

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

**CWP No. 10362 of 2018
Date of Decision: 27.04.2018**

President, S.D. Educational Trust (Regd.), Jhajjar and others
...Petitioners

Vs.

Ram Mehar Singh and others
...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Yogesh Putney, Advocate
for the petitioners.

RAJIV NARAIN RAINA, J. (Oral)

1. Compulsory retirement is not part of the rule or regulation of the Trust which runs the School for bringing the relationship of employee-employer to an end, and, therefore I find no infirmity in the reasoning of the Educational Tribunal on interpretation of condition No.2 of the appointment letter of the petitioner.

2. The facts leading to the filing of the appeal before the Educational Tribunal were that respondent No.1 was appointed as Hindi teacher by the petitioners in the year 1998. The services of the petitioner were placed under suspension on 14.07.2014. After about two years he was charge-sheeted on 15.01.2015 vide Annex. P-4 & P-5 and the enquiry was held in both the charge sheets in which the petitioner was held guilty of misconduct. The enquiry report is dated 26.08.2017. During this period, the petitioner remained under suspension. The impugned decision of the Executive Committee to compulsorily retire

the petitioner from service has come invoking condition No.2 of the appointment letter. This is how the impugned order dated 297.08.2017 was passed which read as follows (P-61)

3. It is the last sentence of condition No. 2 that has given rise to the moot issue before the Educational Tribunal that the order is not simpliciter compulsory retirement as it casts aspersions on the appellant-respondent that he has lost touch with teaching work. The reason has been assigned arbitrarily which appears to be irrelevant consideration and it leaves a mark on the forehead which is stigmatic in nature for future employment since the petitioner cannot be accused of not being “in the practice of teaching” since past 3 years when he was under suspension. He was kept away from taking classes. But he did not withhold his labour or failed to attend classes which obviously was in a result of the suspension order operating for too long without serving charge sheet within reasonable time. In these circumstances, the Tribunal has held that once the respondent was held guilty of charges of misconduct levelled against him, the report should have been furnished to the respondent-appellant and his explanation called and then the disciplinary authority could have chosen what to do by issuing show-cause why his services should not be dispensed with.

4. In paragraph No. 13 of the order, the Educational Tribunal has found, and quite correctly, that condition No.2 of the appointment letter dated 09.07.1998 is not applicable because disciplinary action was

already pending against the appellant, and, therefore, the impugned order was not sustainable in the eyes of law. Besides, the due procedure of law was not followed and the principles of natural justice violated by not affording a reasonable opportunity of hearing to the appellant while retiring him compulsorily. When asked, Mr. Putney has had to admit that there are no independent service regulations governing services of the School nor had the expression 'compulsory retirement' been used to support the conclusion. Compulsory retirement has to be operated by rule and regulation and it cannot be imported at the whims of the Trust/Society. By coining with the new expression in the School of 'compulsory retire' when it was not a part of the conditions in the service letter, giving two months' salary in lieu of notice of compulsory retirement also will not cure the defect.

5. Still further, the Tribunal has held that as per Section 8(2) of the Haryana School Education Act 1995, no employee of a recognized private aided school shall be dismissed, removed or reduced in rank or shall his services otherwise terminated except with the prior approval of the Director or his nominee. In the present case, the same has not been done. Therefore, the Tribunal concluded that the impugned order dated 27.08.2017 was not sustainable. Judicial review in exercise of power under Article 226 of the Constitution of India over work of Tribunal is limited to the extent indicated by the Supreme Court in Syed Yakooob Vs. K.S. Radhakrishnan, AIR 1964 SC 477, that is on grounds of

perversity, irrationality and unreasonableness. This Court does not sit in appeal over orders passed by the Educational Tribunal. After all the view taken by the Educational Tribunal appears reasonable in the facts and circumstances of this case, then interference would not be warranted at the hands of this Court.

6. Mr. Putney argues that if the action of the authority is to be faulted then the principles in Managing Direction, ECIL Vs. B. Karunakar (1993) 4 SCC 737 should have been applied and the parties put back to where the error occurred in the procedure adopted. Without expressing any final opinion on the point and keeping in view the fact that it was not pressed before the Educational Tribunal but then at the same time, according to Mr. Putney, the respondent-appellant did not plead prejudice then this issue is left open to be considered by the petitioner-Society for it to act in accordance with law.

7. Even if it is accepted that the prior permission of the Director was not required, the case not being one of the dismissal, discharge and reduction in rank, involving compulsory retirement from service, even then, the impugned order is not sustainable in law and facts. A reading of Rule 108 (a) of the Haryana School Education Rules, 2003, which deal, with compulsory retirement, shows that is not legally valid due to short-payment of salary by one month. The rule requires three months notice or salary in lieu thereof.

8. No ground for interference is made out with the impugned

order dated 27.08.2017. Accordingly, the present petition is dismissed as above.

27.04.2018
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned : *Yes*
Whether reportable : *No*