IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11391 of 2018 (O&M)
Date of Decision:9.5.2018

Shri Krishan Institute of Engineering & Technology & Ors ... Petitioner

Versus

Parshant Aggarwal and another ... Respondents

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

Present: Mr.Raghav Goel, Advocate for the petitioner

Mr.Tarundeep Kumar, Advocate for the Caveator-respondent no.1

RAJIV NARAIN RAINA, J. (Oral)

1. This petition is directed against the order dated 21st February, 2018 (Annex. P-10) passed by the Educational Tribunal allowing the appeal of the 1st respondent by setting aside the order of termination dated 2nd April, 2016 passed by the petitioning employer, namely, Shri Krishan Institute of Engineering and Technology, Kurukshetra. The Tribunal has not only set aside the termination order, but has held the appellant/1st respondent to be deemed to be in service with effect from the date of termination and has also granted to him arrears of full back-wages.

2. The brief facts of the case are that the 1st respondent was appointed as Lecturer in the Department of Electronics and Communication on 31st July, 2004. He was promoted to the post of Assistant Professor in Electronics and Communication Engineering vide order dated 1st May, 2009.

The appointments were approved by the affiliating University i.e. Kurukshetra University, Kurukshetra.

3. The Tribunal noticed that the petitioner-Institute was run under the Self-financing Scheme formulated by the Kurukshetra University, Kurukshetra governed by the Kurukshetra University Self-financing Rules which apply to teaching and non-teaching staff enaged for and in connection with the affairs of running the self-financed courses and programmes established under these rules by the University. The 1st respondent was given charge of the Principal of the Institute. His services were discontinued vide letter dated 2nd April, 2016. The letter is reproduced in paragraph 5 of the impugned order and is reproduced herein below:-

> "DISCONTINUATION OF SERVICE
>
> Your services are no longer required, hence, your services are dispensed herewith with immediate effect. As per para 7 of the terms and conditions contained in your appointment letter issued vide letter SKIET/396 dated 1.5.2009, three month salary in lieu of notice period is paid herewith vide Punjab National Bank, Ratgal Branch cheque No.843407 dated 2.4.2016 for an amount of Rs.38,999/- (Rs. Thirty Eight Thousand nine hundred ninety nine only), cheque No.843408 dated 2.4.2016 for an amount of Rs.38,999/- (Rs.Thirty Eight Thousand nine hundred ninety nine only), and Cheque No.843409 dated 2.4.2016 for an amount of Rs.38,99/- (Rs. Thirty eight thousand nine hundred ninety nine only).

> You are further required to submit No Dues Certificate from all concerned so that your other dues could be cleared."

4. Rule 8 of the Scheme relates to the nature of appointment of staff and the Tribunal noticed the said notice in its order which reads as under:-

> "8.Nature of Appointment of Staff
>
> The Courses introduced under the Scheme will be of purely temporary nature and will continue only so long as these are financially viable. Hence, the engagement or recruitment of staff in connection with the affairs of the course under the Scheme would be purely of Contractual and Temporary nature. The employee under the Scheme will have no right to regularization of their services. In case, the college intends to discontinue a particular course, the staff engaged in connection with the running of the said course will be duly notified of the College's intent to discontinue the course from the ensuing academic session as soon as a decision to this effect is taken by the Governing Body of the College."

5. The Tribunal noticed that when the Self-Financing Scheme itself provides that recruitment of staff would be purely contractual and temporary in nature and employee under the Scheme will have no right to regularization of services, the appellant/respondent cannot be allowed to continue even as permanent employee of the Institute.

6. The Tribunal further noticed para. 7 of the appointment letter dated 1st May, 2009 which reads as under:-

"In case of resignation or discharge on grounds other than abolition of post except as a result of disciplinary action, one month's notice during the period of probation and 3 months notice after the successful completion of probation period or payment of pay and allowances in lieu thereof, will be required on either side."

7. Rule 18 of the Self-Financing Rules prescribes method of coming to an end of contractual relationsip and provides three modes which are reproduced as under:-

"18. The contractual relationship will come to an end under the following circumstances:-

(i) If the Course is closed;

(ii) Contract is not renewed;

(iii)Performance of the employee is not found satisfactory."

8. On the facts presented, the Tribunal concluded that it is not the stand of the petitioner-Institute that the course of Electronics and Communication had been closed. There is nothing in the order of discontinuation that performance/conduct of the appellant was not satisfactory. Further the appellant's appointment vide letter dated 1st May, 2009 was not for fixed period of time or for a particular course. Therefore, the Tribunal concluded that none of the circumstances envisaged by Rule 18 of the Self-Financing Rules and letter of appointment dated 1st May, 2009 existed. The Tribunal found the termination order illegal, null and void and liable to be set aside.

9. The star argument of the petitioner raised before the Tribunal was that a contract of personal service cannot be specifically enforced and a

court will not grant a declaration that the contract subsists and the employee continues to be in service against the will and consent of the employer. The argument has not weighed in the mind of the Tribunal on the ground that the Tribunal is not a civil court where a declaration is sought that contract of service subsists and the employee continues to be in service. The Education Tribunal is seized of an appeal of an employee against termination order passed by Director, SKIET-respondent no.2. The legality of order has to be adjudicated not as a civil court, but a special Tribunal set up for the purpose of hearing appeals against termination. A large number of judgments cited by the Institute have been noticed and recorded by the Tribunal in paragraph 3 of the impugned order. The Tribunal observed that the judgments relied upon by the Institute are of no avail in the presence of the Rules for Self-Financing Scheme governing service conditions and letter of appointment dated 1st May, 2009. The Tribunal partly allowed the appeal and the termination order dated 2nd April, 2014 was set aside. The appellant has been ordered to be deemed to be in service w.e.f. 2nd April, 2016 with right to full back wages and arrears thereof for wrongful termination.

10. It is argued by the learned counsel for the petitioner that on 2nd April, 2013 while checking the attendance record of the Institution, it was found that the 1st respondent remained absent from duty on various occasions without having applied for leave or having informed the Director/Principal of the petitioner-Institute and for which, he was issued letter dated 2nd April, 2013 (Annex. P-7). On another occasion on 16th March, 2016, the 1st respondent remained absent from duty and he was issued warning letter dated 16th March, 2016 (Annex. P-8). The argument of the learned counsel on consideration is found baseless. If the motive and intention of termination order had been based on misconduct and absence from duties, then the

principles of natural justice should have been followed and the petitioner should have been offered opportunity to dispel the notion in the mind of the employer that he was guilty of absence from duty. The incidence of absence relates to April, 2013, March, 2016. Negligence of duty and remaining absent from duty was considered as the reason for termination of service considering it as detrimental by the Management to the interest of the Institute and an act of gross indiscipline. If this was the situation, then an opportunity of hearing should have been given to the petitioner to explain himself. This was not done which is an additional reason why interference is not called for. The decision in **Naresh Kumar vs. Hiroshi Maniwa and others**, 2015 (18) SCT 698 cited by the learned counsel for the petitioner is distinguishable since the Delhi High Court was not considering a case in the background of rules and the self financing scheme framed by the Kurukshetra University, Kurukshetra applicable to the petitioner institute and therefore, the principle that contract of private employment is not similar to public employment is not applicable to the facts and circumstances of the present case. The Tribunal has rightly observed that none of the circumstances envisaged by Rule 18 of the Self-Financing Rules and/or in the terms and conditions spelled out in the letter of appointment dated 1st May, 2009 existed in the termination order.

11. In view of the above, I find no merit in this petition which is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

9.5.2018
MFK

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*

Md. Firoz Khan
2018.07.03 15:34