

Neutral Citation No.- 2023:PHHC:065074

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

**CWP-26578-2019
Reserved on: 23.02.2023
Date of decision: 03.05.2023**

NEEL KAMAL MISHRA

...Petitioner

VERSUS

**THE TECHNOLOGICAL INSTITUTE OF TEXTILES AND SCIENCE
AND ANOTHER**

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sandeep Kumar Goyat, Advocate
for the petitioner.

Mr. Kshitij Sharma, Advocate
for the respondent No.1.

JAISHREE THAKUR, J.

1. This is a petition that has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of certiorari for quashing judgment dated 19.08.2019 (Annexure P-9) passed by the District and Sessions Judge-cum-Educational Tribunal, Bhiwani, whereby the appeal filed by the petitioner against his termination order dated 06.07.2018 (Annexure P-5) has been dismissed and further for issuance of a writ in the nature of mandamus directing the respondent No.1-Institute to reinstate the petitioner with continuity of service along with back wages and other benefits.

Neutral Citation No.- 2023:PHHC:065074

2. In brief, the facts as culled out are that the respondent No.1-Institute issued advertisement for the posts of Assistant Professor and Lecturer in the year 2004 for various subjects including Environment Science and Bio-Technology. Being fully eligible, the petitioner applied for the post of Lecturer, Environment Science and Bio-Technology and was called for written test/personal interview before the Selection Board on 27.06.2004. The petitioner appeared before the Selection Board on the said date and was selected for the post of Lecturer, Environment Science and Bio-Technology. He was issued appointment letter dated 16.08.2004 (Annexure P-2). The respondent-Institute sent approval of appointment of the petitioner after completion of his probation period to Maharshi Dayanand University, Rohtak and the Dean, Colleges Dev. Council approved the appointment of the petitioner on regular basis as Lecturer with effect from 16.08.2004 vide Annexure P-3. Thereafter, on the recommendation of the Screening Committee, the petitioner was placed in the senior scale of 10000-325-15200 with effect from 01.09.2008 and was given several extra-curricular activities. He was also issued various certificates and appreciation letters and was accordingly promoted as Assistant Professor. After availing the services of the petitioner for more than 14 years, the respondent-Institute terminated the services of the petitioner vide order dated 06.07.2018 (Annexure P-5) on the ground that there is no workload in the subject of Environment Science and Bio-Technology as per the new syllabus of B.Tech courses as prescribed by the AICTE. The respondents also issued a cheque of Rs.2,39,838/- as three months' notice pay in lieu of notice. Against the said order of termination, the petitioner herein filed an appeal before the District and

Neutral Citation No.- 2023:PHHC:065074

Sessions Judge, Bhiwani (exercising the powers of Educational Tribunal, Bhiwani) which was dismissed vide judgment dated 19.08.2019 (Annexure P-9). Hence, the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the services of the petitioner herein have been terminated without any notice and opportunity of hearing, which is against the provisions of the Haryana Affiliated Colleges (Security of Service) Act, 1979 and also against the rules of AICTE. He would submit that as per Section 7(2) of the Haryana Affiliated Colleges (Security of Service) Act, 1979, the penalty of dismissal or removal from service or reduction in rank shall not be imposed unless the same is approved by the Director and in the instant case, the same has not been done by the respondent-Institute. He would further submit that the word termination used in the impugned termination order is defamatory and used intentionally with mala fide intention, which would affect the future of the petitioner and nowhere in the termination order is it mentioned that the services of the petitioner are being dispensed with by way of retrenchment. The subject of Environmental Sciences was made a compulsory subject vide UGC letter dated 07.08.2014 and MDU letter dated 02.11.2016. It is argued that after terminating the services of the petitioner, the respondent-Institute engaged two more faculty members for the same subject, which the petitioner was teaching, as per the information received under the RTI Act. He would further argue that the respondent-Institute has not transferred three months' salary in the account of the petitioner and moreover, no benefit of GPF, Gratuity etc. has been given till date. He would rely upon a judgment rendered by the Supreme Court in

Neutral Citation No.- 2023:PHHC:065074

Lal Bahadur Gautam versus State of U.P. and others, 2019 (3) SCT 41,

wherein the petitioner therein was held entitled for reinstatement as the respondent-College was affiliated to the University and the termination order was held illegal as no prior approval from higher authorities was obtained.

4. Per contra, learned counsel appearing on behalf of respondent No.1-Institute would contend that respondent No.1-Institute is not an aided institute but is a self-financed institute. The post on which the petitioner was working was surplus and by invoking conditions No.3 and 7 of the appointment letter, the services of the petitioner were terminated on payment of three months' salary in lieu of three months' notice. It is submitted that the petitioner is governed by rules/regulations of the TITS Service and Conduct Rules. In terms of the said Rules, termination of an engagement of a confirmed employee can be done with a three months' notice and based on this, respondent-Institute has a right to terminate the services of the petitioner. It is further submitted that the services of the petitioner were dispensed with as per the terms and conditions of the appointment letter on paying three months' notice pay amounting to Rs.2,39,838/-. His services have not been terminated stigmatically or by levelling any allegations. Hence, the issue of issuing a charge-sheet and conducting inquiry, does not arise and in fact his services were terminated by way of retrenchment being surplus. He would contend that the Educational Tribunal, Bhiwani has also not committed any error of law and has rightly dismissed the appeal of the petitioner after taking note of all the aspects. He would rely upon a judgment rendered by the Supreme Court in **St. Mary's Education Society versus Rajendra Prasad Bhargava, 2022 (4) SCT 94,**

Neutral Citation No.- 2023:PHHC:065074

wherein the writ petition raising service dispute was held to be not maintainable against the private aided minority Institute.

