

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 3804 of 2016 (O&M)
Date of Decision: 06.10.2016.

Shri Durga Mahila Mahavidhyalya
Samiti

--Petitioner

Versus

Presiding Officer and another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Vinod Gupta, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J

Shri Durga Mahila Mahavidhyalya Samiti i.e. the petitioner-Samiti runs a college at Tohana which is affiliated to the Chaudhary Devi Lal University, Sirsa. It is stated to be an unaided institution, even though, affiliated to the university.

The instant petition is directed against the order dated 15.12.2015 (Annexure P-11) passed by the Additional District Judge-I, Fatehabad exercising the powers of the Educational Tribunal. Perusal of the impugned order would reveal that private respondent no.2 namely Gauri Bhatnagar, who was serving as Lecturer in Sanskrit in the college, had challenged a resolution dated 4.2.2015, passed by the Management of the petitioner-Samiti, whereby her services had been terminated and such challenge has been upheld by the Educational Tribunal vide the impugned order dated 15.12.2015 and the order/resolution terminating her services, has been held to be illegal, null and void.

Counsel appearing for the petitioner-Samiti would submit that respondent no.2 was appointed as Lecturer in Sanskrit on 16.7.2009 and vide resolution dated 1.10.2014 she was given the officiating charge of the

post of Principal of the college. Counsel refers to an order dated 16.1.2015 placed on record at Annexure P-2 which contains a decision of the Management that till 26.1.2015 no leave would be sanctioned by the Principal on account of the Republic Day function. It is contended that the conduct of the private respondent was highly irresponsible inasmuch as she herself remained absent on 26.1.2015 and even provoked other staff members to remain absent. Against such backdrop an explanation was also sought from respondent no.2 vide communication dated 28.1.2015 (Annexure P-3). It is contended that even the response dated 29.1.2015 at Annexure P-4 submitted by respondent no.2 was derogatory and not acceptable. On 3.2.2015, respondent no.2 was relieved of the charge of Principal and on the following day i.e. 4.2.2015 a resolution was passed by the Management to terminate her services.

It has been vehemently contended that the conduct of respondent no.2 was such that it was not in the interest of the institution to continue with her services and prior to taking the impugned action, an explanation had been sought for and which would be in consonance with the principles of natural justice. It has also been argued that the college in question is not an aided institution and the Educational Tribunal while passing the impugned order dated 15.12.2015 (Annexure P-11) has completely overlooked the aspect that the Management cannot be forced to retain in service an employee whose conduct and way of functioning is detrimental to the interest of such institution.

Having heard counsel for the petitioner at length, this Court is of the considered view that the instant petition lacks in merit.

During the course of arguments counsel would admit that the conditions of service of an employee/teacher in an unaided institution which, though, affiliated to the university, would be governed by the statutory provisions of the Haryana Affiliated Colleges (Security of Service) Act, 1979 (herein after to be referred as 1979 Act).

Section 7 (1) would be relevant for the controversy and issue at hand and reads as follows:-

“7(1). No employee shall be dismissed, removed, reduced in rank or no annual increment or increments of pay of any employee shall be withheld with cumulative effect except after an enquiry in which he has been informed of the charge against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that this section shall not apply where an employee is dismissed, removed, reduced in rank or where the annual increment or increments of pay of any employee is or are withheld with cumulative effect on the ground of conduct which has led to his conviction on a criminal charge.”

The mandate of the provision reproduced herein above is couched in clear and unambiguous terms. No employee can be dismissed, removed or reduced in rank except after an enquiry has been held and in which the delinquent employee has been informed of the charges and after having been given a reasonable opportunity of being heard in respect of such charges. Clearly section 7(1) is in the nature of a protection being afforded to an employee of a private affiliated college and whereby a regular departmental enquiry is envisaged prior to imposition of a major penalty.

Counsel appearing for the petitioner-Samiti has very fairly conceded during the course of hearing that no regular enquiry was

conducted against respondent no.2. It was only an explanation that had been called for vide letter dated 28.1.2015 (Annexure P-3). Such explanation would not fall within the scope of the expression “enquiry” as envisaged under Rule 7(1) of the 1979 Act.

At this stage, counsel would raise an argument that a complaint as regards the conduct of the petitioner had been lodged before the Superintendent of Police, Fatehabad. On the basis thereof the proviso to Section 7(1) is sought to be invoked. Even such contention is completely misconceived. The proviso to the section only provides that the enquiry prior to dismissal or removal or reduction in rank could be dispensed with only on the ground, if, the conduct of the delinquent employee had led to conviction on a criminal charge.

The proviso would have no applicability to the facts of the present case. Only a complaint at best had been lodged against respondent no.2 with the Superintendent of Police, Fatehabad. Leave alone a criminal trial, even the F.I.R till date has not been registered.

Under such circumstances, this Court does not find any infirmity with the view taken by the Educational Tribunal holding the action of the petitioner-Samiti terminating the services of respondent no.2 to be violative of the provisions of the 1979 Act as also being against the principles of natural justice and fair play.

Even otherwise, it may be apposite to notice that the Educational Tribunal in its order dated 15.12.2015 (Annexure P-11) has already granted liberty to the petitioner-Samiti to proceed against private respondent no.2 in accordance with law.

Under such circumstance, no interference in the matter is called for.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

06.10.2016
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Whether speaking/reasoned: Yes
Whether Reportable: No