



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.202

CWP-2024-1997 (O&M)
Date of Decision: 07.08.2024

Mukand Lal National Senior Secondary
School, Yamunanagar

.... Petitioner

Versus

Director, Secondary Education, Haryana
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. R.P. Daaria, Advocate for
Mr. G.S. Gandhi, Advocate for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

Mr. Vinay Kumar Pandey, Advocate for respondent no.3.

TRIBHUVAN DAHIYA, J. (ORAL)

The petition has been filed *inter alia* seeking a writ of *certiorari* quashing the orders dated 09/12.05.1995, Annexure P-25, passed by the second respondent, and 29.01.1997, Annexure P-26, passed by the appellate authority/first respondent, whereby termination of the third respondent from service by the petitioner/School was set aside directing his reinstatement, and giving liberty to the School Management to enquire into the allegations of financial irregularities against him afresh as per provisions of law, after affording full opportunity to defend.

2. Facts of the case in brief are, the third respondent joined as Accounts Clerk-cum-Cashier in the School on 16.05.1983, and worked as such till October 1986. The School accounts were not audited during this period. Audit for the period up to October 1986 was conducted some time in 1988 and 1991; whereupon, certain irregularities regarding withdrawal of money by the third respondent for depositing in the Provident Fund were noticed.



Accordingly, he was asked to explain the same vide letter dated 14.03.1991, Annexure P/2-B, and was later placed under suspension vide letter dated 06.01.1992, Annexure P-3. A civil suit was filed by the third respondent challenging his suspension without holding any enquiry. It was withdrawn on a statement by the School that the third respondent would be reinstated and regular enquiry into the charges would be conducted.

2.1. Accordingly, a charge sheet dated 21.09.1992, Annexure P-13, was issued to the third respondent. In order to furnish reply, he asked for relevant documents vide letter dated 10.10.1992, Annexure P-14, but was denied the same vide letter dated 17/21.11.1992, P-15, and an enquiry officer was appointed to conduct enquiry into the charges. Later, the enquiry report dated 24.03.1994, Annexure P-17, was submitted, concluding that all the charges levelled against the third respondent stood proved as he had tampered with the accounts record, misutilised the School funds and caused monetary loss to the Management. Thereupon, the School Management issued a show cause notice, dated 23.07.1994, Annexure P-18, proposing major penalty against him. Since a copy of the enquiry report was not furnished along with the show cause notice, the third respondent asked for the same vide letter dated 02.08.1994, Annexure P-19, to enable him to submit the reply. In response, the School Manager vide letter dated 05.08.1994, Annexure P-20, informed him that the enquiry report along with proceedings of the Managing Committee meeting, as also the show cause notice, were sent to him under Registered/A.D. post.

2.2. The third respondent sent reply to the show cause notice on 20.08.1994, but without waiting for his reply, the Management proceeded with the matter, and after considering the enquiry report and audit reports, terminated his service with immediate effect, vide letter dated 20.08.1994, Annexure P-21. The decision, along with relevant documents, was forwarded to the second respondent for approval, who after considering the record and



hearing the Management, as well as the third respondent, concluded vide impugned order, dated 09/12.05.1995, that the enquiry into the charges against the third respondent was not conducted as per the procedure laid down. He was not afforded due opportunity to defend himself. The order also recorded as under:

... (iii) the management decided to impose the penalty of termination and Sh. Joginder Lal Dua was given a show cause notice vide order dated 23.7.1994 to file representation against the proposed penalty within 21 days from the receipt of show cause notice. Sh. Joginder Lal Dua did not receive copy of enquiry report along with show cause notice and the same was supplied to him by the management on dated 11.8.1994. Sh. Joginder Lal Dua submitted his reply on dated 20.8.94 by registered post but the management passed the final order of termination on 20.8.94 without waiting and considering the reply of Sh. Joginder Lal Dua. ...

Accordingly, the termination was declared illegal and against the rules.

