

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

**CWP No.13890 of 2016 (O&M)
Date of Decision: 22.07.2016**

Managing Committee, Halwasia Vidya Vihar Senior Secondary School,
Bhiwani and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CWP No.13891 of 2016 (O&M)

Managing Committee, Halwasia Vidya Vihar Senior Secondary School,
Bhiwani and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CWP No.13911 of 2016 (O&M)

Managing Committee, Halwasia Vidya Vihar Senior Secondary School,
Bhiwani and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder Singh, Advocate,
for the petitioners.

TEJINDER SINGH DHINDSA, J.(ORAL)

This order shall dispose of CWP Nos.13890 of 2016, Managing
Committee, Halwasia Vidya Vihar Senior Secondary School, Bhiwani and
another Vs. State of Haryana and others and CWP No.13891 of 2016,
Managing Committee, Halwasia Vidya Vihar Senior Secondary School,

Bhiwani and another Vs. State of Haryana and others and CWP No.13911 of 2016, Managing Committee, Halwasia Vidya Vihar Senior Secondary School, Bhiwani and another Vs. State of Haryana and others as the issue involved in these three writ petitions is identical.

Petitioner No.1 is the Managing Committee of the Halwasia Vidya Vihar Senior Secondary School, Bhiwani (hereafter referred to as the Managing Committee) and petitioner No.2 is the Jan Kalyan Trust, Kolkata, West Bengal.

Private respondents were serving as teachers in the respondent School. Vide separate orders passed on different dates in the year, 2013 they were removed from service. Appeals having been preferred before the Additional District Judge-cum-Appellate Tribunal, Bhiwani, vide common decision dated 19.08.2015 (Annexure P-7) appeals have been accepted and private respondents have been held entitled to reinstatement in service with all consequential benefits.

These three writ petitions are directed against such common order dated 19.08.2015 at Annexure P-7 passed by the Additional District Judge-cum-Appellate Tribunal, Bhiwani.

Learned Senior counsel has argued that the private respondents were relieved from service as per terms and conditions of the service contract entered between the Managing Committee and the employees. Under such circumstances, termination of services of the private respondents cannot be construed as punitive. It is also contended that private employer cannot be forced to retain an employee and even if there has been any contravention of the terms and conditions of a service contract, the only relief available was to claim damages and not reinstatement.

Learned Senior counsel has been heard at length.

The respondent School is stated to be affiliated to the Central Board of Secondary Education, New Delhi. There is no dispute as regards the fact that each one of the private respondents has served in the school over a considerable length of time.

It would be apposite to take note that against the action of removal from service, some of the private respondents had even approached the District Education Officer, Bhiwani and vide order dated 26.11.2013 the Managing Committee had been directed to redress the grievance of the employees and to reconsider the matter.

The process of reconsideration is reflected in the minutes of a meeting dated 30.11.2013 of the Managing Committee and which reads as under:-

“In the meeting a letter from the District Education Officer, Bhiwani bearing No.SO/13/506-17 dated 26.11.2013 was placed in which she has written to reconsider the relieving orders of Shri Ghananand Sharma, Smt. Poonam Maheshwari, Shri Vimlesh Arya, Sh. Danveer Singh, Smt. Sarla Sharma, Smt. Veena Pani Mehta and Smt. Sudha Sharma has been discussed and decided that the strength of the students has been decreasing continuously since last three years, presently the strength of teachers required is much more than the strength of students. The above named teachers have been relieved from their services after payment of three months notice pay in lieu of notice as per their personal contract of service. The amount of Gratuity has also been paid to them. In such circumstances the School is not in a position to take them back into service.

However, if in future exigencies arise due to increase in strength of students their engagement will be

considered with sympathy”.

Perusal of the impugned order dated 19.08.2015 passed by the Appellate Tribunal-cum-Additional District Judge, Bhiwani at Annexure P-7 reveals that the appeals of the private respondents herein have been accepted and reinstatement has been directed primarily on the following grounds:-

- i) All the appellants (private respondents herein) were fully qualified to hold their respective teaching posts and had served for a considerable long length of time.
- ii) There was nothing adverse against them in their entire tenure of service.
- iii) In the minutes of a meeting dated 30.11.2013, the Managing Committee having reconsidered the issue, justification had been furnished dispensing with the services of the teachers on account of the decreasing strength of the schools whereas it was noticed by the Tribunal that even after September, 2013 the Managing Committee had appointed some new teachers.
- iv) The Tribunal had also taken note that some juniors to the appellants (private respondents) had been retained in service.

Learned Senior counsel has not been able to controvert the factual position as regards aforementioned grounds and basis that has weighed with the Tribunal while passing the impugned order.

Rather, it has been fairly conceded that after dispensing with the services of the private respondents, new teachers have been appointed and other teachers who were junior to the private respondents had been retained in service. Nothing has come forth even with regard to the private respondents not possessing the requisite qualifications or their work and

conduct being adverse.

Under such circumstances, “**the hire and fire principle**” being invoked against the private respondents by the Managing Committee of a School which is otherwise affiliated to the Central Board of Secondary Education, New Delhi cannot be accepted.

While declining to interfere in the matter, a factual aspect that has weighed with this Court is that in pursuance to the impugned order dated 19.08.2015 (Annexure P-7), the private respondents are stated to have been already reinstated with consequential benefits.

Learned Senior counsel has raised an additional submission as regards findings having been recorded in the impugned order by the Additional District Judge-cum-Appellate Tribunal, Bhiwani as regards mal-administration and mal-functioning of the Managing Committee. In this regard, it is submitted that the Additional Deputy Commissioner, Bhiwani had been appointed as Administrator of the School vide order dated 16.04.2015 and such action having been impugned, this Court vide judgment dated 03.06.2016 in CWP No.10520 of 2015 had set aside the order appointing the Administrator. It is submitted that the judgment in CWP No.10520 of 2015 has been rendered after the filing of the present petition. Senior counsel would contend that the findings and observations contained in the impugned order dated 19.08.2015 (Annexure P-7) with regard to mal-administration and mal-functioning of the Managing Committee are wholly inappropriate and are not based on any cogent material and as such can even effect and hamper the smooth functioning of the affairs of the Managing Committee while administering the School and in its interaction with the affiliating body i.e. CBSE, New Delhi.

In the considered view of this Court, such aspect need not be gone into on merits.

Suffice to clarify that dismissal of these three writ petitions while upholding the impugned order dated 19.08.2015 (Annexure P-7) would not be construed as a stamp of approval of this Court as regards any observations or findings having been recorded by the Additional District Judge-cum-Appellate Tribunal on the functioning of the Managing Committee.

Petitions are dismissed.

22.07.2016

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No