

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

115

CWP-6350-2017 (O&M)
Date of decision: 27.03.2017

Apeejay Saraswati P.G. College for Girls

....Petitioner

Versus

Dr. Vandana Tyagi and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Sumeet Goel, Advocate for the petitioner.

Mr.Lalit Pardhan, Advoate for the respondents.

P.B. Bajanthri, J. (Oral)

In the instant petition, petitioner has questioned the validity of the order dated 21.03.2017(Annexure P1) by which respondent No.1's appeal was allowed while setting aside the order of discharge of the respondent No.1 and further directed the petitioner to follow the procedure mentioned under Rule 8, sub Rule (2) proviso (ii) of Haryana Affiliated College (Security of Service) Rules, 2006 (For short 'Security of Service Rules, 2006).

2. Respondent No.1 was appointed as a Principal in the petitioner's institutions on 23.10.2015. Ist respondent joined the petitioner's institution on 26.10.2015. As per the order of appointment the Ist respondent was on probation for a period of 2 years. Before completion of 2 years of probation

she has been discharged from service on 14.02.2017.

3. Respondent No.1 feeling aggrieved by the order of discharge preferred appeal/application before the jurisdictional District Court, Bhiwani. The Education Tribunal/District and Sessions Judge, Bhiwani while examining the order of appointment, order of discharge read with Security of Service Rules, the Education Tribunal noticed that respondent No.1's services have been dispensed/discharged without their being compliance to sub Rule 2 and proviso (ii) of Rule 8 of Security of Service Rules. Thus, it is held that the petitioner is required to comply the aforesaid provision before passing order of discharge.

4. Learned counsel for the petitioner submitted that respondent No.1 has been discharged from service with reference to the conditions imposed in the order of appointment. In this regard learned counsel for the petitioner relied on conditions stipulated in the order of appointment. Extract of the relevant condition are as under:-

“Terms and conditions:

1. *(i)His/Her appointment is to a purely temporary post which is liable to be abolished at any time and carries no promise of subsequent permanent employment. No offer of permanent vacancy can be made to him/her at present.*

(ii) He/She shall be on probation for a period of year which can be extended for such further period as the competent authority under the rules may determine.

2. *In case of resignation or discharge on grounds other than abolition of the post (except as*

a result of disciplinary action), one month's notice or one month's pay and allowance in lieu thereof will be required to be paid on either side.”

5. It was further submitted that question of invoking Rule 8(2)(b) in the present case do not arise for the reasons that respondent No.1 has not completed two years of probation period as on the date of passing of the order of discharge. She has completed only one year and few months. Thus, the Tribunal has erred in holding that respondent No.1's order of discharge would fall within the purview of Rule 8(2)(b) so as to direct the petitioner to comply the provision of Rule 8 (2) (b) is illegal and contrary to the Rule 8(2) which stipulates that on the completion of the probation period of a person, the appointing authority may take the following steps under Rule 8(2)(b). Therefore, the order of Education Tribunal is liable to be set aside and the order of discharge is to be upheld.

6. Learned counsel for the respondent submitted that the Education Tribunal has not committed any error for the reasons that respondent No.1 was on probation for a period of 2 years. There is requirement of certain statutory duties on the appointing authority to comply Rule 8(2)(b). Undisputedly, the petitioner has not complied provisions of Rule 8(2)(b) proviso. Therefore, no interference is called for in respect of Education Tribunal's order dated 21.03.2017.

7. Heard learned counsel for the parties.

8. Respondent No.1 was appointed on 26.10.2015 and her services have been dispensed/discharged on 14.02.2017. Undisputedly, her services has been discharged before completion of 2 years. Perusal of Security of

Service Rules, 2006 there is no provision of discharging an employee when he/she was on probation i.e. prior to completion of 2 years. Only provision provides for either to confirm or to dispense the services of the employee after completion of 2 years. In this regard, Rule 8 is relevant which reads as under:-

8. (1) The persons appointed to any post in the Service shall remain on probation for a period of two years in the first instance, if appointed by direct recruitment and one year if appointed otherwise.