2.3. The Management filed appeal against the same before the first respondent. After considering the record and hearing the parties, the appeal was dismissed vide order dated 29.01.1997, concluding that the Principles of Natural Justice were not followed while terminating the third respondent's service. Accordingly, the Management was directed to reinstate the third respondent, while giving it liberty to enquire into the allegations against the latter afresh. The order reads as under:

... After hearing arguments from both the sides and perusing through the relevant record brought on the file. I had find no force in the arguments of the Management and the detailed and speaking order of District Education Officer, Yamunanagar dated 12.5.95 appears to be passed on the basis of relevant record and findings of the inquiry. The management has not further done justice to Shri Joginder Lal Dua by refusing him the help of a counsel while on the other side the Enquiry Officer was himself a legal person. Apparently again, the management acted in a hasty manner while passing order of termination without even waiting



for the reply of Sh. Joginder Lal Dua which had meanwhile been submitted. I further agree with the conclusion of District Education Officer, Yamunanagar that audit report was not got cross-checked through substantive evidence. On all these points, I find the order of Management bad in law and against the principle of natural justice and, therefore, agree with the decision of District Education Officer, Yamunanagar dated 12.5.95. The stay granted by the D.S.E. vide its order dated 26.5.95 is hereby vacated and the management is directed to take back Shri Joginder Lal Dua into its service with immediate effect. The management is further directed to ensure payment of dues to Shri Joginder Lal Dua within a period of one month of his joining in the service. However, the management would be at liberty to enquire into the allegations of financial irregularities against Shri Joginder Lal afresh, as per provisions of law and would also provide full opportunity to Shri Joginder Lal Dua to defend himself.

The Management approached this Court by filing the instant petition challenging the orders passed by the second as well as the first respondent.

2.4. On 17.10.1997, learned counsel for the petitioner/School made a statement before this Court that the Management was prepared to pay the third respondent fifty per cent of wages/subsistence allowance from March, 1994 up to date, within a period of two weeks. The order reads as under:

Mr. Gandhi in all fairness states that the Management is prepared to pay to respondent No.3, 50% of the wages i.e. subsistence allowance for the period from March, 1994 upto date within a period of two weeks from today subject to respondent No.3 furnishing a suitable surety/guarantee for its payment in case he is not found entitled. To come up for arguments on 19.11.1997. Payment to the extent of 50% of the wages be paid to the respondent No.3 on or before 10.11.1997.

2.5. Learned counsel for the third respondent, on instructions, states that he furnished security/guarantee of his residential house for the wages/subsistence allowance, but was paid the same only up to October 1997,



and not thereafter. He is entitled to the allowance as a matter of right, and its non-payment by the Management forced him into a life of penury.

3. In the aforementioned facts, learned counsel further submitted that the third respondent was not afforded due opportunity of hearing before termination of service. He was not allowed to defend himself, as the requisite documents were not given despite requests. The enquiry was conducted in a biased manner with the sole aim of holding him liable for the irregularities pointed out by the auditors, though the Principal himself was the Drawing and Disbursing Officer. Therefore, there was no basis to hold the third respondent guilty. Besides, he was not furnished a copy of the enquiry report, and the final order of termination was passed without considering his reply. The impugned orders are in accordance with law, and deserve to be upheld by this Court. Learned counsel also contends that the third respondent is entitled to subsistence allowance for the period he remained out of job, as the same was not paid to him despite undertaking given by the Management before this Court, and adequate security having been furnished to it for the purpose.

4. Learned counsel for the petitioner is not in a position to dispute the facts aforementioned.

5. Heard.

6. As per facts apparent on record, the third respondent was not provided requisite documents to defend himself against the charges levelled. *Firstly*, he was not furnished the requisite documents to reply to the charge sheet; *secondly*, even a copy of the enquiry report was not furnished to him along with the show cause notice, dated 23.07.1994, proposing the punishment. It was later given on 11.08.1994; accordingly, he could send the reply to show cause notice only on 20.08.1994 by registered post. However, the order of termination was passed on the same day, without taking his response into consideration. This caused him material prejudice as he was not afforded due opportunity to defend himself during the enquiry proceedings, as also before



the punishing authority. The Principles of Natural Justice were breached which vitiated the entire proceedings as well as the consequent order of termination. Accordingly, the impugned orders do not suffer from any infirmity or error of law in holding that the order of termination against the third respondent is not sustainable.

7. In view thereof, the petition is dismissed, and in terms of the impugned order dated 29.01.1997, the third respondent shall be taken back in service by the petitioner/Management and will be released all due benefits, including salary, in terms thereof after deducting the subsistence allowance/wages paid to him during pendency of the petition; to obviate the inflationary effect the arrears will be paid with interest at the rate of seven per cent per annum from the due date to the date of actual payment. In case the third respondent has reached the age of superannuation, he shall be entitled to the aforementioned benefits of salary and arrears with interest from the due date to the date of superannuation. Further, the petitioner will be at liberty to hold enquiry into the charges against the third respondent afresh in accordance with law. The directions are to be carried out by the petitioner within two weeks of receiving a certified copy of the order. No costs.

(TRIBHUVAN DAHIYA)
JUDGE

07.08.2024
Maninder

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