

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

CWP-26929-2022

Date of decision : 28.02.2023

Apra Sharma

....Petitioner

Versus

Managing Committee Kaintal School (Senior) and another ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Harinder Sharma, Advocate
for the petitioner.

Mr. Arihant Jain, Advocate,
Mr. Arun Jindal, Advocate,
Mr. Varun Jindal, Advocate and
for the respondents.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed impugning the order dated 25th of August, 2022 (Annexure P-10) passed by respondent No.2 whereby services of the petitioner have been ordered to be terminated.

2. On 29th of April, 2009, the petitioner was appointed as Post Graduate Teacher with the respondent-School. Owing to certain allegations levelled against the petitioner, order dated 25th of August, 2022 was passed whereby the petitioner was ordered to be terminated w.e.f. 25th of November, 2022 (Annexure P-10). The petitioner approached Punjab Educational Tribunal impugning the aforesaid order. The said petition bearing No.129 of 2022 filed under Section 7-a (12) of the Punjab Affiliated Colleges (Security of Services of Employees) Act, 1974 is still

pending before the Tribunal. Along with the petition, the petitioner filed an application seeking interim relief. Since the Tribunal was functioning without proper quorum the application filed by the petitioner seeking interim protection could not be entertained and the same was declined for want of quorum vide order dated 10th of November, 2022. In the background of these facts and circumstances, the petitioner approached this Court by way of present petition.

3. Ld. Counsel for the petitioner has emphatically argued that the present writ petition would be maintainable in view of law laid down by Division Bench of this Court in **LPA No.117 of 2013** titled as '**Governing Body/Managing Committee versus Punjab School Education Board and others**' and till the Tribunal adjudicates upon the issue of interim protection, the petitioner is entitled for the same.

4. Per contra, Mr. Jain submits that the present writ petition itself is not maintainable that too in the absence of Tribunal having been impleaded as party. It has been further contended that there being a purely contractual relationship between the parties as per settled law no interim protection can be granted.

5. I have heard counsel for the parties and have gone through records of the case.

6. So far as the issue w.r.t. the maintainability of the writ petition is concerned, in the considered opinion of this Court, the same would be maintainable. This Court does not need to travel far to fetch the reason.

Division Bench of this Court in the case of **Governing Body/Managing Committee versus Punjab School Education Board and others** (supra)

held as under :-

“(9) Thus, the expression “all cases of disputes” contained in Section 7-A (12) of the Act is wide enough to encompass within its ambit the disputes between the employees of “un-aided institutions” and their “Managing Committee” also. The distinction between the Government aided Privately Managed Recognized Schools/ Colleges or un-aided Privately Managed Recognized Schools/Colleges may have some relevance or bearing on the nature of relief may be granted by the Tribunal in a given case. It is not true that the employee of un-aided Privately Managed Recognized Schools/Colleges is remediless and cannot ventilate his grievance before the Educational Tribunal, more so when the appellant has not been able to point out any express bar against the exercise of jurisdiction by the Educational Tribunal in such like matters.”

(emphasis supplied)

7. Same was the view reiterated by another Division Bench in **LPA No.892 of 2019** titled as '**Surinder Krishan Sharma vs. State of Punjab and others**', holding as under :-

“9. The expression “all cases of disputes” used in Section 7-A(12) of the Act is wide enough to encompass within its ambit any type of disputes between the employees of “unaided institutions” and their “Managing Committee” and the scope of the same cannot be held to be confined only to the punishment of dismissal, removal or reduction in rank. The expression used is wide enough to confer power upon the Tribunal to hear all such disputes arising between the employees and the Managing Committee of the institution.

10. The view being taken by us finds support from another Division Bench judgment of this Court in the case of Governing Body/Managing Committee and another v. Punjab School Education Board and others, LPA No. 1172 of 2013, decided on 08.07.2013. The matter can be examined from yet another angle. If the argument advanced by learned counsel for the appellant is accepted, it would result into an anomalous situation as there would be two forms for redressal of the grievances of the employees dependent upon the relief being sought by them.

11. In view of the above facts and discussion, we find no good ground to take a view different from the one taken by the learned Single Judge that the Educational Tribunal shall have the jurisdiction to entertain all the disputes between the employees and the Management of the Institution and thus we do not find any illegality in the judgment of the learned Single Judge in refusing to entertain the writ petition on the ground of existence of alternate remedy and upholding the preliminary objection of the State respondents.”

8. In view of the afore-settled proposition of law, this Court has no hesitation in holding that since the petitioner was well within her rights to invoke the jurisdiction of Tribunal and the Tribunal having declined to entertain the interim prayer made by the petitioner for want of proper quorum, the present petition at the behest of the petitioner invoking jurisdiction under Article 226/227 of the Constitution of India would be well maintainable. Resultantly, preliminary objection raised by counsel for the respondents is found to be misconceived and is thus rejected.

9. Coming on the merits of the case and taking leaf out of law laid

down by the LPA Bench in **Governing Body/Managing Committee versus Punjab School Education Board and others** (supra), the relief to be granted to the petitioner has to be in accordance with the settled proposition of law. It is not in dispute that so far as the relationship between employer and employee in a privately managed unaided school/ educational institution is concerned, the same is purely contractual in nature. It is contract of service.

