

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2865-2012 (O&M)

Date of Decision:-07.03.2019.

Managing Committee, Khalsa College Society, Amritsar through its
Secretary

.....Petitioner

Versus

The Education Tribunal, Punjab, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. P.S. Khurana, Advocate for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. H.P.S. Rahi, Advocate for respondent No.3.

ARUN MONGA, J. (Oral)

1.) The present writ petition has been filed, *inter alia*, for issuance of a writ in the nature of *certiorari* to quash judgment dated 09.08.2011 (Annexure P-10) passed by Education Tribunal, Punjab. Whereby, the termination of services of the petitioner from the post of Senior Laboratory Attendant (Physics) was set aside and the respondent No.3 was reinstated in service w.e.f. the date of his termination with all consequential benefits.

2.) Succinctly, the factual backdrop of the case, as pleaded by respondent No.3, in his petition Annexure P-8 before the Tribunal as also in the reply to this petition is that at the relevant time, he was working as Lab Assistant with the petitioner college and the said post is/was "aided post" because the college was receiving 95% grant-in-aid from State of Punjab.

The grant-in-aid from the State of Punjab is an irrefragable position as

borne out from the proceeding book dated 26.11.2001 and 10.07.2004 of the college and in the letter dated 14.08.2007 addressed to DPI by the college, as has been noted by the learned Tribunal in the impugned order. The respondent No.3 was originally appointed on the basis of an interview held on 16.09.2001 on the post of Senior Laboratory Attendant (SLA) vide appointment letter dated 26.09.2001 (Annexure P-2). In the said appointment letter, it was stated that the appointment will depend upon approval to be granted by the DPI (Colleges), Government of Punjab-respondent No.2. However, after the respondent No.3 had put in 9 years of continuous service with unblemished record, vide termination order/letter dated 04.12.2010 (Annexure P-6), his services were wrongly dispensed with, on the ground that approval of appointment and 95% grant of losses has not been received from the DPI (Colleges), Government of Punjab.

3.) In the reply filed by respondent No.3 to the writ petition, preliminary objection has been taken that his services could not have been terminated by the petitioner college without following the provisions contained in Sections 3 to 5 of the Punjab Affiliated Colleges (Security of Services of Employees) Act, 1974. It would be instructive to reproduce the relevant Sections thereof for better appreciation:-

“3. Dismissal, removal or reduction in rank not to be ordered except after inquiry

No employee shall be dismissed or removed or reduced in rank except after enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

4. Procedure to be observed before dismissal or removal –

(1) The penalty of dismissal or removal from service shall not be imposed unless the same is approved by the Director.

(2) Where after the inquiry referred to in section 3, it is proposed to impose the penalty of dismissal or removal from the service, the proposal shall be referred to the Director along with the relevant record and intimation about the proposal having being so referred shall be sent to the employee concerned also, simultaneously.

(3) The employee may, within a period of thirty days of the receipt of the intimation referred to in sub section (2), make a representation against the proposed penalty to the Director who may, by an order in writing give his approval to the imposition of the proposed penalty of dismissal of removal from service, as the case may be, or refuse to give approval if the proposal is found to be mala fide or by the way of victimisation or not warranted by the facts and circumstances of the case.

(4) Any party aggrieved by an order of director under sub section (3) may file an appeal to the Educational Tribunal, which may after giving to the parties an opportunity of being heard pass such order as he may deem fit.”

4.) Having gone through the pleadings filed by the parties and having heard the learned counsel for the respective parties, I am of the view that there is no scope of interference under Article 226 of the Constitution of India qua the impugned order passed by the learned Education Tribunal. I am in agreement with the opinion and the reasoning expressed in the said order and accordingly, the same merits being upheld.

5.) A perusal of the order passed by the learned Tribunal clearly reflects that respondent No.3 was removed from service and, the non-

committed by the petitioner college. The relevant part of the judgment passed by the Tribunal is reproduced hereinbelow.

“16. This is the most contentious issue before the Tribunal. The case of the petitioner is that his services were terminated vide order dated 4.12.2010, whereas the learned counsel for the respondent-management submitted that it was a case of simpliciter discharge due to non release of grant by the DPI. In these circumstances, we will have to refer the facts and the law. The brief facts are that the case of the petitioner was sent to DPI for pay fixation with an additional benefit of higher responsibility. The approval was not granted till date. Consequently, the management was paying the salary to the petitioner from its own resources. Shri Khurana, learned counsel for the respondent-management has tried to convince us that letter dated 4.12.2010 is neither a termination nor a dismissal. It is a simple case of discharge in terms of appointment letter and, therefore, the petitioner is not protected under sections 3 and 4 of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974. We are not convinced with this argument. The jugglery of words expressed in the letter will not improve the case of the respondent. The act of 1974 talks of four legal terms (1) dismissal (2) removal (3) reduction and (4) termination. The language of letter dated 4.12.2010 does not talk of dismissal nor we can infer. It is not reduction in rank. Now the question whether it is removal or termination. The Act has used the word 'termination' in relation to an employee who was appointed on probation or for a fixed period. The word removal has a larger meaning. When an employee does not remain on the rolls of the college, it would amount to removal. Moreover, it is the case of respondent

himself that the petitioner was charge sheeted of misconduct. Enquiry was instituted, Enquiry Officer has given the report, three charges stood proved out of five and that the report of enquiry officer is still under consideration. After 4.1.2010, the petitioner has not been allowed to perform his duties. This clearly tantamounts to removal. He was also placed under suspension due to pendency of enquiry. Section 3 of the 1974 Act lays down that no employee shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and give a reasonable opportunity of being heard in respect of those charges. Section 4 lays down the procedure and according to section 4 (2), it is mandatory for the management to seek prior approval of the DPI before terminating the services of the petitioner. It also looks to be un-natural that you are allowing an employee to work since 2001 upto 4.12.2010 and then say that your services have been terminated. Going to the back ground of the case, we are of the opinion that it was a case of removal not only on account of non-receipt of grant in aid, but also the management was not friendly with the petitioner due to his alleged misconduct. As the prior approval has not been obtained from the DPI, therefore, the order dated 4.12.2010 cannot stand in the eyes of law and has to be struck down and it is ordered accordingly. Both these points are decided in favour of the petitioner and against the respondent-management.

- 6.) As against the argument of the learned counsel for the petitioner that services of respondent No.3 were dispensed with for lack of approval by respondent No.2 for granting the necessary aid qua the said

post, the same is also devoid of any merit in view of admitted position as

found by the Ld. Tribunal against the petitioner from own documents of the petitioner-college vis. proceeding book dated 26.11.2001 and 10.07.2004. The factual position found against the petitioner by the learned Tribunal has not been controverted in the writ petition. An adverse inference is to be drawn for the failure of the petitioner college to produce in present case the relevant documents/record produced before and relied by the learned Tribunal while passing the impugned order. The argument of the learned counsel for the petitioner that the learned Tribunal has wrongly relied upon the said record is also of no significance as no attempt or effort was ever made to approach the Tribunal that the record referred to by the Tribunal in its judgment is non-existent.

7.) I am in respectful agreement with the above observations of the learned Tribunal and, accordingly, the present writ petition is dismissed with no order as to costs.

(ARUN MONGA)
JUDGE

March 07, 2019.

Jyoti Rani

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.