

CWP No.2148 of 2012

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.2148 of 2012

Date of decision: 07.10.2016

Prabandh Samiti of Arya Kanya Vidyalaya, Kharar (Mohali).

....Petitioner

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. P.K. Mutneja, Advocate for the petitioner.

Mz. Puneet Kaur Sekhon, Addl.A.G, Punjab

for respondent Nos.1 to 4.

Mr. Kapil Kakkar, Advocate for respondent No.5.

Jaswant Singh, J

Petitioner, which is running a privately managed recognized aided School for girls under the name and style "Arya Kanya Vidyalaya" at Kharar (for short "the School") and is affiliated to the Punjab Education Board, has filed this writ petition through its Manager Jagdish Chand Verma seeking a writ of Certiorari for quashing the impugned order dated 16.1.2012 (**P.25**) passed by respondent No.4-Educational Tribunal, Punjab whereby the approval dated 22.7.2011/08.8.2011 (**P.21**) accorded by the D.P.I-respondent No.2 and the dismissal order dated 02.9.2011 (P.22) passed by the petitioner-School of respondent No.5-Santosh Kumari has been set aside.

It is contended by learned counsel for the petitioner that

the learned Tribunal has set aside the dismissal of respondent No.5-Santosh Kumari only on the ground that subsistence allowance was not paid to her without recording any finding as to what prejudice has been caused to respondent No.5-Santosh Kumari on that account. Learned counsel has cited **State Government of Madhya Pradesh and Ors. Vs. Shankarlal (2008) 2 Supreme Court Cases 55** in support.

On the other hand, learned counsel for respondent No.5 has contended that since respondent No.5 was not paid subsistence allowance during the pendency of disciplinary inquiry, therefore she was not able to defend her case properly and a great prejudice is caused to her.

Heard learned counsel for the parties and perused the paper book with their able assistance.

Respondent No.5 was appointed as Math Mistress against a vacant post on 18.09.1997 on probation for a period of one year and the same was extendable upto two years and her service conditions are governed under the provisions of Punjab Privately Managed Recognized Schools Employees (Security of Service) rules 1981 (for short "1981 Rules").

Respondent Nos.1 to 3-State has also filed a reply and admitted the passing of order dated 16.4.2010 (**P.14**) by the Director Education Department (SE), the operative part of the same reads as under:

"Without going into the merits of the case and keeping in view the principles of natural justice it is felt that before inflicting an major punishment on the

*employee he should be afforded full opportunity to put up her defence during the proceedings of the departmental enquiry and disciplinary action. Therefore, the concerned Managing Committee is directed that the enquiry into the charges levelled against Shrimati Santosh Kumari must be conducted impartially in which she must be given full opportunity to present her defense. Along with this Shrimati Santosh Kumari is also directed that she should also join the enquiry on the date and time fixed by the Enquiry Officer and present her defense by following a co-operative attitude. This entire proceeding must be completed within three months from the receipt of this Order. **Till this time approval to keep Shrimati Santosh Kumari under suspension is granted on the condition that she would be given subsistence allowance as per Rules every month. In the event of failure to do this this Order would be open to be reviewed.***

A perusal of paper book reveals that on earlier occasions also, petitioner had filed CWP No.9325 of 2002 which was allowed by this Court vide order dated 10.10.2002. Another writ petition bearing CWP No.5357 of 2005 was also filed and decided by this Court on 28.4.2005.

It transpires that respondent No.5 was issued a charge sheet dated 30.3.2009 (P.4) on account of certain omission and commission and in substance, the same reads as under:

- “1. It was alleged that the results of 10th class of Santosh Kumari for the years 2001 to 2008 is not good.*
- 2. That on 06.11.2008 at 03.10 pm when 8th class was inspected then it was vacant and teacher was not in the class.*

3. *On 10.11.2008 the teacher indulged into an argument without any reason with the School Incharge.*
4. *The strength of 8th class was less and Santosh Kumari was incharge of 8th class.*
5. *On 3.12.2008 at the time of inspection by the School Secretary Santosh Kumari was absent from 9th class and the students were asked certain questions which were not answered.*
6. *That Santosh Kumari refused to note the instructions of Manager.”*

Respondent No.5 submitted reply to the charge sheet and thereafter an Inquiry Officer was appointed by the petitioner-Samiti, who submitted his ex-parte report dated 01.10.2009 (P.7) and thereafter approval for dismissal of respondent No.5 was accorded by the D.P.I-respondent No.2 vide order dated 08.8.2011 (P.21) and on the basis of which dismissal order dated 02.9.2011 (P.22) was passed by the petitioner-Samiti. Aggrieved against the said orders, respondent No.5 filed an appeal before the Tribunal, which was accepted vide judgment dated 16.1.2012 (P.25) thereby setting aside both the aforesaid orders, hence the present writ petition.

It also transpires that in pursuance of the order dated 16.4.2010, a cheque No.731266 dated 26.8.2010 only for an amount of Rs.7638/- was sent to respondent No.5 by the petitioner along with forwarding letter dated 26.8.2010 (P.17) and a fresh inquiry report dated 18.10.2010 (P.18) was submitted by the same very Inquiry Officer and on the basis thereof approval was accorded by the DPI and accordingly, respondent No.5 was dismissed.

