

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 16.10.2019
CWP-22676-2010 (O&M)

Vipan Gulati

... Petitioner

vs.

State of Punjab & Ors.

.. Respondents

CWP-20575-2011

Khalsa College, Amritsar

... Petitioner

vs.

Education Tribunal, Punjab & Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sandeep Khunger, Advocate
for the petitioner-employee/lecturer.

Mr. P.S.Bajwa, Additional Advocate General, Punjab.

Mr. P.S.Khurana, Advocate
for the College/Management.

ARUN MONGA, J.(ORAL)

Vide this order, the above mentioned two writ petitions, one filed by the College and the other filed by its Faculty Member/Lecturer (Computer Science) impugning order/judgment dated 04.05.2010 passed by the Punjab Educational Tribunal, are being disposed of as common issues are involved therein.

2. I have heard the rival contention of learned counsels and gone through the pleadings alongwith the record appended therewith.

3. While both the parties have assailed the judgment, though, on different grounds viz. the College is aggrieved on the ground that the Tribunal did not have jurisdiction in view of the amendment carried out in Section 6 of the Punjab Affiliated Colleges (Security of Service) Act, 1974

(for brevity 'the Act') since the Lecturer was working on an unaided post, while on the other hand, it is the plea of the Lecturer that the Tribunal ought to have reinstated him in service instead of observing that he shall continue to be suspended, while at the same time, directing that he shall be deemed to be in service and continue to be on rolls of the College.

4. Be that as it may, without adverting to the merits of the order/judgment passed by the Tribunal, a perusal of Section 6 of the Act leaves no manner of doubt that Tribunal did not have the jurisdiction to entertain the appeal of the petitioner against the order passed by Director Public Instruction (DPI) since he was working on an unaided post. On that short ground alone, impugned judgment is hereby set aside.

5. Having said that, one has to necessarily deal with the import of the earlier order/judgment dated 09.12.2009 passed by the Tribunal which concededly has not been challenged by the College and to that extent, it has attained finality.

6. Learned counsel appearing for the College submits that there was no occasion for the College to challenge the judgment dated 09.12.2009 since it merged into the order dated 31.03.2010 passed by DPI, whereby, he had observed that in view of the amendment in the Act, no sanction is required by him and the Management is free to avail any other remedy under law.

7. I am afraid that the said argument is completely devoid of any merit.

8. Judgment dated 09.12.2009 passed by the Tribunal had two components to it i.e.

(a) setting aside the order dated 17.09.2008 passed by the DPI as well as order dated 17.03.2009 passed by the

Management, whereby, the employee/lecturer was dismissed from service.

(b) In view of the setting aside of the order, the matter was remanded to the DPI to consider the matter afresh.

9. In view of the fresh order passed by the DPI giving liberty to the Management to seek appropriate remedy as may be admissible under law, the Management was free to do so but has consciously chosen neither to challenge the order/judgment of Tribunal dated 09.12.2009 nor passed any fresh orders qua its employee. Resultantly, the position that emerges is that dismissal order of the employee stood quashed and all necessary consequences, therefore, have necessarily to enure to the benefit of the employee/lecturer.

10. As regards the employee/lecturer being available for joining the duty, learned counsel appearing for the college seriously disputes that he was ever available to join. He submits that as per his information, the employee/lecturer was, throughout, residing in America and was gainfully employed. On the asking of the Management, the employee never produced his passport which would have reflected that he had work visa for the past 20 years. While on the other hand, learned counsel for the employee/lecturer submits that the petitioner is willing to file an affidavit alongwith the proof of his being available throughout in India.

11. In the peculiar circumstances, the Management/College is directed to reinstate the petitioner with continuity in service subject to his furnishing the proof/undertaking that after passing of the order/judgment dated 09.12.2009 by the Educational Tribunal, he was throughout in India and available to join the duty.

12. As regards the back-wages, learned counsel for the

employee/lecturer submits that after expiry of six months of suspension period, his client is entitled to full back-wages/salary for the period he remained suspended,. He, however, further asserts that in order to give amicable quietus to the litigation, he is under instructions to state that the employee/lecturer is willing to accept a lump sum amount of Rs.24,41,768/- which has already been deposited before this Court during the pendency of the writ petition.

13. In the aforesaid premise, the employee/lecturer shall not be entitled to any monetary benefits other than the amount of Rs.24,41,768/- which shall be payable by the Management/College to its employee upon his reinstatement. The said amount shall be directly released to the employee of the College by the Registry of this Court on a joint application being filed by the Management and the employee.

14. Disposed of in above terms.

15. Pending application(s), if any, also stands disposed of.

16. Photocopy of this order be placed on the other connected file.

16.10.2019
smriti

(ARUN MONGA)
JUDGE

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