

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 13980 of 2015(O&M)
Date of Decision: 02.04.2019

The Managing Committee, Shri Guru Gobind Singh College, Sector 26,
Chandigarh & Anr.

... Petitioners

Versus

Chandigarh Administration & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R.S. Ahluwalia, Advocate,
for the petitioners.

Mr. Pankaj Jain, Advocate and
Mr. Deepak Malhotra, Advocate
for UT Chandigarh.

Mr. Akshay Bhan, Sr. Advocate with
Mr. HPS Sandhu, Advocate
for respondent No.4 Kuldeep Singh.

ARUN MONGA, J. (ORAL)

1. The Managing Committee of Shri Guru Gobind Singh College, Sector 26 Chandigarh has, *inter alia*, assailed herein an order dated 18.09.2012 (Annexure P-9) passed by Director Higher Education, declining to accept the proposal of the Management to dismiss respondent No.4 from service which in appeal was upheld by Education Tribunal vide impugned order dated 02.05.2015 (Annexure P-11).

2. The factual matrix of the case, in nutshell, is that respondent No.4 joined as Principal of the college on 20.02.2004 and the Management during his term as Principal noticed lack of supervision and dereliction of duties on his part. There was alleged bungling with the funds of the College

running in lacs of rupees. The Executing Committee of the Sikh Educational Society which is also the governing body of the College in terms of Clause 3 and 16 of the Constitution of Sikh Educational Society and controls and manage the affairs of the petitioner college, decided to take disciplinary action against respondent No.4.

3. The respondent No.4 was served with three separate charge-sheets, *inter alia*, on the allegations of embezzlement of funds, forging the record and indecent behaviour with the staff. Respondent No.4 denied the charges, but the Enquiry Officers found the charges proved against respondent No.4. Accepting the finding of enquiry reports, the competent authority proposed the dismissal of respondent No.4 from services.

4. Proposal to dismiss was sent to respondent No.2(DHE) for necessary approval, in terms of Section 4 of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974(for brevity, Act of 1974). However, respondent No.2 disagreed with the proposal and rejected it vide an order dated 18.09.2012 (Annexure P-9). It was held that the proposed punishment is not commensurate to the charges proved against respondent No.4.

5. Being dis-satisfied, the petitioners filed CWP No. 20862 of 2012 assailing order dated 18.09.2012(Annexure P-9) before this Court. However, with the constitution of Educational Tribunal, the parties were relegated to Tribunal's jurisdiction for adjudication of the *lis*. The Tribunal also concurred with the reasoning and findings returned by the respondent No.2 and dismissed the appeal of the petitioners vide impugned order dated 02.05.2015 (Annexure P-11). Still aggrieved, the petitioners have filed the instant writ petition.

6. In the reply, respondents No.1 and 2 justified the impugned orders, Annexures P-9 & P-11. The stand taken is that as per Section 4 of 1974 Act, *ibid*, dismissal or removal from service cannot take place unless approved by the Director. According to them, enquiry reports and records thereof were meticulously examined. Finding that the proposal of dismissal was not commensurate with the charges proved against respondent No.4, the proposal of dismissal was not acceded to. According to respondents No.1 and 2 it was within the domain of Director Higher Education to agree or disagree with the proposal sent by the Management.

7. The respondent No.4 on the other submits that he is merely a whistle blower and owing to that is being punished. He states that after joining as Principal, he exposed the scam of embezzlement of funds and brought it to the notice of Managing Committee and also lodged a complaint. He had complained against one Amarjit Singh regarding his illegal activities. Annoyed with his complaint, he was transferred from the college. The respondent No.4 filed CWP No. 11705 of 2007 assailing his transfer before this Court and his transfer was stayed. Stay granted by this Court compounded the annoyance of the Management and has been made a scapegoat.

8. It has been averred that the enquiries were conducted in sham and biased manner. The Director Higher Education and Education Tribunal have rightly appreciated the facts and material on record while rejecting the proposal for his dismissal from service. Proper procedure was followed as envisaged under the Act of 1974, which has been enacted to protect the employees from exploitation and arbitrary victimization in the hands of Management. The Director Higher Education while passing the impugned

order also considered the fact that the person involved in the forgery was duly booked. He was later tried and convicted by Criminal Court of law.

9. In replication, the petitioners took a further stand that while passing the impugned order, Annexure P-9, the Director Higher Education exceeded his jurisdiction by taking into consideration certain material, which was not the part of enquiry reports.

10. I have heard learned counsel for the parties at some length and gone through the paper book with their able assistance. Having carefully gone through the impugned orders passed by respondent No.2 and 3, I do not find any ground to interfere in the justifications accorded in the impugned orders. My detailed reasoning qua the same is discussed hereinafter.

11. Learned counsel for the petitioners contends that respondent No.4 acted in a manner prejudicial to the interests of the College. Respondent No.4 was subjected to three different inquiry proceedings arising out of three separate charge sheets, viz. one dated 24.08.2007 and other two dated 23.11.2007. Pursuant thereto, three inquiry reports i.e. one dated 16.01.2008 and two dated 15.04.2008 (Annexures P-6 to P-8) were furnished by the Inquiry Officer. Respondent No.4 was indicted on all the charges by the Inquiry Officer. He was rightly found guilty by the enquiry officers. Based on the said reports, the petitioners took a decision to dismiss respondent No.4 from services of the college by accepting his indictment. Once Management lost confidence in him, it was rightly proposed to dismiss him from service. However, the Director Higher Education and Education Tribunal failed to appreciate the seriousness of charges levelled against respondent No.4 and wrongly rejected proposal of his dismissal.

