

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

(1) LPA No.1701 of 2011

Pushpa Sharma

...Appellant

VERSUS

State of Haryana & Ors.

....Respondents

(2) LPA No.1782 of 2011

Pushpa Sharma

...Appellant

VERSUS

The Managing Committee of Arya College, Panipat & Ors.

....Respondents

Date of Decision :- 29.11.2016

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. R.K.Malik, Senior Advocate with
Mr. Bhupinder Malik, Advocate for the appellant.

Ms. Palika Monga, DAG Haryana.

Mr. R.K.Chopra, Senior Advocate with
Ms. Gagandeep Kaur, Advocate for Managing Committee.

SUDIP AHLUWALIA, J.

These two Intra-Court appeals have been preferred by Smt. Pushpa Sharma, who was the Writ Petitioner in CWP No. 4730 of 1988 and a Respondent in CWP No. 6887 of 1987. Both the Writ Petitions were decided against her by the common impugned judgment passed by the Ld. Single Judge on 31.5.2011. It may be mentioned at the outset that by and

large, the documents relied upon by the parties in both the appeals are common. As such, their respective Annexure numbers, whenever referred to in this judgment, would be those as assigned in the first appeal i.e. LPA No.1701 of 2011, unless specifically mentioned otherwise.

2) The background of the matter is that the Appellant was originally working as a Lecturer in the S. D. College of Education, Narwana and was confirmed there. The college was Government aided though privately managed. The appellant was appointed against a regular post duly sanctioned under the Grant-in-Aid Scheme. On being declared surplus in that College, she was directed to be absorbed /adjusted in the Respondent College (Arya College, Panipat) by the Director, Higher Education, Haryana. She accordingly joined in the Respondent/College as a Lecturer in Chemistry on 5.8.1984. In the Appointment Letter (Annexure P-1) issued to her on that day by the Secretary, Arya College, Managing Committee, a reference was made to letter No.8/1-84 c (5) Dated 1.10.1984, in pursuance of which, she was appointed Lecturer in the Respondent/College. Her monthly salary was fixed at ₹ 860/- in terms of letter No.4734/8/1-84(5) in the grade of ₹ 700/- to 1600/- (plus allowances). However, it was also mentioned therein that she would 'be on probation as per University Rules' and also that she would 'be governed by the Services and Conduct Rules for teachers of Non-Government Affiliated Colleges'.

3) The Appellant was clearly aggrieved by the Clause of putting her 'on probation', since according to her, having been confirmed as a Lecturer earlier, her absorption/adjustment in the Respondent/College at the instance of the Director, Higher Education, Haryana (Respondent No. 2) clearly was not a case of fresh appointment. Therefore, according to her, as

specifically mentioned in Para 4 of her Writ Petition, (CWP No.4730 of 1988), the condition laid down in her Appointment Letter that she would remain on probation 'as per University Rules was wholly illegal, arbitrary and against the Rules'. Further, the case of the Appellant was that during the alleged period of probation, her work and conduct remained unblemished and that no adverse report/remarks of any sort whatsoever were ever conveyed to her and that her teaching work result was higher than the average result declared by the Kurukshetra University in the respective years. Nevertheless, her period of probation was extended by one year with effect from 6.8.1985 by the Secretary of the Management of the Respondent/College, vide letter dated 1.8.1985 (Annexure P-2). Her contention in this regard is that the Secretary of the Respondent/Management was not competent to extend her period of probation and that the aforesaid communication was altogether without jurisdiction and void. Even otherwise, the decision about the extension of her probation had been taken six months in advance without any cogent reason and basis, which was, therefore, wholly arbitrary and untenable.

4) The Appellant in her Writ Petition had also referred to various rules & instructions issued by the State of Haryana and Kurukshetra University from time to time, which are on record as Annexures P-4, P-5 and P-6. The sum and substance of these communications happens to be that the extension of the probation period of any teacher must be included as a specific Agenda of the Management Committee after proper notice to all members, and that the nominees of the University and the Department must be associated and if due to some reasons, they do not assemble or attend the meeting, the decision should be adjourned to the next meeting. Besides, the

decision should be taken only after taking into confidence all the members by providing them all the facts and figures and that cogent and solid reasons before a decision to terminate the services of a probationer or to extend the period of probation should be conveyed and the Department should be informed about the same along with the reasons. But none of these instructions were adhered to before extending the Appellant's probation period, on account of which, the relevant order (Annexure P-2) is alleged to be wholly illegal and void. Even otherwise, according to the Appellant, she being a confirmed Lecturer in S.D. College of Education, was entitled to be absorbed/adjusted in the Respondent/College as was done in case of ten other similarly placed Lecturers, whose names have been disclosed in Para 7 of the Writ Petition, and who in similar circumstances were absorbed/adjusted in various Colleges affiliated to the Kurukshetra University 'as confirmed' from the very dates on which they joined in those Colleges.

