

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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LPA No.626 of 2020 (O&M)

Date of Decision: December 15, 2021

State of Haryana and others

....Appellants

VERSUS

Ramesh Kumar

....Respondent

**CORAM: HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Shruti Jain Goyal, D.A.G. Haryana
for the appellants.

Mr. Ranjit Singh Kalra, Advocate for the respondent.

G.S. SANDHAWALIA, J(Oral).

The present appeal has been preferred by the State against the judgment of learned Single Judge passed in CWP No.14657 of 2018 dated 01.10.2019, wherein the writ petition filed by the employee (respondent) as such was allowed to the extent that the show cause notice/reversion order dated 09.05.2018 (Annexure P-4) was set aside.

Learned Single Judge had placed reliance upon an earlier judgment passed by him in ***CWP No.7626 of 2015 titled Gurmail Kaur and others vs. State of Haryana and another, decided on 27.05.2015.***

The reversion as such was done from the post of PGT (Physical Education) in Government Senior Secondary School, Haluwas, Bhiwani on

account of the fact that petitioner has acquired his post graduation from

Institute of Advance Studies in Education, Sadar Shahr, Rajasthan in the year 2010.

It is not disputed that the writ petitioner had been protected at the time of filing of the writ petition by this Court and he was due to retire on 30.09.2020. While issuing notice of motion in the present appeal, the operation of the judgment was stayed on 21.09.2020. The fact that the petitioner had retired, was noticed on 25.02.2021, which order reads as under:-

“Learned counsel for the appellant-State prays for time to implead the UGC in the light of the question of validity of Post Graduate Degree i.e. Master of Arts in Physical Education obtained by the respondent through Distance Education mode in the session 2007-2009 from Institute of Advance Studies in Education Sardar Sahar Rajasthan, i.e., Deemed University.

It transpires that based on the aforesaid Post Graduate Degree, the respondent-Ramesh Kumar was promoted to the post of Post Graduate Teacher (Physical Education) by the Director, Secondary Education Haryana and upon the question of validity having been raised, the show cause dated 09.05.2018 (Annexure P-4) was issued to the respondent to file reply within 15 days. The learned Single Judge has set aside the said show cause/order, against which the present LPA has been filed by the State, wherein vide interim order dated 21.09.2020, the operation of the impugned judgment dated 01.10.2019 passed by the learned Single Judge has been stayed.

Learned counsel for the respondent states that the issue being raised apart from being covered in favour of his client, would be academic, as the respondent-Ramesh Kumar has retired in the rank of Lecturer/PGT on 13.09.2018 and thus, no reversion order can now be legally passed. It is submitted that delay in the present appeal is causing prejudice to the release of retiral benefits.

We are of the view that in light of the admitted fact that the stage is/would be only of issuance of a show cause and respondent-Ramesh Kumar having retired in the rank of PGT, no prejudice can be caused to his entitlement for release of pension in spite of the stay order dated 21.09.2020 passed in the instant L.P.A.

Hence, the prayer of the appellant-State for grant of time to move an application for the impleadment of UGC at this stage can not be denied, which of course, would be decided in accordance with law.

Adjourned to 25.05.2021.”

Perusal of the impugned order dated 09.05.2018 (Annexure P-4), which was subject matter of challenge, would also go on to show that it was an order in the form of a show cause notice-cum-final order. While issuing show cause notice, a decision had already been taken by the State to revert the petitioner. The relevant portion of that order reads as under:-

“Keeping in view the above facts, Sh. Ramesh Kumar who is presently working on the post of PGT Physical Education in Govt. Sr. Sec. School, Haluwas, Bhiwani is ordered to be reverted to his previous post of TGT. However, before doing so he is served upon a Notice of Reversion. He can submit his reply (if any) in

this regard within 15 days from the date of receipt of this notice. If he does not submit his reply within 15 days from the date of this notice, Department will decide the matter ex-parte.”

It is not disputed that the petitioner had already been promoted on 24.04.2017 (Annexure P-3) and the show cause notice was issued after a period of over a year. It is a settled principle that before passing any order that is prejudicial to the employee, an opportunity of hearing as such should have been granted to him, rather than in the form in which the impugned order had been passed, as noticed above. Thus on that account, the order in itself is also not sustainable for the reasons other than those recorded by the learned Single Judge, who was of the opinion that the order can be faulted and as such is liable to be set aside on this ground itself. In such circumstances, without going into the issue as to the factum whether the judgment in ***Gurmail Kaur (supra)***, in which the principle was decided that the qualification obtained from various deemed Universities, was not recognized, which issue is now pending before the Apex Court. The State has challenged in Special Leave to Appeal No.17134 of 2021, the validity of the judgment passed by learned Single Judge in ***Gurmail Kaur (supra)***, which has been filed against the judgment passed in LPA No.171 of 2021 dated 22.03.2021. The present appeal of the State is thus dismissed without observing anything on the merits of the certificate issued by the deemed University.

Even otherwise, in view of the peculiar facts and circumstances, since the writ petitioner has now retired and it would be as such injustice upon him to await the result of litigation at the fag end of his career.

(G. S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

December 15, 2021

Sachin M.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No