

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-7121-2019 (O&M)
Date of Decision: 05.09.2019

New Senior Secondary School, Civil
Lines, Ludhiana

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Sapan Dhir, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J (Oral)

Challenge in the instant petition is to the order dated 28.11.2018 (Annexure P-10) passed by the Educational Tribunal, Punjab and in terms of which the petitioner school has been directed to pay a sum of Rs.2 lakh each to private respondents no.3 to 6 by holding their termination to be wrongful.

Brief facts that would require notice are that the petitioner is a private educational institution not receiving any grant-in-aid from the State Govt. Respondents no.3 to 6 having applied for the post of teachers, were so appointed and joined on 7.9.1987, 10.4.1992, 19.7.1971 and 6.5.1983 respectively. Their services were terminated vide orders dated 9/11.4.1997 placed on record at Annexure P-2 (colly). Such action was assailed by the private respondents by filing CWP-10437-1997 and the writ petition was dismissed on 17.5.2013. LPA-1799-2013 was preferred and the same was disposed of by a Division Bench of this Court on 14.1.2014 granting liberty to the appellants (private respondents herein) to approach the Educational Tribunal. In terms of liberty granted, private respondents filed a petition/application before the Educational Tribunal, Punjab assailing the action of the petitioner school in having terminated their services. Such

petition/application stands decided in terms of impugned order dated 28.11.2018 (Annexure P-10) and granting relief as afore-noticed.

Counsel representing the petitioner school has argued that the Writ Court while dismissing CWP-10437-1997 that had been filed by the private respondents, had held that the termination orders of the petitioner can only be seen as a violation of a breach of contract of service which is personal in nature and such finding has not been set aside by the Letters Patent Bench. It is sought to be contended that under such circumstances the Educational Tribunal could not have entertained a challenge against the action of termination on merits and on such ground alone the impugned order at Annexure P-10 cannot sustain. It has also been argued that the private respondents were terminated as there were complaints against them regarding the teaching work, checking of home work and indiscipline in the classes as also on account of certain misconduct. Under such circumstances the petitioner school was well within its rights to have dispensed with the services of the private respondents, who were working as teachers. It is asserted that certain documents had been placed on record before the Tribunal as Annexures R-1 to R-27 containing complaints, adverse A.C.Rs, warnings etc. that had been issued to the private respondents but such aspect has been completely overlooked by the Tribunal. Yet another submission raised by counsel is that the services of the private respondents were dispensed with in the year 1997 and it stands to reason that they had been gainfully employed elsewhere for all these years and as such the order of the Tribunal directing compensation of Rs.2 lakh each in their favour is unwarranted.

Counsel for the petitioner has been heard at length and the pleadings on record have been minutely perused.

Undoubtedly, the private respondents herein had filed **CWP-10437-1997 (Mrs. Manju Sharma and others Vs. State of Punjab and others)** assailing the action of the school in having terminated their services. Such writ petition was dismissed vide judgement dated 17.5.2013 at Annexure P-6. Perusal of the judgement would reveal that a view was taken that the writ petition itself is not maintainable under Article 226/227 of the Constitution of India as it raised a challenge to termination orders which at best could be a violation of the breach of contract of service which is personal in nature. It was on such ground alone that the writ petition was dismissed. In the penultimate paragraph of the judgement it was clearly observed that the grounds raised as regards the termination order lacking reasons and being in violation of the principles of natural justice is not being gone into as the merits of the case is not **under scanner**. Against the judgement of the Writ Court, LPA-1799-2013 was filed and which was disposed of on 14.1.2014 in the following terms:-

“Date of Decision: 14.01.2014

LPA No. 1799 of 2013 (O&M)

Mrs. Manju Sharma and others

...Appellants

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. G.C. Dhuriwala, Advocate for the appellants.

JASBIR SINGH,J (Oral)

The appellants came to this Court by challenging their termination from service. They filed Civil Writ Petition, which was

dismissed on 17.05.2013 by observing that the same was not maintainable. It was also noticed that the petitioners were serving in Private School, which was not aided by the Government. Their services may have been terminated in terms of contract between them and the management of that School.

Mr. Dhuriwala, counsel for the appellants states that liberty should have been granted to the appellants to approach the Education Tribunal constituted in terms of the orders of Hon'ble the Supreme Court. He states that liberty be granted to him to approach that Tribunal.

We order accordingly.

*(JASBIR SINGH)
Judge
(HARINDER SINGH SIDHU)
Judge”*

In the considered view of this Court, liberty having been granted by the Letters Patent Bench to approach the Educational Tribunal and coupled with the fact that the orders of termination had not been examined on merits by the Writ Court, the Educational Tribunal ought to have been adjudicated the matter on merits. This is precisely what has been done by the Educational Tribunal while passing the order dated 28.11.2018 (Annexure P-10). No exception to such course of action can be taken.

Counsel has sought to justify the action of termination by contending that there were numerous complaints against the private respondents as regards their teaching work, checking home work, indiscipline in classes as well as misconduct. Similar stand was even taken before the Educational Tribunal in the reply that had been submitted on behalf of the petitioner school. A reference in this regard may be made to the averments contained in para 5 of the written statement filed by the petitioner school before the Educational Tribunal and appended along with the instant petition as Annexure P-9.

It would be crucial to take note that even though, the termination orders passed against private respondents were couched in innocuous terms but the stand of the petitioner school before the Educational Tribunal, Punjab as also in the instant writ petition is that action of termination was taken on account of complaints regarding teaching work, indiscipline and other acts of misconduct. In other words the order of termination was punitive in nature. Even a private educational institution under such circumstances was obligated to initiate if not a regular inquiry at least, a fact finding inquiry against the concerned teachers with regard to the allegations of misconduct and dereliction of duty. No such inquiry was conducted by the petitioner school. Rather this Court finds that the action of termination of services of the private respondents was against all norms of fair play and in utter disregard of the principles of natural justice. The uncontroverted factual premise is that the petitioners were not even served any show cause notice and were not even granted an opportunity of hearing prior to taking the extreme step of passing of orders of termination. Even though, an attempt has been made by counsel to impress upon this Court that documents have been placed on record before the Educational Tribunal with regard to certain adverse A.C.Rs having been recorded and warnings having been issued, yet, no rebuttal has come forth at the hands of the counsel to the observations made by the Educational Tribunal in the impugned order that the A.C.Rs etc. were recorded just a day prior to the termination orders having been passed and that there was nothing on record to show that the complaints were ever made a subject matter of any disciplinary proceedings much less show cause notices having been issued. The Tribunal has rightfully held the termination of services of

the private respondents to be bad in law.

As regards quantum of compensation is concerned, services of the private respondents who had been engaged on different dates between the years 1971 to 1987 had been terminated in the month of April, 1997. These teachers have been agitating the issue ever since. In the first instance a writ petition had been filed in the year 1997 itself. The writ petition having been dismissed on 17.5.2013 on the ground of not being maintainable against a private school, LPA-1799-2013 was filed. The same having been disposed of on 14.1.2014 granting liberty to approach the Educational Tribunal, the private respondents filed an application/petition before the Educational Tribunal in the year 2014 itself. Such petition stands finally decided by way of passing of the impugned order dated 28.11.2018 (Annexure P-10). Against a wrongful action of termination of services of the private respondents in the year 1997 and the same having been held so finally in the year 2018, an amount of Rs.2 lakh as compensation each cannot be termed as fanciful. The same would not require any intervention at the hands of this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

There is no merit in the instant petition and the same is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

05.09.2019

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No