5) Furthermore, according to the Appellant, the Respondent/Management, vide its letter dated 9.7.1986 issued the Agenda of the meeting to be held on 30.7.1986, which is contained in Annexure P-7. The various items of this Agenda as noted in Annexure P-7, read as under -

“Items to be considered

- (1) Regarding the seniority list of the Lecturers of the College.*
- (2) Regarding the financial position of the college; and*
- (3) Any other essential item, with the permission of Chairman;”*

6) As such, there was absolutely no item regarding termination of the Appellant's services in the aforesaid Agenda for the proposed meeting. The same was, however, taken up on the date of meeting and the services of the Appellant were decided to be terminated on the following two grounds -

- “(i) *That the work load in the college has been reduced; and*
(ii) *That the work and conduct of the petitioner was not satisfactory.*”

7) The nominees of the Vice Chancellor and the Director, Higher Education, who were present in the meeting did not agree to the termination of services of the Appellant and therefore got their vote of dissent recorded. The nominee of the Vice Chancellor in fact wrote to the Dean of Colleges, Kurukshetra University, vide his letter No.DSC/VCN/86-87/2487 dated 19.9.1986 that the work load in the college was fully justified 'by these two members' and that, in case the services of the appellant were sought to be terminated on the ground of unsatisfactory work and conduct, the proper procedure laid down under the Act and the rules framed there under and the instructions issued by the respondent-State and the University should have been followed. However, on the basis of these proceedings, the General Secretary of the respondent-Management vide his letter dated 31.7.1987 (Annexure P-9) issued the orders terminating the services of the appellant.

8) Being aggrieved by the action of the Respondent/Management, the Appellant approached Respondent No. 2/Director Higher Education, challenging the order of her termination. After hearing both sides, Respondent No. 2 set aside the termination order by his order dated 20.4.1987 (Annexure P-12). Being dis-satisfied with this decision, Respondent/Management filed an appeal before the Secretary, Department of Education, Government of Haryana (Respondent No.1), which was dismissed by him, vide order dated 10.9.1987 (Anneuxre P-14). The termination of the Appellant was, therefore, held to be illegal by both these authorities. The Respondent/Management, therefore, filed CWP No. 6887 of 1987 against the orders of the Director, Higher Education and Secretary, Education Department, Government of Haryana while the appellant filed

her separate Writ Petition (CWP No. 4730 of 1988), in which, she sought a Writ of Mandamus directing the Respondent/Management to permit her to resume her duties, and also for payment of her salary arrears. The Writ Petition of Management was allowed by the Ld. Single Judge while that of the Appellant was dismissed, vide the impugned judgment.

9) We have gone through the reasons assigned by the Ld. Single Judge in coming to his final decision. It transpires that the basic reason why the Ld. Single Judge found no substance in the contention raised on behalf of the Appellant is that in his view, she was a 'probationer' when her appointment was terminated and not 'a confirmed employee' as claimed by her. As such, there was no scope for following any procedure prescribed in respect of regular/confirmed employees. On the other hand, it has been stressed on behalf of the Appellant that having already being 'a confirmed Lecturer' in the S.D. College of Education, Narwana earlier, and having thereafter been declared surplus by that College, her adjustment/absorption in the Respondent/College at the instance of the Director, Higher Education clearly implies that it was not at all a case of 'fresh appointment', but only of adjustment of a confirmed Lecturer, on account of which, all the prescribed protections to her services were available to her under the 'Haryana Affiliated Colleges (Security of Services) Act, 1979' (Act No. 15 of 1979). She had made specific reference to this Act in Para 12 of her Writ Petition.

