

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2986 of 2015 (O&M)

Date of Decision: 28.04.2016

Home-cum-Education Secy., Chandigarh & Anr. ... Petitioners

VS.

Pafna & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE A.B. CHAUDHARI

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate for the petitioners

Mr. Girish Agnihotri, Senior Advocate with
Ms. Saroj Malakar, Advocate for respondent No.1

SURYA KANT, J. (Oral)

(1) The Education Department Chandigarh Administration has laid challenge to the order dated 27.05.2014 (P7) passed by the Central Administrative Tribunal, Chandigarh Bench (in short, 'the Tribunal') whereby the order dated 12.02.2009 of the disciplinary authority imposing penalty of dismissal from service on the first respondent as well as that of the Appellate Authority, have been set aside and she has been ordered to be reinstated in service with all consequential benefits.

(2) The above-stated order has been passed by the Tribunal after the case was remanded by this Court in the previous round of litigation decided on 18th November, 2013 i.e. CWP-8218-CAT-2013 filed by the first respondent.

(3) The facts may be noticed briefly. The first respondent joined the Education Department as Social Studies Mistress (TGT) on 03.12.1990 on the basis of the purported qualification of Graduation with B.Ed. degree possessed by her. After about 18 years, she was served with a notice dated 08.02.2008 asking her to prove that the B.Ed. Degree obtained by her from Maithili University, Darbhanga (Bihar) was genuine and recognized. Meanwhile, the University Grants Commission (UGC) issued a Circular dated 18.06.2008 clarifying that *“UGC never recognized Maithili University, Darbhanga as a ‘University’ at any point of time and that the name of that University is included in the list of fake universities/institutions maintained by UGC”*.

(4) The disciplinary action was taken and the first respondent was held guilty of securing public employment on the basis of a fake degree. She was consequently dismissed from service on 12.02.2009. Her departmental appeal too was dismissed. She challenged that order before the Tribunal but again failed. Still aggrieved, the first respondent approached this Court in CWP-8218-CAT-2013 which was allowed by this Court to the extent that the matter was remitted to the Tribunal for fresh adjudication in the light of the earlier decision of this Court in **Ram Bhagat Sharma vs. State of Haryana & Ors., 1997(4) RSJ 134** and keeping in view the Tribunal's own decision in **Sukhjinder Pal Kaur vs. Union of India & Ors., (OA No.385/PB/2010)** which was duly upheld by this Court.

(5) In **Ram Bhagat Sharma's** case, a Division Bench of this Court dealt with almost similar situation where the academic qualifications were obtained by school teachers from unrecognized universities like Hindi Sahitya Sammelan, Allahabad or Maithili University, Darbangha. This Court upheld the action contemplated by the Education Department, Haryana and directed to terminate the service of all teachers who had secured employment on the basis of degree/diploma/certificates issued by unrecognized university. However, in the case of those teachers who had completed three years' service, a direction was issued that they should be given opportunity to acquire requisite qualification within stipulated time. In case, they fail to acquire such qualification, then appropriate order dispensing with the service of such persons were also to be passed.

(6) **Sukhjinder Pal Kaur** (supra) was appointed as a JBT teacher in the Education Department of Chandigarh Administration. She was dismissed from service as the JBT certificate obtained by her from Gandhi Hindi Vidyapith, Allahabad was found to be unrecognized as it was a fake university. The Tribunal set aside the dismissal order of **Sukhjinder Pal Kaur**, relying upon **Ram Bhagat Sharma's** case (supra). Since there was *ex facie* inconsistency in the views taken by the Tribunal in **Sukhjinder Pal Kaur's** case on one hand and in the respondent-Pafna's case on the other, that this Court allowed the writ petition filed by the first respondent in part and remitted the matter to the Tribunal for fresh adjudication.

(7) Thereafter the Tribunal vide the impugned order has ordered reinstatement of the first respondent with all consequential benefits.

(8) It is equally useful to mention at this stage that the first respondent has meanwhile admittedly passed B.Ed. degree on 31.05.2012 from Jammu University which is a well recognized university.

(9) When this case came up for hearing on 27.02.2015, this Court was of the *prima facie* view that the facts of the case in hand are closer to **Ram Bhagat Sharma's** case hence the *ratio decidendi* of that decision would apply. Nonetheless, the contention raised by the petitioner-Administration that the first respondent cannot be fully exonerated, was found worth consideration hence notice was issued to the first respondent and payment of backwages was also stayed.

(10) We have heard learned counsel for the parties at a considerable length and gone through the record.

(11) It goes without saying that there is a marked distinction between a 'fake degree' and an 'unrecognized degree'. In the case of 'fake degree', the institution can be genuine but the 'degree' can still be fake, being not issued by such recognized institution. Contrarily, an unrecognized fake university, may have stamped its so-called diploma/degree/certificates which are not 'forged' documents in legal parlance but are otherwise worthless. The case in hand appears to be

of second category as the B.Ed. degree obtained by the first respondent was from a fake university which was never recognised by UGC.

(12) Having held that, we cannot be oblivious of the fact that the 1st respondent had served for about 20 years to the satisfaction of the petitioner-authorities. She also complied with the *dictum* in **Ram Bhagat Sharma's** case (supra) and has passed B.Ed. from a recognized University in the year 2012. Similarly, the petitioner-authorities cannot apply different yard-sticks on pick and choose basis. The case of 1st respondent is identical or better than that of **Sukhjinder Pal Kaur's** case in which the Chandigarh Administration did not even challenge the order of Tribunal and has reinstated her with all consequential benefits. The first respondent has thus rightly been ordered to be reinstated and no fault can be found with the order passed by the Tribunal to that extent.

(13) Nevertheless, it is difficult to accept that mere on passing B.Ed. from a recognized university in the year 2012, the misconduct attributed to the first respondent has completely obliterated. The cause of her remaining outside the service for a considerable long period is attributable to the first respondent and not the petitioner-authorities. She apparently was negligent and careless while joining B.Ed. Course without even verifying the genuineness and authenticity of the so-called institution. This fact alone should have dissuaded the Tribunal from granting consequential benefits to the first respondent.

We therefore hold that the first respondent is not entitled to

backwages and her reinstatement in service shall be on notional basis only.

(14) As regards the contention of the petitioners that the misconduct on the part of the first respondent having been proved, she cannot be fully exonerated, we leave the issue to the entire discretion of the competent authority for taking a holistic view in this regard. If the competent authority is satisfied that the denial of backwages to first respondent in itself is a sufficient penalty, it would not be necessary for the petitioner-authorities to proceed further and the proceedings may be closed. However, if the competent authority is of the view that in addition thereto, some prescribed punishment is also required to be imposed, such authority shall be at liberty to impose any minor punishment on the first respondent in accordance with the principles of natural justice.

(15) The writ petition stands disposed of in above terms.

(Surya Kant)
Judge

28.04.2016
vishal shonkar

(A.B. Chaudhari)
Judge