

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-715-2021 (O&M)
Date of decision:- 01.05.2024

State of Haryana and others
...Appellant(s)

Versus

Sahipal and another
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Deepak Balyan, Additional Advocate General, Haryana,
for the appellants.

Mr. R.K. Malik, Senior Advocate,
with Mr. Jagjeet Beniwal, Advocate,
for respondent No. 1.

* * * *

G.S. SANDHAWALIA, A.C.J. (ORAL)

1. The consideration in the present appeal is to the order dated 04.03.2020 passed by the learned Single Judge allowing CWP-16643-2015 and setting aside the order dated 10.07.2015 (Annexure P-7), whereby the respondent No. 1 – writ petitioner’s services were terminated from the post of Heavy Vehicle Driver against which he had applied in the year 2012 on contract basis.

2. The reasoning which weighed with the General Manager, Haryana Roadways was on the basis of the instructions received as such that the Central Board of Higher Education, New Delhi was a Board which was not recognized and was in the list of bogus institution and, therefore, the respondent No. 1 – writ petitioner as such did not fulfill the educational qualification for the post of Heavy Vehicle Driver. The learned Single Judge came to the conclusion that the instructions which were annexed on 19.06.2015 as Annexure R-3/T by the State in support of the dismissal order would not have retrospective effect as the respondent No. 1 – writ petitioner

was appointed on 19.01.2014 and, therefore, his services could not be terminated in view of the said instructions.

3. Learned State counsel appearing for the appellants has tried to convince us that reliance upon the judgement rendered by a Division Bench of the Delhi High Court in *Nek Mohammad Vs Union of India and others*, W.P. (C) No. 5135 of 2003 (decided on 04.06.2010) was not rightly done by the learned Single Judge.

4. We are of the considered opinion that the reasoning as such of the learned Single Judge is on the ground that the instructions dated 19.06.2015 could not have been with retrospective effect for which there is no defence as such by the State. A perusal of the paper-book would also go on to show that apparently after his joining on contract basis on 19.01.2014, the respondent No. 1 – writ petitioner was put to notice on 16.03.2015 (Annexure P-4) that his proof of education was not affiliated with the National Institute of Open Schooling (NIOS) and, therefore, the job had been got by fraudulent means and why his services be not terminated. Reply had been submitted to the said show cause notice by the respondent No. 1 – writ petitioner on 26.03.2015 (Annexure P-5) that the institute as such was recognized as per the letter dated 08.09.1990 (Annexure P-8B) and as per the letter dated 23.03.2015 issued by the Central Board of Higher Education, the educational certificate of the respondent No. 1 – writ petitioner had been found to be correct. The said letters of recognition and validity were attached with the said reply.

5. Learned State counsel has also taken us through the letter dated 08.09.1990 (Annexure P-8B) addressed by the Assistant Secretary, Ministry of Human Resource Development, Government of India, New Delhi to the Deputy Director Regional Education, Bhagalpur Sub Division, Bhagalpur, Bihar, where the Central Board of Higher Education, New Delhi is recognized from the Government of India and the educational qualification of

High School and Intermediate of the Central Board of Higher Education, New Delhi is equivalent to the educational qualification of Matric and Intermediate of Bihar.

6. Apparently, when the impugned order dated 10.07.2015 was passed, these factors were not kept into consideration. Rather, it has been recorded that there was no reply. It is also on record that there was another show cause notice dated 29.06.2015 (Annexure P-6) which is mentioned in the impugned order, but there is no reference to the earlier show cause notice dated 16.03.2015 to which reply had been given. In the written statement also the specific averment was made in paragraph 6 regarding the furnishing of the reply dated 26.03.2015 by the writ petitioner to the show cause notice dated 16.03.2015. There is an admission by the State that the said reply was received. There is no such valid consideration regarding the letter dated 08.09.1990 which was the defence as such of the respondent No. 1 – writ petitioner. In such circumstances, we are of the considered opinion that the order dated 10.07.2015 passed by the authorities also did not consider this aspect and, therefore, can be termed as a non-speaking order.

7. In such circumstances, for an additional reason, we feel that the order of the learned Single Judge is well justified and not liable to be interfered with.

8. The appeal being meritless, accordingly, stands dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

01.05.2024
Amodh Sharma

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