10) The relevant extracts of the aforesaid Act as enshrined in its Statement of Object and Reasons, as well as the protection available to Teachers covered in Section 7 of the same are set out below -

“The Haryana Affiliated Colleges (Security of Services) Act, 1979

(Act No.15 of 1979)

An Act to provide for the Security of Service to employees of affiliated

Colleges.

Be it enacted by the Legislature of the State of Haryana in the Thirteenth Year of the Republic of India as follows:-

STATEMENT OF OBJECT AND REASONS

The teachers working in the non-Government affiliated colleges have been pressing the Government for taking necessary steps to provide them protection against the high-handedness of the College Managing Committees in regard to matters relating to their conditions of service. With a view to provide security of service to the employees working in the non-government college and also tone up the educational administration government propose to enact a suitable legislation in this behalf. Hence the Bill. Published in the Haryana Gazette Extraordinary dated 23.3.1979 page 583).

PROCEDURE TO BE OBSERVED BEFORE DISMISSAL, REMOVAL OR REDUCTION IN RANK.

- (1) *No employee shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges 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 or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

- (2) *The penalty of dismissal or removal from service or reduction in rank shall not be imposed unless the same is approved by the Director.*
- (3) *Where after the enquiry referred to in sub-section (1) it is proposed to impose the penalty of dismissal, removal from service, or reduction in rank the proposal along with the relevant record shall be referred to the Director and the employee concerned shall be informed.*
- (4) *The employee may, within a period of thirty days of the receipt of the intimation referred to in sub-section (3) make a representation against the proposed penalty to the Director who may, after examining the record and giving the parties an opportunity of being heard, by an order in writing give approval to the imposition of the proposed penalty or refuse to give approval if the proposal is found to be mala fide or by way of victimization or not warranted by the facts and circumstances of the case.”*

11) In this backdrop, we may now refer to the reasons, which appear to have swayed the decision of the Ld. Single Judge in concluding that the Appellant/Writ Petitioner could not be treated to have been

appointed as a teacher in the Respondent/College on 'a regular basis'. The relevant observations of the Ld. Single Judge in this regard are set out below -

“.....As I have already observed that the facts are not much in dispute. Hence, the question which is to be decided in these writ petitions is as to “whether the employee was appointed by the College on regular basis and was not on probation and whether the decision taken by the Managing Committee to dispense with her service was in accordance with law”. There is no evidence brought on record by the employee from which this Court could gather that she was adjusted in the College by the Managing Committee on regular basis. The relationship of employer and employee came into being between the parties by virtue of appointment letter dated 05.08.1984 in which it has been categorically mentioned that she was kept on probation. She did not challenge the order of her appointment. After six months of her service, the Managing Committee had an occasion to meet and discuss her work and conduct on 22.02.1985 in which it was decided to extend her probation period which was ultimately extended vide letter dated 01.08.1985 w.e.f. 06.08.1985 for a period of one year which was not again challenged by her at that time and has been challenged now. Thereafter, she had written a letter to the DHE on 14.01.1986 in order to get a direction to the College for appointing her on regular basis which was declined and she was informed on 03.02.1986 in this regard that it is not possible for the Education Department to give a direction to the College for her appointment on regular basis as it would be within the purview of the Managing Committee alone. The said communication was never challenged by the employee and she remained satisfied with her appointment on probation till she was asked to leave the College on 31.07.1986. From these facts, coupled with the fact that the employee was appointed on regular basis by a different management in a private College and was not adjusted by the Government on regular basis in the College, she cannot, in the garb of pay protection, claim that she had been inducted as a regular Lecturer. In view thereof, I do not agree with the first contention of the learned counsel for the employee as well as observations of the DHE and the Secretary that she was a confirmed employee of the College.”

[Emphasis applied by us]

12)

The aforesaid observations clearly indicate that the opinion of

the Ld. Single Judge that the Appellant could not have been considered a 'confirmed employee' was principally on the basis of her original Appointment Letter dated 5.8.1984 (Annexure P-1) and the subsequent one dated 1.8.1985 extending her period of probation (Annexure P-2).

13) We may now advert to some more documents on record, which however, do not appear to have been considered by the Ld. Single Judge.

