

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

CWP No.19849 of 2017 (O&M)

Date of Decision.13.08.2019

Sarfaraj

...Petitioner

Vs

Mewat Model School Society and others

...Respondents

Present: None.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

Petitioner Sarfaraj has sought quashing of the order dated 21.08.2017 (Annexure P-9) terminating his services by giving offer of appointment to respondent No.4 with alternative direction in the nature of mandamus to official respondents to protect petitioner by creating a supernumerary post.

Vide notice of motion order dated 04.09.2017, had restricted his prayer only for adjustment in some other school on the ground that there was no fault of his when services were terminated after a period of six years.

In order to appreciate the controversy, it would be in fitness of things to give brief narration of facts. In pursuance to advertisement dated 30.01.2011 caused by respondent No.1-Mewat Model School Society through its Vide Chairman-cum-Deputy Commissioner, Gurugram for various posts including 3 posts of TGT (Computer Science) were sought to be filled. Petitioner stated to have applied for the post of TGT (Computer Science) and issued appointment letter dated 07.07.2011. However, respondent No.4 after a gap of five years filed CWP No.682 of 2016 challenging appointment of petitioner as the information obtained under

RTI revealed that she was given 36.60 marks though petitioner secured 36.11 marks. This Court vide order dated 12.05.2017 disposed of the writ petition by directing respondents No.1 to take action by issuing show cause notice to the petitioner calling his explanation. Petitioner straightway filed reply but without considering and appreciating his submissions, order of termination, has been passed. There was no foul play or misrepresentation from petitioner's side. Respondent arbitrarily awarded two marks to petitioner for his extra qualification whereas five marks to respondent No.4, though her extra qualification was not in relevant subject for which she had applied for. There are only two Teachers of Computer Science and the total number of students are more than 1200 and due to shortage of faculty, students are suffering. The impugned order is not sustainable as action of respondent No.4 in assailing appointment order of petitioner was not maintainable on account of inordinate delay. Even after selection of petitioner, respondent No.2 caused another advertisement but for that petitioner had become overage.

In response to aforementioned notice of motion order restricting claim of petitioner for adjustment, respondent No.1 filed reply and contested writ petition by raising numerous preliminary objections and action was supported with explanation that there was an error in issuing appointment letter as petitioner's name was at Sr. No.3 though he should have been lower to respondent No.4, who secured 36.60 marks. Petitioner did not appear for personal hearing after having filed reply to show cause notice in pursuance of direction of this Court dated 12.05.2017. Petitioner had been professing discrimination on the basis of religion by instigating students and many incidents had been cited in paragraph 8 regarding

damage of vehicles by students belonging to teachers of particular community and Committee on receipt of complaint found allegations on petitioner correct and transferred him on account of his misconduct to Mewat Model School, Tauru but still continued with the activities. Even the remedy of assailing the termination order lies before the Tribunal, thus, prayed for dismissal of the writ petition.

I have gone through paper book, averments made in writ petition and reply and of the view that there is no force and merit. There is no rejoinder to rebut categoric stand taken in the written statement. Since respondent No.1 is a private unaided college, therefore, remedy of assailing impugned order (Annexure P-9) lied before the Appellate Tribunal. Be that as it may. There is no dispute that petitioner obtained 36.11 marks vis-a-vis respondent No.4 who secured 36.60 marks. On receipt of information under RTI, respondent No.4 was found more meritorious, thus, approached this Court and this Court despite having taken objection of delay directed official respondents to take action in accordance with law. The impugned order has been passed as a necessary corollary to the same. No explanation has come forward on behalf of petitioner for not appearing before the Committee dealing with correction of error in issuing appointment letter. There is categoric reference to conduct of petitioner.

In such circumstances, relief of adjustment cannot be granted to petitioner. Writ petition is devoid of merit and accordingly dismissed.

(AMIT RAWAL)
JUDGE

August 13, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No