

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1503 of 1993

**Reserved On: 11.09.2023
Pronounced On: 20.09.2023**

Punjab Wakf Board and Others

... Appellant(s)

Versus

Mohammad Shakeel (Since Deceased) through his Legal Representatives

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. S.K.Jain, Mr. Akshay Jain and Mr. Depeak Jain, Advocates
for the appellant(s).

Mr. Dinesh Kumar, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 (hereinafter referred to as “the 1918 Act”) and not by Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. The correctness of the concurrent findings of facts, arrived at by both the Courts below, while decreeing the suit filed by the plaintiff (respondent herein) for the grant of declaration that the order dated

30.12.1983 terminating his service is illegal, has been assailed by the

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defendants in this regular second appeal.

3. After having heard the learned counsel representing the parties at length and on perusal of the judgments passed by both the Courts below along with the requisitioned record, the following issue arises for adjudication:-

“Whether the principle of “Last Come First Go” is applicable particularly when the services of the temporary employee on the ground of unsuitability is dispensed with in accordance with the terms of the employment/regulations or rule governing the employment?”

4. The relevant facts, in brief, are required to be noticed. The respondent was appointed as a Teacher on a purely temporary basis in the Islamia High School, Malerkotla, run by the Punjab Wakf Board (hereinafter referred to as “the Board”) which has been constituted under the Wakf Act, 1954 (hereinafter referred to as “the 1954 Act”). He was removed from the service on 30.12.1983, citing that his service is no longer required. He filed a suit for declaration that the order dispensing with his services is illegal, ultravires, unconstitutional, malafides, null and void and against the principles of natural justice. Both the Courts below decreed the suit. It has been found that the employees of the Board are entitled to the protection under Article 311 of the Constitution of India. The learned counsel representing the parties are *ad idem* that the protection under Article 311 of the Constitution of India is not available to the employees of the Board.

This fact is conceded by the learned counsel representing the respondent in his written submissions.

5. Both the Courts below have held that the principle of “Last Come First Go” has not been followed as there were as many as 12 junior employees who were retained in service. It has further been held by the First Appellate Court that in fact, the services of the respondent has been terminated as a punishment, therefore, without holding the departmental inquiry, it was not permissible to dispense with the services.

6. The learned counsel representing the parties have filed their respective synopsis with the gist of their arguments. The contention of the learned counsel representing the appellant are as under:-

“1. Whether the employees of the Punjab Wakf Board can be held entitled to the protection under Article 311 of the Constitution, or not?”

*Both the learned Courts below have held that the services of the plaintiff-respondent are regulated by Article 311 as Punjab Wakf Board is the State within the meaning of Article 12 of the Constitution. So far as the latter aspect is concerned regarding the Punjab Wakf Board being a State within the meaning of Article 12, there is no doubt. However, the former part recording the finding that the services of the plaintiff are regulated by Article 311 of the Constitution is inherently and fundamentally perverse and illegal. This proposition of law has been well settled, and no more res-integra. A Constitution Bench of the Supreme Court in **S.L. Agarwal (Dr) v. GM, Hindustan Steel Ltd., (1970) 1 SCC 177**, has settled this issue and held that the employees of the Hindustan Limited are not holders of civil posts under the Union and, therefore, Article 311 would not applicable to such employees. This judgment of the Supreme Court received imprimatur in a latter*

*judgment of 3-Judge Bench in **Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764.** In such circumstances, the contrary findings recorded by the learned Courts below deserve to be set-aside. Consequently, the appeal deserves to be allowed.*

2. *Whether the principle of "last come first go" would be applicable to the case of the respondent, or not?*

*The findings recorded by the learned Courts below are predominantly premised/based upon the retention of his juniors in service however, though senior, his services have been terminated. This principle of "last come first go" has its origin and evolution from Section 25-G of the Industrial Disputes Act and is a concept, and has its applicability, under the Industrial Disputes Act (Kindly see **Jaipur Development Authority v. Ramsahai, (2006) 11 SCC 684.** In all humility and fairness, lest it may not be construed as misleading, this principle has been applied in cases of ad-hoc employees other than workman under the Industrial Disputes Act. However, in the present case this principle would not be applicable in view of the express terms of engagement given in the appointment letter Furthermore, this principle would have its applicability in similar set/class of employees and cannot be applied otherwise. It is not the pleaded case of the respondent that the employees retained were similarly situated or among the same set/class of employees. This principle cannot be applied in service jurisprudence except for such cases where there are allegations of arbitrariness and discrimination.*

