

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11043 of 2018
Date of Decision: 04.05.2018

Prabhash Jain

...Petitioner

Vs.

State of Haryana and others

...Respondents

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

Present: Mr. P.K. Solath, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner is the General Secretary of the Society which runs four schools, due to mismanagement, the Schools have been taken over by Sub-Divisional Magistrate (Civil) as an Administrator appointed by the Director Secondary Education, Haryana.

2. This petition has been filed with the following prayer: to issue a writ certiorari, mandamus or any other appropriate writ, order or direction quashing the impugned indemnity bond dated 29.08.2017 (Annex. P-11) issued by the Administrator whereby the society i.e. Jain Sabha Rohtak has been bound for 33 years and also to set aside the appointment letters of respondent Nos. 5 to 14 dated 27.11.2017 & 17.04.2018 (Annex. P-21 Colly) issued by the respondent No.2 being illegal, arbitrary and without approval of the General Body of the Jain Sabha Rohtak.

3. The order appointing the Administrator dated 20.03.2017 is

not under challenge in this petition. The prayer is for quashing the indemnity bond dated 29.08.2017 issued by the Administrator (Annex. P-11). The indemnity bond is prescribed in the Haryana Voluntary Service Rules 2017 and as per the provision of the Rules, the staff of aided schools working in sanctioned aided post on exercise of option can be taken into government service. The condition No.1 of the indemnity bond binds the management under a statutory obligation to run their schools just like unaided recognized school for a period of minimum 33 years after migration of the staff to the department of the government.

4. It is argued that the Administrator had no authority to take an indemnity bond and should have left the matter to be decided by the General Body of the Society. This argument is not legally sustainable since the Administrator had been appointed under due authority of law and his appointment is not challenged. If it is not under challenge he has to act in the best interest as codified under the Haryana Voluntary State Education Service Rules, 2017. I see no illegality in prescribing the indemnity bond so long as it is a part of the scheme of the Rules. If the petitioner as Secretary of the Society has any dispute with the Administrator, he is at liberty to challenge the appointment in separate proceedings.

5. The next argument of the learned counsel put forward is that if the staff of the schools working on aided posts were under charge-

sheets for misconduct served by the private management there names could not have been forwarded by the Administrator. This argument is also misplaced in view of Rule 4(1) as the names of staff working on sanctioned posts forwarded to the government would be screened by it and appointments offered accordingly paying due consideration to the charge sheet. Rule 4(1) of the rules notified on 09.08.2017 reads as follows:

“4 (1): Any employee appointed in a regular capacity and working on a sanctioned post in any aided school desiring to be appointed under these rules shall submit an application in Form-I to the President/Manager of the Managing Committee of the concerned aided school with an advance copy to the concerned appointing authority. Such application shall be made within one month of the publication of these rules in the Official Gazette. The option one exercised in this regard shall be final and shall not be allowed to be changed under any circumstances at any stage.”

6. All that the President/Manager of the concerned aided schools are obliged to do as prescribed under Rule 4(2) requires that he shall personally verify the contents of the application made in sub-rule (1) of Rule 4 within a period of 15 days of the last date of receipt of application in Form-II and forward the duly verified application to the Directorate of Secondary Education, Panchkula, Haryana. He has no other role to play except what is prescribed under Rule 4 (2). Still further the responsibility of the management of aided schools is

prescribed under Rule 6 of the rules. Learned counsel for the petitioner draws attention of the court to sub-rule (ii) of Rule 6 which provides as follows:

6 (ii) The management shall be under statutory obligation to run the present schools just like un-aided recognized schools for a period of minimum 33 years. In this respect, Managements shall submit a duly registered and attested indemnity/security bond in Form-IV to Government.

7. If the petitioner is aggrieved by Rule 6(ii) then his remedy is not before the Single Judge as the vires of the rule could be tested on judicial review before the appropriate Bench; I see no reason to interfere in this matter and would commend dismissal of the same.

8. Learned counsel for the petitioner submits that the Administrator has not verified the antecedents of the staff whose names has been forwarded to the Government, therefore, the transfer is bad. This is not an argument on which the relief can come to the petitioner. Antecedents, if any, will be examined by the State Government to permit induction in its Voluntary Education Service Scheme.

9. Accordingly, the petition is dismissed

(RAJIV NARAIN RAINA)
JUDGE

04.05.2018

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