

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 11.07.2018****CWP No.15122 of 2017**

S.D.Aadarsh Vidyalaya through President, Sector 47, Sohna Road,
Gurugram & others

...Petitioners

Vs.

Additional District Judge -cum- Educational Tribunal, Gurugram & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Zorawar Singh, Advocate, for the petitioners.

Mr. Rahul Gautam, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

At the very outset, learned counsel for the petitioners submits that he does not seriously press the petition on merits, but disputes the jurisdiction of the Educational Tribunal, who has decided the appeal by the order dated 27.02.2017 setting aside the order of termination of the services of the respondent with consequential relief.

The argument advanced by the learned counsel for the petitioners in support of his plea for setting aside the impugned order of the Tribunal is that remedy by way of an appeal is provided under Regulation 49 of the Central Board of Secondary Education Affiliation Bye Laws, which stipulates that a Disciplinary Committee is to comprise of the Chairman of the School Managing Committee; the Manager of the School; a nominee of

the Board/appropriate authority; the Head of the School and one Teacher, who is member of SMC.

However, the Disciplinary Committee, as I understand from a reading of Regulation 49 would be the Committee tasked to examine the findings of the inquiry officer, reasons for imposing penalty recorded by the Disciplinary Authority and the representation by the employee and pass orders as it may deem fit including inflicting punishment on a delinquent employee for proven misconduct. In the present case, a vague charge-sheet was issued to respondent No.2 without any direct allegations of misconduct accompanied by a statement of allegations and imputations of misconduct and material particulars for the petitioner to know the case against her. Upon this charge sheet, a domestic inquiry was held by an advocate in which the vague charges were alleged to have been proven. Disciplinary action led to termination, which was questioned by respondent No.2 before the Additional District Judge -cum- Educational Tribunal, Gurugram in appeal.

The contention of the petitioner that on account of alternative remedy available, the appeal was not maintainable, did not find favour with the Tribunal. The Tribunal noticed that in the present case, the termination order dated 03.04.2015 was passed by Ms. Asha Sharma, who was herself a Manager/President of the Managing Committee as per her seal on document Ex.D1 and resolution in regard to the termination was passed by the Managing Committee as per Annexure D-46. The Tribunal concluded that the Management could not have been judge in their own cause. The appeal would be a classic flaw as one from Caesar to Caesar's wife and therefore, in my considered view the learned Tribunal was correct in forming an opinion

that respondent No.2 had no option but to take recourse of law by filing the appeal. The affiliation Bye Laws should not, to my mind, be allowed to predominate over the special remedy provided by way of appeal to the Educational Tribunals owing their existence to the directions of the Supreme Court in T.M.A. Pai Foundation Vs. State of Karnataka, (2002) 8 SCC 481 to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State. The specialized Tribunal was consequentially created by Notification of the Haryana Government 07.05.2013 to decide directly cases of termination and dismissal from service etc. in educational institutions in Haryana by empowering the District Judges/Additional District Judges in the respective Sessions divisions to be the authority to hear complaints against adverse orders passed by managements against teaching and non-teaching staff.

Thus, on the point of jurisdiction, the writ petition must fail and is ordered to stand dismissed. The award is upheld as legal and valid. Interim stay granted vide order dated 14.07.2017 is vacated. The petitioners are directed to comply with the award immediately without awaiting any dilatory, prolix and illusory proceedings in execution of the award in the Civil Courts at Gurugram, in case filed and pending, which proceedings are not supported by law or notification.

11.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>