

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

Date of decision: 24.05.2016

CWP No.3964 of 2010

Baba Budha College, Bir Sahib

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sudeep Mahajan, Advocate, for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

Mr. V.K.Sandhir, Advocate, for respondent No.3.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

1. Having heard Mr. Sudeep Mahajan, learned counsel for the petitioner; Mr. Harkesh Manuja, learned Additional Advocate General, Punjab for the respondent-State and Mr. V.K.Sandhir, learned counsel representing the contesting ex-employee/respondent No.3, I would dismiss the petition filed against the judgment and order of the Educational Tribunal, Punjab to the extent it impugns the order dated 17.11.2009 (Annex P-14). The appeal filed by the petitioning College has been dismissed against the order dated 29.09.2008 passed by the Director Public Instructions (Colleges), Punjab. Both the Administrative and Judicial Authorities have held that the penalty of dismissal as proposed by the College Management was not justified and instead a direction was issued converting dismissal to compulsory retirement

with the further direction to make consequential payments. The proposed dismissal order was not ratified by the Director Public Instructions (Colleges), Punjab exercising powers under the Punjab Affiliated Colleges (Security of Service) of Employees Act, 1974.

2. The parameters for exercise of judicial review on the writ side of this Court against the orders passed by the Tribunals lie in narrow compass and it is trite to say jurisdiction is not appellate in nature and is restricted to correct errors apparent on the face of the record. Interference would be called for only when the Authority or the Tribunal has exercised jurisdiction or has acted with perversity, irrationality and arbitrariness. From none of which infirmities the impugned order suffers.

3. Balkar Singh – respondent No.3 was a Lecturer in Mathematics and teaching at the petitioning College. He has served for the last 27 years before the incident transpired. He was issued charge-sheet on the main allegation that he had entered into a scuffle and committed misconduct with the Honorary Secretary of the College Managing Committee on 15.09.2007. There was a dispute between both of them and they had both gone to the extent of lodging FIRs against each other. The Enquiry Officer has held that the charges proven. I have read the charge-sheet dated 23.10.2007 (Annex P-5), which runs into several pages containing different Articles of Charges which are ancillary and incidental to the main charge which main charge has been multiplied. The first of which is that *“S. Balkar Singh attempted to kill Hardial Singh, the Hony. Secretary of the College, by strangulating his throat without any provocation in the office of the Hony. Secretary; committed the act of criminal intimidation to him; committed the act of insubordination, absolute disobedience, breach of peace, willful disturbance, indiscipline; lowered the*

dignity of the office of the Hony. Secretary and intentionally dishonoured him”.

The other charges meander on and on. The Enquiry Officer in his report dated 28.02.2008 while summing up the case has observed as follows:

“I make it clear against that I have been guided more by ethical code of conduct and academic conventions than measure juristic technicalities in dealing with this case. My findings/conclusions may sound harsh to some or all, but a festering wound always needs deeper surgery to heal.”

4. In his conclusion, the Enquiry Officer has used such fantastic and bombastic personal opinions ascribing the role of Balkar Singh in the incident. After a “psycho-circumstantial analysis” or whatever that means, adverting to the preceding paragraphs of the report the Enquiry Officer makes bold to opine that the role of Balkar Singh on 14.09.2007 is “indefensible”. Who began the incident was also left in doubt when the Enquiry Officer admits yet asserts in his conclusion that “whatever way the above said incident began, the end result was unethical, unwarranted and unteacher like”. Then again; “Even if there was some sort of provocation, the teacher is bound by a code of conduct and is expected to show restraint”. He has gone into the philosophy of how a teacher should behave. This shows that even the EO was not without doubt that there was provocation, which simply means the petitioner was provoked. The Enquiry Officer records:

“.....No sense of prosecution or paranoia authorizes a man to take law in his own hands or resort to unconstitutional methods. By assaulting the Secretary both verbly and physically S. Balkar Singh took law in his own hands and thus caused a breach of the sacred trust that exists between the employee and the Management. Once snapped that link is difficult to restore. Hence I feel time has come for Balkar Singh to part ways with this Institution. Having regard for his 28 years of service to the college, the decision is hard and

painful, but there is no other alternative if this border institution is to be allowed good health and smooth running. So, the management is fully justified to take disciplinary action against S. Balkar Singh commensurate with the severity of his unrestraint and misconduct.

(b) It may be a little bit of overreach but I can't help suggesting to the management that the post of Secretary be made a tenure post and the candidate be elected periodically. It will go a long way in restoring normalcy to the college affairs.

(c) It is difficult for me to give a clean chit to S. Dilbag Singh[Principal] whose inept handling of the tour program led to this flare up. Neither at the time of changing the office room of the Register nor in the present case he issued any written notice/order to Balkar Singh before taking the matter to the managers and his ignorance of the basic rules for running the college in itself is the root of most of the avoidable troubles. His controversial promotion as Vice-Principal and then as Acting Principal caused unnecessary heart burning in the staff, which also requires corrective measure from the management."

