

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10024-2016
Reserved on: 27.01.2023
Decided on: 10.02.2023

SANDEEP

Petitioner

VERSUS

EDUCATIONAL TRIBUNAL (APPELLATE AUTHORITY) AND
OTHERS

Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R. K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Dhiraj Chawla, Advocate
for respondents No.2 and 3.

JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India, seeking issuance of a writ in the nature of certiorari for quashing termination order dated 29.10.2011 (Annexure P-6) and further for quashing judgment dated 31.03.2016 (Annexure P-10), whereby the appeal of the petitioner has been dismissed along with a prayer to reinstate the petitioner herein with all consequential benefits and to quash order dated 31.03.2009 (Annexure P-11).

2. In brief, the facts as stated are that the petitioner had degrees in M.Sc (Computer Science) and M.Tech (Computer Science). The petitioner passed his M.Phil. in the year 2007 and the result was declared on 24.12.2008. The respondent-Matu Ram Institute of Management advertised a post of Lecturer in Computer Science for BCA programme. The petitioner being qualified applied for the said post and appeared before the Selection Committee, which offered an appointment to the petitioner vide letter dated 17.07.2010. Respondent No.3-Matu Ram Institute of Management was run by Jat Education Society, Rohtak and when the term of the Managing Committee of the said Society was over, an Administrator was appointed by the Government. The Administrator issued show cause notice to the petitioner vide letter dated 26.04.2011, as to why his services be not terminated, to which the petitioner submitted a reply. However, services of the petitioner came to be dispensed with vide order dated 10.05.2011 by the Administrator.

3. Thereafter, the petitioner filed CWP No.8647 of 2011 before this Court seeking to challenge the order of the Administrator being without any jurisdiction. The said writ petition was disposed of vide order dated 19.09.2011 and the petitioner was directed to file an appropriate appeal before the Educational Tribunal. While disposing of the said petition, status quo qua the service of the petitioner was ordered to be maintained to enable the petitioner to file an appeal. The petitioner filed an appeal before the Educational Tribunal and the status quo as ordered by the Court was extended from time to time. However, on account of non-availability of the counsel for the petitioner, the status quo was not extended and the services of the petitioner were again

terminated vide order dated 29.10.2011 Annexure P-6 by respondent No.3. The appeal was subsequently amended to challenge the order dated 29.10.2011, which was dismissed and by way of an order passed in Civil Revision No.3288 of 2015, the petitioner was permitted to file an amended appeal, which appeal finally stood dismissed vide order dated 31.03.2016 Annexure P-10. Hence, the instant writ petition.

4. Learned Senior Advocate appearing on behalf of the petitioner assailed the order of termination on the ground that the Administrator had no power to terminate the services of the petitioner as the power of the Administrator had been given under Haryana Private Colleges (Taking over of Management) Act, 1978 and in terms of Section 3 of the said Act, the Administrator had no power to alter the service conditions of the employees of the College. It is further argued that the termination of the services of the petitioner on the ground that the petitioner was not qualified for the post, is *per se* illegal. The petitioner has passed his M.Phil. on 14.12.2008 and UGC had issued a notification, which has found reference in the Government of Haryana's letter dated 04.10.2006 (Annexure P-8) that all candidates, having M.Phil. degree in the subject concerned, are exempted from NET, whereas the Administrator relied upon a letter dated 31.03.2009 (Annexure P-11), which stated that letter dated 04.10.2006 stood withdrawn. The letter dated 04.10.2006 is in fact a letter issued wherein it had initially been stated that candidates having Ph.D degree in the concerned subject is exempted from NET for PG level and UG level teaching. It is contended that none of the contentions as raised by learned counsel for the petitioner were taken note of by the

Educational Tribunal.

5. Learned counsel for the respondents on the other hand urged that there is no infirmity with the order of the Educational Tribunal and that the service of the petitioner was rightly terminated. In the alternative, it was submitted that in case learned Senior Advocate for the petitioner presses on the question that no decision has been rendered by the Educational Tribunal on whether the Administrator had power to terminate the services of the petitioner, the matter ought to be remanded back.

6. I have heard learned counsel for the parties and with their able assistance have gone through the pleadings of the case.

7. Admittedly, the petitioner herein came to be appointed with Matu Ram Institute of Management after having faced the process of selection. It is also an admitted fact that petitioner has done his M.Phil. in Computer Science from Chaudhary Devi Lal University, Sirsa as is evident from Annexure P-1. The ground for initial show cause notice dated 26.04.2011 was that the petitioner did not have the mandatory qualifications required for the post of Lecturer and the eventual termination order dated 29.10.2011 was passed on the ground that petitioner did not possess NET qualification or Ph.D. degree at the time of appointment and hence was ineligible for the post. The eligibility regarding NET qualification is governed by letter Annexure P-8, wherein relaxation from NET, for appointment of Lecturers in Universities/Colleges, had been allowed by the Higher Education Department, Haryana, Chandigarh noting the UGC Notification No. 1-1/2002 (PS) Exemp. dated 14.6.2006, which is reproduced as under:-

"NET shall remain the compulsory for appointment as lecturer for those with post-graduate degree. However, the candidates having Ph.D. degree in the concerned subject is exempted from NET for PG level and UG level teaching. The candidates having M.Phil. degree in the concerned subject are exempted from NET for UG level teaching only.

