

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

**Civil Writ Petition No.16182 of 2014
Decided on : 27.10.2017**

Anita Devi

... Petitioner

Versus

Shiksha Parishad, Kanya Gurukul, Julana Shadipur and another

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Jitender Nara, Advocate
for the petitioner.

Mr. Suresh Ahlawat, Advocate
for the respondents.

G.S. Sandhawal, J.

The challenge in the present writ petition under Article 226 of the Constitution of India is to the letter dated 01.04.2014 (Annexure P-4), whereby services of the petitioner had been dispensed with from the post of Clerk by the respondent-Educational Institution, on the ground that the expenses were to be reduced and accordingly by giving notice the services were dispensed with.

The challenge has also been raised to the dismissal of the appeal by the District Judge, Jind, on 27.05.2014 (Annexure P-5), who repelled the arguments raised that the procedure for dispensing of the service was violative of Section 7 (2) of the Haryana Affiliated College (Security of Service) Act, 1979 (for short '1979 Act'). It was, accordingly, noticed that the appointment of the petitioner was on probation basis and she had never been confirmed and, therefore, the provisions would be only

applicable to the regular employees and confirmed employees. Resultantly, it was held that the institution was running into losses, on account of less number of students and, therefore, it would be impossible to keep the employee in service and there was no malafide assertion on the part of the respondents.

Counsel for the petitioner, accordingly, argued that the dispensing of the service was not justified and no proper procedure was followed.

A perusal of the paper book would go on to show that the appointment was in pursuance of an Advertisement dated 22.09.2011 (Annexure P-2) and the appointment letter was issued on 05.10.2011 (Annexure P-3), which provided that the probation period was of one year and could be extended for one year. The order of confirmation had to be passed as per Clause-1 by the competent authority in writing.

It was not the case of the petitioner that she was confirmed at any stage. Therefore, the provisions of the Act would not be applicable, which provide a procedure that an employee can challenge the action, if removed by way of dismissal or removal from service. The definition of an employee under Section 2 (c) means any person who is in whole time employment of an affiliated college.

Resolution dated 31.03.2014 (Annexure R-2) would go on to show that the petitioner alongwith an Assistant Librarian were relieved on account of the financial exigencies to cut down the unnecessary expenses of the institute. It has also further been averred in the written

statement that the strength of the students had fallen and the action was taken for reducing the expenses of the institute. The dispensing of the petitioner thus was of a employee, who was not confirmed and therefore it cannot said that the provisions of the Act would be applicable to a employee who was not confirmed.

A similar provision exists in the Punjab Aided Schools (Security of Service) Act, 1969 (for short '1969 Act), whereas in the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (for short '1974 Act') the definition of an employee means a person in the employment of an affiliated college but does not include a work charged employee. Accordingly, keeping in view the provisions of the 1974 Act, it was held in **Mohan Singh (Professor) Vs. Managing Committee, S.M.D.R.S.D. College, Pathankot, 1995 (4) SCT 322** that a probationer could not seek the benefit of the Act, keeping in mind the law laid down in **Kartar Singh, Lecturer Vs. Director, Public Instruction, Punjab, Chandigarh and others, 1980 (2) SLR 843** by the Division Bench.

A similar view was taken in **Amrinder Singh Tiwana Vs. State of Punjab and others, 2015 (4) SCT 525**, wherein an *ad hoc* employee had been relieved from service. It was accordingly held as under:-

“18. It is settled law even in the case of Government servants who have the protection of Article 311 of the Constitution, that a temporary employee has no right to the post and his services are liable to be terminated at the end of the contract or even before that as per the terms and conditions of his appointment or the relevant statutory provisions. Here, the petitioner was working

on a non-aided post and did not have the protection of any statute or rule, violation whereof, can be pleaded. As already noticed, the protection of Sections 3 to 5 of the 1974 Act is not available to the petitioner as he was a temporary employee. Hence, there is no force in the argument of the Ld. Counsel for the petitioner that his relieving is contrary to the provisions of the 1974 Act.”

In CWP 14301 of 2014 'Saroj Vs. Shiksha Parishad and another', the dispensing of the services of the Assistant Librarian-Saroj who was also stated to be an employee on contract basis against a unsanctioned post has also been upheld, keeping in mind the financial exigencies of the employer and the fact that no malafides had been alleged.

Accordingly, keeping in view the above, the order dated 27.05.2014 (Annexure P-5) passed by the District Judge, Jind does not suffer from any infirmity, whereby this Court could step into to exercise the discretionary jurisdiction under Article 226 of the Constitution of India of a order of dispensing of services of a Probationer.

Accordingly, finding no merit the present writ petition is dismissed.

OCTOBER 27, 2017

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No