

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

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LPA-176-2020

Date of decision : 06.04.2022

S.D. College for Women, Sultanpur Lodhi

....Appellant

V/s

The State of Punjab and others

....Respondents

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

Present: Mr. Naresh Prabhakar, Advocate for the appellant.

Mr. Sushant Maini, Senior DAG Punjab.

G.S. SANDHAWALIA, J. (ORAL)

The present Letters Patent Appeal is directed against the judgment dated 19.11.2019 of the learned Single Judge passed in CWP-20170-2003, filed by the appellant-College.

The learned Single Judge has upheld the order dated 16.04.2003 (Annexure P-8), whereby Director of Public Instructions (Colleges), Punjab had issued direction to the appellant-College to allow respondent No.4 to join duty and granted her all consequential benefits. Similar order passed by State College Tribunal, Punjab dated 11.11.2003 (Annexure P-10) has also been upheld.

Rather, perusal of the judgment under appeal would go on show that the interest of the appellant-College was protected at the cost of respondent No.4 by restricting her wages to 50% instead of full salary on the concession given by her Counsel. It was noticed that respondent No.4 would have continued in service, had the order of the Tribunal been implemented, but for the stay granted by this Court. The State was held liable to pay back wages to the extent of 95% and 5% was to be paid by the College, as per the grant-in-aid scheme. The College was to

make the payment without insisting on the advance payment from the State. After the disbursement, appellant-College was at liberty to seek reimbursement from the State in accordance with the applicable procedure.

Learned Single Judge had also noticed the argument which has also been raised by learned counsel for the appellant-College that respondent No.4 was appointed on an un-aided post and, therefore, she was not entitled to the protection as envisaged under the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974. Reference was made to document, Annexure R-2 to rebut the stand which was the statement of the estimated expenditure of the salary for the years 1991-92, 1992-93 and 1993-94, under deficit grant scheme whereby name of the private respondent (respondent No.4) figured at serial No.13 and 95% of the wages had to be claimed from the State. In such circumstances, the argument which has now been raised that the post was not aided is thus without any basis.

It is also clear from the supplementary affidavit of Rakesh Kumar Dhir, President of Managing Committee S.D. College for Women, Sultanpur Lodhi, District Kapurthala (appellant-College), which had been placed on record dated 14.11.2019, whereby the appellant-College had also acknowledged the fact that the said document had been placed on record. The relevant paragraph reads as under:-

“1. That in the present case, respondent No.4 has placed on record document showing that her claim for grant in aid was made before the State of Punjab for the period preferred therein.”

It is, thus, apparent that the College also admits this fact and does not deny the said document, which had been relied upon by the learned Single Judge.

The argument raised by Mr. Prabhakar is, thus, not justified in the present facts and circumstances of the case.

It is to be noticed that in the earlier round of litigation i.e. in CWP-8529-1998, which was disposed off on 23.11.1998 (Annexure P-5), on the ground that disputed questions of fact had arisen and, therefore, liberty was given to respondent No.4 to approach the Civil Court or the authorities constituted under the Act of 1974. A perusal of the said order would go on to show that no such stand was taken that the post was not aided and thus, it does not lie in the mouth of the appellant-College which had not been the plea taken at the earlier point of time. The said plea was taken for the first time before the Director of Public Instructions (Colleges), Punjab, when the employee (respondent No.4) had approached the said authority after having been relegated by this Court as noticed above. Then there is sufficient material in the form of Annexure R-2 and the admission made by the official of the College that the stand is contrary as such in view of the document which has now come on record.

In the said writ petition filed by the said employee rather, the stand of the appellant-College in its written statement (Annexure P-4) was that an alternative and efficacious remedy was available to respondent No.4 under the Act of 1974, and thus there is nothing on record to show that the post was not aided and the College cannot be permitted to take a contrary stand now.

In such circumstances, we are of the considered opinion that the findings which have been recorded by the learned Single Judge, while noticing that the employee (respondent No.4) who was suffering from abdominal cancer, had restricted the wages only to 50% with the hope of prompt reimbursement. It is also apparent to notice that the Division Bench while entertaining the writ petition

(CWP-20170-2003), at the initial stage had vide order dated 19.12.2003 directed that all the payments were to be made to respondent No.4, as indicated by the Tribunal and reinstatement should remain stayed till further orders. The said payment was to be subject to the decision of the writ petition. The relevant para of the said order reads as under:-

“In the meanwhile, in case the petitioner makes all the payments to respondent no.4, as indicated in the impugned order, her reinstatement shall remain stayed till further orders. However, this payment shall be subject to the decision of the writ petition. ”

The employee (respondent No.4) at that point of time in her written statement had specifically raised the preliminary objection that the amount due comes to ₹7,46,705/-, but she had only been paid ₹1,27,100/- and, therefore, the balance of ₹6,19,605/- was still due. The said objection is reproduced as under:-

“2. Petitioner has not released full payment legally to the answering respondent in terms of the impugned order (P-10) and order dated 19.12.2003 passed by this Hon'ble Court. As per the calculation made by the answering respondent and as already supplied to the petitioner, the total amount legally due to her comes out to Rs.7,46,705.00. However she has only been paid a sum of Rs.1,27,100/-. Thus, an amount of Rs.6,19,605/- is still due from the petitioner towards the answering respondent. As such, on this short ground alone the writ petition deserves to be dismissed.”

The replication filed to the same by the appellant-College does not clarify this fact as well the full amount which had been paid to respondent No.4, as directed by the Division Bench. The same reads as under:-

“2. That para no.2 as stated is wrong. The amount has been released as per the directions of this Hon'ble Court and as per the claim of the respondent No.4. No amount is due.”

In such circumstances on account of evasive denial as such and no clarification having been given, the only plea taken was that no amount was due to respondent No.4. Thus, it can safely be said that the interim order of the Division Bench was never complied with and only a part payment was made to respondent No.4.

The Tribunal had noticed vide its order dated 11.11.2003 (Annexure P-10) that the employee (respondent No.4) was under paid and the cheques were got signed from her and the amount was drawn from her bank account by the persons of College Management and she was only paid the paltry sum in cash. Resultantly, the Tribunal directed her reinstatement immediately and the full payment of salary was made from the date of her termination within a period of 30 days, failing which interest was liable to be paid @ 12% per annum.

In such circumstances, we are of the considered opinion that the learned Single Judge has not faulted in any manner while upholding the orders passed by the official respondents. It rather protected the interest of the appellant-College on the hope that the amount would be paid expeditiously to respondent No.4, especially noticing that the employee was overage and only the financial benefit was payable and there could be no reinstatement.

In view of above, the impugned order dated 19.11.2019, does not suffer from any infirmity or illegality which would warrant interference in appeal.

We are not inclined to order the payment of full wages though on 10.03.2022, it has been noticed as under:-

“Office to tag the record of CWP-20170-2003, since it is contended that there was an interim order while admitting the writ petition and on that account the private respondent could not be reinstated.

It is made clear that in case the said statement is found to be incorrect, the benefit of 50 per cent of wages which had been restricted by learned Single Judge shall be modified to the effect that the appellant shall pay the full back wages in case of dismissal of the appeal, since the findings recorded was that the College was responsible for not inducting the private respondent (respondent No.4) back in service inspite of order dated 11.11.2003 passed in her favour, by the Tribunal.

Adjourned to 21.03.2022.”

Since we have not issued notice to respondent No.4, we do not affix the liability of payment of 100% wages, as there is no aggrieved appeal as such by the employee.

Accordingly, the present appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

April 06, 2022
Ajay

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No