

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 24351 of 2015 (O&M)

Date of Decision : February 26, 2016

DAV College Managing Committee
and others Petitioners

vs.

Additional District Judge, Sirsa
and another Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Rajdeep Singh Cheema, Advocate
for the petitioner.

Mr. Ram Niwas Sharma, Advocate
for respondent no. 2.

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DEEPAK SIBAL, J. :

C. M. No. 611 of 2016 :

Through this application, vacation of orders dated 19.11.2015 and 21.12.2015 is sought along with permission to place on record written statement on behalf of respondent no. 2.

Written statement on behalf of respondent no. 2 is taken on record. Since the main case is being adjudicated upon, no orders on the prayer of vacation of stay need to be passed. CM stands disposed of.

C. M. No. 2316 of 2016 :

Through this application, reply to the application filed by the contesting respondent for vacation of stay and replication to the written statement filed by respondent no. 2 is sought to be placed on the record.

Allowed as prayed for.

CM stands disposed of.

Main Case :

The present petition has been filed by D. A. V. College Managing Committee (hereinafter referred to as – the Managing Committee) and others to challenge the order dated 24.09.2015 (Annexure P-9) passed by the Presiding Officer, Educational Tribunal, Sirsa-cum-Additional District Judge, Sirsa (hereinafter referred to as – the Tribunal), through which the termination of services of respondent no. 2 has been set aside and as a consequence of which, he has been ordered to be reinstated, will full back wages.

The relevant facts, which need to be noticed for adjudicating upon the issue raised in the present petition are that through order dated 03.04.1998, respondent no. 2 was appointed as a Trained Graduate Teacher (TGT) (Sports) in D.A.V. Centenary Public School, Sirsa (hereinafter referred to as – the School). The school is under the Management of the petitioner Managing Committee. On 11.09.2012, respondent no. 2 was appointed as President of the D.A.V. School Employees Association (hereinafter referred to as – the Association) and on assuming charge as such, on 04.10.2012, the Association held a meeting under his

Presidentship, wherein it was resolved to submit a charter of demands to the Principal of the School. On 22.10.2012, as resolved, a charter of demands was submitted to the Principal, but when no action was taken thereupon, a reminder was sent. Even after the reminder, when the Association received no response, on 13.05.2013, the same memorandum of demands was submitted by the Association to the Deputy Commissioner, Sirsa. On 23.05.2013, a Show Cause Notice was issued by the Principal of the School to respondent no. 2 to the effect that on 16.05.2013 and 17.05.2013, after school timings, he had been instigating the school employees to shout slogans against the school Management, to which respondent no. 2 duly responded to by denying any such instigation by him. Thereafter, vide letter dated 29.05.2013, the services of respondent no. 2 were dispensed with on the ground that one post of TGT (Sports) had been abolished and as respondent no. 2 was the junior most TGT (Sports), his services were no longer required. Laying a challenge to the aforesaid order dated 29.05.2013, respondent no. 2 filed an appeal before the Tribunal. After sifting the evidence led by both the parties and examining the issues raised, the Tribunal, vide its order dated 24.09.2015, accepted the appeal filed by respondent no. 2, as a result whereof, he was ordered to be reinstated with full back wages along with interest to be paid on the arrears of back wages. Through the present petition, the order dated 24.09.2015 is challenged.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

Learned counsel for the petitioners submitted that in the

School in question, there were 2300 students and Classes I to XII were being taught. Classes I to V were being taught by primary teachers, Classes VI to X by Trained Graduate Teachers and Classes XI and XII by Post Graduate Teachers. Reference was made to a circular issued by the Central Board of Secondary Education (CBSE), which provided that every school was required to appoint Physical Education Teachers in the student ratio of 1:500 in each stage i.e. primary, secondary and senior secondary and that the teachers should be designated as Primary Teacher (Physical Education), TGTs (Physical Education) and PGTs (Physical Education). My attention was then drawn to a letter dated 19.09.2012 written by the Director, Secondary Education, Haryana addressed to all Education Officers, wherein it was provided that Classes IX and X would also be taught by the PGTs. On the strength of the aforesaid submissions, learned counsel submitted that the petitioner School, after considering the number of students and the aforesaid circular and letter, came to a conclusion that for the entire school, three Sports/Physical Education Teachers, which were in place, were not necessary and only two were enough. Accordingly, the third post was abolished and respondent no. 2, who was the junior most TGT, was relieved.

The issue to be determined is whether the dispensing of services of respondent no. 2 on the ground of abolition of the post held by him is justifiable ?

As per bye-law no. 29 (2) of the Central Board of Secondary Education Affiliation Bye-Laws, which admittedly are applicable to the

School, services of a Teacher can be terminated in the case of abolition of a post due to closing down of the School or a Class within the School, reduction in the number of Sections of a Class or discontinuance of a teaching subject.

Whether any of the afore-referred situations were prevailing at the time of dispensing of services of respondent no. 2 ?