10. Apex Court in case of **Kailash Singh vs. Managing Committee, Mayo College, Ajmer and others, (2018) 18 SCC 216** after considering ratio of law laid down in **T.M.A. Pai Foundation and others vs. State of Karnataka and others (2002) 8 SCC 481** and series of other case law held as under :-

“19. We may hasten to add that, of course, in the given situation no inquiry appears to have been done, but the response of the appellants to the show cause notice issued by the Board of Governors, itself shows as to what transpired and reveals the stand of the appellants. All this led to a complete lack of confidence in the employees, by the Board of Governors. The decision by the Board of Governors, which is really the Managing Committee as defined under Section 18 of the said Act, was a unanimous one as provided in sub-clause (iii) of the second proviso to Section 18 of the said Act, and even the required salary was paid, albeit in two instalments. However, the Management did commit a legal default in not obtaining the consent of the Director of Education in writing, which has caused this long drawn legal battle. At the cost of repetition, we may re-emphasise that the Mayo College is a recognised institution but is not financially aided in any manner by the Central or the State

Government, and the first proviso to Section 18 of the said Act has already been read down, and in our opinion, rightly so, in view of the 11 Judges Bench decision in *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*,² dealing exclusively with educational institutions, and a portion thereof, separately dealing with unaided educational institutions, as pointed out by learned senior counsel for the Management, Mr. K.N. Bhatt, under the heading of “Private Unaided Non-Minority Educational Institutions”. We have no hesitation in concluding that there can be no question of reinstatement in such a case, but the only remedy is by determining the compensation to be paid to the appellants, in view of the Management not having complied with the legal requirement of obtaining the consent of the Director of Education in writing.

20. We seek to buttress our conclusion with the following judicial pronouncements. In a seminal judgment in *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*,² an essential distinction is sought to be made in the case of private unaided educational institutions, opining that its essence is in the autonomy that the institution must enjoy in its management and administration. Thus, while in a government-aided institution, the Government may have a greater say in the administration, while in the case of unaided institutions, maximum autonomy in day-to-day administration is to be with the private unaided institution. *Supra*. This was held to be equally applicable to the teaching faculty and the members of staff, for maintaining excellence in education. In para 63 of the said judgment, the Bench took note of the grievance that wherever cases of misconduct are committed by teachers and members of the staff, for which disciplinary action is taken, the rules framed by the Government are against the Management, which inter alia require prior permission from a governmental authority, before initiation of disciplinary proceedings. The most relevant observation in para 64 is :

“In the case of a private institution, the relationship

between the management and the employees is contractual in nature.”

We may, however, add that thereafter the importance of a domestic inquiry, in accordance with the principles of natural justice, has also been emphasised. But then, in the present case, the show cause notice and the response to it, themselves seem to lend credence to the allegation of inappropriate behaviour of the appellants. The subsequent endeavour of Jeffry Jobard, through a communication to back-out, cannot really aid him to a large extent.

21. We may also note that were the appellants to file a civil suit, the evidence would have been recorded, and the matter gone into a greater detail in a factual context. This is relevant from both aspects of seeking restoration of services and quantification of damages. The significant aspect is that there should not be specific performance of a master-servant contract of service, and damages should be the appropriate remedy.

22. We may refer to *Vidya Ram Misra v. Managing Committee, Shri Jai Narain College*,⁶ where in para 4, it was observed as under: (SCC pp.624-25)

“4. It is well settled that, when there is a purported termination of a contract of service, a declaration that the contract of service still subsisted would not be made in the absence of special circumstances, because of the principle that courts do not ordinarily enforce specific performance of contracts of service (see *Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi* [AIR 1970 SC 1244 : (1970) 2 SCR 250 : (1970) 1 SCJ 790] and *Indian Airlines Corporation v. Sukhdeo Rai* [AIR 1971 SC 1828]). If the master rightfully ends the contract, there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So even if the master wrongfully

dismisses the servant in breach of the contract, the employment is effectively terminated. In *Ridge v. Baldwin* [(1965) 2 WLR 935 (HL)] Lord Reid said in his speech:

“The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them.”

23. The aforesaid view is also adopted by the Constitution Bench in *Sirsi Municipality v. Cecelia Kom Francis Tellis* ¹⁰. We may usefully extract the observations in the following paragraphs:

“15. The cases of dismissal of a servant fall under three broad heads.

The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and

restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief Act.

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

18. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. It (sic.)⁷ the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

19. The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee

in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant.”

24. The facts of the present case are covered by the master-servant relationship, i.e., the first category. There is no adjudication by invocation of a reference to the Industrial Disputes Act, 1947. Thus, the remedy would only be in damages.”

11. Keeping in view the nature of the relationship between the parties and the settled proposition of law, this Court does not feel it appropriate to grant interim relief to the petitioner as she may be entitled to adequate compensation in case her termination is found to be bad and not reinstatement.

12. Needless to say the rights of the parties shall be governed by the final adjudication of the matter at the hands of the Tribunal.

13. Anything observed herein shall not be construed to be an expression of opinion on the merits of the case.

14. Resultantly, the present writ petition is dismissed.

February 28, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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