

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

Date of decision: 17.10.2016

CWP No.21341 of 2016

Lingaya's University

...Petitioner

Vs.

Rishikesh Pandey & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. N.R.Dahia, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J.

The petitioner is Lingaya's University. It is a deemed University incorporated under Section 3 of the University Grants Commission, 1956 as an autonomous educational institution imparting technical training. It is established and located in District Faridabad in the State of Haryana. It has framed service rules for its teaching and non-teaching staff called the "Lingaya's University Service Rules – 2010".

1st respondent is Rishikesh Pandey, a Technician posted at the workshop of the Mechanical Engineering Department of the University. He was charged with committing misconduct and dismissed from service for insubordination and disobedience of the orders of the competent authority.

Aggrieved by the order of dismissal dated 02.09.2015, the respondent moved the Educational Tribunal, Faridabad without approaching the Vice Chancellor of the University, which is the Appellate Authority as per Service Rules of the University. The appeal came up before the learned Additional District Judge, Faridabad and by order dated 10.02.2016, the appeal has been allowed and the order of dismissal has been set aside with a

direction to reinstate the petitioner with continuity of service and with 50% of back-wages.

This writ petition has been brought under Articles 226 & 227 of the Constitution of India praying for setting aside the order of the learned Additional District Judge, Faridabad dated 10.02.2016 passed in Civil Appeal No.27 of 2015 and for restoring the order of termination.

In challenge to the order, Mr. N.R.Dahia appearing for the University has raised a front-line argument on point of jurisdiction. It is his submission that the State of Haryana has notified the constitution of the Educational Tribunal vide Gazette notification dated 07.05.2013 and in terms of that notification, the power of hearing appeal has been conferred to the District & Sessions Judge of the District exercising territorial jurisdiction over the subject matter dispute and he has not been given any power to further delegate his authority to an Additional District & Sessions Judge in his Division.

To examine this issue, it would be necessary to acquaint oneself with the words of the notification dated 07.05.2013. The notification reads as follows:

“No.7/45-2010 PS(2) – In pursuance of the judgment dated 30.10.2002 of the Hon’ble Supreme Court of India in TMA Pai Foundation & others Versus State of Karnataka (2002(8) SCC 481), wherein the Hon’ble Court has observed that for the redressal of grievances of employees of unaided educational institutions who are subjected to punishment of termination of services, a mechanism will have to be evolved by constituting appropriate tribunals. The right of filing appeals would lie before the District & Sessions Judge or Additional District & Sessions Judge till the tribunals are set up.

Accordingly, District & Sessions Judges in the State of Haryana have been authorized to hear appeals of employees of aided/unaided technical education institutions against decision of management within their jurisdiction, by the Hon’ble Punjab and

Haryana High Court, Chandigarh vide No.23414GAZ.II/IX.C.II, dated 10.08.2000. The Tribunals already notified by the Hon'ble High Court will also hear appeals of employees of aided/unaided schools against the orders of management.”

The notification is a transitory provision till Tribunals are set up in the State of Haryana. There is no doubt that the notification has been issued in pursuance of the observations made by the Supreme Court in TMA Pai Foundation & others Vs. State of Karnataka, (2002) 8 SCC 481 case. The Supreme Court created by its order a Forum for redressing grievances of employees of unaided educational institutions, who are visited with punishment of termination from service. A right of appeal has been created for employees of educational institutions to prefer appeals, which would lie in accordance with the notification for the time being before the District & Sessions Judge or Additional District & Sessions Judge till the Tribunals are set up by the respective States of the Union. Accordingly, the notification designates the District & Sessions Judges to be the Appellate Authority authorized to hear appeals of employees of aided/unaided technical education institutions against the decision of the managements within their jurisdiction. The Tribunals already notified by the High Court would also hear the appeals of employees covered by the decision against the orders of management.