Services of respondent No.4 cannot be forced upon the Management. He has relied upon **Kanhaiyalal Agrawal Vs. The Factory Manager, Gwalior Sugar Co. Ltd. 2001 AIR(SC) 3645, Chairman-cum-MD, TNCS Corpn Ltd. Vs. K. Meerabai, 2006(1) SCT 460, Managing Committee, Khalsa Higher Sec School Batala Vs. State of Punjab & Ors. 2004(3) RSJ 732, B.C. Chaturvedi Vs. Union of India & Ors. 1996 AIR(SC) 484, National Fertilizers Ltd. & Anr. Vs. P.K. Khanna, 2005 AIR (SC) 3742 and M/s Goodyear India Ltd. Vs. D.N. Trikha & Anr. 2010(1) RSJ 163.**

12. Mr. R.S. Ahluwalia, learned counsel for the petitioners thus contends that vide impugned order dated 18.09.2011 (Annexure P-9) Director Higher Education illegally rejected the proposed action of the petitioner-College to dismiss respondent No.4 from service. Likewise, the order of the Director Higher Education has been wrongly upheld by the Court of Additional District Judge No.1, Chandigarh-cum-Education Tribunal-Colleges, UT Chandigarh.

13. Per contra, learned Senior counsel for respondent No.4 and learned counsel for respondents No.1 and 2 have argued in support of the impugned orders. According to them, in the departmental enquiry respondent No.4 was not found to have committed any embezzlement. It was entirely in the sole domain of respondent No.2 to agree or not to agree with the proposal sent by the Management.

14. I am in agreement with the submission of Mr. Akshay Bhan, learned Senior counsel for the respondent No.4 that once a clear finding of the competent criminal Court was rendered vide judgment/ order dated 28.10.2003, wherein it was held that the signatures on the cheques, qua

which the delinquency of embezzlement was attributed to respondent No.4, were forged by one Rajnish Ranjan, who had withdrawn the amount from the bank account of college, respondent No.4 cannot be punished for signing those very cheques. The trial Court conviction order of Rajnish Ranjan was upheld in appeal and has attained finality as no further proceedings were preferred against the Appellate Court order. He further points out that the said convict (Rajnish Ranjan) has already undergone the sentence of imprisonment of three years awarded to him pursuant to the criminal court proceedings.

15. Learned Senior counsel has also argued that the accounts of the college were never reconciled by the College Chartered Accountant. Even the alleged embezzlement was never brought to the notice of the management by any auditor. It was only when respondent No. 4 brought the issue to the fore, action was taken and a special Chartered Accountant, Mr. SK Bansal was appointed to conduct a special audit regarding the alleged embezzlement. It was thereafter, that role of the Accounts Clerk, Sh. Amarjit Singh was discovered.

16. It was stated in the audit report that embezzlement from the funds of the College was going on since 1997 and persisted upto December, 2005 when Accounts Clerk, Sh. Amarjit Singh retired. It is admitted fact that Sh. Amarjit Singh confessed to having submitted fake deposit slips and was consequently ordered to make good the loss caused to the College by the respondent No. 4. When cheques amounting to Rs. 10 lacs bounced a complaint was made to the DIG, Economic Offences Wing, Chandigarh. As this was again prior to joining of respondent No. 4, he cannot be blamed for the same.

17. The learned senior counsel has also refuted the claim of the petitioner that Director, Higher Education could not have gone into the reasons for dismissal of the respondent No. 4. A perusal of sections 3 and 4 of the Act of 1974 clearly shows that the act was brought into force to protect the rights of the employees from the arbitrary actions of the employers. Section 3 states that no punishment can be meted out to an employee without holding a proper enquiry where the delinquent officer is given opportunity to refute the charges. Section 4 of the Act states that only after the Director, Higher Education grants the approval, can an employee be dismissed or removed from service.

18. In light of the above provisions, it is evident that the to grant the approval the Director, Higher Education will be empowered to go into the evidence and the records of the case brought before him. Unless he is so empowered, exercise of his powers under the 1974 Act would be contrary to settled principles of law that an order passed by a competent authority must be a reasoned and speaking order after due appreciation of evidence adduced.

19. Having gone through the impugned order dated 18.02.2012 (Annexure P-9), passed by the Director, Higher Education, I find that not only the same is a speaking but reasons contained therein are based on clear findings of fact. He has observed that the delinquent officer i.e. respondent No. 4, was never held directly responsible for any of the charges. He was only made liable to the extent that he was negligent in performance of his duties. The dereliction of duty attributed to the respondent No. 4 was not grave enough to warrant dismissal from service. Even otherwise, the persons directly responsible for the loss caused to the college have already been penalized. The order passed by the Director, Higher Education, therefore, does not suffer from any illegality.

20. I am also in agreement with the reasoning given by the Education

Tribunal in its order dated 02.05.2015 (Annexure P-11), while upholding the order passed by the Director, Higher Education and hence do not deem it appropriate to interfere with the same.

21. Though other wide ranging arguments were advanced with respect to the impunity of the orders, Annexure P-9 and Annexure P-11, but the same have not been addressed as I have already held that the impugned orders do not warrant any interference.

22. I may hasten to add here that there is no dispute to the proposition of law laid down in the judgments relied upon by the learned counsel for the petitioner, but the same are distinguishable in the facts of the present case. Losing faith in the employee must be *bonafide* and there must be genuine apprehension of the employer that continuation of delinquent employee in service would be detrimental to the institution. Only because the Management wants to throw out an employee, for no valid rhyme or reason, is not a reason enough to be sustained in law. I have categorically held that the Director Higher Education has rightly appreciated the material on record. There was no involvement of respondent No.4 in the alleged bungling and the proposed punishment by management is/ was, therefore, not commensurate to the proved charges.

23. In view of the discussion above and the reasoning contained therein, the writ petition is dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

April 02, 2019
Jiten/R

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| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |