

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-748-2015 (O&M)

Date of Decision:-17.04.2018.

R.S. Gupta, President Aggarwal College, Ballabgarh, Faridabad and another

.....Appellant

Versus

Kapil Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Lokesh Sinhal, Advocate for the appellants.

Mr. K.L. Arora, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, appellants have challenged the Trial as well as Appellate Court judgment dated 3.12.2013 and 30.10.2014 respectively. Respondent-Kapil Kumar is stated to have been appointed as Lecturer in Music on 31.07.2005 on a probation period of 2 years. As and when he completed 2 years, he has not been confirmed. There is a provision for continuation on probation. While he was on probation on 28.01.2009, his services have been terminated on 28.01.2009 with reference to terms and conditions imposed in the order of appointment in particularly clause 2.

2.) Learned counsel for the appellant submitted that there is no infirmity in the order of termination as it has been passed with reference to clause 2 of the order of appointment. Whereas, the Trial Court proceeded to pass a decree in favour of the respondent on the score that there is a non-

compliance to the portion of Clause 2 to the extent that no written notice of one month or salary in lieu was given. It was contended that Trial Court cannot direct for reinstatement. That apart Haryana Affiliated Colleges (Security of Service) Rules, 1993 is not attracted in the respondent's case. Therefore, Trial and Appellate have erred in passing order in favour of the respondent. He relied decision of this Court reported in 1996 (3) SCT 154 (Satish Kumar Vs. State of Haryana and another), Supreme Court decisions reported in (i) 1976 AIR (SC) 888 (Executive Committee of Vaish Degree College Vs. Lakshmi Narain) and (ii) 1981 AIR (SC) 122 (Smt. J. Tiwari Vs. Smt. Jawala Devi Vidya Mandir and others) to the extent that declaratory relief cannot be granted in a manner as granted in the present case.

3.) *Per contra* learned counsel for the respondent submitted that respondent was appointed as a Lecturer in Music on probation for a period of 2 years on 31.07.2005 and his probation period has not been declared as satisfactory. In other words, he deemed to be continue on probation. While he was on probation on 28.01.2009, his services have been terminated. Such termination is contrary to Rule 8 of the Rules, 1993. Even there is non-compliance of clause 2 of the order of appointment. Therefore, there is no infirmity in the judgment of Trial as well as Appellate Court.

4.) Heard the learned counsel for the parties.

5.) Undisputed facts are that respondent was appointed as a Lecturer in Music on 31.07.2005 on probation. There is a deeming clause that if the probation period is not declared satisfactory within the stipulated time, in that event, competent authority may dispense his service or extend

on probation as on the date of passing termination order on 28.01.2009. It was also undisputed that appellants have not complied portion of clause 2 of the order of appointment to the extent of issuance of notice or giving one month's salary in lieu of termination. No doubt there cannot be a declaration in respect of reinstatement. At the same time, one has to examine if the order of termination is set aside and its effect is required to be taken into consideration. Supreme Court in the case of **M/s. Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras AIR 1992 3 SCC 1** in para 10 held as under:-

“10 In the instant case, the proceedings before the Board under Ss. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under S. 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of

*an order. **Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed.** The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for*

winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.

Having regard to the principle laid down in the aforesaid decision effect of setting aside the order of termination would be restoring the original position. In other words as if the respondent's services have not been terminated. That apart, undisputedly, respondent was on probation, therefore, 1993 Rules in particularly Rule 8 is attracted. Before taking any action against probationer, concerned authority is required to follow Rule 8 of the 1993 Rules. Rule 8 of the 1993 Rules reads as under:-

8. Probation.-(1) *The persons appointed to any post in the Service shall remain on probation for a period of two years in the first instance, if appointed by direct recruitment and one year if appointed otherwise.*

(2) *On the completion of the period of probation of a person the appointing authority may.-*

(a) *if his work or conduct has, in its opinion, been satisfactory, confirm such person from the date of completion of his probation period or if a permanent post is not available, declare that he has completed his probation satisfactory; or*

(b) *if his work or conduct of a person in its opinion has not been satisfactory,-*

(i) dispense with his services, if appointed by direct recruitment, or revert him to his former post if appointed otherwise or deal with him in such other manner as the terms and conditions of his previous appointment permit.

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation:

Provided that the total period of probation, including extension, if any, shall not exceed three years:

Provided further that if it is proposed to take action under sub-clause (i) or (ii) then the case of the official shall be referred to a committee consisting of the following members:-

(1) President or his nominee;

(2) Dean of Colleges of the University or his nominees;

(3) Nominee of Government on the Managing Committee;

(4) Principal of the College concerned;

(5) Principal of another College not under the same Managing Committee. The Managing Committee shall take a final decision in the matter in accordance with the recommendations of this Committee:

(iii) if the Managing committee does not agree with the report of the Committee constituted under rule 8 (b) (ii) or the committee is unable to come to a decision by majority then the matter will be referred by the Principal to the Director whose decision will be final. However, an employee against whom an order of termination of services has been passed without complying with the provision of these rules, may, within period of thirty days of the date of communication of

orders make an application to the Director whose decision will be final in the matter.”

6.) The cited decisions by learned counsel for the appellants could be distinguished having regard to Rule 8 of the 1993 Rules read with the Supreme Court decision in the case of **Nair Service Society vs T. Beermasthan 2009 (2) SCC 545** wherein para 48 held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

7.) The respondent is governed by statutory rules. Even though he was on probation at the time of termination of his services, statutory provision has not been taken into consideration. In view of these facts and circumstances, appellants have not made out a case so as to interfere with the Trial as well as Appellate Court judgment dated 3.12.2013 and 30.10.2014 respectively.

8.) Appeal stands dismissed.

(P.B. BAJANTHRI)
JUDGE

April 17, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.