

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 20457 of 2015
Date of Decision: May 10, 2017

Arya Education Society

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Bhupinder Malik, Advocate,
for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

Mr. R.S. Dhull, Advocate,
for respondent No.4.

P.B. Bajanthri, J. (Oral)

1. Petitioner – Society has questioned the validity of order dated 02.09.2015 (Annexure P/20) passed by Director, Secondary Education, Haryana by which 4th respondent's appeal has been allowed while setting aside order of compulsory retirement dated 09.06.2012 so also order of reversion dated 06.06.2011 and rejecting petitioner's cross-appeal.

2. Learned counsel for the petitioner vehemently contended that appellate authority has taken up two issues, namely, reversion and compulsory retirement at one go instead of deciding only compulsory retirement since there is no appeal against order of reversion under the statutory provision. It was further submitted that various contentions of the petitioner – society have not been taken into consideration by the appellate

authority – Director, Secondary Education, Haryana. Learned counsel for the petitioner further submitted that against the order of reversion, appellate authority has no jurisdiction and so also respondent no.4 was on probation, therefore, question of issuance of notice to respondent no.4 before reverting him do not arise.

3. On the other hand, learned counsel for respondent no.4 submitted that respondent no.4 has a civil consequences in respect of passing order of reversion dated 06.06.2011. Respondent no.4 has not been heard in the matter, therefore, he is entitled for notice before ordering reversion dated 06.06.2011. Insofar as compulsory retirement's order dated 09.06.2012 read with appellate authority's order dated 02.09.2015, he has no objection if the matter is remanded to the Director, Secondary Education, Haryana for fresh consideration in respect of compulsory retirement issue is concerned. Insofar as reversion issue is concerned, it was submitted that order of reversion is to be set aside even though the appellate authority has no jurisdiction. There is a violation of principle of natural justice.

4. Heard learned counsel for the parties.

5. 4th respondent has been reverted on 06.06.2011 (Annexure P/5). It is undisputed that 4th respondent has not been heard in the matter before passing reversion order dated 06.06.2011. By virtue of promotion, 4th respondent is being paid higher scale. If the same is reduced by ordering reversion, pay of 4th respondent would be reduced. Therefore, notice is required to be given or 4th respondent is to be heard before passing order of reversion dated 06.06.2011. On this score, reversion order dated 06.06.2011 is liable to be set aside.

6. Insofar as compulsory retirement and order of reversion

decided by the appellate authority vide order dated 02.09.2015 is concerned, order dated 02.09.2015 is set aside. Insofar as order of compulsory retirement dated 09.06.2012 issue is concerned, matter is remanded to the appellate authority – Director, Secondary Education, Haryana for deciding the appeal of 4th respondent and cross-appeal of the petitioner afresh. The appellate authority is directed to decide the appeal as well as cross-appeal within a period of three months from today. Order of reversion dated 06.06.2011 is set aside. The petitioner is at liberty to take fresh steps if it is warranted by issuing appropriate notice furnishing the details and reasons for reverting respondent No.4. Respondent No.4 is entitled for difference of pay during the intervening period from 06.06.2011 till passing final order of reversion, if any. Arrears of pay shall be calculated and disbursed to 4th respondents within a period of three months from today.

7. Accordingly, instant writ petition stands allowed.

May 10, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No