3. *Whether enquiry is required to be conducted in case of termination order of an ad-hoc/temporary employee not punitive or stigmatic, but of termination simpliciter.*

A perusal of the termination order would unravel that it is termination simpliciter with no stigma or punishment attached and, therefore, no enquiry was required to be conducted. Moreover, the service of the respondent was purely ad- hoc/temporary basis.

4. *Whether the terms and conditions of the appointment letter can be enforced after efflux of time, or not?*

*It is submitted with respect, but with all emphasis, that the terms and conditions of the appointment letter can be enforced at any point of time after efflux of time. The findings recorded by the learned Courts below that the same cannot be enforced after six years of service are completely and patently fallacious and legally unsustainable. To this extent judgment in **State of Karnataka v. Umadevi (3), (2006) 4 SCC 1.**”*

Whereas the submissions of the learned counsel representing the respondent are extracted as under:-

- “1. That the judgments and decree passed by the Courts below are legal and justified, based on appreciation of evidence led by the parties and do not suffer from any illegality, impropriety or error of jurisdiction. There is concurrent finding of facts and the scope of Regular Second Appeal is quite limited.*
- 2. That neither any substantial question of law has been framed nor there is any substantial question of law which may require the consideration of this Hon'ble Court.*
- 3. That at the outset, it is submitted that so far as the reference to Article 311 of the Constitution of India in the Trial Court judgment is concerned, it is submitted that undoubtedly the provisions of Article 311 of the Constitution of India are not applicable to the employees*

of the Board however, the principles apply. Further the employees of the Board are governed by the Statutory Regulations known as Punjab Wakf Regulations, 1966 as framed in exercise of the powers conferred by 68 of the Punjab Wakf Act, 1954 which form the part of the record as Exhibit P/20 and the said Punjab Wakf Regulations, 1966 are still holding the field. The relevant provisions of the regulations read as under:-

"2. Definitions:- In these regulations, unless the context otherwise requires:

(d) Employee means any person in the employment of the Board and includes Imams, Mauzzans, Care-takers, Teachers, Khadims and Mujawirs."

43. Penalties - *Section 68(2)(e):- Subject to the provisions of these Regulations the following penalties may for good and sufficient reasons as hereinafter provided, be imposed on an employee of the Board, namely:-*

(I) Censure

(ii) Withholding of increments and promotions

(iii) Recover from pay of the whole or part of any pecuniary loss caused to the Board by negligence or breach of order.

(iv) Reduction to a lower Class or post or to a lower time-scale or to a lower stage in a time-scale.

(v) Compulsory retirement of an employee in permanent employment.

(vi) Removal from the service of the Board which shall not be disqualifications, for

future employment.

- (vii) *Dismissed from the service of the Board which shall ordinarily be disqualification for future employment.*

Explanation-*The following shall not amount to a penalty within the meaning of this regulation:*

- (I) *Non-promotion whether in a substantive or an officiating capacity of an employee, after consideration of his case, to a service, class or post for promotion to which he is eligible.*
- (ii) *Revision to a lower service, class or post of an employee, officiating in a higher service, class or post on the ground that he is considered after trial to be unsuitable for such higher services, class or post or on administrative ground unconnected with his conduct.*
- (iii) *Termination of service.*
- (a) *of an employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment of the rules and orders for which he was appointed, or*
- (b) *of a person appointed otherwise than under contract to hold a temporary appointment on expiration of the period for which he was appointed; or*
- (c) *of a person employed under an agreement, in accordance with the terms of such agreement.*

68(2)(e):- No order imposing any of the penalties specialized in clauses (v) to (vii) of regulation 43 shall be passed against an employee of the Board (other than an order passed on facts which have led to his conviction, in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person. charged together with a statement of the allegations on which each charge is based and any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required within reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the authority concerned so directs, an enquiry shall be held. At that enquiry oral evidence shall be heard and recorded as to such of the allegations as are admitted and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and have witnesses called, as he may wish, provided that the inquiring officer, may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceeding shall contain a sufficient record thereof. The punishing authority shall, if it not the inquiring authority, consider the record of the inquiry, record its findings on each charge and pass appropriate orders on the case.