Mr. Dahia contends that powers are vested exclusively in the District & Sessions Judge not to be sub delegated to the Additional District & Sessions Judges within his Sessions Division. It is his argument that the Additional District Judge, Faridabad lacked jurisdiction in passing the order, which could only have been passed by the District & Sessions Judge and therefore the impugned order suffers from want of jurisdiction. In making this argument, Mr. Dahia forgets that the post of District & Sessions Judge is

not a promotional post. It is by way of designation from amongst the senior most Additional District & Sessions Judges. The powers exercised on the judicial side by the District & Sessions Judge are concurrent with the Additional District & Sessions Judges. The only difference being that the District & Sessions Judge is the marking authority, who can either himself hear the appeal or assign it to one of the Additional District & Sessions Judge within his jurisdiction. Therefore, for the purposes of exercising judicial authority, the District & Sessions Judge and the Additional District & Sessions Judge are equally competent to pass valid orders and judgments in appeals. I would, therefore, reject the argument based on jurisdiction and hold that the learned Additional District Judge, Faridabad was competent to hear the appeal and the petition cannot be allowed on this short point.

If the learned Additional District Judge, Faridabad had the authority to pass the order then this Court would have jurisdiction to examine the impugned judgment on merits. In exercise of this jurisdiction, the writ court does not sit in appeal over the work of the Additional District Judge in his capacity as a Tribunal and would exercise judicial review to the limited extent; whether there is an error apparent on the face of record. There is considerable restraint upon this Court on the writ side to re-examine and re-appreciate the judgment on law and on facts. I have, therefore, perused the impugned judgment with care and find that it contains sufficiently elaborate discussion and reasoning assigned to the issues involved to reach the conclusions on merits while reviewing the order of termination/dismissal passed by the petitioner institution.

The relevant reasoning is contained in Paras.5, 6 & 7, which is self-speaking and requires no further comment or paraphrasing and is, therefore, reproduced as follows:

“5. After taking into consideration the aforementioned facts and circumstances of the case, main question required for adjudication is whether enquiry has been conducted by the enquiry officer in fair and transparent manner after complying with the principle of natural justice or not? Counsel for the appellant in this regard submitted that not even a single document has been supplied to the appellant either at the time of supplying charge sheet or at the time of conducting enquiry. It is undisputed in the present case that charge sheet was issued on 17.08.2015 and enquiry officer was also appointed on the very same day i.e. on 17.08.2015. It is also not disputed that enquiry was started by the enquiry officer on 19.08.2015. Even as per Annexure attached by the respondent with its reply i.e. R3, it has been made clear that enquiry proceedings held on 19.08.2015. R2 is the copy of service rules attached by the respondent itself with its reply. Clause 21(b) of the service rule is as follows:

“21(b) Sufficient time of at least one week shall be given to him/her to prepare and give his/her explanation, as also to produce any evidence that he/she may wish to tender in his/her defence. He/she shall be permitted to appear before the officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests. The employee will be permitted to produce evidence/witness in his/her defence.”

6. According to Clause 21(b), it is clear that at least one week time shall be given to the delinquent officer to prepare his explanation. But in the present case, enquiry has been started only after two days of issuance of charge-sheet i.e. charge sheet was issued on 17.08.2015 and enquiry was started by enquiry officer on 19.08.2015. It shows that enquiry was conducted in hurry and even without following their own rules. Further, in the present case, show cause notice was also issued on the same day on which the charge sheet was issued i.e. on 17.08.2015 which is clear from Annexure R-12. It shows that the disciplinary authority was not fair enough to proceed against the appellant as the show cause notice was issued without waiting the report of enquiry officer. It is also clear in Clause 21 that after conclusion of enquiry, enquiry officer shall prepare a report of the enquiry regarding findings on each of the charge. In the present case, charge sheet was issued on 17.08.2015

and enquiry officer was also appointed on same day and further the report was submitted by the enquiry officer to the Vice Chancellor on 28.08.2015 i.e. within 11 days. In enquiry report, which is Annexure R23, enquiry officer has not recorded his findings on the charges separately; rather his non-speaking report is in the form of his opinion. The last para of the enquiry is reproduced as under:

“Considering his past record and repeated episodes of misbehavior and also based on the input given by his supervisors, the employee may not be permitted to continue in the service any longer. Necessary action need to be taken for relieving him from his services.”

