

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

CWP No.20170 of 2003(O&M)
Decided on:19.11.2019

S.D.College for Women

.....Petitioner

versus

The State of Punjab and others

....Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present: Mr.Naresh Prabhakar, Advocate,
for the petitioner.

Mr. Mehardeep Singh, AAG, Punjab.

Mr.Pankaj Maini, Advocate
for respondent No.4.

MR.ARUN MONGA, J. (Oral)

CM-17303-CWP-2019

Application is allowed as prayed for. Affidavit is taken on
record.

CWP No.20170 of 2003

Inter alia issuance of a writ in the nature of *certiorari* has been sought to quash order dated 16.04.2003 (Annexure P-8) whereby the respondent No.3/Director of Public Instructions (Colleges), Punjab, directed the petitioner-College to let the respondent No.4 join her duty and grant her all the consequential benefits. The said order was appealed against and was upheld by the State College Tribunal, Punjab vide order/decision dated 11.11.2003 (Annexure P-10) which too has been assailed herein.

2. I have heard rival contentions of the learned counsels and have perused the relevant pleadings alongwith the records.

3. Primary argument of learned counsel for the petitioner-College

is that the respondent No.4 was since appointed on an un-aided post of Sweeper, therefore she is not entitled to the protection as envisaged under the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974. He further argues that since the said Act is not applicable herein, therefore, the Director, Public Instructions as well as the State College Tribunal lacked the jurisdiction to pass the order impugned therein.

4. *Per contra* learned counsel for the petitioner has drawn my attention to the statement of estimated expenditure on the salary for the year 1992-92, 1992-93 and 1993-94, under 95% deficit grant scheme contained in Annexure R-2, wherein the name of respondent No.4, i.e. Giano, figures at Serial No.13. The said statement of estimated expenditure has neither been controverted by respondent-DPI nor the State.

5. Though a supplementary affidavit has been filed by one Rakesh Kumar Dhir, President of Managing Committee of the petitioner-College, wherein the date of initial appointment of respondent No.4 and the period of service rendered by respondent No.4 has been given but there is not even a whisper or a murmur with regard to the estimate contained under Annexure R-2, which clearly includes the name of the respondent No.4 with the applicable pay scale in respect 95% grant to be disbursed by the State under the grant-in-aid scheme and balance 5% to be borne by the petitioner-College. In this premise it is safe to assume that at the post to which the respondent No.4 was appointed was an aided post and was covered under Section 2(aa) of the Act, *ibid*.

6. In the premise, it is held that the Director, Public Instructions (Colleges), Punjab, was empowered to give the direction to the college after having gone through the merits of the case. However, the order passed by

the DPI directing the petitioner-College to re-instate respondent No.4 is non-speaking in nature and the detailed reasons for issuing such direction have not been stated therein. Notwithstanding, it would be travesty of justice at this stage to remand the matter for passing a speaking order particularly, in view of the fact that the said *locuna* has been filled up by the State College Tribunal while giving the detailed order/Judgment dealing with the rival contentions of the parties. I have gone through the Judgment rendered by the Tribunal and I see no legal infirmity with the same warranting interference by this Court.

7. On a query posed by this Court learned counsel for the respondent No.4 submits that at this stage the decision/Judgement of the State College Tribunal cannot be implemented *qua* reinstatement as respondent No.4 is currently about 60 years and is over age for the job. Petitioner would have been entitled to work and payment of salary, had the said decision of the Tribunal been implemented. He further submits that even otherwise respondent No.4 is currently suffering from abdominal cancer.

8. With regard to the payment of back wages at this stage, as directed vide the Judgment dated 11.11.2003 rendered by the State College Tribunal, the State/College are entirely responsible for not inducting respondent No.4 back in service having preferred the present petition. Learned counsel under instructions of respondent No.4 fairly submits that in order to give quietus to the litigation by mutual amicable settlement, respondent No.4 would be satisfied if 50% of the wages, instead of a full salary as accorded by the State College Tribunal, is paid to her.

9. In aforesaid premise, the petition is dismissed with the direction

to the petitioner-College/State to pay 50% of the back wages to respondent No.4, for the period she would have continued in service, had the Judgment dated 11.11.2003 rendered by the State College Tribunal been implemented, but for the stay granted by this Court.

10. It is made clear that the State and the petitioner-College shall be jointly and severally liable for payment of back wages to the extent of 95% by the State and 5% by the petitioner-College, as per the grant-in-aid scheme applicable to the private aided colleges in the State. Let the needful be done within a period of 3 months.

11. The necessary disbursement shall be made by the petitioner-College without insisting on the advance payment of the same from the State. Once the disbursement is made by college it shall be at liberty to seek reimbursement from the State in accordance with the applicable procedure.

November 19, 2019

dharamvir

(ARUN MONGA)
JUDGE

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