5. A reading of the above as highlighted by underlining makes the Enquiry Officer not only the friend, philosopher and guide of the management but its mouthpiece, killing two birds with one stone, the Principal and the petitioner. He became judge, prosecutor, advisor and disciplinary authority virtually dismissing the petitioner in these words: "*Hence I feel time has come for Balkar Singh to part ways with this Institution.*" Rummaging through the entire report and making comments here and there in this order analyzing what is held part and what is obiter and ipse dixit would be a sheer waste of time as it would lead to nothing concrete or of any moment contextually in the present decision-making process in challenge to the impugned orders.

6. The only argument worth some consideration put forward by the learned counsel for the petitioning College is that the Director Public Instructions (Colleges), Punjab has passed a sketchy order (Annex P-12) and that apart, could not have converted dismissal to compulsory retirement from the date of his suspension and further ordered that all outstanding payments and consequential benefits shall be admissible to the respondent. This is urged to be exercise of authority beyond jurisdiction vested in the officer by the Act. Is it so?

7. Balkar Singh's version of the turn of events on the fateful day and the motive of the charge sheet was that a student of B.Sc. Economics Part-II, namely Ranjit Singh, was caught copying during examination. He submitted almost a blank answer-sheet but later on he was shown to have stood second in his class by scoring 62.80% marks. This fact was brought to the notice of the Registrar and the Chancellor of the Guru Nanak Dev University, Amritsar and suitable action was taken at the highest level and it was for this reason the Management became inimical to Balkar Singh because Ranjit Singh was the son of Kashmir Singh, a member of the Managing Committee of the petitioning college. This fact is not controverted on record placed on file. Besides this, the allegation that Balkar Singh tried to kill Hardial Singh has also not succeeded in the police investigation and the alleged offences committed under Sections 307/505 IPC stand diluted and the story that the petitioner tried to strangle Hardial Singh was found to be false by the investigating agency.

8. I have read the order of the learned Tribunal with the assistance of the learned counsel for the parties and find no legal infirmity therein regarding the exercise of discretion and the jurisdiction in reducing dismissal from

service to compulsory retirement. Dismissal has not been held proportionate to the charges leveled. The Tribunal has noticed the reply filed by the Deputy Superintendent of Police in the cross criminal cases, who filed an affidavit before this Court in CRM No.53904-M of 2007 titled 'Professor Balkar Singh Vs. State of Punjab' deposing that the incident did not take place but only a minor scuffle. The case had gone untraced and therefore, the petition filed for quashing the FIR has been dismissed as having been rendered infructuous. The Tribunal noticed that all other charges emanate from first charge of attempt to murder and therefore all the minor charges must fall with the major charge having disappeared. It is even the case of petitioner Balkar Singh that an altercation took place between him and Hardial Singh. He admitted that at the time of incident Dilbag Singh, Principal and some students were present. The Tribunal presided over by a retired Judge of this Court in the impugned order dated 17.11.2009 has observed that the report of the Enquiry Officer Mr. C.S.Virk has references which are not admissible in law, but had his own reasons to hold that charges against the delinquent official stood proved. The high moral ground taken by Mr. C.S.Virk may be good for him, but not good for Balkar Singh while assessing his role in the episode since the enquiry report is not written in legal language but the flourish of a person overreacting on the incident with his pen in one hand and a book on lexical semantics, in the other. This is the impression at least this Court has got on reading the enquiry report which impression is perfectly in sync with the observations of the learned Educational Tribunal, Punjab in the impugned order. Moreover, Sub clause 3 of Section 4 of the Act stipulates that the approval of proposed dismissal would be refused to be acted on by the management if it is not warranted by the facts and circumstances of the case. I would, therefore, not agree with the argument of the learned counsel for the petitioner that both the orders are illegal and in

excess of jurisdiction conferred by the Act in converting disproportionate dismissal to one of compulsory retirement from service. Since ample discretion vests with the learned Tribunal under sub-section 4 of Section 4 of the Act to pass any order as it deems fit to serve the ends of justice, I have no warrant to interfere with the impugned orders which are sound in law and would thus dismiss the petition on judicial review in the narrow supervisory jurisdiction exercised by this Court over the work of Tribunals provided by Article 226 of our Constitution the amplitude of which power is succinctly explained and circumscribed by the Constitution Bench of the Supreme Court in the leading authority on the subject delivered in Syed Yakoob Vs. K.S.Radhakrishnan, AIR 1964 SC 477: 1964 SCR (5) 64.

9. I also do not think it necessary to go into the public interest litigation filed by Baldev Singh & another against the President and Secretary of the Managing Committee of the College in order to pass orders in this case since that litigation has no material bearing on the present case. The Court is not concerned with the character of the petitioner except what is for or against him in case papers.

10. Consequently, the present writ petition is hereby dismissed being devoid of merit. As a result, the order of the Tribunal becomes executable in accordance with law.

24.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE