

CWP No.11335 of 2014

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARHSr. No.: 204**CWP No.11335 of 2014**
Date of Decision: 09.04.2024Mahila Mahavidyalaya

..... PETITIONER(S)

*VERSUS*State of Haryana and others

..... RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

...

PRESENT: - Mr. Raj Kapoor Malik, Advocate for the petitioner.

Ms.Tanushree Gupta, DAG Haryana.

Mr. Babbar Bhan, Advocate for respondent No.4.

Tribhuvan Dahiya, J (Oral)

The petition has been filed *inter alia* seeking a writ of certiorari quashing the order dated 19.05.2014, Annexure P-12, passed by the second respondent reinstating the fourth respondent in service, as also the confirmation letter dated 01.09.2006, Annexure P-5.

2. Brief facts relevant to adjudicate the matter are as under:

2.1. That petitioner is a privately managed College, getting grant-in-aid from the State Government with effect from 10.02.2009; it is affiliated to the third respondent-Maharishi Dayanand University. The fourth respondent was appointed as part time Clerk in the College on consolidated salary up to 31.03.2006, vide letter dated 25.07.2005 Annexure P-1. At that time, it was an unaided College being run by the Management on its own. He was confirmed in service vide Managing Committee resolution dated 12.08.2006, as conveyed to him vide impugned letter dated 01.09.2006. Since the fourth respondent was

Working in the College when it was taken on grant-in-aid, the Management

submitted his case to the Department for approval under grant-in-aid post but the request was turned down. Consequently, his service could not be regularized and he continued working on the self-financed post. The College found a copy of the Managing Committee's resolution, dated 29.07.2007, in the fourth respondent's personal file. The resolution had been submitted to the Department and a reference was made in it to an earlier resolution, dated 12.08.2006, which did not tally with the original resolution. With these facts, a notice dated 12.09.2009, Annexure P-3, was issued to the fourth respondent giving him an opportunity to explain the position.

2.2. Subsequently, the fourth respondent was charge-sheeted for disobeying the orders of President of the Management Committee on 11.07.2009, and drawing full pay for the suspension period, etc. vide charge-sheet dated 10.11.2009, Annexure P-6. However, his service was finally terminated by the College, vide order dated 28.12.2009, on the ground that having been appointed on self-finance basis, benefits of regular service could not be given as he had not been selected by a proper selection Committee in accordance with rules.

2.3. The fourth respondent challenged this termination by filing an appeal before the second respondent-Director General, Higher Education Department, which was accepted, vide the impugned order dated 19.05.2014, on the ground that his service could not have been terminated for the reason he was not charge-sheeted. Accordingly, he was ordered to be reinstated in service in the same capacity he was working before termination of service. The petitioner College has challenged this order of reinstatement.

3. Leaned counsel for the petitioner has contended that the impugned order is without jurisdiction, since there is no provision in The Haryana

Affiliated Colleges (Security of Service) Act, 1979, (for short, '1979 Act'),

which entitles the second respondent to entertain an appeal against the order of termination. He has placed reliance upon Section 10 of the 1979 Act, to submit that an appeal can be filed before the Director by an employee, who is aggrieved against an order imposing any penalty other than dismissal, removal or reduction in rank passed by the Management. Since the petitioner's service had been terminated by removing him from service vide the impugned order dated 19.05.2014, no appeal would lie to the Director. He could not have entertained the appeal and/or ordered the reinstatement.

4. Learned counsel for the fourth respondent, on the contrary, contends that the impugned order accepting the appeal is strictly as per provisions of the Act, and the Director was within jurisdiction to entertain the appeal and pass the order of reinstatement. The order of termination was passed without following the procedure laid down in the Haryana Affiliated College (Security of Service) Rules, 2006 (for short, 'the Rules') framed under the 1979 Act, as before imposing the major punishment of removal from service, the Management was required to take prior approval of the Director which was not taken. Accordingly, the appeal was maintainable.

5. Learned counsel for the parties have been heard, and with their assistance documents on record have been perused.

6. The only issue arises for consideration is, *whether the impugned order, dated 19.05.2014, entertaining the petitioner's appeal against termination is without jurisdiction?* To consider the issue, it is apt to make a reference to relevant provisions of the Act as well as the Rules.

Provision of the 1979 Act

Section 10

10. (1) Any employee aggrieved by an order imposing any penalty on him other than dismissal, removal or reduction in rank may,

within thirty days of the date of communication to him of such order, prefer an appeal to the Director in such form and manner as may be prescribed:

Provided that the Director may entertain the appeal after expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Director may, after hearing the parties, confirm, vary or reverse the order appealed from and may pass orders as he deems fit.

Provisions of 2006 Rules

Appendix-C

1. The following penalties may, for good and sufficient reasons, be imposed upon members to whom these rules are applicable, namely -

Minor punishments:

(i) to (iv) xxx xxx xxx

Major Punishments:

(v) Removal/Dismissal from service;

(vi) Reduction to a lower post or time scale or to a lower stage in a time scale;

(vii) Withholding of annual increment of pay with cumulative effect.

7. It is apparent on record that the petitioner's service was terminated, vide order dated 28.12.2009, on the ground that he could not be given benefits of regular service as he had not been selected/appointed in accordance with rules and remained engaged under the self-finance Scheme. A perusal of Section 10 of the 1979 Act makes it clear that an aggrieved employee can prefer an appeal to the Director against any penalty other than dismissal, removal or reduction in rank. None of the three penalties was imposed upon the petitioner, as he was terminated from service. This

termination cannot be termed as removal, as contended by learned counsel for the petitioner, because removal is dismissal from service which is a major penalty, as prescribed under appendix C to the 2006 Rules. That being so, the Director was within his rights to entertain the petitioner’s appeal against termination under Section 10 of the Act and pass the impugned order. Further, it is also apparent on record that the petitioner was terminated from service on the basis of charges for which he was not issued any show cause notice/charge sheet. The charge-sheet had been issued for disobeying orders of the President and drawing full salary for the suspension period instead of the suspension allowance, whereas the service was terminated on the ground of appointment not being in accordance with rules. This could not have been done being in violation of the Principles of Natural Justice. It was on this account that the termination was set aside by the Director vide impugned order dated 19.05.2014, which is unexceptional.

8. For the reasons recorded above, there is no merit in the petition and it stands dismissed.

(Tribhuvan Dahiya)
Judge

April 09, 2024
Meenu

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>