

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

**CWP No.17446 of 2019  
Date of decision:02.07.2019**

Rajesh Kumar

... Petitioner

Vs.

District Judge-cum-Education Tribunal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Nonish Kumar, Advocate  
for the petitioner.

**AMIT RAWAL J.**

Prayer in the present petition is for quashing of the order dated 12.03.2019 (Annexure P-7) passed by Education Tribunal, Haryana wherein statutory appeal preferred against order dated 18.4.2016 (Annexure P-3) whereby services of the petitioner were terminated, has been dismissed.

As per the averments in the petition, vide letter dated 01.08.2011, (Annexure P-1) petitioner having highly qualified was appointed as Physical Training Instructor (PTI) for the Millennium Public School, Karnal on contractual basis on various terms and conditions on fixed remuneration and vide Annexure P-2, his services were confirmed. However, in the absence of charge-sheet and explanation, was called upon by the Principal on 18.4.2016 to submit his resignation. Vide letter dated 18.4.2016, Annexure P-3, services were ordered to be ceased on account of functional constraints.

Having availed the statutory remedy, claimed the relief of damages. The Tribunal noticing the rival contentions of parties confined relief to the damages.

Mr. Nonish Kumar, learned counsel appearing on behalf of the petitioner raised the following submissions:-

- i) The order of Tribunal is not sustainable in the eyes of law, for, once it found the order of termination on account of functional constraints in the absence of any rules, was not justified.
- ii) There was no fault of petitioner and therefore, he was liable to be reinstated as he completed age of 42 years and thus, not eligible for Government service.
- iii) It is a question of loss of bread and butter.

Reliance was also laid to the **decision dated 06.02.2018 rendered in CWP No.2310 of 2018 titled as “M/s G.D.Goenka School Vs. Ajay Singh Shekhawat and others”** towards the action of the Management for dismissal of services, was found to be suffering from illegality and writ petition of Management preferred against Tribunal ordering reinstatement was upheld.

I have heard learned counsel for the petitioner, appraised paper book and of view that there is no force and merit in the submissions of Mr. Nonish Kumar.

The Tribunal though noticed that there was no rules but did not

grant reinstatement on the premise that personal service cannot be ordinarily enforced except only in three situations; i.e. under Article 311 of the Constitution of India, Industrial Law and where the statutory body has acted in violation of the mandatory provisions of the statute. Condition No. 20 of Chapter 7 of Haryana Education Act, 1995 do not prevent the Managing Committee of every recognized private school to enter into written contract with every employee.

Defence of Management reveals that there were various complaints against petitioner but order was not stigmatic and authorities did not attribute any stigma upon petitioner while relieving from service and confined to the relief of damages alongwith interest @ 9%. It is settled law that employee cannot implore upon the employer particularly where appointment is purely contractual.

The order relied upon by learned counsel for petitioner is only referral to constitution of Tribunal, in view of decision rendered by the Hon'ble Supreme Court in **T.M.A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481** and was nothing beyond. In such circumstances, ratio decidendi culled out in the said case is not applicable in present case.

The order of Tribunal, in such circumstances, cannot be said to be fallacious or suffering from any illegality. No ground for interference is made out.

Resultantly, the writ petition is dismissed.

(AMIT RAWAL)  
JUDGE

July 02, 2019  
savita

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |