

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

CWP No.21450 of 2018(O&M)

Reserved on:15.03.2023

Date of Decision.23.03.2023

Dayanand Mahila Mahavidyalya

...Petitioner

Vs

Presiding Officer and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashutosh Kaushik, Advocate
for the petitioner.

Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for respondent No.2.

Mr. Kapil Bansal, DAG, Haryana
for respondents No.3 and 4.

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JAISHREE THAKUR J.

1. This is a writ petition that has been filed under Article 226/227 of the Constitution of India for quashing the impugned judgment dated 22.05.2018 (Annexure P-1) passed by respondent No.1-Tribunal while wrongly interpreting order dated 03.03.2011 (Annexure P-18) passed by this Court.

2. In brief, facts as enumerated in the writ petition are that respondent No.2 joined the respondent-College as Lecturer (Home Science) vide appointment letter dated 21.08.1995. As respondent No.2 wanted to pursue Ph.D from Delhi University, she was granted no objection certificate for the same on 24.07.2001. A letter dated 24.12.2003 was received by the petitioner-College from University Grants Commission intimating that respondent No.2 has been awarded Teacher Fellowship under FIP Scheme.

In order to pursue said Teacher Fellowship under FIP Scheme, respondent No.2 applied for academic leave from 1.2.2004 to 31.1.2006. Vide letter dated 31.01.2004, respondent No.2 was granted study leave, subject to and in anticipation of approval of Director Higher Education, Kurukshetra University, Kurukshetra and the UGC. It was also mentioned in the said letter that she was being relieved at her own risk and responsibility. Thereafter, respondent No.2 vide letter dated 31.01.2004 sought to be relieved for two years w.e.f. 01.02.2004 to 31.01.2006 to pursue her Ph.D under the FIP Scheme for Teacher Fellowship at her own risk and responsibility, which was approved vide letter dated 21.02.2005 subject to the condition that respondent No.2 will have to execute bond to serve in her parent institution viz; petitioner-College for a period of five years at least, after completion of her fellowship course. The said condition was also communicated to respondent No.2 vide letter dated 26.02.2005 by the petitioner-College. However, respondent No.2 never executed such bond. Reminders were received by the petitioner-College from respondent No.3 vide letters dated 10.05.2005, 21.06.2005 and 19.4.2006 to get the bond executed on behalf of respondent No.2 and in compliance of the same, petitioner-College sent letters dated 09.07.2005 and 25.07.2005 asking respondent No.2 to execute the bond or join her duties with immediate effect. Vide letter dated 13.7.2007 written to petitioner-College, respondent No.2 resigned under protest, which has not been accepted by the competent authorities till date. The petitioner-College forwarded the resignation of respondent No.2 to respondent No.3 to seek clarification as to whether to accept the resignation of respondent No.2 or not. Respondent No.3 vide letter dated 18.10.2007 directed the petitioner-College to take action against

respondent No.2 as per Rules, which say that if a government employee resigns or retires from service without returning to duty after the period of study leave or within the stipulated period after such return to duty, then he/she is liable to refund double the amount of leave salary. A copy of letter dated 18.10.2007 was sent to respondent No.2 vide letter dated 04.12.2007, which was challenged by her by filing CWP No.20960 of 2008 wherein this Hon'ble Court vide order dated 15.12.2008 while issuing notice of motion, allowed respondent No.2 to join service without enforcing the condition of execution of bond. However, vide order dated 26.11.2010, this Court granted liberty to the petitioner-College to fill up the vacancy of Lecturer in Home Science, as the respondent No.2 failed to give information whether she was serving somewhere else or not. Thereafter, the aforesaid writ petition i.e. CWP No.20960 was dismissed as withdrawn vide order dated 03.03.2011, while observing that dismissal of the writ petition as withdrawn will not be any bar for the government to take action in according with law and if the petitioner was not willing to serve the college, it could not be left without Lecturer and made to suffer. However, counsel for the petitioner-College assured that if resignation of respondent No.2 is accepted, her provident fund shall be released. A departmental enquiry was held against respondent No.2 which culminated into issuing her a show cause notice proposing punishment of dismissal from service. However, before any order could be passed, respondent No.2 preferred an appeal before respondent No.1-Education Tribunal that her charge-sheet be quashed and her provident fund and salary for the period 01.09.2004 to 31.01.2006 be released by accepting her resignation. The appeal preferred by respondent No.2 was partly accepted by respondent No.1 vide its order dated 22.05.2018 and

respondents were directed to release the provident fund and other service benefits to respondent No.2 as per rules and regulations, in pursuance to order passed by this Court in CWP No.20960 of 2008 on 03.03.2011, as the show cause notice has no bearing on the same. Aggrieved against the said order, petitioner-College approached this Court by way of instant writ petition.

3. Learned counsel appearing for the petitioner would submit that respondent No.1-Tribunal erred in presuming that resignation of respondent No.2 stands accepted and the writ petition filed by respondent No.2 was withdrawn by her on the assurance given by the petitioner-College that her provident fund shall be released. It is argued that in fact, till date, resignation of respondent No.2 is not accepted. She was time and again asked to join her service and even during the pendency of writ petition, a reminder dated 10.01.2009 was sent to respondent No.2 to join her duties immediately but she deliberately did not join. It was only when the show cause notice proposing punishment for dismissal from service was served upon her, she herself requested to accept her resignation. Respondent No.2 withdrew the writ petition at her own volition and statement qua release of provident fund to her was subject to acceptance of her resignation, which has not been accepted till date.

4. Per contra, Mr. R.K. Malik, Senior Advocate assisted by Mr. Sandeep Dhull, Advocate appearing for respondent No.2 would submit that there is no justification in withholding the provident fund of an employee as it is his/her personal property. He relies upon the judgment rendered by a Division Bench of this Court in **Gurcharan Singh Vs. State of Punjab 1999 (2) SCT 817** wherein after dismissal from service due to conviction in

a criminal case, petitioner therein requested for release of GPF amount, which was denied to him even after notice of demand and this Court held that the amount in GPF account is petitioner's own property and therefore, there is no legal justification for withholding it.

5. I have heard learned counsel for the parties and have perused the paper book as well as the case law cited. If the argument raised by the counsel appearing for the petitioner is accepted that respondent No.1-Tribunal wrongly interpreted the order dated 03.03.2011, even then the settled position of law is that employer cannot withhold the amount of GPF of an employee as it is his/her own property, as has been held in the judgment rendered in **Gurcharan Singh's case** (supra). In view of the settled position of law, the impugned order passed by respondent No.1-Tribunal is upheld to the extent that petitioner-College and official respondents are directed to release the amount of provident fund to respondent No.2. Let such direction be complied with within a period of two months from the date of receipt of certified copy of this order, failing which the same shall be released with interest @7% per annum.

6. The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

March 23, 2023
Pankaj*

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