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- (2) *The regulations shall not apply where the person concerned has absconded, or where for other reasons it is impracticable to communicate with him. All or any of the provisions of this regulation may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived, where there is a difficulty in observing exactly the requirements of the regulation and those requirements can be waived without injustice to the person charged."*
25. *Probation - Section 68(2)(e). - Every appointment to a post in Class I and Class II shall be subject to probation or trial for a period of one year which is liable to be extended further by the appointing authority at his discretion. A person shall be confirmed at the earliest opportunity.*
26. *Termination of probation Section 68(2)(e) - The appointing authority may before the expiry of the period of probation or trial for reasons to be recorded in writing, terminate the probation of any person and revert him to his permanent post under the Board or discharge him from the service of the Board if he is a direct recruit. In the latter case a notice of one month shall be given before discharge or the employee shall be paid one month's emolument in lieu thereof. If any, leave is granted, the period of notice and leave shall run concurrently, the period of notice and leave shall run concurrently and for this purpose 'emoluments' shall leave allowances.*
37. *Reduction of establishment Section 68(2) (e)- When any post or posts are abolished persons*

shall be selected for discharge or reversion on the basis of juniority, unless for reasons to be recorded the services of any persons are considered indispensable by the Board.

Explanation. - An appointment the pay of which is reduced shall be deemed to be abolished within a meaning of this regulation.

38. *Order for abolition of post-Section 68(2)(e), (1) - An order for abolition of a post or for reduction of the emoluments of an appointment shall not be brought into operation in the case of a permanent employee before the expiry of three months, after the notice has been given to the employee affected and in other cases, before the expiry of one month after the service of the notice.*

(2) *In the case of an employee on leave, the order shall not be brought into operation before the leave expires, but the leave and the period of notice shall run concurrently."*

4. *That the termination order dated 30.12.1983 (Exhibit P/1) has been passed by the then administrator while exercising the powers under Regulation 43(iii) of the Punjab Wakf Regulations, 1966 by giving one month's notice. In service jurisprudence, no longer required means either the work has come to an end or volume of work has been reduced but admittedly it has come on record that as many as 12 persons junior to the respondent have been allowed to continue, thus, it is clear that neither the work came to an end nor the volume of work reduced and in this process the juniors were retained and the respondent being senior was terminated. Further the plea of the Board that the order*

is in accordance with terms and conditions of the appointment order dated 30.08.1976 (Exhibit P/2) has been passed. The appointment order (Exhibit P/2) says that the services can be terminated without assigning any reason by serving 03 days notice but in fact one month notice has been given as per regulation 26. Further from the perusal of the termination order, it is clear that the termination is not in accordance with the terms and conditions of the appointment order rather on the ground of no longer required despite the fact that as many as 12 juniors were working in the Board.

5. *That it is well settled position in law that no order which visit civil consequences must not be passed without affording any opportunity of hearing to the adversely effected persons and in the present case no notice/show cause notice or action oriented notice was given and as such the respondent has been condemned unheard and the order has been in gross violation of principles of natural justice. In support of the above reliance is made upon the following judgments:*

i. State of Orissa vs. Dr. (Ms.) Binapani Dei 1967 (SLR) 465 SC

The observations of the Hon'ble Supreme Court are as under:

"But the decision of the State could be based upon the result of an inquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance

with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our Constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed, it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

ii. *A.K. Kraipak and Others vs. Union of India and Others, AIR 1970 SC 150*

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent

miscarriage of justice. These rules can operate only areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years.