This type of finding given by the enquiry officer itself vitiates the enquiry.

7. After perusing the record, it is undisputed that the impugned order dated 02.09.2015 was passed by the Registrar vide which the appellant has been dismissed from service. The enquiry officer submitted his report to Vice Chancellor and the impugned order was passed by the Registrar. It is also clear from the impugned order that no show cause notice was given to the appellant before passing the order of dismissal which is against the well settled principles of service jurisprudence. Rule 17 of Service Rules, 2010 of the University deals with the dismissal of employee and after perusing the same, it becomes clear that the same has not been complied with.”

The issue was properly crystallized by the learned Additional District Judge, Faridabad, which fell for consideration; whether the enquiry conducted against the respondent was fair and proper and was held in a transparent manner after complying with the principles of natural justice. The question was answered is in the negative. The inquiry did not inspire confidence. The learned Additional District Judge acting as a Tribunal read Clause 21(b) of the Service Rules and found serious infirmities in the conduct of the enquiry. It appeared quite evident to it that prescribed procedure was breached which has caused serious prejudice to the respondent and does not pass muster of the law in State Bank of Patiala &

others Vs. S.K.Sharma, AIR 1996 SC 1669; (1996) 3 SCC 364. There was even a clear and apparent breach of the law in Union of India & others Vs. Mohd. Ramzan Khan, AIR 1991 SC 471 in not supplying a copy of the enquiry report and giving reasonable time to the delinquent to make an answer in defense to establish innocence. Moreover, the learned Additional District Judge, Faridabad found the enquiry conducted in a rush and hurry with predetermined mind to dismiss the respondent from service. Even the disciplinary authority was not fair enough to proceed against the respondent-employee since the show cause notice was issued without waiting for the report of the enquiry officer. Besides, the enquiry officer was to return findings on each of the charges, which has not done separately and the enquiry report itself was made in the form of an opinion, which fails to qualify as findings of fact.

I have no reason to come to a different conclusion as that would amount to replacing the opinion of this Court with the discretion exercised by the competent Appellate Authority. It is well settled that a defective enquiry is no enquiry in the eyes of law and nothing foreign can be breathed into it, to reach a different conclusion and especially in writ proceedings, which are supervisory in nature and summary while dealing with work of Tribunals the parameters of which jurisdiction are circumscribed by the law settled in various judgments of the Supreme Court including in the leading case Syed Yakoob Vs. K.S.Radhakrishnan, AIR 1964 SC 477 (CB).

I find no palpable error apparent on the face of the record sufficient to ignite the jurisdiction of this Court on merits of the case to strike the order down as illegal, irrational, perverse or arbitrary. The Tribunal has considered the relevant material on record and it has not fallen

prey to any irrelevant considerations seeping in, in arriving at the conclusion that the dismissal/termination order was legally bad and unsustainable.

This is not a fit case for interference and the work of the learned Additional District Judge, Faridabad, who has examined all the relevant facts, dates and events that transpired within a short span of fortnight. He has examined the rule position and the order inspires confidence and avoids injustice, which are the two hallmarks of a sound decision. This is not to say that an enquiry cannot be concluded within a short time, but the palpable flaws committed from stage-to-stage i.e. from charge sheet to termination are so glaring that they have correctly met the eyes of the learned Additional District Judge, Faridabad and duly penned down in the order with which I would be loathe to interfere.

This petition is found devoid of merit both on point of jurisdiction and on the merits of the enquiry leading to the order of termination/dismissal and is accordingly dismissed. The order of the learned Additional District Judge, Faridabad be now complied with forthwith.

17.10.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes