

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18227 of 2016

Date of Decision: 22.11.2016

The Managing Committee, DAV Senior  
Secondary School

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Kanwaljit Singh, Sr. Advocate,  
with Mr. Amarjeet Singh, Advocate,  
for the petitioner.

**RAJIV NARAIN RAINA, J.**

1. The challenge in this petition is to an order dated December 04, 2015 passed by the Education Tribunal-cum-District Judge, Kurukshetra allowing the appeal of respondents No.3 to 8 by setting aside the termination orders passed by the respondents in the appeal against the appellants, the respondents herein, with 50% back wages and consequential benefits. The learned Tribunal has also held respondents No.3 to 8 entitled to the same pay as is admissible to their counterparts in privately managed Government aided schools in Haryana with the financial burden falling on the State of Haryana and the petitioner Managing Committee, DAV Senior Secondary School, Shahbad Markanda, District Kurukshetra in the proportion ordained in the grant-in-aid scheme to shoulder the deficit of the expenditure.

2. The case of the petitioner management is that the private

respondents [ex employees] were appointed on contractual basis against non-aided post on fixed salary. The private respondents had earlier filed CWP No.16019 of 1998 in this Court titled *Sanjeev Kumar and others v. State of Haryana and others*. The writ petition was disposed of on August 07, 2009 by the learned Single Judge with a direction to the respondents to consider the issue whether the respondents while working on contractual basis on fixed salary against unaided post were still entitled for the regular pay scales, which are given to their counterparts working in the Government schools. The time for consideration was fixed preferably within a period of three months. The order dated August 07, 2009 was a consent order agreeing to disposal by the management to decide the claims of the petitioners therein [private respondents herein] by taking into consideration the decision of this Court rendered in *Rajni Vali v. Chandigarh Administration* in CWP No.14612 of 1993 decided on December 01, 1995. These directions were issued to the Secretary Education, Haryana since parties agreed that the authority would decide the claim of the petitioners by a speaking order after taking into account the judgment. However, the services of private respondents were dispensed with on August 10, 2009. Since the termination orders were passed during the pendency of the petition the affected employees preferred appeals before the competent authority i.e. the District Education Officer, Kurukshetra who accepted the same vide order dated February 15, 2010 and directed the management to take the private respondents back into service. The management passed the order on January 07, 2010 under Court directions in *Sanjeev Kumar* [supra].

3. Aggrieved by the order of the State Government, the

management preferred appeal to the Tribunal and therein stuck to its stand that since the private respondents were appointed against unaided post by the school management on contract basis on fixed salary at their own level and no grant-in-aid was claimed from Government for those un-sanctioned posts they had no claim to regular pay scales. Besides, the management pleaded that the student strength had dropped low which led to dispensing with their services. They would refer to another writ petition filed by the affected parties bearing CWP No.13719 of 2010 the employees prayed for quashing of the impugned order dated January 07, 2010 passed by the Secretary Education, Haryana and for granting them the same pay scales as admissible to their counterparts and to reinstate them to service with consequential benefits. This matter came up on March 31, 2015 before this Court and vide order of even date the same was withdrawn by the petitioning employees to approach the Education Tribunal which had the jurisdiction to decide the prayers in the petition by way of an appeal. This was necessitated due to the Notification issued vide Haryana Government Gazette (Extra) School Education Department dated May 07, 2013 prescribing that appeals of employees of aided and unaided schools against the orders of the management are to be heard by the Tribunals notified by the High Court in the light of the directions of the Supreme Court in TMA Pai Foundation and others v. State of Karnataka, (2002) 8 SCC 481. The Court expressed no opinion on the merits of the case when it relegated the petitioners to their remedies in the Court of the District/Additional District & Sessions Judge, Kurukshetra acting as a Tribunal. This is how the learned District Judge-cum-Education Tribunal, Kurukshetra was seized of the

matter.

