

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

**LPA No.1272 of 2017
Reserved on : 20.12.2022
Pronounced on : 06.01.2023**

Rama Rani

... Appellant

Versus

DAV University, Jalandhar-Pathankot Highway, Village Sarmastpur,
Jalandhar

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Ms. Puneet Kaur Sekhon, Advocate for the appellant.

Mr. Rajdeep Singh Cheema, Advocate
for the respondent-University.

G.S. Sandhawalia, J.

The issue for consideration in the present Letters Patent Appeal is judgment of the learned Single Judge passed in **CWP No.18905 of 2015 'Rama Rani Vs. DAV University, Jalandhar-Pathankot Highway'** decided on 29.03.2017, wherein the writ petition was dismissed and the challenge to the termination order of the writ petitioner, who was on probation was held not to be punitive or stigmatic. It was recorded that there was no requirement of holding a departmental inquiry for a probationer and in the absence of any infirmity in the orders passed by the respondents no relief was granted.

2. Counsel for the appellant has vehemently submitted that if the veil is lifted, it is apparently a stigmatic order and there is a report of the Committee against the appellant as per the written statement, which

was not referred to by the learned Single Judge. Therefore, it could not be held that the performance was not upto the mark. The impugned order by which the services had been dispensed with on 04.08.2015 (Annexure P-1) talked about Clause 5 (a) of the appointment letter, whereas the issue of probation was as per the Clause 1 of the letter which provided the period of probation could be extended depending upon the performance in accordance with statutes/rules of the University. It was, accordingly, submitted that an extension had been granted by the respondent-University and during the tenure of the said extension the services had been dispensed with. Therefore, dispensing with the services with 3 months salary in lieu of the notice period was in contradiction to the dispensing of the services of a probationer which would depend upon the performance of the said employee.

3. The learned Single Judge came to the conclusion that the termination would be valid so long it was not punitive or stigmatic, as the writ petitioner was on probation while relying upon the judgment passed in **Progressive Education Society Vs. Rajendra (2008) 3 SCC 310** and, thus, came to the conclusion that since 3 months salary had been deposited in lieu of the notice period, it would not be stigmatic in any manner. The judgment relied upon by counsel for the writ petitioner in **Chandra Prakash Shahi Vs. State of U.P. and others, (2000) 5 SCC 152** was distinguished on the ground that the preliminary inquiry was conducted by the Assistant Commandant and resultantly the writ petitioner's case was not similar, since there was no inquiry conducted

behind the back of the writ petitioner. It was noticed that there was an incident regarding marking of presence and on the basis of an apology statement, the report of the Fact Finding Committee and that of review of the work, it was decided to relieve the writ petitioner, which was within the right of the employer. Similarly, the judgments passed in **V.P. Ahuja Vs. State of Punjab, (2000) 3 SCC 239** and **Registrar General, High Court of Gujarat and another vs. Jayshree Chamanlal Buddhbhatti, (2013) 16 SCC 59** were also distinguished.

4. We are of the considered opinion that the facts would go on to show otherwise that the dispensation of services was apparently on account of an alleged misconduct which was further proved from the fact that in the written statement also it is conceded that a three members Fact Finding Committee of Senior Professors was constituted by the Advisor to the Chancellor on the disciplinary matter concerning the writ petitioner and one Ms. Ranjit Kaur. The same was justified that it was to find out the factual position before taking further action in the matter.

5. The averments made in the written statement itself goes on to show that the employees were guilty of misrepresenting the facts and the Committee was of the opinion that the actions of both of them were unbecoming of a teacher and, therefore, the report had been sought from the Registrar regarding the work and conduct, who had submitted its report. In addition thereto a two members Committee was constituted by the competent authority to give its comments. The competent authority after going through the reports of the Fact Finding Committee, Registrar

and two members Committee directed that services of both the employees may be dispensed with. Relevant averments made in the written statement read as under:-

“5. That the petitioner has not approached this Hon'ble Court with clean hands as she has concealed the fact that she accepted her fault as she tendered apology vide letter date 11.4.2015 for her previous statements and explanations. However, this letter has not been intentionally attached by the petitioner to the writ petition. A copy of the same is thus attached as Annexure R-1. The allegations of the petitioner of non-grant of opportunity of hearing are belied from her own admission that she alongwith Ms. Ranjit Kaur were called by the Committee and heard. The writ petition is liable to be dismissed on this ground alone.

