

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

**LPA No.2341 of 2016 in
CWP No.21341 of 2016
Date of Decision:-02.12.2016**

Lingaya's University, Nachauli

...Appellant

Versus

Rishikesh Pandey and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. N.R. Dahia, Advocate
for the appellant.

HARI PAL VERMA J.

Lingaya's University, Nachauli, the appellant-petitioner has filed this intra court appeal under Clause X of the Letters Patent against the judgment dated 17.10.2016 passed by learned Single Judge, whereby writ petition filed by the appellant-petitioner against the order dated 10.02.2016 (Annexure P-17) passed by the Educational Tribunal-cum-Additional District Judge, Faridabad allowing the appeal of respondent No.1, was dismissed.

The appellant filed review application against the order dated 10.02.2016, however same was also dismissed by the Educational Tribunal-cum-Additional District Judge vide order dated 30.05.2015 (Annexure P-18).

Respondent No.1, who was working as a technician in workshop of Mechanical Engineering Department of the appellant University, was charge-sheeted vide memorandum dated 17.8.2015 on various grounds including disobeying the orders of superiors and acting in a manner unbecoming of an employee of the University. Despite repeated advisory letters he did not care to improve his work and behaviour, rather, continued to disobey the orders of superiors. He was placed under suspension vide office order dated 17.8.2015 subject to outcome of the inquiry pending against him. The Chief Vigilance Officer-cum-Inquiry Officer conducted a regular inquiry into the charges levelled against him. The Inquiry Officer submitted inquiry report dated 28.8.2015 and found respondent No.1 guilty of all the charges levelled against him. Accordingly, his removal from service of University was also recommended. On the basis of the charges so levelled and the inquiry report thereof, the Registrar of the University, being a competent authority, ordered dismissal of respondent No.1 vide order dated 2.9.2015, with immediate effect.

The order dated 2.9.2015 dismissing respondent No.1 from service was made subject matter of challenge before the Educational Tribunal and the Ld. District Judge, Faridabad entrusted that appeal to the Ld. Additional District Judge, Faridabad who held that since the order of dismissal was passed without issuing any show cause notice, it was against the very spirit of principle of service jurisprudence. Aggrieved against the judgment dated 10.2.2016 passed by learned Additional District Judge, Faridabad, the appellant-petitioner has preferred CWP No.21341 of 2016.

The writ petition was dismissed by this Court vide order dated 17.10.2016, observing as under :-

“I find no palpable error apparent on the face of the record sufficient to ignite the jurisdiction of this Court on merits of the case to strike the order down as illegal, irrational, perverse or arbitrary. The Tribunal has considered the relevant material on record and it has not fallen prey to any irrelevant considerations seeping in, in arriving at the conclusion that the dismissal/termination order was legally bad and unsustainable.

This is not a fit case for interference and the work of the learned Additional District Judge, Faridabad, who has examined all the relevant facts, dates and events that transpired within a short span of fortnight. He has examined the rule position and the order inspires confidence and avoids injustice, which are the two hallmarks of a sound decision. This is not to say that an enquiry cannot be concluded within a short time, but the palpable flaws committed from stage-to-stage i.e. from charge sheet to termination are so glaring that they have correctly met the eyes of the learned Additional District Judge, Faridabad and duly penned down in the order with which I would be loathe to interfere.

This petition is found devoid of merit both on point of jurisdiction and on the merits of the enquiry leading to the order of termination/dismissal and is accordingly dismissed. The order of the learned Additional District Judge, Faridabad be now complied with forthwith.”

Learned counsel for the appellant-petitioner has argued that against the order of termination passed by the appellant-University, respondent has alternative remedy, which he has not exhausted. He submits

that against the order of termination dated 2.9.2015 passed by the appellant-University, the respondent No.1 has an efficacious alternative remedy to file appeal before the Vice Chancellor and there is serious procedural deficiency on the part of the Tribunal, whereby the appeal filed by the respondent No.1 was allowed and the respondent was ordered to be re-instated with continuity of service with 50% back-wages. He has further argued that the Education Tribunal as per the State notification was required to presided over by the District Judge whereas against the order of termination dated 2.9.2015 whereby respondent No.1 filed an appeal, the same was dealt with by learned Additional District Judge, Faridabad, who was otherwise not competent hear the appeal.

We have heard learned counsel for the appellant and does not find any illegality in the judgment dated 17.10.2016 passed by learned Single Judge.

The plea as raised by the appellant that respondent No.1 had the efficacious alternative remedy of appeal was never pleaded before the Tribunal i.e. before the learned Additional District Judge, Faridabad and, therefore, this plea is not available to the appellant. Similarly, the argument raised by the learned counsel for the appellant that the learned Additional District Judge, Faridabad was not competent to hear the appeal, cannot be accepted. The expression 'District Judge' has duly been incorporated in Chapter VI of the Constitution of India. Article 236 of the Constitution of India interprets the term 'District Judge', which read as under:-

“236. Interpretation.— In this Chapter—

(a) the expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions Judge.”

Article 236 (a) of the Constitution of India has defined the term “District Judge” which includes Additional District Judge as well.

Therefore, it is beyond any doubt that the Ld. Additional District Judge was well competent to pass the order dated 10.02.2016 accepting the appeal filed by respondent No.1. Furthermore, this Court finds that before passing of termination order dated 02.09.2015 by the University, no show cause notice was ever served to respondent No.1 and on this score alone, present appeal is liable to be dismissed. This factual position has not been disputed by the learned counsel for the appellant.

Therefore, this Court does not find any illegality in the well reasoned judgment dated 17.10.2016 passed by learned Single Judge and as such, no interference is warranted.

Accordingly, LPA is dismissed.

(SURYA KANT)
JUDGE

(HARI PAL VERMA)
JUDGE

December 02, 2016

Vijay Asija/sanjeev

Whether speaking/reasoned
Whether Reportable

Yes
Yes/No