

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

CWP No.13711 of 2017 (O&M)

Date of decision:24.07.2019

Sunita Aggarwal

... Petitioner

Vs.

Managing Committee and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashish Aggarwal, Senior Advocate with
Ms. Shemona Sabharwal, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G.Haryana.

AMIT RAWAL J. (Oral)

C.M.No.1203 of 2019

The application is allowed subject to all just exceptions.
Proceeding regarding interview, result-cum-detailed marks card of MA,
memorandum of Marks of MA, letter dated 22.5.2017, certificate dated
25.07.2017, letter dated 26.08.2015 (information under RTI Act) and
particulars of staff as Annexures P-5 to P-11, are taken on record.

CWP No.13711 of 2017

Challenge in present writ petition is to the impugned orders
dated 01.03.2016 and 01.02.2017 (Annexures P-1 and P-4) respectively .

Petitioner-Sunita Aggarwal obtained degree of M.A
(Economics) from Maharishi Dayanand University Rohtak, M.Ed and again

M.A.(Economics) from JRN Rajasthan Vidyapeeth University. Respondent-2 conducted the interview reflected in Annexure P-5 for the post of Diploma in Education (D.Ed.). The aforementioned interview was held in August 2007 comprising of committee of five members including the nominee of National Council for Teacher Education. The petitioner alongwith five other persons having degree of M.A., M.Ed were selected as Teachers for D.Ed.

Mr. Ashish Aggarwal, learned Senior counsel assisted by Ms. Shemona Sabharwal, Advocate appearing on behalf of petitioner submitted that petitioner has been discharging duties to the satisfaction of College with no complaint of any sort. Vide order dated 29.02.2016, petitioner was ordered to undergo Master Training Scheme Program (Training) but when after completion of training, she reported to the college, was verbally told that she has been relieved from the service on 01.03.2016.

There was no fault of petitioner as the department did not send her name for approval of National Council for Teacher Education (NCTE), thus, the aforementioned termination was in violation of principles of natural justice. Even as per website of the College, names of many persons who joined alongwith petitioner were sent for National Council for Teacher Education. Since remedy of appeal against order of termination lied before Education Tribunal, District Judges of various districts have been assigned role of Education Tribunal, the impugned finding is conjectural and deviation from the main issue but failed to notice that there was no advertence to the principles of natural justice.

In support of aforementioned contention, relied upon the ratio decidendi culled out by Division Bench of this Court in **Rekha Sharma Vs. State of Punjab 1993(3) SCT 709.**

Learned State Counsel submitted that they have no role to play except respondent no.2. This Court on 03.07.2017 issued notice of motion. As per office report, all the respondents have been served including respondent no.2. Vide order dated 12.01.2018, respondents were ordered to be proceeded against ex parte.

Accordingly, I proceed further to decide the writ petition on merit.

I have heard the learned counsel for parties and appraised paper book. The order of selection of petitioner Annexure P-5 and impugned order dated 01.03.2016 read as under:-

“Vaish College of Education Rohtak

The proceedings regarding the interview for the selection of Teachers for D.Ed Class in Vaish College of Education, Rohtak held on 01.08.2007 at 11.00 A.M in the college premises. The selection committee comprised the following members:-

Signature

- | | | | |
|----|-----------------------|-----------|--------------|
| 1. | Sh. Jiwan Ram Goyal | Chairman | |
| 2. | Sh. Chander Garg | Secretary | Not attended |
| 3. | Dr. Kedar Nath Garg | Manager | |
| 4. | Dr. (Mrs.) Kusum Jain | Principal | |

5. Nominee of NCTE Not attended

The interview was conducted on 01.08.2007 at 11.00 am in the college premises and the following teachers have been selected.

Sr. No.	Name	Qualification
1.	Mrs. Indu Jain	M.Sc., B.Ed
2.	Mr. O.P.Aggarwal	M.Com, M.Ed
3.	Mrs. Geeta Gupta	M.Com, B.Ed
4.	Ms. Sandhya	M.A, M.Ed
5.	Mrs. Sunita Aggarwal	M.A, M.Ed
6.	Ms. Manisha	M.A, B.Ed

Sd/-

(Jiwan Ram Goyal)

Chairman

Vaish College of Education
Rohtak

Sd/-

(Dr. Kedar Nath Garg)

Manager

Vaish College of Education
Rohtak

Sd/-

(Dr. Mrs. Kusum Jain)

Principal

Vaish College of Education.”

01.03.2016

Smt. Sunita Aggarwal,

Lecturer in Education

After screening your personal file we find that you are not approved teacher as per the requirement of NCTE/MDU Govt. of Haryana/Govt. Of India therefore, you are hereby relieved from your post with immediate effect.

Deputy Commissioner-cum-Administrator

Vaish College of Education Rohtak.”

Relevant paragraph of reply of respondent no.2 in appeal reads as under:-

“In the prayer clause the appellant has challenged oral order dated 01.03.2016. The appellant has not mentioned regarding the said oral orders received by her from whom. All the story mentioned in the appeal is a bundle of lies reasons best known to the appellant to do the same. In fact, the then Administrator of Vaish Education Society has relieved the plaintiff from the service and a letter has been sent to her by Speed Post on 01.03.2016 only because she was not approved teacher as per norms of NCTE/MDU/Govt. of Haryana/Govt. of India and as such the Administrator has relieved the services of the plaintiff in a legal and rightful manner.”

It is a matter of record that petitioner during all this period without any complaint has been serving the department. It is only when she was on training as noticed above, her services were terminated. The Tribunal from paragraphs 8 to 10 of its order failed to address the argument with regard to principles of natural justice but had gone beyond the pleadings and non-suited petitioner in not placing on record any appointment letter or presumed status to be on ad-hoc basis. In fact, on going through reply of College, it is asserted that petitioner was not approved teacher as per norms of National Council for Teacher Education.

The question which was required to be answered by the Education Tribunal and as well as by the Department was as to any steps being taken by colleges for seeking approval from National Council for Teacher Education. It was not petitioner who was required to seek approval but by College. If the College did not forward the case of petitioner for approval, there cannot be any attribution of fault.

It is a matter of record that employees recruited alongwith petitioner are still working in the College. The principles of natural justice cannot be also flouted with impunity when the petitioner continue to work for almost 9 ½ years.

Paragraph 5 of the judgment, referred to above, reads thus:-

“5. The defence taken by respondent No. 3 that this Court cannot issue any direction to it is untenable. A writ of mandamus can be issued to undo injustice wherever it is found. It will be useful to refer to the following observations of the apex Court in [Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani](#), A.I.R. 1989 S.C. 1607 :-

"The Law relating to mandamus has made the most spectacular advance. [Article 226](#) confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This striking departure from the English law. Under [Article 226](#), writs can be issued to 'any person or authority.' It can be issued 'for the

enforcement of any of the fundamental rights and for any other purpose'. The term 'authority' used in [Article 226](#), in the context, must receive a liberal meaning unlike the term in [Article 12](#). [Article 12](#) is relevant only for the purpose of enforcement of fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in [Article 226](#) are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of the positive obligation owned by the person or authority to the affected party. No matter by what means the duty imposed. If positive obligation exists mandamus cannot be denied. It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice

wherever it is found. Technicalities should not come in the way of granting that relief under [Article 226.](#)"

In the light of this, the objection of respondent No. 3 that no writ of mandamus can be issued to it is overruled."

Though I deem it appropriate to remand the matter to Tribunal for addressing the issue again but fact of matter is that impugned order is lacking non-compliance of principles of natural justice, much less no reasoning particularly with regard to approval of National Council for Teacher Education. The order of termination, thus, in such circumstances cannot be permitted to sustain. Accordingly, impugned orders dated 01.03.2016 and 01.02.2017 (Annexures P-1 and P-4) are hereby set aside.

Writ petition is allowed. Respondents are directed to reinstate petitioner into service but it will not prevent College to take action in accordance with law, if any cause survives.

(AMIT RAWAL)
JUDGE

July 24, 2019
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No