

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

CWP No.10458 of 2020 (O&M)

Date of Decision: 25.08.2020

Sonu Munjal

..... Petitioner

Versus

Director Public Instruction (Colleges) Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Keshav Gupta, Advocate,
for the petitioner.

Mr. Krishan Singh Dadwal, Advocate,
for the respondents no.2 to 4.

Mr. R.S.Thind, DAG, Punjab.

AMOL RATTAN SINGH, J. (ORAL)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

On 23.07.2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, the petitioner seeks issuance of a writ in the nature of “certiorari or mandamus or any other appropriate writ, order or direction,” quashing the impugned order dated 01.06.2020 (Annexure P-22), passed by respondent no.4, whereby the petitioner has been removed from service; as also the charge sheet dated 22.10.2019 (Annexure P-6) and the supplementary charge sheet dated 06.12.2019 (Annexure P-9), and the enquiry report dated 04.03.2020

(Annexure P-19).

Upon query to learned counsel as to why this petition should be entertained in view of the fact that there is a provision for an appeal before the Education Tribunal, he submits that in view of the current pandemic the Tribunal is not functioning, as it does not have the facility of video conferencing so far.

He then points to Rules 4 and 5 of the Punjab Affiliated Colleges (Security of Service) Rules, 1978, (Annexure P-23), to submit that the petitioner could not be removed from service as has been done vide the impugned order Annexure P-22, without first referring the enquiry report, and the proposal for her removal, to the Director Public Instructions.

Learned counsel submits that, however, without any such approval having been obtained from the Director the impugned order has been passed.

Notice of motion.

Mr. Charanpreet Singh, AAG, Punjab, accepts notice at the asking of the court.

Notice be issued to the remaining respondents by way of normal as well as dasti process, returnable on 14.08.2020.

In the meanwhile, on the aforesaid contention raised, operation of the impugned order shall remain stayed.

It is made absolutely clear if the aforesaid contention is found to be incorrect and approval has actually been obtained from the Director in terms of the aforesaid Rules, then the petitioner would be deemed to have been removed from service from the date that the impugned order was passed and would not be entitled to any salary and other benefits at all from that date, subject of course to any passed in appeal by her.

It is also made clear that if the remaining respondents are not shown to be served of the notice issued by the next date of hearing, even this interim order would be deemed to have been vacated, without any further order required to be passed in that regard.”

Thereafter, on 14.08.2020, the following order had been passed:-

“All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the COVID-19 pandemic.

To enable learned counsel for the petitioner to file a replication, adjourned to 25.08.2020, with it made clear that if the replication is not filed well within time with an advance copy thereof to learned counsel for the respondents, the interim order shall stand vacated.

Interim order to continue till that date only.”

Today, learned counsel for the petitioner submits that the Education Tribunal is likely to begin functioning in the near future in view of the direction given by a co-ordinate Bench itself and therefore he does not press this petition.

Dismissed as withdrawn.

If the Tribunal is approached within 10 days from today by the petitioner, the interim order passed by this court would continue to operate for those 10 days, after which the Tribunal would pass an order after hearing parties as to whether the interim order in favour of the petitioner should continue thereafter or not.

It is made clear that if the petitioner does not approach the Tribunal in respect of his grievance within 10 days from today, i.e. by 04.09.2020, the interim order shall stand automatically vacated, no further order required to be passed in that regard.

It is necessary to notice here that Mr. Dadwal has argued that the post in question being an unaided post, therefore as per the amended provisions of Section 6 of the Punjab Affiliated Colleges (Security of Service of Employees) Amendment Act, 2007, the Act itself would not be applicable to the post of the petitioner because Sections 3, 4 and 5 of the principal Act would not be applicable.

To counter the aforesaid, Mr. Gupta, learned counsel for the petitioner, submits that the petitioner as a matter of fact is relying on the provisions of the rules in support of his case; (though how rules can override a substrative statutory provision obviously is not understandable).

Naturally, the learned Tribunal would take all that into account to determine as to whether the interim order in favour of the petitioner should continue or not.

August 25, 2020
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No