

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

CWP No.26672 of 2022 (O&M)

Reserved on:06.12.2022

Date of Decision.22.12.2022

Shri Krishna Hare Educational Trust and another

...Petitioners

Vs

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. M.S. Longia, Advocate
for the petitioners.

Mr. Sukhandeep Singh, Advocate
for respondent No.2.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing order dated 20.07.2022 (P-1) passed by respondent No.3-Tribunal whereby appeal filed by respondent No.2 has been allowed and she has been ordered to be reinstated in service with full back wages and continuity in service, while setting aside her termination order.

2. Brief facts, as culled out from the writ petition, are that respondent No.2 had joined petitioner No.2-School on 02.04.2012 as Pre-Primary Teacher. Earlier, respondent No.2 was working on contract basis. She was confirmed on 01.07.2014 after satisfactorily completing the probation period. However, services of respondent No.2 were terminated vide order dated 08.07.2019 against which she preferred an appeal before respondent No.3-Educational Tribunal, Punjab. Respondent No.3 vide order dated 20.07.2022 allowed the appeal of respondent No.2 and ordered her to be reinstated in service with

immediate effect with full back wages and continuity of service. Hence, the writ petition.

3. Learned counsel appearing for the petitioners would argue that petitioner No.2-School is a private unaided institution and therefore, as per Section 8 of the Punjab Privately Managed and Recognized Schools Employees (Security of Services) Act, 1979, respondent No.3-Tribunal has no jurisdiction to entertain the dispute arising between employee and the management of petitioner No.2-School. Reliance has been placed upon judgment rendered by the Hon'ble Supreme Court in *K.K. Saksena Vs. International Commission on Irrigation and Drainage and others* (2015) 4 SCC 670 to contend that private law remedies are not enforceable through extraordinary writ jurisdiction even though brought against public authorities. Public Function/Public duty performed by person/body not falling within definition of State in Article 12 of the Constitution of India is not amenable to writ jurisdiction under Article 226 of the Constitution of India. It was further argued that under Clause 27 of the employment agreement read with Clause 48 of the addendum dated 01.05.2018, petitioner No.2 was duly entitled to terminate services of respondent No.2 by giving her two months' notice in writing or by payment of two months' gross salary in lieu of such notice, therefore, there is no illegality in the termination order passed by petitioner No.2. Furthermore, the termination order is not stigmatic in nature and therefore, no opportunity of hearing was required to be given to respondent No.2.

4. Per contra, learned counsel appearing for respondent No.2 would argue that respondent No.3-Educational Tribunal was well within its jurisdiction to entertain the appeal preferred by respondent No.2. In support of his contention, he relies upon the judgment rendered by a Division Bench of this Court in *Surinder Krishan Sharma Vs. State of Punjab and others* 2019 (4) SCT 30

holding that expression 'all cases of disputes' used in Section 7A(12) of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 is wide enough to encompass within its ambit any type of disputes between the employees of "unaided institutions" and their "Managing Committee", notwithstanding disputes related to punishment of dismissal, removal or reduction in rank. It was further argued that termination of an employee without assigning any reasons or affording an opportunity of hearing is illegal.

5. I have heard learned counsel for the parties and have perused the paper book as well as the case laws cited.

6. The term "educational institution" has been defined under Section 2 (cc) of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 which says 'educational institution' shall have the same meaning as assigned to it in clause (f) of Section 2 of the Punjab Affiliated Colleges (Security of Service) Act, 1974. Section 2 (f) of the Punjab Affiliated Colleges (Security of Service) Act, 1974 reads as under:-

(f) "educational institution" means an affiliated college as defined in clause (a) of Section 2 of this Act, and includes a privately managed recognized school as defined in clause (g) of Section 2 of Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979."

Clause (g) of Section 2 of Punjab Affiliated Colleges (Security of Service) Act, 1974 reads as under:-

(g) "privately managed recognized school" means a school, which is not run by the Central Government, the State Government, a local authority or any other authority designated or sponsored by the Central Government, State Government or local authority, as the case may be, and is recognised by the State Government for imparting pre-primary, primary, middle, high and higher secondary education or training below the degree level, but does not include an institution which imparts technical education."

Section 8 of Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 speaks about jurisdiction of Educational Tribunal and the same reads as under:-

*“8. **Jurisdiction of Educational Tribunal.** – Notwithstanding anything contained in this Act, and in sub-section (12) of Section 7-A of the Punjab Affiliated Colleges (Security of Service) Act, 1974, the Educational Tribunal shall also have the jurisdiction to hear cases of disputes between the Management Committees of all educational institutions and their employees.”*

7. A plain reading of Section 8 of the aforesaid Act would reveal that the Educational Tribunal shall also have jurisdiction to hear cases of disputes between the Management Committees of **all educational institutions and their employees**. There is no bar or distinction carved out regarding aided or unaided educational institutions. In the absence of such distinction and in view of the judgment rendered by Division Bench of this Court in *Surinder Krishan Sharma's case*, the argument raised by the counsel appearing for the petitioners that Educational Tribunal had no jurisdiction to entertain the appeal preferred by respondent No.2 is totally misconceived and misfounded. Therefore, once an employee and the management, where the dispute arises are covered under the definition of the employee and the managing committee, as given in the 1974 Act, as amended from time to time, the Educational Tribunal will have the jurisdiction to decide all the disputes between them. Further, it is not a case where a person has directly approached this Court while exercising provisions of Article 226 of the Constitution of India. Therefore, the judgment rendered by the Hon'ble Supreme Court in *K.K. Saksena's case* is not applicable. In the present case, petitioners themselves approached this Court in writ jurisdiction and this Court in its supervisory authority is testing the veracity of the order passed by the Educational Tribunal.

8. A perusal of the termination order would reveal that there was no reason assigned as to why service of respondent No.2 has been terminated, much less, no show cause notice or opportunity of hearing was issued to the respondent No.2 before terminating her service. As a part of the rule of natural justice, the right of *audi alteram partem* is a valuable right, which mandates that no one should be condemned unheard. Notice is the first limb of this principle, which must be precise and unambiguous and should apprise the party determinatively of the case it has to meet, with adequate time so as to enable the party to make its representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is essential that a party should be put on notice before any adverse order is passed against it. Moreover the termination is itself violative of contract as clause 48 of the addendum to the appointment agreement reads as “*the School Management will be entitled to terminate service of an employee by giving two month notice in writing or by payment of two months gross salary in lieu of such notice*”. In the case in hand, neither was two months’ notice given to respondent No.2 nor payment made in lieu thereof. The termination order passed by the petitioner No.2 is totally in violation of principles of natural justice and thus, is not sustainable in the eyes of law and thus, liable to be set aside.

9. In view of the aforesaid facts and circumstances, order passed by respondent No.3-Educational Tribunal is upheld and the writ petition stands dismissed, being devoid of merit.

(JAISHREE THAKUR)
JUDGE

December 22, 2022

Pankaj*

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