14) Annexure A-5 is a copy of the Letter dated 6.8.1984, in which, the Principal of the Respondent/College wrote to the Deputy Director, Colleges that the Appellant had reported for duty in the fore noon of that date, and a clarification was further sought on the salary on which, she was to be appointed, and whether she was to be appointed on probation or as a confirmed hand. ***It was further mentioned therein that the Appellant's formal Appointment Letter would be issued after receiving reply from the Deputy Director.*** Undoubtedly, this letter dated 6.8.1984 was issued by the Principal subsequent to the purported Appointment Letter dated 5.8.1984 (Annexure P-1) issued by the Secretary, Managing Committee i.e. a day before the appellant actually joined her duties. In this manner, there is a manifest contradiction between the contents of the two letters issued by the two separate authorities representing the respondent/College regarding the actual terms of her appointment.

15) There is nothing to indicate whether the Deputy Director, Colleges had any inkling of the purported Appointment Letter dated 5.8.1984, since Annexure A-6 is the apparent response conveyed on his behalf to the Principal of the respondent/College, vide Memo No. 4734-8/1-84 C II (5) dated 1.10.1984, in which, it was mentioned -

“In this connection, it is to inform you that Smt. Pushpa Sharma,

Lecturer in Chemistry is to be appointed on regular basis and her pay is to

be protected which she was drawing. Hence necessary action may kindly be taken accordingly in the matter."

16) As such, there remains no doubt that the respondent/College had been categorically informed in response to its own query that the appellant was 'to be appointed on regular basis and her pay is to be protected'. Consequently, the separate Appointment Letter (Annexure P-1) issued by the Secretary of the Managing Committee previously on 5.8.1984 becomes altogether redundant. The respondent/College, after having received the aforesaid reply from the Deputy Director (Colleges) in response to its own query dated 6.8.1984 was, therefore, clearly obligated to treat the appellant as a regular incumbent, in view of its own commitment in its letter of query dated 6.8.1984 (Annexure A-5) to the effect that 'after receiving your reply, the Appointment Letter will be issued to her.'

17) Furthermore, the appellant has drawn our attention to another communication from the Kurukshetra University sent to the respondent/College, which had similarly sought clarification regarding her status in the light of its own query raised by letter No.16 K/6217 dated 11.01.1986, on account of doubt pertaining to the admissibility of her maternity leave. The text of the reply in clarification sent by the University to the respondent/College is set down below-

*"The Principal,
Arya College,
Panipat.*

Sub:- Clarification regarding Maternity leave.

Dear Sir,

I am to refer to your letter No.16 K/6217 dt. 11.1.1986 on the subject cited above and to inform you that since Mrs. Pushpa Sharma has been transferred to your College from S.D. College of Education for Women, Narwana, it is a case of adjustment of teacher. If she was a confirmed teacher prior to her joining at Panipat, she will be entitled to

all benefits as are allowed to a confirmed employee and she will be treated as confirmed from the date of her joining in your college. She is also entitled to the Maternity Leave.

*Yours faithfully,
Sd/- Assistant Registrar (Colleges),
For DEAN of Colleges.”*

18) In the circumstances, there remains no doubt whatsoever that the status of the appellant as a confirmed employee had not only been recognized by the Director, Higher Education, Haryana and Kurukshetra University, but also specifically communicated to the College by both these authorities by their separate and unconnected correspondences. Consequently, the purported Appointment Letter (Annexure P-1) issued on behalf of respondent No.3 on 5.8.1984 was clearly *de hors* the relevant Statute and Statutory Rules as well as instructions of the concerned authorities. Clearly, the respondent No.3 had no authority to put an already confirmed teacher on probation 'as per University Rules' when in fact, the University itself recognized that she was to be treated as confirmed from the date of her joining in the College. For this reason, we are of the view that the Ld. Single Judge has erred in having treated the appellant as a 'probationer' merely on the strength of communications issued by respondent No.3 being Annexures P-1 and P-2. If at all, her work and performance was found to be unsatisfactory, then, as rightly observed by the nominees of the Vice Chancellor and Director, Higher Education, the proper procedure laid down under the Act and Rules framed thereunder ought to have been followed before terminating her services.

19) It has to be borne in mind that the respondent College and its Management owe their existence to the State Govt. which provides 95% Grant-in-Aid to run the College and Kurukshetra University with whom the

College is affiliated. The Management of the College or its Secretary had no authority to defy or denounce the directions issued by State Govt. as well as Kurukshetra University regarding status of the appellant as a regular and confirmed teacher of the College.