(2) On the completion of the period of probation of a person the appointing authority may-

(a) if his work or conduct has, in its opinion, been satisfactory, confirm such person from the date of completion of his probation period or if a permanent post is not available, declare that he has completed his probation satisfactorily; or

(b) if the work or conduct of a person in its opinion has not been satisfactory-

(i) dispense with his services, if appointed by direct recruitment, or revert him to his former post if appointed otherwise or deal with him in such other manner as the terms and conditions of his previous appointment permit;

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation;

Provided that the total period of probation, including extension, if any, shall not exceed three

years :

Provided further that if it is proposed to take action under sub-clause (i) or (ii) then the case of the official shall be referred to a committee consisting of the following members:-

(1)President or his nominee;

(2)Dean of Colleges of the University or his nominees;

(3)Nominee of Government in the Managing Committee;

(4)Principal of the College concerned;

(5)Principal of another college not under the same Managing Committee. The Managing Committee shall take a final decision in the matter in accordance with the recommendation of this committee;

(iii) if the Managing Committee does not agree with the report of the committee constituted under rule 8(2) (b) (ii) or the committee is unable to come to a decision by the majority then the matter will be referred to by the Principal to the Director whose decision shall be final. However, an employee against whom an order of termination of services has been passed without complying with the provision of these rules, may, within a period of thirty days of the date of communication of orders make an application to the Director whose decision shall be final in the matter.”

9. Learned counsel for the petitioner contended that petitioner can

dispense or discharge an employee's services before completion of 2 years with reference to terms and conditions imposed in the order of appointment. Therefore, the petitioner is empowered to discharge an employee prior to completion of 2 years without their being any approval of the committee or Director as provided for the purpose of discharging an employee who has completed 2 years of service under Rule 8(2)(b). The said contention of the petitioner is not in terms of the rule. It is to be noted that terms and conditions of appointment in particularly (1) and (2) which is specific that he/she shall be on probation for a period of 2 years which can be extended for such further period as the competent authority under the rules may determine. Having regard to factual aspects it is evident that respondent No.1 is on probation under the Rules. Therefore, in the case of discharging respondent No.1's under Security of Service Rules, 2006 is required to be invoked. Security Service Rules, 2006 is silent about discharge of an employee before completion of 2 years of service. Therefore, the petitioner's contention that with reference to order of appointment and terms and conditions petitioner proceeded to discharge respondent No.1 before completion of 2 years is not acceptable in the absence of specific provision. One must go by statutory rules. In the present case, Security of Service Rules, 2006 is governed for the purpose of condition and service of an employee who has been appointed in the petitioner No.1's institution. Since the Security of Service Rules, 2006 is silent about discharging an employee before completion of 2 years question of invoking terms and conditions imposed in the order of appointment by the petitioner is highly arbitrary and

illegal.

10. The Education Tribunal proceeded to hold that the order of discharge is liable to be set aside for non-compliance of Rule 8(2)(b) and its proviso and further directing the petitioner to complete the procedure laid down in Rule 8 (2) (b) is incorrect for the reasons that Rule 8(2)(b) is applicable only in respect of an employee who has completed 2 years of service. Since Rule 8(2) is applicable on the completion of the period of probation of a person the appointing authority may-. The petitioner is very specific that Rule 8(2) can be invoked only wherein employee has completed 2 years of service. Therefore, the Tribunal has erred in holding that Rule 8(2)(b) is to be read even to an employee who has been discharged prior to completion of 2 years of service and further direction to the petitioners to comply the provisions under Rule 8(2)(b) is an error and it is set aside. Insofar as order of discharge of the Ist respondent is concerned, it is without authority of law by the appointing authority for the reasons that respondent no. 1 has been appointed under the Security of Service Rules, 2006 on probation of 2 years and the said Security of Service Rules, 2006 is silent about discharging an employee who has not completed 2 years of service. Therefore, order of discharge is liable to be set aside on the ground that in the absence of provision of law the petitioner cannot refer to the condition imposed in the order of appointment of respondent No.1 when the order of appointment is with reference to Security of Service Rules, 2006 itself the petitioner cannot go beyond the Security of Service Rules 2006 to discharge the respondent No.1 from service unless and until Rules, 2006 is

amended appropriately. Thus, order of the Education Tribunal is modified to the extent directing the petitioner to comply the provisions of 8(2)(b) is set aside. Insofar as setting aside the order of discharge by the Education Tribunal is to be read on the ground that in the absence of any provision of law to discharge an employee before completion of 2 years. The petitioner is directed to take back respondent No.1 to duty forth with and respondent is entitled to all service benefits during the intervening period. The same shall be extended within a period of 3 months.

11. With the above observation, petition stands disposed of.

27.03.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No