6. That a three member Fact Finding Committee of Senior Professors was constituted by the Advisor to the Chancellor on the disciplinary matter concerning the petitioner and Ms. Ranjit Kaur to find out the factual position before taking further action in the matter.

After deliberating upon the issue with the concerned faculty members, having been afforded an opportunity of hearing, it was felt that both teachers were not only hiding the facts and were also guilty of misrepresenting the facts. The Committee was of the opinion that action of both of them, were unbecoming of a teacher and that suitable action be taken in the matter.

7. That after receipt of the report of the Fact Finding Committee dated 20.07.2015, the Competent Authority sought the report of the Registrar regarding the work and conduct of both the employees (including the petitioner). The Registrar submitted the report dated 29.07.2015. In addition thereto a two members Committee constituted by the Competent Authority also gave their comments dated

30.07.2015 upon the report of the Fact Finding Committee. Thereafter, the Competent Authority after going through the reports of the Fact Finding Committee, Registrar and two-members Committee directed that services of both the employees may be dispensed with in terms of clause 5 of their appointment letter, they both being on probation.

It is submitted that had there been an intention of the Management to punish them, of course a regular enquiry would have been conducted. The termination of the petitioner is not punitive but is a simpliciter order of termination/discharge in terms of the appointment letter and does not cast any stigma. The Competent Authority in all fairness ascertained as to whether the petitioner should be continued in service and did not indict the petitioner for any misconduct. As such, there is no force in the allegations of the petitioner. The writ petition is liable to be dismissed on this ground also.”

6. It is not disputed that the appellant was appointed on 04.08.2014 (Annexure P-1) as an Assistant Professor in the subject of Computer Science Engineering, in reference to an application and subsequent interview. It is the pleaded case of the writ petitioner that she was already working with the Guru Nanak Dev University, Amritsar. She resigned from her job on 06.08.2014 and joined the respondent-University, where she was supposed to be on probation from the date of joining. The period of probation could be extended depending upon her performance in accordance with statutes/rules of the University, as per Clause 1 of the appointment letter, which reads as under:-

“1. Post: Your appointment will be on the applicable period of probation from the date of joining. The period of probation on can be extended depending on your

performance in accordance with statutes/rules of the University.”

7. Clause 5 (a) provided that services could be terminated by three months' notice or on payment of salary in lieu of the notice period. Thus, it was an independent clause as such for dispensing with the services, which was resorted to by the University on 04.08.2015 (Annexure P-8), which was the subject matter of challenge. The order of termination reads as under:-

“It is to inform you that your services are terminated in terms of clause No. 5(a) of your appointment letter. The salary for three months Rs.141468/- in lieu of the notice period has been deposited in your bank account. Hence, you stand relieved from your duties with immediate effect.”

8. Apparently reference was never made to Clause 1 as reproduced above while dispensing with the services. On 16.03.2015 (Annexure P-3) notice was issued to one Ms. Ridhi Kapoor, Assistant Professor for marking proxy presence for the writ petitioner while marking her own presence on 12.03.2015. A similar notice was also issued to the writ petitioner vide letter of even date (Annexure P-5) that she had left the University in the afternoon, whereas she was marked present by a co-employee and why action should not be taken against her. An explanation was given on 19.03.2015 (Annexure P-6) by the appellant that she was not feeling well on that day and she had left the University at 12:30 PM and she had given similar instructions to the said employee and she had come back from home by 4:45 PM and marked her attendance by overwriting her signatures because the pen was not running properly.