20) The alternate plea raised on behalf of respondent/College in this regard that actually, the appellant's services as a probationer were terminated due to inadequate work load and not unsatisfactory conduct, is untenable on the face of it. This is so because the Minutes of the Meeting dated 30.7.1986, in which, the decision was taken specifically mentioned about the appellant's 'unsatisfactory work' as also the dissenting views of certain members present in the Meeting in this regard. This would be clear on perusing the following extracts from the Minutes (as contained in Annexure P-8) -

“Excepting Dr. P.P. Mehta, Sh. R.C. Behl, Sh. S.P. Chadha and Sh. Siri Ram Goyal all the members took this decision that due to the reduced work load and the unsatisfactory work Sh. Rajpal Singh, Smt. Pushpa Sharma who are on probation, immediately be relieved from the services of the college. Dr. P.P. Mehta and Sh. R.C. Behl while getting their vote of dissent recorded said that we disagree with the decision of the majority to remove the Lecturers from the services of the college because in case of unsatisfactory work and regular procedure has not been followed. Their shortcoming should have been communicated to them in writing.”

21) Furthermore, the Principal of the respondent/College, subsequently in response to the query from the Director, Higher Education also in its reply dated 15.9.1986 (Annexure P-11) admitted *albeit* evasively that in fact the adverse notings regarding the appellant's performance were drawn in the personal file, although he did assert in the same breath that she 'was terminated because her post had to be surrendered being surplus'. Now assuming that the reason for terminating the appellant's services was

actually insufficient work load, which incidentally was not accepted by the Vice Chancellor's nominee as noted in his letter No.DSC/VCN/86-87/2487 dated 19.9.1986, still the appropriate course available to the College authorities was to inform/approach the Director, Higher Education, at whose instance, the appellant had been appointed in the respondent/College, for her re-absorption elsewhere. But this logical course was not followed. Instead the resolution to terminate her appointment was passed in spite of there being no such specific agenda for the meeting in this behalf, and the Principal of the respondent/College in answering the query of the Director, Higher Education in his letter (Annexure P-11) went on to admit that 'A meeting of the Governing Body was held on 30.7.86. The matter pertaining to the teacher was not mentioned in the agenda to avoid pressure tactics by the teachers concerned on the members of the Management.'

(Emphasis by us)

22) In totality, therefore, the conduct of the Managing Committee of respondent/College in terminating the services of the appellant by resorting to such surreptitious means and in spite of objections of the departmental representatives present in the meeting borders upon the limits malicious vindictiveness. They inexplicably chose not to approach the Director, Higher Education or inform him, that she was being declared surplus and, therefore, would have to be absorbed elsewhere, just as she had been absorbed in the respondent/College itself on account of having been a confirmed Teacher earlier. It is even more regrettable that due to such illegal and highhanded conduct of respondent No.3, not only the employment of the appellant was terminated, but even her eligibility for pension after attaining the age of retirement was compromised, as she had to

remain out of service for several years after such termination. Her counsel has fairly submitted before us that pursuant to her termination, she did manage to find employment in S.V.B.P. Public School at Samalkha (District Panipat, Haryana), which is a private unaided school and remained in such employment for over 12 years from March 1995 to September 2007', and drew a total amount of ₹ 13,05,156/- during this entire tenure as her remuneration.

23) We, therefore, allow these appeals; set aside the judgment of the Ld. Single Judge and quash the termination of the appellant's employment as also the order dated 31.7.1986 (Annexure P-9) issued by respondent No.3. The respondents are directed to grant full back wages to the appellant subsequent to her termination after adjusting and verifying the remuneration received by her during her employment elsewhere, the details of which she will disclose in an affidavit to be submitted to the respondents. She will also be entitled to the disbursement of pension as well as other consequential retiral benefits, which shall be granted to her by the respondents within three months after she submits her affidavit. Since the Management of the College remained adamant not to re-instate the appellant in service despite the order passed by Director Higher Education and Secretary Education Department, we grant liberty to the State Govt. to deduct the arrears of pay or other monetary benefits payable to the appellant, from the Grant-in-Aid after the release of such benefits to her.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

November 29, 2016
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***