

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**C.R. No.673 of 2017 (O&M)
Date of Decision.22.04.2019**

Deepshikha Yadav

...Petitioner

Vs

Ranjan Aggarwal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Vikas Kuthiala, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the
impugned orders dated 3.1.2017 (P-7) and 27.10.2016 (P-4).

It was alleged that the petitioner was appointed as
Lecturer in the Department of MBA by the Management of Lord
Krishna Charitable Trust, Gurgaon Institute of Technology and
Management, Bilaspur on 25.6.2009 and had rendered services for a
period of 29 months. After probation of one year, she was confirmed
in July, 2010 and applied for maternity leave. However, on
02.01.2012, petitioner was told that her services were terminated as
per the Haryana Affiliated Colleges (Security of Service) Act, 1979
(Haryana Act No.15 of 1979), Director was vested with jurisdiction
to hear appeal for redressal of grievance of employees of unaided
colleges and schools. The petitioner preferred appeal wherein
respondents herein were proceeded ex parte after having put in

appearance through one Rajesh Pandey, Advocate, resulting into ex parte judgment and decreed dated 21.11.2013 (Annexure P-2). Respondents on 19.12.2013 submitted an application under Order 9 Rule 13 CPC which was allowed on 17.05.2016 (Annexure P-3).

However, Mr. Amit Jain, learned counsel appearing on behalf of the petitioner submitted that the Education Tribunal has adopted a totally different procedure unknown to the settled canons of law in framing issues by terming the *lis* of a disputed nature and on 27.10.2016 framed following issues:-

“1. Whether the impugned termination of plaintiff from her services as Lecturer by defendants, is illegal on the grounds taken in the petition/appeal? OPP

2. If issue No.1 is proved, whether the plaintiff/appellant is entitled for reinstatement in service with all consequential service benefits and damages? OPP

3. Whether the statutory appeal is not maintainable and plaintiff concealed true and material facts? OPR

4. Relief.”

Application (Annexure P-5) was submitted for recalling of the order, which was contested through reply (Annexure P-6) and vide impugned order dated 03.01.2017 (Annexure P-7), dismissed the application. He also drew attention of this Court to the notification dated 08.09.2005 (Annexure P-8) and also orders Annexure P-9 to P-11 wherein the Education Tribunal without resorting to framing of issues decided the appeals, thus, urges that expression appeal would

not be construed to be original proceedings for framing of issues.

Per contra, Mr. Vikas Kuthiala, learned counsel appearing on behalf of the respondents submitted that it is not simple case of termination of services as from the pleadings of the appeal, it is yet to be deciphered that the petitioner had submitted his resignation. There were inconsistent pleadings requiring determination of issues. Both parties have filed appeals and replies along with annexures. No harm and prejudice would be caused in case such procedure is adopted but not averse to any direction for fixing timeline.

I have heard learned counsel for the parties, appraised the paper book and of the view that the order dated 27.10.2016 framing issues, *prima facie*, is not sustainable in the eyes of law for the simple reason that the Hon'ble Supreme Court while deciding the controversy by hearing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 had an occasion to ponder upon that the principal court of not less than Additional District Judge or District Judge are not required to frame issues unless and until some new facts are pleaded other than of the part of record of the Arbitrator. That aspect will again be subjected to certain evidence/cross-examination.

The Education Tribunal should have been very circumspect in adopting the procedure of framing of issues as they are not proceedings of first court. The expression “appeal” cannot be construed as “original suit”. Since parties have already filed their reply and counter reply, it can always reiterate the pleadings by way

of affidavit with original documents and can avail leave of the Tribunal to seek cross-examination of either of the witnesses in case finds variance in pleadings or new fact but not in the manner and mode as has been adopted.

In view of the aforementioned circumstances, impugned orders are set aside and the revision petition stands disposed of in above terms. This Court is sanguine of the fact that the Education Tribunal would decide the matter as expeditiously as possible.

(AMIT RAWAL)
JUDGE

April 22, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No