemented and become final and the petitioner reinstated to service, then for monetary claims the petitioner would have to be relegated to his remedy before the civil court etc. or the Educational Tribunal, as the case may be, where his rights can be determined on evidence and in the presence of the necessary parties.

3. The file is closed.

(RAJIV NARAIN RAINA)
JUDGE

21.12.2016
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Whether speaking/reasoned Yes

Whether reportable No