4. It is not disputed that respondents No.3 to 8 were appointed in the petitioner-School on January 17, 1994, October 01, 1997, August 01, 1996, October 01, 1997, October 09, 1995 and on September 06, 1993 respectively and continued to work till termination of their services vide order dated August 10, 2009 as against respondents 3 to 6 and No.7 and 8 vide order dated February 20, 1999. It is not disputed that the school run by the petitioner is a grant-in-aid institution till 10<sup>th</sup> Class. Permission was granted by the Director Secondary Education, Haryana to start 10+1 and 10+2 classes vide letter dated July 20, 1990 subject to conditions mentioned therein and for these two classes it was decided that they will not demand any grant-in-aid from the Government/Department and the management will provide the requisite infrastructural facilities to the students from their own resources. The claim of the management for extending grant-in-aid to the upper classes was refused by the Government denying prayer to defray the deficit of salaries.

5. The Tribunal framed the following issues vide order dated November 16, 2015:-

*"1. Whether the appellants No.1 to 4 are entitled to the same scale of pay as admissible to S.S. Teachers in Government High School on principle of equal pay for equal work? OPA*

*2. Whether the appellants No. 5 and 6 are entitled to the same scale of pay as admissible to Lecturer in Government Senior Secondary School on principle of equal pay for equal work? OPA*

*3. Whether termination orders dated 10.8.2009 of appellants No. 1 to 4 are illegal, null and void and liable to be set aside on the grounds mentioned in the appeal? OPA*

4. *Whether termination orders dated 20.2.1999 of appellants No. 5 and 6 are illegal, null and void and liable to be set aside on the grounds mentioned in the appeal?*

*OPA*

5. *Whether the appellants No. 1 to 6 are entitled to reinstatement with full back wages and all consequential benefits? OPA*

6. *Whether the appeal is not maintainable as alleged?*

*OPR*

7. *Relief."*

6. In recording findings on issues No 1 & 2 the learned Tribunal considered the law in Chandigarh Administration and others v. Mrs. Rajni Vali and others, JT 2000 (1) SC 159 and CWP No.3686 of 2000 titled Harish Kumar v. State of Haryana decided on March 01, 2011 by the Supreme Court and this Court respectively holding that the employees were entitled to the same scale of pay as admissible to aided posts on the principle of 'equal pay for equal work'. The learned Tribunal considered the material placed on record by the parties in reaching the conclusion in favour of the private respondents and against the present petitioner- management.

7. Issues No.3 to 6 were taken up together for consideration. In its consideration on issues No.3 to 6 the learned Tribunal elaborately dealt with the materials on record and returned positive findings that the management had failed to produce any evidence and even failed to place on record the appointment letters of appellants No.5 & 6 or even prove the termination of their services. The Tribunal held that the management did not allow appellants No.1 to 4 to attend the school after August 10, 2009 and this constituted termination of service by refusal to allow work and not by virtue of an order passed in writing. The termination was oral. The learned

Tribunal did not accept the plea of abandonment of service by the

management. The Court below noticed that the management had neither pleaded nor proved that the services of the appellants before it were terminated on the ground of having become surplus by following the last come first go rule. The learned Tribunal held that the refusal to mark the presence of appellants No.1 to 4 amounted to termination while the termination orders against appellants No.5 & 6 were held illegal and null and void and the appellants thus were held entitled to reinstatement. The learned Tribunal applied the law in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324 to reach the conclusion. The Supreme Court observed in this case that in cases of wrongful termination of services, reinstatement with continuity and back wages is the normal rule. Accordingly, issues No.3 to 6 were also decided in favour of the employees and against the management.