8. This notification was subsequently withdrawn vide memo No.7/66-2003 C-IV (3) dated 31.03.2009. However, the UGC in its meeting held on 12.08.2010 confirmed agenda item No.2.08, which reads as under:-

"The Commission further resolved that since both the above mentioned Regulations are prospective and not retrospective in nature, therefore, all candidates having M.Phil. degree on or before 10th July, 2009 shall remain exempted from the requirement of NET for the purpose of appointment as lecturer/Assistant Professor. Further, all candidates who have either obtained Ph.D degree on or before 31st December, 2009 and candidates who had registered themselves for Ph.D degree on or before 10th July, 2009 and are subsequently awarded Ph.D degree, shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor".

9. A reading of the said minutes, duly confirmed, shows that all candidates having M.Phil. degree on or before 10.07.2009 shall remain exempted from the requirement of NET for the purpose of appointment as Lecturer/Assistant Professor, which would be fully applicable to the case of the petitioner herein, who had got M.Phil. degree on 24.12.2008 and, therefore, would be exempt from qualification of NET. The respondent-University is

bound by the qualifications as prescribed by the UGC. In a judgment rendered by the Division Bench of this Court in **Neeraja Malik versus State of Haryana, 1997(1) RSJ 246**, it has been categorically held that the UGC has full power to grant relaxation in any of its regulations and there is no justification for any Government or University to ignore such relaxation. Therefore, once the UGC itself has not prescribed the NET qualification for appointment, provided the candidate has got M.Phil. degree, the Institution could not have ousted the petitioner on that ground.

10. As regards the argument raised by learned counsel for the respondents that the matter ought to be remanded back since the question of power of an Administrator to terminate the services of the petitioner has not been dealt with, this Court is not inclined to do so. The reason for not remanding the matter back to the Educational Tribunal to decide the matter afresh is that the services of the petitioner had been terminated as far back as in 2011 and he is seeking redressal of his grievance since then. Around 12 years have since passed and no useful purpose would be served in remanding the matter back when this Court can take note of Section 3 of the Haryana Private Colleges (Taking over of Management) Act, 1978, which is reproduced below:-

"3.(1) Whenever the State Government, on receipt of a report from the University concerned or otherwise, is satisfied that the Managing Committee or President of a College has neglected to perform or persistently makes default in the performance of duties and functions imposed on it under the Kurukshetra University Act, 1956, or the Maharshi Dayanand University Act, 1975, or the statutes, ordinances and regulations made thereunder, or exceeds or

abuses his powers and that it is expedient in the interest of College education to take over the management of such college, the State Government may, after giving the managing committee or the president of such college a reasonable opportunity of showing cause against the proposed action and after giving the managing committee or the president of such college, a reasonable opportunity of showing cause against the proposed action, and after considering the reply, if any, made by the managing committee or the president of such college by an Administrator, for a period not exceeding three years, as it may deem fit.

(2) Whenever the management of any college is taken over under sub section (1), ever/person Incharge of the management of such college immediately before its management is taken over, shall deliver the possession of the college property to the Administrator.

(3) After taking over the management of a college under this Section, the Administrator shall exercise all the powers of the managing committee and the president.

(4) During the period, the college remains under the management of an Administrator:-

(a) the managing committee and the president shall ceases to exercise powers and functions of management over the affairs of the college as long as the management vests in the Administrator;

(b) the service conditions of the employees of the college who were in employment immediately before the date on which the management was taken over, shall not be varied to their disadvantage;

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11. A reading of Section 3, Sub-Section 4 (b) of the said Act would clearly reflect that during the period, the College remains under the management of an Administrator, the service condition of the employees of the College, who were in employment immediately before the date on which the management was taken over, shall not be varied to their disadvantage. Meaning thereby, any employee who stood appointed/employed before an Administrator came to be appointed, would be secure and would not have his service conditions varied, which has been done in the instant case by terminating the services of the petitioner. The Administrator was appointed on 23.12.2010 after the petitioner had joined service on 17.07.2010. Therefore, this Court has no hesitation in holding that the order as passed by the Administrator is without jurisdiction and is liable to be set aside.

12. Consequently, the instant writ petition is allowed. Impugned order dated 29.10.2011 (Annexure P-6) being bad in law is set aside. The petitioner would be reinstated in service with all consequential benefits. Let the arrears of salary etc. be released to the petitioner herein within a period of three months from the date of receipt of certified copy of this order, failing which, the amount due shall carry interest at the rate of 6% per annum till payment.

(JAISHREE THAKUR)
JUDGE

10.02.2023
Chetan Thakur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No