IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1239 of 2015 (O&M)
Date of decision: April 26, 2016.

Santosh Kumari Jain

... **Appellant**

v.

State of Haryana and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri Rajesh Bansal, Advocate, for the appellant.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral):

This letters patent appeal is directed against the order dated 18.3.2015 whereby learned Single Judge has dismissed the appellant's writ petition in which she challenged the order dated 31.3.1994 (Annexure P-3) of terminating her services as a JBT teacher, in the Jain Primary School, Panipat – respondent No.3.

[2] The facts may be noticed briefly.

[3] The appellant was appointed as JBT teacher in respondent No.3 – Jain Primary School, Panipat on 1.12.1981. The respondent-School receives grant-in-aid from the State of Haryana to the extent of 95% and as such, the appointments and conditions of service of its employees are governed in accordance with the provisions of the Haryana Aided Schools (Security of Service) Act, 1971 and the 1974 Rules, framed thereunder.

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[4] It appears that there were only six sanctioned posts of JBT teacher in the School and all such posts were already occupied by duly appointed teachers much before the appellant's appointment. It further appears that there was no advertisement issued nor any Selection Committee, in accordance with provisions of 1971 Act or the 1974 Rules, was constituted to select the appellant. She was appointed by the management, obviously against a non-sanctioned and non-aided post, though on regular basis. It was nothing but a case of back-door entry.

[5] The management made an attempt to adjust the appellant against a sanctioned post and for that purpose, one of the JBT teachers - respondent No.4, working in the respondent-School, was transferred to 'Jain High School'. The said transfer was, however, not approved by the Education Department. Further due to rift between the management and the State Government, the management was left with no option but to pass the impugned order dated 31.3.1994 (Annexure P-3), dispensing with the services of the appellant, observing as follows:-

> *"The management anyhow continued to make efforts with the department so that the retrenchment could be avoided lot of correspondence was duly exchanged. Other ways and means were suggested but could not yield any result. Again vide letter No.336-41 dated 9.3.92 effort was made for making arrangement to avoid retrenchment but vide letter No.438 dated 6.7.92. The surplus teachers were reduced to 2. In this letter it is clarified that the sanctioned strength is for 6 teachers whereas the required norms is 4 teachers. Thus Govt. allowed the grant for 6 teachers only but the school continued to employ you irrespect of the above positions. The juniority list was thus drawn and you are the junior most teacher management continued to pay you salary under the belief that position may improve & govt. may resume the grant but all in vain.*

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> *Under the compelling circumstances, it is not possible for us to continue to pay you salary and retain you as against the govt. norms.*
>
> *Thus in view of the position so created as per govt. letter referred above and the fact that you can no longer be kept in employment your services are hereby terminated with effect from 31.3.94 afternoon. You will be entitled to legal dues as admissible to you which you can collect submitting no dues certificate from all concerned departments."*

[6] The aggrieved appellant approached this Court. The writ petition was admitted but no stay was granted. Resultantly, the appellant has remained out of service since 31.3.1994.

[7] When the matter was taken up for hearing by the learned Single Judge, he found no material on record to suggest that respondent No.4 had 'resigned' from the school or that he was offered a fresh appointment to join the High school. Both the schools were run by the same management and it appears that respondent No.4 was forced to leave the Primary School with a view to create an artificial slot for the appellant. Since respondent No.4 was senior to the appellant, he had a preferential right to be retained back on the post in the Jain Primary School when the Education Department declined to accede to the novel method adopted by the management. It was in these circumstances that the appellant's services were dispensed with.

[8] As the facts would speak for themselves, the appellant has no superior, indefeasible or legally enforceable right to seek reinstatement in service when there was neither a vacant sanctioned post nor she was selected or appointed in accordance with law. Reinstatement of the appellant could obviously be at the cost of respondent No.4 who was not only senior to her but was rightly retained and allowed to hold the post being lawfully appointed.

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[9] No case to interfere with the order passed by the learned Single Judge is thus made out.

[10] Dismissed.

[**Surya Kant**]
Judge

[**A.B. Chaudhari**]
Judge

April 26, 2016.
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