5. I have heard learned counsel for the parties, and with their able assistance, have gone through the pleadings of the case as well as case laws cited.

6. The respondent-Institute is an unaided self-financed Institute and is governed by the rules/regulations of the TITS Service and Conduct Rules. These rules are called the TITS College Service and Conduct Rules, which are framed on the basis of rules governing the conditions of service and conduct described by Maharshi Dayanand University, Rohtak for teaching and non-teaching employees of non-government colleges affiliated to the University. The appointment letter that was issued to the petitioner herein clearly specified that the petitioner would be on probation for a period of two years and that the agreement during this period could be terminated without assigning any reason from either side by giving one month notice in writing during the period of probation or on payment of one month's salary in lieu thereof. After confirmation, the notice period required on either side shall be three months or three months' salary in lieu thereof. This clause is in consonance with Rule 25 of TITS Service and Conduct Rules. The services of the petitioner were dispensed with on account of new syllabus as prescribed by AICTE, where there was no workload for the subject of Environment Sciences and Biotechnology. The post on which the petitioner was working became surplus and his services were terminated with immediate effect and in view of three months' notice, three months' salary was paid to him. The impugned order

Neutral Citation No.- 2023:PHHC:065074

dated 06.07.2018 is not stigmatic in nature, as it is a simplicitor order stating that there was no workload for the petitioner in the subject he was teaching.

7. However, before going into any of the contentions raised by the petitioner, would the present writ petition be maintainable in the light of the fact that the Supreme Court in its latest judgment has held that a writ petition raising service disputes against private educational institutions is not maintainable if they are not governed or controlled by the statutory provisions? Reference in this regard may be made to the judgment rendered in *St. Mary's Education Society's case (supra)*, in which case one of the two questions framed was “*Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution? In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?*” The appellant-Institute was an unaided Private Educational Minority Institute and the services of the respondent were terminated after issuance of a show cause notice a charge-sheet and holding a departmental inquiry. Appeal filed was ordered to be dismissed by the Disciplinary Committee, which was challenged in proceedings under Article 226 of the Constitution of India. The writ was dismissed by holding that writ was not maintainable as against a Private Aided Institute. However, the said judgment was set aside by the Division Bench. Thereafter, the Institute approached the Supreme Court. The Supreme Court

Neutral Citation No.- 2023:PHHC:065074

discussed the case law as cited on the question of maintainability of the writ petition and concluded as under:-

“68. We may sum up our final conclusions as under:-

(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

(b) Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(c) It must be consequently held that while a body may be discharging a public function or performing a public duty

Neutral Citation No.- 2023:PHHC:065074

and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

(d) Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the

Neutral Citation No.- 2023:PHHC:065074

employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

(e) From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

8. In **Marwari Balika Vidhyalaya versus Asha Shrivastaga, (2020) 14 SCC 449**, the Supreme Court while relying on the judgment as rendered in **Ramesh Ahluwalia versus State of Punjab, (2016) 6 SCC 541** held that a writ petition against a Private School getting grant-in-aid to the extent of Dearness Allowance is maintainable. However, the judgment rendered in **St. Mary's Education Society's case (supra)** distinguished the judgment as rendered in **Marwari Balika Vidhyalaya's case** by holding as under:-

“58. In context with Marwari Balika Vidhyalaya (supra), we remind ourselves of the Bye-law 49(2) which provides that no order with regard to the imposition of major penalty shall be made by the disciplinary authority except after the receipt of the approval of the disciplinary committee. Thus unlike Marwari Balika Vidhyalaya (supra) where approval was required of the State Government, in the case on hand the approval is to be obtained from the disciplinary committee of the institution. This distinguishing feature seems to have been overlooked by the High Court while passing the impugned order.

Neutral Citation No.- 2023:PHHC:065074

59. *In Marwari Balika Vidhyalaya (supra), the school was receiving grant in aid to the extent of dearness allowance. The appointment and the removal, as noted above, is required to be approved by the District Inspector of School (Primary Education) and, if any action is taken dehors such mandatory provisions, the same would not come within the realm of private element”*

9. In ***K.K. Saksena versus International Commission on Irrigation and Drainage and others, (2015) 4 SCC 670***, after an exhaustive review of its earlier decisions on the subject, the Supreme Court held as follows:-

"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. Reason is obvious. Private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

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Neutral Citation No.- 2023:PHHC:065074

52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and

(iii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal."

10. Applying the ratio of the aforesaid decisions, it is clear that the present writ petition is not maintainable. The respondent is an unaided private Institute, and though affiliated with Maharishi Dayanand University, it has its own Service and Conduct Rules, in terms of which the petitioner was appointed and then his services were terminated by giving three months' salary in lieu thereof. There is no Government aid or effective control over the running of the respondent-Institute. Though imparting education is a public function, but the termination of service of the petitioner is basically on the basis of the contract of service and the Service and Conduct Rules. It has been held in the judgment rendered in **Vaish Degree College versus Laxmi Narain, 1976 (2) SCC 58**, that

Neutral Citation No.- 2023:PHHC:065074

a contract of personal service cannot ordinarily be enforced unless a public servant is sought to be removed from service in contravention of Article 311 of the Constitution of India, where a worker is sought to be reinstated on being dismissed under Industrial Law and where a statutory body acts in breach of mandatory provision of the statute. Such is not the issue herein. The respondent-Institute is also not a statutory body as it has not been established that it is created under a statute and in fact is an unaided Institute.

11. Consequently, the instant writ petition stands dismissed, leaving it open to the petitioner herein to avail his remedy, in accordance with law.

03.05.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No