Apparently, no order was passed at that point of time of dispensing with the services in any manner.

9. Thereafter, she was given extension on 27.07.2015 (Annexure P-7) by the Registrar for a period of one year on the ground that her term of probation for a period of one year was to expire on 06.08.2015, which was accordingly extended. Apparently, something was brewing at that point of time behind the scenes in as much as an advertisement bearing No.4/2015 (Annexure P-9) was then issued, whereby appointments of an Assistant Professor for the said subject of Computer Science Engineering was also sought to be filled and last date for submitting the application was 05.08.2015. Her services were eventually dispensed with on 04.08.2015 by giving three months' salary as noticed above without referring to the probation clause. An apology had also been taken on 12.04.2015 (Annexure R-1/1) from the writ petitioner regarding the incident of March, 2015. Even in the written statement apart from what has been reproduced above, averments were made that she had overwritten on her proxy attendance to show that she was actually present and, therefore, there were malafides on her part and that Ranjit Kaur also had admitted to her guilt of having marked the attendance of the writ petitioner and both of them were hand in glove and were knowingly concealing the truth.

10. Apparently, a Fact Finding Committee of three senior Professors as noticed above was constituted to look into the issue and, thus, a preliminary inquiry was conducted before services were dispensed

with. In such circumstances, the contention of the counsel is well justified that if the veil is lifted, the probationer was not packed off on account of the fact that her services were not upto the mark and rather it was by way of punishment as extension had been granted ten days earlier apparently finding work and conduct upto the mark. Motive and foundation of the misconduct on account of the fact that the attendance had been wrongly marked was the apparent reason for termination.

11. Resultantly, keeping in view the dictum laid down as to what is motive and foundation, the judgment passed in **Chandra Prakash Shahi (supra)** rather would be applicable, wherein the person was restored back in services as ordered by the Tribunal which had been interfered by the High Court. As noticed the learned Single Judge also noticed that there was a preliminary inquiry which is also apparent from the facts and circumstances of the present case. Relevant observations of the said case would be, thus, applicable:-

“27. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held

to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

28."Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary enquiry .”

12. In **Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta, 1999 (1) SCT 861** the writ petition had been dismissed of the probationer and the appeal also, wherein the dispensing of the services was on account of the work not being satisfactory and there were allegations of misbehaving with women staff members. The termination order also mentioned unsatisfactory performance, and the conduct, ability and capacity of the employee

whereby her services had been dispensed with. Resultantly, the Apex Court came to the conclusion that the same was based on misconduct and was stigmatic and it came to the conclusion that it was not a simple order of termination, but was a lengthy order and stigmatic. It was founded that an Inquiry Committee was appointed and therefore, the impugned order was not sustainable and reinstatement was directed with the continuity of services.

13. In **V.P. Ahuja (supra)** the order mentioned the fact that the employee had failed in performing his duties administratively and technically. The said order was not interfered with by this Court, which was set aside by the Apex Court and it was held that the order itself was stigmatic and even the affidavit filed before this Court and the Apex Court had indicated the background of the case in which the order terminating the services came to be passed. Therefore, such an order on the face of it, was stigmatic and could not have been passed without holding an regular inquiry. The said observations would thus be applicable to the facts and circumstances of the present case, as pleadings in the written statement also would indicate the manner in which the matter was being inquired into and thus, no opportunity was given and if the veil is lifted, it is a stigmatic order.