It is apparently clear that despite categoric direction

dated 16.4.2010 (P.14), respondent No.5 was not paid the subsistence allowance as per Rule 14 of 1981 Rules and the learned Tribunal came to the conclusion in para 15 as under:

*“From the chain of documents, we are satisfied that appellant was present in the school, but was not allowed to mark her presence. If the answer of the Tribunal is in affirmative and in favour of the appellant, a reasonable inference can always be drawn that she was not employed gainfully or that she was not doing any business or that she did not leave the head quarters without the prior approval of the punishing authority. In fact, the respondent/management had given directions to the Principal not to accept any communication of the appellant. Letters which have been relied upon by learned counsel for respondents alleging that appellant was duly informed to comply with statutory rules in our view are liable to be ignored. This evidence has been created by the management. Though an effort has been made by counsel for the respondents that these letters were sent under registered cover. This point was raised by the management before the DPI who was prima facie convinced that appellant was being deprived of the subsistence allowance and that was the reason that in the order dated 16.4.2010, direction was given to the management to release the subsistence allowance. **Thus we hold that the fault squarely lies with the management. The appellant at all material time was willing and ready to submit the necessary certificates and statutory information, and this fact was also to the knowledge of the management which has not even till today has produced an iota of document to show that appellant was gainfully***

employed somewhere else either in a school or by giving private tuitions. False defence cannot be made a good shield. Truth has to prevail and it speaks like a bright sunshine. The management cannot be allowed to harass an employee and cannot be allowed to get a protective shield of false plea. We have no hesitation in rejecting the defence version."

The above factual foundation has been recorded by learned Tribunal after taking into consideration the entire record of the case as well as minute examination of the same. No material or evidence has been brought to the notice of this Court to disagree or interfere with the abovesaid finding of facts recorded by the learned Tribunal while exercising powers of judicial review in a writ of Certiorari under Article 226/227 of the Constitution in view of the law laid down by Hon'ble Supreme Court in a Constitutional Bench judgment reported as **Yakoob Syed Vs. K.S. Radhakrishanan, AIR 1964 SC 477**, the relevant part of which reads as under:

" The Tribunals of fact have found that respondent No.1 does not own a workshop at Chidambaram and having regard to the other relevant circumstances which the Tribunals have considered, the fact that he does not own a workshop at Chidambaram has ultimately proved decisive against respondent No.1 and in favour of the appellant. If that be so, a decision based on facts found by the Tribunal cannot be reopened on the plausible plea that a further enquiry should be made because that would be just. If findings of fact were allowed to be disturbed by

High Courts in such writ proceedings, that may lead to an interminable search for correct findings and would virtually convert the High Courts into Appellate Courts competent to deal with questions of fact. That is why we think, in entertaining petitions for writs of certiorari, it is necessary to remember that findings of fact recorded by special Tribunals which have been clothed with jurisdiction to deal with them, should be treated as final between the parties, unless, of course, it is shown that the impugned finding is based on no evidence."

Still further, the law is well settled by Hon'ble Supreme Court in case reported as **Jagdamba Prasad Shukla Vs. State of U.P** to the effect that subsistence allowance is not a bounty; rather the same is a right of an employee, who is placed under suspension and non-payment of the subsistence allowance was held to be breach of principles of natural justice in a case of departmental inquiry. The relevant part of the judgement reads as under:

"The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension i.e. from suspension till removal. One of the reasons for not appearing in enquiry as intimated to the authorities was the financial crunch on account of non-payment of subsistence allowance and the other was the illness of the appellant. The appellant in reply to show cause notice stated that even if he

was to appear in enquiry against medical advice, he was unable to appear for want of funds on account of non-payment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to the appellant to defend himself in the departmental enquiry. Thus, the departmental enquiry and the consequent order of removal from service are quashed."

Judgment cited by learned counsel for the petitioner in **Shankarlal's case (supra)** is not helpful to the case of the petitioner as in that case, a finding of fact was recorded by learned Tribunal to the effect that the respondent-employee himself was to thank himself for non-payment of subsistence allowance and the appellant-State of M.P had taken all possible steps for disbursement of subsistence allowance and para 20 of this judgment in this regard reads as under :

"A finding of fact has been arrived at by the Tribunal that the respondent himself was to thank himself for non-receipt of subsistence allowance. It was held that the appellant had taken all possible steps for disbursement of subsistence allowance."

Despite the aforesaid fact, the High Court of Madhya Pradesh had set aside the findings of learned Tribunal and came to the conclusion that question of prejudice for non-payment of subsistence allowance is irrelevant and in those circumstances, Hon'ble Supreme Court set aside the judgment of High Court and remitted the matter back to the High Court for fresh disposal. But here in the present case, the position is entirely different as the

Tribunal has recorded a positive finding of fact in favour of respondent No.5 in very clear terms, reproduced in the earlier part of the judgment as referred above, which are not repeated here in the present case for the sake of brevity. There is no material available on record to interfere with those factual findings while exercising extraordinary powers under Article 226/227 of the Constitution.

In view of the aforesaid, there is no merit in the present writ petition and the same is dismissed.

October 7th, 2016
manoj

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No