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

CWP-17485-2019 (O&M)
Date of decision : 05.09.2019

Anil Kumar

... Petitioner

Versus

State Level School for Teacher Education (Regd.
Society) at Jhajjar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Kumar Rana, Advocate and
Mr. Jagdish Manchanda, Advocate for the petitioner(s).

Mr. Harish Nain, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

CM-12032-2019 IN CWP-17506-2019

This is an application for fixing the actual date.

Since the main case is already fixed for today, no cause of
action survives in present application and same is ordered to be disposed of
as having been rendered infructuous.

MAIN CASES

This order of mine shall dispose of five writ petitions bearing
CWP No.17485 of 2019 titled as **“Anil Kumar V/s State Level School for
Teacher Education (Regd. Society) at Jhajjar and another, CWP
No.17487 of 2019** titled as **“Pargat Singh V/s State Level School for
Teacher Education (Regd. Society) at Jhajjar and another, CWP
No.17506 of 2019** titled as **“Gurpreet Singh V/s State Level School for
Teacher Education (Regd. Society) at Jhajjar and another, CWP**

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No.17512 of 2019 titled as “Seema Rani V/s State Level School for Teacher Education (Regd. Society) at Jhajjar and another and CWP No.17578 of 2019 titled as “Sandeep Kumar V/s State Level School for Teacher Education (Regd. Society) at Jhajjar and another, as the questions of law and facts are identical. However, the facts are being taken from CWP No.17485 of 2019.

In pursuance to advertisement dated 21.04.2016 inviting the applications for filling up the posts of Assistant Professors in Geography, Social Science, History, Economics, Political Science and Sociology, all the petitioners have been issued appointment letters dated 02.02.2017 and accordingly, submitted joining report within permissible period and had been discharging their duties with utmost dedications and sincerity

Mr. R.K. Malik, learned Senior Counsel assisted by Mr. Sandeep Kumar Rana, learned counsel appearing on behalf of the petitioners in CWP Nos.17485, 17487, 17512 & 17578 of 2019 and Mr. Jagdish Manchanda, learned counsel appearing on behalf of the petitioners in CWP No.17506 of 2019, submitted that the Department, at his own level, conducted preliminary enquiry with regard to some allegations/complaints pertaining to the selection process, resulting into, preliminary enquiry report dated 15.03.2017 (Annexure R-1). Four Members Committee, without associating the petitioners, concluded that the entire selection process should be scrapped. Dissatisfied with the same, another preliminary enquiry was ordered to be conducted to enquire into the appointment of Principal and Assistant Professor Math, Political Science in Parambh School for Teacher Education, Jhajjar, by the Chairman, on 10.08.2017. The aforementioned Committee again without associating the

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petitioners reiterated the findings of the previous committee. For the reasons best known to it, Mr. Rajiv Prashad, HCS, Joint Director Administration, Secondary Education, Haryana, was appointed as Enquiry Officer to look into matter of selection process of Assistant Professors in the subjects of Economics, Political Science, History, Mathematics, Sociology, Chemistry and Geography, in the aforementioned Institute at Jhajjar. In order to overcome the compliance of principles of natural justice, an attempt has been made by the respondents to rely upon report dated 10.08.2018 (Annexure R-5), to contend that in case selection process is scrapped, petitioners may not challenge the same on that account, but the fact of the matter is that the petitioners' probation period completed without any impediment. Services had been impeccable as no adverse remark has been communicated so far. If at all the Department was aggrieved, should have confronted the petitioners with show cause notice and dissatisfied with the same, procedure of enquiry, which is known to service jurisprudence, ought to have been adopted. In support of his contentions, relies upon the judgment of Hon'ble Supreme Court in **"Shridhar V/s Nagar Palika, Jaunpur and others" 1990 AIR SC 307**, to contend that even if, service conditions of petitioners have not been confirmed by specific order or in the absence of implied confirmation, principles of natural justice are required to be followed, in other words, services of petitioners cannot be dispensed with, in the manner and mode, as has been done by the respondents, thus, urges this Court for setting aside the impugned orders.

Mr. Harish Nain, AAG, Haryana, supported the impugned orders by raising the following submissions:-

- i) As regards the argument of learned counsel for the petitioners

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of not affording opportunity of hearing being imaginative and does not have foundation, has drawn the attention of this Court to preliminary report dated 10.08.2018 (Annexure R-5), whereby each and every affected parties i.e. petitioners have been afforded opportunity of hearing to explain along with the documents i.e. their credential/educational qualifications.

ii) Many discrepancies were found and it was an outcome of such enquiry, conscious decision was made to cancel/scrap the entire selection process.

iii) Terms and conditions of the appointment letters and the Rules governing the service conditions do not envisage any situation of implied confirmation and there has to be specific order.

iv) The emphasis has been laid to the Rule 10 of the State Level School for Teacher Education An Institute of Advanced Study in Education, Haryana, Bye-laws, 2012 and it is prerogative of the appointing authority to dispense with the services of the employee, if work and conduct, during probation period, is not found satisfactory.

v) The pith and substance of arguments is that there was no automatic or implied confirmation in view of existence of Sub-Rule 3 of Rule 10 of the Bye-laws *ibid*.

In support of his contentions, relies upon the *ratio decidendi* culled out by this Court in **“Badev Singh V/s State of Punjab and others” 2007 (3) SCT 763**, to contend that once Rule provides for issuance of confirmation order, there cannot be automatic deemed confirmation, thus, urges this Court for dismissal of writ petitions.

I have heard learned counsel for parties, appraised the paper book and of view that impugned orders dated 07.06.2019, terminating the

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services of petitioners, are repugnant, illegal, arbitrary, much less, not sustainable in the eyes of law for the reasons, which are not one, but many.

It would be apt to extract the terms and conditions of Appointment Letter as well as Rule 10 of the Bye-laws, relied upon by State Counsel, which reads as under:-

"Terms and conditions of Appointment Letter

- 1. The appointment is purely temporary and on provisional basis.*
- 2. The appointment is against a temporary post. The confirmation against substantive post shall be considered on the basis of seniority & record of service as and when such post is available.*
- 3. Your services are liable to be terminated at any time without assigning any reason by giving one month's notice or one month's salary or salary for such period for which the notice falls short of one month, as the case may be, in lieu thereof, and in case you desire to resign from service you will have to give one month's notice or deposit one month's salary or salary for such period by which the notice falls short of one month in lieu thereof, as the case may be.*
- 4. You will have to take an oath of allegiance to the Constitution of India and affirm that you do not have more than one living spouse in case you are married.*
- 5. In case you are married, you will have to furnish a declaration to the Head of department that you have not taken any dowry after marriage. The declaration should be signed by your wife, father and father in law, as per Chief Secretary, Haryana letter no. 18/1/2004-2GSI dated 21.02.2006.*
- 6. If you are unmarried, you will have to take an oath of allegiance to the Constitution of India and affirm that you do not give or take or abet the giving or taking of dowry, or*

demand, directly or indirectly from the parents or guardians of the bride or bridegroom, as the case may be, any dowry, as per Chief Secretary, Haryana letter no. 18/1/2004-2GSI dated 21.02.2006.

7. You will not be allowed to apply for any post outside the Institute for a period of at least five years.

8. Your seniority will be fixed in accordance with the Service Byelaws and as per Govt. rules.

9. You will be on probation for a period of two years in the first instance & your probation period can be extended if in the opinion of the management it is necessary to do so.

10. Your services will be governed by Service Byelaws of the Society for Prarambh School for Teacher Education Jhajjar as amended from time to time.

11. In other matters, no specifically mentioned in this communication, you will be governed by the Civil Service Rules as applicable to Haryana Govt. Employees/ Service Byelaws of the Society for Prarambh School for Teacher Education Jhajjar and such orders/instructions as may be issued by the Govt. from time to time.

12. After joining you are required to submit four copies of character and antecedents verification forms duly filled in within ten days either in person or through registered post in the office of Principal, Prarambh School for Teacher Education, Jhajjar. The specimen of character and antecedents verification be obtained from the Principal. Consequent upon this appointment you may join at Prarambh School for Teacher Education, Jhajjar after getting Medical Fitness Certificate from the concerned Medical Board.

13. At any stage if the certificates produced by you are found to be bogus or defective, your services shall be terminated at any point of time. Notwithstanding anything contained in this appointment letter, your appointment is subject to condition that if you are found unfit/unsuitable for appointment on the

basis of medical report or on the basis of character and antecedents' verification, your services shall be terminated forthwith without prejudice to any other terms and conditions. If do not join within the prescribed time as mentioned in this letter, your appointment will be treated as cancelled and for that no further notice will be given."

Rule 10

10. Probation

(1) Members of the Service shall remain on probation for a period of two years in case recruited by direct appointment and of one year in case recruited otherwise.

Person appointed to any post in the service shall remain on probation for a period of two years; provided that:

(a) A person appointed to the service in the Institute by transfer will also have a period of probation of two years.

(b) Any period after such appointment spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(c) Any period of work in equivalent or higher rank, prior to appointment to the service may, in the case of an appointment by transfer, at the discretion of the appointing authority, be allowed to count towards the period of probation fixed under this rule; and

d) Any period of officiating appointment shall be reckoned as period spent on probation, but no person who has so officiated shall on the completion of the prescribed, period of probation be entitled to be confirmed, unless he is appointed to a permanent vacancy.

(2) If in the opinion of the appointing authority the work or conduct of a person during the period of probation is not satisfactory, his service may be dispense with his service:

(a) If such person is appointed by direct recruitment,

(b) If such person is appointed otherwise than by direct recruitment.

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- (i) revert him to his former post; or*
- (ii) deal with him in such other manner as the terms and conditions of his previous appointment permit.*
- (3) On the completion of period of probation of a person, the appointing authority may,*
 - a) if his work or conduct has, in its opinion, been satisfactory;-*
 - (i) confirm such person from the date of his appointment, if appointed against a permanent vacancy, or*
 - (ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy : or*
 - (iii) declare that he has completed his probation satisfactory, if there is no permanent vacancy; or*
 - (b) if his work or conduct has, in its opinion, not been satisfactory.*
 - (i) dispense with his services, if appointed by direct recruitment or if appointed otherwise, revert him to his former post or deal with him in such other manner as the terms and conditions of his previous appointment permit; or*
 - (ii) extend his period of probation and thereafter pass such orders, as it could have passed on the expiry of the first period of probation provided that the total period of probation including extension if any shall not exceed 3 years."*

On conjoint reading of the terms and conditions as well as Rules, it is revealed that it is the discretion of Management to extend the period of probation subject to term and conditions.

Argument of Mr. Nain with regard to applicability of Sub-Rule 2 of Rule 10, is not able to cut ice, for, powers with the authority to dispense with services of petitioners vest only on two accounts; one work and second conduct. Written statement is entirely bereft of any action being taken against the Committee undertaken the selection process, much less, with regard to the work and conduct, as categoric averments in writ petition

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regarding work and conduct of the petitioners has not been emphatically denied.

It is settled law that vague denial is not a specific denial. If the petitioners had acquired a right owing to issuance of appointment letters, allegations against them were required to be dealt with, in accordance with service jurisprudence as well as principles of natural justice, much less, governing bye-laws, but not in the manner and mode, as has been done by the respondents, in other words, the petitioners were required to be confronted with individual notices and, if not found satisfactory, necessary individual enquiry, if necessary, would have reflected, the intention of the respondents/Department, even if, no specific order of confirmation has been passed, but the fact of the matter is that the petitioners have completed more than two years of service and their services had been dispensed with, without holding the regular enquiry.

Keeping in view the aforementioned facts and circumstances, the impugned orders, under challenge, are set aside. Writ petitions are allowed.

However, this order of mine shall not prevent the respondents/Department for initiating the process in accordance with the observations made hereinabove as well as applicable bye-laws.

Necessary consequences will follow in accordance with law.

05.09.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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