14. In **Jayshree Chamanlal Buddhbhatti (supra)** referred to above, which was again distinguished by the learned Single Judge. The removal of Civil Judge/JMFC was on the ground that the High Court on the strength of material on record had found that the performance was not

good and satisfactory and she was not suitable for the said post and, therefore, her services were done away during the period of her probation. She was reinstated by the said High Court when she exercised her legal rights and with backwages, which was subject matter of challenge. The appeal was dismissed by noting that without affording an opportunity and accepting the allegations against her character, her services had been dispensed with and, therefore, she had rightly been reinstated while relying upon the judgment passed in **Shamsher Singh Vs. State of Punjab, AIR 1974 Supreme Court 2192.**

15. In **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others, (2015) 15 SSC 151**, the termination was on account of an inquiry conducted by the police authorities on the basis of a complaint received by the Vigilance Department. The learned Single Judge had opined in favour of the employee, which had been interfered by the Division Bench on the ground that the essential qualifications had been lowered down and therefore, the beneficiary was the writ petitioner. Resultantly, the Apex Court came to the conclusion that no regular inquiry was held and punishment of dismissal was there without framing of charge and was in violation of principles of natural justice and could not be effected by passing an order of termination simpliciter. A stigma had been caused on the basis of a report received by the Vigilance Department and, therefore, the view taken by the Division Bench was not accepted and the appeal was allowed and reinstatement was ordered with 50% back-wages.

16. Thus, we are of the considered opinion that in the facts and circumstances of the present case the learned Single Judge erred in distinguishing the judgments which were directly applicable to the facts and circumstances. The stance as such in the written statement had not been appreciated and the background of the termination and, therefore, the impugned order is not sustainable.

17. After hearing arguments on 19.12.2022 both the sides were asked to take instructions whether the appellant is willing to forgo her back-wages, if she is reinstated by the respondent-University. On the other hand counsel for the respondent-University was also asked to take instructions as to whether the respondent-University is willing to pay reasonable compensation in lieu of back-wages for the last 7 years, in order to avoid reinstatement.

18. On 20.12.2022, we were informed by the respective counsels of both the sides that the appellant is expecting a child and it may not be possible for her to re-join the respondent-University at this stage, even if the appeal is to be allowed in her favour. Mr. Cheema on the other had taken instructions and submitted that the respondent-Institute is willing to reinstate the appellant in service without back-wages. Photocopy of the email received has also been taken on record.

19. Keeping in view the above, we are of the considered opinion that as noticed a case was made out for interference by the learned Single Judge at that point of time on 29.03.2017, but the learned Single Judge did not exercise her extraordinary writ jurisdiction. At this stage in view

of the change circumstances, we are of the considered opinion that it would be not justified as to reinstate the appellant and she can be given the benefit of compensation for dispensing with her services in a wrongful manner. As noticed earlier and as pleaded she was working with the Guru Nanak Dev University, Amritsar and had given up her job and joined the respondent and that she worked at a lower salary in a private institute in order to sustain herself.

20. In such circumstances, keeping in view the fact that she was employed in the pay-scale of Rs.15600-39100 + AGP of Rs.6000 in the year 2014, the damages aspect have to be accordingly considered as to what is her entitlement and it would not be fair to impose her upon the employer in view of the bad blood *inter se* the parties. Reliance can be placed upon **Executive Committee of Vaish Degree College, Shamli vs. Lakshmi Naraian, AIR (1976) SC 888**, wherein such methodology had been adopted, which has been followed in **Dipak Kumar Biswas vs. Director of Public Instructions and others, (1987) 2 SCC 252**.

21. The Apex Court recently in **Kailash Singh vs. Managing Committee, Mayo College, Ajmer and others, (2018) 18 SCC 216** had granted payment of compensation to the tune of Rs.25 lakhs to one employee and Rs.18 lakhs to another, who had put in more than 15 years of service and had been shunted out unnecessarily by the school without any departmental proceedings.

22. Accordingly, we are of the considered opinion that a sum of Rs.10 lakhs would be an adequate amount of compensation which is

liable to be paid by the respondent-University in lieu of illegally terminating the services on probation, on the basis of stigmatic conduct as such and without holding an inquiry and, thus, violating the principles of natural justice.

23. Resultantly, the present appeal is partly allowed. The said amount be paid within a period of 2 months, failing which it would carry interest @ 7% per annum from today till recovery.

(G.S. SANDHAWALIA)
JUDGE

January 06, 2023
Naveen

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes