

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 2310 of 2018

Date of Decision: 06.02.2018

M/s G.D Goenka School

...Petitioner

Vs.

Ajay Singh Shekhawat and others

...Respondents

2. CWP No. 2335 of 2018

M/s G.D Goenka School

...Petitioner

Vs.

Parveen Singh Shekhawat and others

...Respondents

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

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.

Mr. Aditya Yadav, Advocate
for the caveator.

RAJIV NARAIN RAINA, J. (Oral)

This order will dispose of both the petitions as the issue raised is common.

When the Educational Tribunal has power to set aside the dismissal order, it is inherent that it has power to grant consequential relief of reinstatement and back wages. The learned District Judge, Gurgaon acting as Educational Tribunal has considered the nature and quality of the order of dismissal passed by the petitioning Management against the respondent. The respondent was a sports teacher and the

Tribunal has found that the adverse action was not legal and justified. It was within the jurisdiction of the Tribunal to award reinstatement. With reinstatement comes the legal fiction of continuity in service and, therefore, by virtue of that very legal fiction, the petitioner would be entitled on reinstatement to arrears of salary for the period he was forced out of service. Those cannot be denied by the petitioner-management. The jurisdiction of the Educational Tribunal has been explained by the Division Bench of this Court in Management of S. D. Model Senior Secondary School and another Vs. District Judge-cum-Service Tribunal and another, 2014 (13) RCR (Civil) 328. The Bench after noticing several judgments including in T.M.A. Pai Foundation Vs. State of Karnataka, (2002) 8 SCC 481 whereby the Supreme Court had directed constitution of Educational Tribunals pan India. One such Tribunal has been constituted in Haryana by notification dated 07.05.2013. The Courts of the Learned District Judges in Haryana have been notified as Educational Tribunals for the different Districts/Divisions.

The Division Bench in paragraph No.23 part relevant to this case concludes as follows:

(i) xxx

(ii) *In respect of the second question, the notification of the State Government constituting Educational Tribunal will include all service disputes arising out*

of an order passed by the Management, as appealable to the Educational Tribunal. Such right to appeal is not arising in view of the judgment in T.M.A. Pai Foundation's case (Supra), but in exercise of the executive powers of the State.

(iii) The State Government shall consider appropriate amendments in the Haryana School Education Act, 1995 in the light of statement made by Mr. Poonia before this Court expeditiously.

(iv)xxx

The arguments raised by the learned senior counsel that power to set aside the dismissal order does not vest in the Tribunal is not an argument which I would accept. If the contention is recognized it would result in denuding the judicial power of the Tribunal to adjudicate the case.

The other argument raised by Mr. Bhan that the relationship between the Management and the respondent was one of contract of personal service which is not specifically enforceable in law is rejected in view of the statutory protection afforded to the employees of private recognized schools in Haryana with all shade of service disputes to be settled by the tribunal. In my opinion the governing law would not be the Haryana School Education Code as stressed by the senior counsel which code does not deal with the service law disputes, as is the issue

raised in this case. There is no legal error in the order of the learned Educational Tribunal apparent of the face of the record.

As a result, I have no reason to differ with the conclusions reached by the Tribunal in its wisdom upon the evidence to set aside the dismissal from service. Accordingly, the petition is dismissed. The award of the Educational Tribunal be implemented expeditiously. Caveat is discharged.

(RAJIV NARAIN RAINA)
JUDGE

06.02.2018

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