8. The management even took the drastic and desperate stand that initial appointments of the appellants (respondents No.3 to 8 herein) were illegal since they were inducted without following the prescribed procedure by taking cover of the decision of the Supreme Court in Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1. But the learned Tribunal discredited the argument when it found that the management had failed to produce copies of the appointment orders and the relevant record regarding procedure followed for appointment of the respondents herein. The Court *a quo* rightly drew adverse legal inference against the management that in the absence of primary evidence regarding appointment of the appealing aggrieved employees before it cannot be said to have been made without compliance with the prescribed procedure and, therefore, the decision in

*Uma Devi* case was distinguishable on facts. The management also took the stand that appointments were for fixed period which had already expired but they failed to produce evidence in support of the plea by failure of producing the appointment letters which was the best evidence but was withheld. The most critical question arising was that the management failed to produce any record whether these employees were appointed against unaided or non-sanctioned posts which was crucial to the case. This was not to say that both the categories did not fall in the definition in Section 2 (d) of the Haryana Aided Schools (Security of Service) Act, 1971 (“1971 Act”) which defines an employee to be a person in whole-time employment in an aided school. The Tribunal relied on the law expounded by this Court in Ram Narain Tyagi v. The State of Haryana and others, 1985 (2) SLR 100. It was held that the 1971 Act applies in cases of whole-time employees of aided schools irrespective of the fact whether the posts against which they are working are approved or sanctioned by the department or not. In the present case, even though the employees may have been appointed on contract basis but it qualified for whole time employment falling within the definition of “employee” and, therefore, their services stood protected by the provision of the 1971 Act. If the plea was that termination order was passed for misconduct then disciplinary inquiry was not held in accordance with procedure determined by Rules 23 to 28 of the Haryana Aided Schools (Security of Service) Rules, 1974.

9. Heard Mr. Kanwaljit Singh, learned Senior counsel for the petitioning management. He argues that the findings of the learned Tribunal are erroneous on the issues framed and deserve to be set aside. The learned

Senior counsel has restricted himself to the arguments raised before the learned Tribunal by the management without canvassing anything new but he has not been able to pierce through any chink in the well reasoned and elaborate order made by the learned Tribunal on all the issues. I must say that the learned Tribunal has considered all the aspects on each of the issues as one should in appellate jurisdiction and has dealt with the evidence on record and relied on relevant case law both on the issue of 'equal pay for equal work' and regarding the validity of the termination orders.

10. Mr. Kanwaljit Singh, has despite best effort not been able to distinguish the ratios in *Rajni Vali*, *Harish Kumar* and *Sanjeev Kumar* cases. As a matter of fact, the issue is no longer *res integra* and has been amply covered by the decision of the Supreme Court in *Rajni Vali case* admitting of no side lane to achieve a different result than what the binding ruling decides. Similar contentions have already been rejected by this Court and the Supreme Court in the aforesaid cases. This is not a case of short term employment but a case of service of long years ranging from 1993 to 1997 till the axe fell on the respondents.

11. The learned Senior counsel has not shown any perversity or irrationality in the order of the learned Tribunal which warrants interference in writ jurisdiction. The scope of writ jurisdiction while reviewing work of a Tribunal is very narrow as explained by the Supreme Court in Syed Yakoob v. K.S. Radhakrishnan; AIR 1964 SC 477 where the parameters of interference by the High Court in jurisdiction provided by Article 226 of the Constitution has been explained in the following words:-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has

*been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive*

*jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide **Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104; Nagendra Nath v. Commr. of Hills Division, 1958 SCR 1240** and **Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168.***

*8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the*

*face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each cases and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.*

12. The High Court does not sit as a Court of appeal against orders passed by the Education Tribunal which is within jurisdiction and the discretion exercised is not open to substitution of opinion which may sound or feel better. So long as justice has been done and no prejudice caused to either party by error of judgment no interference whatsoever is called for in the impugned order which considers minutely the issues in an elaborate order. This Court has not gone by the length or weight of the order but its quality which contains no error apparent on the face of the record.

13. Consequently, the petition is not worthy of admission and is dismissed *in limini*.

(RAJIV NARAIN RAINA)  
JUDGE

22.11.2016  
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*Whether speaking/reasoned* Yes

*Whether reportable* No