



CWP-16238-1998 (O&M)

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

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**CWP-16238-1998 (O&M)
Date of Decision: 07.08.2024**

Ashwani Sharma

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. R.K. Malik, Senior Advocate with Mr. Kartikey Chaudhary,
Advocate for the petitioner

Mr. Rohit Arya, Deputy Advocate General, Haryana

Mr. Sukhandeep Singh, Advocate for Mr. Lokesh K. Sinhal,
Advocate for respondent no.3

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the order dated 27.11.1996, wherein the petitioner's appeal against termination of service has been dismissed by the second respondent; as also the order dated 22.07.1998, whereby revision against the same has been dismissed by the State Government.

2. The petitioner was appointed as Librarian by the third respondent/Governing Body of the College vide letter dated 26.10.1995, Annexure P-1. In terms thereof, he was to remain on probation for a period of two years, which could be extended further by the competent authority under the Rules. After serving in the College for about one year, his services were



terminated, vide order dated 18.10.1996, with immediate effect by paying one month's salary for the notice period. The petitioner filed appeal against the order of termination before the second respondent/Director under provisions of the Haryana Affiliated Colleges (Security of Service) Rules, 1993 (hereinafter referred to as 'the 1993 Rules') which was dismissed vide impugned order dated 27.11.1996. Revision against the order under Section 11 of the Haryana Affiliated Colleges (Security of Service) Act, 1979, was also dismissed by the Government vide impugned order dated 22.07.1998. Challenging these orders, the instant petition was filed.

3. Learned senior counsel for the petitioner has contended that the order of termination is *per se* illegal since it is in violation of Rule 8 of 1993 Rules which provides that before dispensing with services of an employee during probation, his case is to be referred to a committee consisting of President of the Management Committee and four other members, and decision regarding his/her services is to be taken in accordance with the committee's recommendation. In the petitioner's case, however, the matter was not referred to the committee, and his services could not have been terminated.

4. Learned counsel for the third respondent, on the contrary, contends that the petition is not maintainable as the order of termination, dated 18.10.1996, against which the petitioner is aggrieved, has not been challenged by him. Only the orders passed in appeal as well as revision are under challenge. He further contends that Rule 8 of the 1993 Rules is not applicable to the petitioner's case, since his services were terminated before completion of two years period of probation by simpliciter order of termination. The rule would have been applicable in case his services were to be terminated on completion



5. Heard.

6. It is apparent on record that the petitioner has not challenged the order of termination, dated 18.10.1996, despite being aggrieved against it. The third respondent had taken a specific objection to that effect in the written statement dated 22.08.1999, still the petitioner did not think it appropriate to challenge the order. This renders the petition not maintainable, as in the absence of challenge to the order of termination, no effective relief can be granted to the petitioner.

7. Further, provisions of Rule 8 of the 1993 Rules are also not applicable to the petitioner's case, as contended by learned counsel for the third respondent. The Rule reads as under:

8. Probation-(1) The persons appointed to any post in the Service shall remain on probation for a period of two years in the first instance, if appointed by direct recruitment and one year if appointed otherwise.

(2) On the completion of the period of probation of a person the appointing authority may-

- a) if his work or conduct has, in its opinion, been satisfactory, confirm such person from the date of completion of his probation period or if a permanent post is not available, declare that he has completed his probation satisfactory; or
- b) if the work or conduct of a person in its opinion has not been satisfactory-
 - i) dispencc with his services if appointed by direct recruitment, or revert him to his former post if appointed otherwise or deal with him in such other manner as the terms and conditions of his previous appointment permit.
 - ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation.



Provided that the total period of probation, including extension, if any, shall not exceed three years.

Provided further that if it is proposed to take action under sub-clause (i) or (ii) then the case of the official shall be referred to a committee consisting of the following members:-

1. President or his nominee
 2. Dean of the College of the University or his nominees.
 3. Nominee of the Govt. on the Managing Committee
 4. Principal of the College concerned.
 5. Principal of another college not under the same Managing Committee. The Managing Committee shall take a final decision in the matter in accordance with recommendations of this Committee;
- iii) if the Managing Committee does not agree with the report of the Committee constituted under Rule 8(b) (ii) or the committee is unable to come to a decision by Majority then the matter will be referred by the Principal to the Director whose decision will be final. However, an employee against whom an order of termination of services has been passed without complying with the provisions of these rules, may, within period of thirty days of the date of communication of orders make an application to the director whose decision will final in the matter.

7.1. Rule 8(1) clearly provides that persons appointed by direct recruitment shall remain on probation for a period of two years in the first instance. Clause (2) provides that on completion of the period of probation, the appointing authority has to look into work and conduct of the employee. If he has satisfactorily completed the period of probation, he can be confirmed in service. Sub-clause (b) to clause (2) provides, in case the employee's work or conduct is not satisfactory in the opinion of the appointing authority, his services can be dispensed with or his period of probation can be extended, based



upon the recommendations of the committee required to be constituted for the purpose in terms of second proviso to clause (2)(b).

7.2. Apparently, therefore, the procedure prescribed under clause (2) to Rule 8 is to be followed ‘on the completion of the period of probation of a person’, whereas, having been appointed on 26.10.1995, the petitioner undisputedly had not completed two years’ probation at the time of termination from service vide order dated 18.10.1996. The matter was, accordingly, not required to be referred to the committee in terms of second proviso to clause (2)(b). This is a case of termination simpliciter during probation, and these provisions will not be attracted, nor can the termination be termed illegal for not following the said procedure.

8. In view of the discussion, there is no merit in the petition, and it stands dismissed.

9. Pending application(s), if any, also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

07.08.2024
Payal

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>