

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

L.P.A. No.1254 of 2015 in
Civil Writ Petition No.18828 of 2010
Date of decision: August 16, 2019

Haryana Waqf Board

...Appellant

Versus

Manoj Kumar

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: None for the appellant.

Mr.Tejpall Dull, Advocate for the respondent.

HARINDER SINGH SIDHU, J.

1. For the reasons stated in CM No.2672-LPA of 2015, the delay of 59 days in filing the appeal is condoned.
2. This Letters Patent Appeal has been filed against the judgment dated 21.05.2015 in CWP No.18828 of 2010 'Manoj Kumar vs. Haryana Wakf Board and others' whereby the writ petition filed by the respondent was allowed and the order dated 29.09.2010 terminating his services set aside with liberty to the appellants to pass a fresh order in accordance with law.
3. The respondent was appointed as a Legal Clerk - a Class III post in the Haryana Wakf Board. As per Regulation 24 of the Punjab Wakf Regulations 1966 the appointing Authority for Class-III employee was the Secretary of the Board and he had, in fact, been appointed by the

Secretary. Regulation 41 stated that the appointing Authority shall be the punishing authority. The Board was the appellate authority in regard to Class I and Class II posts and the Chairman was the appellate authority in respect of Class III posts. The grievance of the respondent was that the order dated 29.09.2010 dismissing him from service (Annexure P-22) had been passed by the Administrator (as the Board had been superseded) who was the appellate authority. Thereby, his statutory right of appeal had been taken away which was impermissible and it rendered the order illegal.

4. Ld. Single Judge relied on decision of Hon'ble Supreme Court in **Uttar Pradesh Power Corporation Limited v. Virendra Lal (Dead) through L.Rs, (2013) 10 SCC 39**, wherein it was held that there was no illegality in a higher authority than the appointing passing an order imposing punishment on an employee if the right of appeal is not taken away. But if the employee has no remedy of appeal then the order of punishment would be illegal.

5. The writ petition was allowed. The order dated 22.09.2010 was set aside. Liberty was however given to the Appellant No.2, the Chief Executive Officer - the appointing authority to pass a fresh order in accordance with law.

6. Ld. Counsel has not been able to dispute that as per Regulation 24 the Secretary is the appointing authority in respect of Class -III post. He only stated that a resolution dated 03.08.2004 was adopted by the Board as per which Class III appointments may be made by the CEO with the prior approval of the Chairman. Firstly, he has not been able to point out as to

whether Regulation 24 has been amended. Secondly, even as per the resolution the appointing authority is still the CEO for Class III post. Only prior approval of the Chairman is required.

7. As the impugned order has been passed by the Administrator who acted in the place of the Chairman during the supersession of the Board, and there was authority before whom the respondent could file an appeal, his right to appeal had been taken away. The ratio of the judgment in **Uttar Pradesh Power Corporation Ltd.** (supra) is squarely attracted in this case.

8. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 16, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No