The record reveals that on a complaint filed by respondent no. 2 to the District Administration against dispensing of his services, under orders of the Additional Deputy Commissioner, Sirsa, a Committee was constituted to hold an inquiry. After associating with it the School Management, The Committee submitted a report, in which it was found that the student strength in all the classes, particularly in the Classes VI and VIII, which were to be taught by the TGTs, like respondent no. 2, had increased . It had further been found that there were not two TGTs (Sports), but only one i.e. respondent no. 2. Smt. Sushma Chawla, who was being projected as the other TGT (Sports) as per records, was found to be a Sports Teacher meant to teach primary Classes. The report, in its entirety is reproduced below for ready reference :-

- “1. The students strength in all the classes has increased and particularly in the class 6th and 8th for which school administration says that TGT sports Mr. Jitender Rattewal was appointed.
2. Principal has not put up record of

appointment of Smt. Sushma Chawla which could show her senior to Mr. Jitender. It shows doubtful about Smt. Sushma Chawla's seniority as TGT Sports.

3. *There is provision of transfer of teachers of DAV school in their appointment letter but before relieving Mr. Jitender Rattewal as surplus teacher no possibility of vacancies in other DAV schools was considered where he could have been transferred which show biased attitude of school administration.*

In view of the above declaring the post of Mr. Jitender Rattewal, TGT (Sports) as surplus seems to be motivated by instant reasons and not on the basis of workload.

[Emphasis supplied]”

A perusal of the above quoted report shows the increase of student strength in the secondary level of the School, which was being taught by respondent no. 2. It was further concluded that the removal of respondent no. 2 seemed to be motivated and not on the basis of reduction in work load. The attitude of the School Administration was also found to be biased. There was no challenge to this report by the petitioners.

The time tables placed on the record, which were made after relieving respondent no. 2, were perused and it was found that Smt. Sushma

Chawla – the Sports Teacher and Mr. V. Joshi – PGT Sports (the only Sports Teachers now left in the School) were teaching Classes VI to XII. No Sports Teacher was found available to teach Classes I to V and this fact, when put to learned counsel for the petitioners, was admitted. Thus, in order to justify the ouster of respondent no. 2, the School Management, tailor-made a time table for Classes VI to XII to show therein two Sports Teachers to teach students of these Classes. In order to justify respondent no. 2's ouster, the School Management placed on record the aforementioned time table, through which it was projected that for the number of students, studying in Classes VI to XII, two Teachers namely Smt. Sushma Chawla and Shri V. Joshi were enough. What the School Management failed to show was so as to who would teach the students of Classes I to V ? Admittedly, after the ouster of respondent no. 2, there was no Sports Teacher for the students studying in Classes I to V as Smt. Sushma Chawla, who had been teaching the primary Section of the School i.e. Classes I to V, had been shown to have shifted to the secondary Section and in the above facts, this was only to justify the ouster of respondent no. 2. Such attitude on the part of the School Management only cements the allegations of mala fides raised by respondent no. 2 against the School Management.

It is the matter of common knowledge that the academic session, as in the case of the petitioner School, was to commence from April. Like all schools, in the case of the petitioner School as well, the time tables would have been made before the start of the session. In view of this fact, as to why, the action to dispense with the services of respondent no. 2

was taken in the end of the month of May i.e. after the time table would have initially been already framed, is not explained.

On 03.04.1998, respondent no. 2 had been appointed as TGT (Sports). The record shows that for over 15 years i.e. till the year 2013, there was no complaint with regard to his work and conduct and that his services were found useful and needed. The only noticeable event, which took place in the integrum, was, in the end of the year 2012, which apparently irked the Management of the School, was the election of respondent no. 2 as President of the Association and under his Presidentship, serving of charter of demands initially to the Principal of the School and then, when the same were not responded to, by way of a virtual complaint against the school Management, to the Deputy Commissioner, Sirsa, which was made on 13.05.2013. A swift and direct consequence of the submission of memorandum of demands to the Deputy Commissioner, Sirsa was the issuance of a Show Cause Notice dated 23.05.2013 by the Principal of the School to respondent no. 2 so as why was he instigating the employees of the School against the Management. Respondent no. 2 denied the allegations raised against him but without taking the proceedings initiated through the afore-referred Show Cause Notice to its logical end, the petitioner School found an easy way to get rid of respondent no. 2 by dispensing with his services on 29.05.2013 on the pretext of abolishing one post of TGT (Sports). The urgency to oust respondent no. 2 can easily be gauged from the fact that his services were dispensed with within six days of the issuance of the above Show Cause Notice. It is further noticeable

that even on abolition of the post in question, respondent no. 2, before being relieved, was required to be issued notice for three months. In the case in hand, instead of issuing him three months' notice, the petitioner School, by giving respondent no. 2 salary for three months in lieu of notice period, immediately relieved him from service. If respondent no. 2, as per rules, was required to be paid three months' salary, his services for three months could easily have been utilized, which would have only benefitted the students. In the urgency shown by the petitioner Management to oust respondent no. 2, coupled with the aforesaid facts, it can only be held that the presence of respondent no. 2 in the petitioner School was being felt by the School Management as a thorn in their flesh.

The afore-referred sequence of events, which factually are not disputed, emit a bad odour of arbitrary and mala fide action on the part of the petitioner Management making its action unsustainable in law.

In view of above, finding no merit in the present petition, the same is hereby ordered to be dismissed with costs quantified at ₹ 25,000/-.

(DEEPAK SIBAL)
JUDGE

February 26, 2016

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