In the past only two rules were recognized but in course of time many more subsidiary rules came to be added to these rules. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rules should be made inapplicable to administrative inquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry."

iii. Sayeedur Rehman vs. The State of Bihar and Others, AIR 1973 SC 239

"This unwritten right of hearing is fundamental to a just decision by an authority which decides a controversial issue affecting the rights of the rival

contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduct to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

iv. *Smt. Maneka Gandhi vs. Union of India, AIR 1978 SC 597*

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The enquiry must, always be does fairness in action demand that an opportunity to be heard should be given to the person affected?

The law must now be taken to be well settled

that even in an administrative proceeding, which involves civil consequences the doctrine of natural justice must be held to be applicable.

v. ***Olga Tellies vs. Bombay Municipal Corporation, AIR 1986 SC 180***

"The procedure prescribed by law for the deprivation of the right conferred by Art. 21 must be fair, just and reasonable. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is, therefore, essential that the procedure prescribed by law for depriving a person of his fundamental right must conform to the norms of justice and fair play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice or unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers, has, therefore, to be tested by the application of two standards; the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of

an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down."

6. *That it is further well settled that an administrative order is to be tested on the ground on which it has been passed and no other ground can be added to justify the order. In support of the above, reliance is made upon the following judgments:*

I. Commissioner of Police vs. Gordhan Das Bhanji reported in AIR 1952 SC 16.

II. Mohinder Singh Gill and another vs. Chief Election 44- Commissioner, New Delhi reported in AIR 1978 SC 851.

III. R.S. Garg vs. State of U.P. reported in 2006 (4) RSJ 195 SC (Para 19) .

19. A discretionary power as is well known cannot be exercised in an arbitrary manner. It is necessary to emphasize that the State did not proceed on the basis that the amendment to the Rules was not necessary. The action of a statutory authority, as is well known, must be judged on the basis of the norms set up by it and on the basis of the reasons assigned therefor. The same cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. (See Mohinder Singh Gitt and another vs. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851, Commissioner of Police vs. Gordhandas Bhanji, AIR 1952 SC 16 and also Hindustan Petroleum Corpn. Ltd. vs. Darius Shapuf Chenai, 2005(4), 2005(7) SCC 627). Judgment already given.

IV. Smt. Dropti Devi vs. State of Haryana and others

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reported in 1996(4) RSJ 177 (Para 5 relied upon above two judgments) copy already given.

7. *That it has come on record that though the order has been passed simplicitor but foundation of the order is misconduct and the alleged absence. In service jurisprudence absence is one of the misconduct and admittedly no inquiry has been conducted and the order has been passed by way of punishment and in clear violation of Regulation 43 of the Punjab Wakf Regulations, 1966 and wrongly invoked the provision of explanation of Regulation 43(iii)(c) in order to avoid the prescribed procedure for imposing major penalties under Regulation 44. The court is **empowered to lift the veil in order to arrive at the truth as to** what is the foundation of the order irrespective of the nature of appointment and since the Board led the evidence with regard to the alleged absence thus, it is clear that the order has been passed by way of punishment without holding any inquiry. In support of the above, reliance is made upon the following judgments:*

- I. *Union Territory Chandigarh and others vs. Central Administrative Tribunal and others reported in 2011(1) SCT 777 DB P&H (Head Note and para 10, 12 & 13) (copy of the judgment already given).*
- II. *Amarjeet Singh vs. State of Punjab reported in 2011(2)SCT 149 P&H (judgment already given).*
- III. *Gopal Pandit vs. Punjab & Haryana High Court reported in 2011(2) SCT 578 P&H (judgment already given).*
- IV. *Jarnail Singh and others vs. State of Punjab and others reported in 1986(2) SLR 278 SC (Para 33,*

34, 35) (copy attached).

V. CWP No.15784 of 1998 - Loven Verma vs. Union of India and others decided on June 2, 2000 by a Division Bench of this Hon'ble Court. Copy of the judgment is attached. The said case relates to Punjab Wakf Board and the issue of termination of senior retaining the junior and on lifting the veil it was revealed that the order has been passed by way of punishment and further the order is to be tested on the ground on which it has been passed and no further ground can be added even by way of affidavit to justify the order and all these issues stand considered and decided in favour of the petitioner.

8. *That as stated earlier, the Punjab Wakf Board is an Incorporate Body created under the Wakf Act, 1954 and now under Wakf Act, 1966 as amended from time to time and the employees are governed under the Statutory Regulations known as Punjab Wakf Regulations, 1966 and Article 311 does not apply. However, the service is governed under the Statutory Rules and the termination is in complete derogation and in violation of the Wakf Regulations, 1966 and as such the judgment and decree deserves to be upheld with the modification that Article 311 of the Constitution of India is not applicable and there is just passing reference of the said provision. It would be seen from the appointment order (Exhibit D/2) that the respondent is to follow and obey rules and regulations of the School as well as of the Punjab Wakf Board. Further the termination order has been passed under Regulation 43(iii) of the Punjab Wakf Regulations, 1966 and as such the service is governed under the Act.*
9. *That power to terminate the service of an employee just*

by giving one month or three month's notice as the case may be has been held to be illegal, unlawful, arbitrary and violative of Section 23 of the Contract Act. In support of the above, reference is made to the following judgments:

- I. Central Inland Water Corporation Limited vs. Brojo Nath Ganguly and another reported in 1986(2) SLR 345, Para 96 & 97 (copy of the judgment already given).*
- II. Delhi Transport Corporation vs. DTC Mazdoor Congress and others reported in 1991 Supp.(1) SCC 600, SC Constitution Bench.*

In this case, law laid down in Brojo Nath's case has been upheld.

- III. S.K. Khosla vs. Food Corporation of India reported in 102-10- 2003(4) RSJ 20 DB Delhi (Para 13 relying upon Central Inland Water Transport Corporation's case). Judgment is attached.*

10. Without prejudice to the above submissions, it is submitted that during the pendency of the Appeal the respondent Mohd. Shakeel has died on 04.03.2018 left behind his widow and 07 daughters who have been brought on record.”

7. It would be noted here that the respondent has failed to produce any material to prove that he was either appointed on a permanent basis or his services were regularized while absorbing him in the permanent cadre.

8. Moreover, it has come on record that the respondent remained absent for 17 days without any application in the year 1981, whereas he did

not attend the school for more than 28 days with application in the given

year. In the year 1983, the respondent remained absent for 40 days, whereas in the year 1984, he remained absent for 65 days, out of which 15 days were without any leave application. The plaintiff admitted that he was never confirmed either by the Board or by the School in the permanent cadre.

9. The learned counsel representing the respondent has relied upon the judgment in *A.K.Kraipak and Others vs. Union of India and Others, AIR 1970 SC 150*. This Court has carefully read the aforesaid judgment wherein the Supreme Court has held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only areas not covered by any law validly made. However, this judgment does not apply to the facts of the present case as there are rules enacted by the competent authority covering the case of the respondent.

10. The learned counsel has further relied upon the judgment in *Sayeedur Rehman vs. The State of Bihar and Others, AIR 1973 SC 239*. In this judgment, the Supreme Court has held that the unwritten right of hearing is fundamental to a just decision by an authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. After having carefully read the aforesaid judgment, this Court is of the view that as the nature of the service of an employee in the given facts was temporary and he was not confirmed by the Board. Thus, he was never included in the permanent cadre dispensing with his services was not against the principles of natural justice.

11. The learned counsel has further relied upon the judgment rendered by the Supreme Court in *Smt. Maneka Gandhi vs. Union of India,*

AIR 1978 SC 597. However, with due respect, this judgment also does not apply to the facts of the present case.

12. The learned counsel has also relied upon the judgment of the Supreme Court in *Olga Tellies vs. Bombay Municipal Corporation, AIR 1986 SC 180*, wherein it has been held that the procedure prescribed by law for the deprivation of the right conferred by Article 21 of the Constitution must be fair, just and reasonable. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. However, this judgment also does not apply to the peculiar facts of the case as the respondent's service has been dispensed with, in accordance with the due process of law.

13. It would be noted here that in *State of Uttar Pradesh v. Kaushal Kishore Shukla (1991)1 SCC 691*, the Supreme Court held that dispensing with the services of *ad hoc*/temporary employee in terms of the appointment is perfectly justified on the ground of unsuitability. After relying upon a Constitutional Bench judgment in *Parshotam Lal Dhingra v. Union of India AIR 1958 SC 36*, the Court held that it must be borne in the mind that a temporary government servant has no right to hold the post and termination of such a government servant does not visit him with the evil consequences.

14. Moreover, a Division Bench of this Court in *Jyoti and Others v. State of Haryana and Others (2021) 1 SCC 588*, held that the principle of "Last Come First Go" is applicable in the case of retrenchment and not in a case where due to work and the conduct of the employee, he is not found to be satisfactory and his services are dispensed with in accordance with the

terms and conditions of such employment.

15. Now, the stage is set for analyzing the arguments of the learned counsel representing the respondent.

16. As regards the first and second arguments, it would be noticed that the regular second appeals in the Punjab and Haryana High Court are not governed by Section 100 CPC in view of the judgment passed in *Pankajakshi's case (supra)*. The regular second appeals are governed by Section 41 of the 1918 Act. In this case, the question of law arises.

17. The third argument of the learned counsel is not applicable particularly when the services of the respondent have not been dispensed with on account of punishment. Regulation 43 of the Punjab Wakf Regulations, 1966 will be applicable only when some penalty is sought to be imposed. Mere reference to a wrong provision in the order dispensing with the services is not sufficient to set aside the same.

18. As regards the fourth argument, it would be noticed that the concept of "Last Come First Go" is applicable to retrenchment when there is a reduction in the work or when it ceases to exist. However, this is not applicable when the services of a temporary/ad hoc employee on the basis of his work and conduct is being dispensed with.

19. With reference to fifth argument, it would be noticed that the three Judges Bench in *Kaushal Kishore Shukla's case (supra)* held that the dispensing of the services of a temporary/ad hoc employee in terms of the employment does not visit him with evil consequences.

20. As regards the sixth argument, it would be noticed that in this case, the entire record has been produced. The plaintiff has also admitted

Clerk of the Punjab Wakf Board, Ambala Cantt., Examined by the plaintiff admitted that as per the report of the Headmaster the respondent absented himself for 117 days out of total 199 working days in the year 1983 between January to October, 1983. In these circumstances, the judgments relied upon by the learned counsel representing the appellants in para 6 are not applicable.

21. As regards the seventh argument, it would be noticed that the foundation of the order is not the misconduct of the employee. The respondent has not been dismissed on the basis of penalty. Hence, the judgments relied upon by the learned counsel representing the respondent in para 7 are not applicable.

22. With reference to the argument No.8, it would be noticed that the Board has framed the regulations which deal with the permanent employees. The aforesaid regulations are not applicable to temporary employees. The respondent herein was employed on a temporary basis. It has come on record that he was never confirmed by the Board. DW.1-Ramzar, Teacher-in-Charge, while appearing in evidence, has specifically stated that the respondent was never approved by the Board in the permanent cadre.

23. As regards the argument No.9, the submission of the learned counsel is to the effect that such contract of service is violative of Section 23 of the Indian Contract Act, 1872 (hereinafter referred to as “the 1872 Act”). It would be noted here that the dispensing with the services of a temporary employee is not in violation of Section 23 of the 1872 Act. As per the appointment letter, his services could be dispensed with without assigning

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any reason to him just by serving him a three days' notice. Whereas conveniently the respondent was given one month notice. Hence, the judgments relied upon by the learned counsel representing the respondent are not applicable and do not hold water..

24. As regards para No.10, it would be noticed that this Court has all the sympathies for the legal representatives of the respondent, however, in view of the settled position of law, the Court cannot decide the case merely on emotions while keeping aside the settled law.

25. Keeping in view the aforesaid discussions, the present appeal is allowed. The judgments passed by both the Courts below are set aside.

(Anil Kshetarpal)
Judge

September 20, 2023**"DK"**

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No