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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 11.09.2024

1) CWP-25087-2015

ARYA HIGH SCHOOL TRUST AND MANAGEMENT SOCIETY

...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

2) CWP-24873-2015

ARYA HIGH SCHOOL TRUST AND MANAGEMENT SOCIETY

...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Shubhkarman Singh Gill, Advocate
for the petitioner(s).

Mr. Harish Rathi, Sr. DAG, Haryana.

Mr. Karan Bhardwaj, Advocate
for respondent No.4.

TRIBHUVAN DAHIYA, J. (Oral)

These petitions are based upon similar facts involving common issues, accordingly, the same are being decided together. For brevity, the facts have been taken from CWP-25087-2015.

2. The petition has been filed seeking a writ of *certiorari* setting aside the order dated 22.08.2012, Annexure P-6, whereby the order of dismissal from service passed against the private respondent was set aside by the District Education Officer(DEO)/third respondent, and she was directed to

be reinstated in service; and the order dated 30.11.2012, Annexure P-7,



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whereby appeal filed by the petitioner/Management against the same was dismissed by the Director Secondary Education/second respondent.

3. Facts of the case in brief are, the private respondent (since deceased) was appointed as Science Teacher/Mistress in a school run by the Management on 20.07.1998, which received grant-in-aid from the State of Haryana. Later, she was placed under suspension, and charge sheeted on 05.07.2007 on account of some misconduct; the charges were proved in an inquiry. Thereafter, a show cause notice dated 14.09.2007, Annexure P-4, was issued, and she was finally dismissed from service vide order dated 18.10.2007, Annexure P-5.

3.1 The private respondent filed an appeal against the order of dismissal, dated 18.10.2007, before the third respondent/DEO, which was allowed and the dismissal order was set aside vide impugned order dated 22.08.2012, directing the Management to reinstate her in service within a period of thirty days. The Management preferred an appeal against the order before the second respondent/Director, Secondary Education, which was dismissed vide impugned order dated 30.11.2012.

3.2 In the connected petition, CWP-24873-2015, the private respondent was appointed as S. S. Master in the school on 22.08.2000. He was placed under suspension on 07.08.2006, Annexure P-3, and was dismissed from service vide order dated 20.04.2007, Annexure P-7, after inquiry into an alleged misconduct. His statutory appeal was also allowed by the DEO vide impugned order dated 22.08.2012, Annexure P-8, and the order of dismissal was set aside. The appeal preferred against it by the Management was dismissed by the Director, Secondary Education vide impugned order dated 30.11.2012, Annexure P-9.



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3.3 Despite the order of dismissal against the private respondents in both the petitions having been set aside, they were not allowed to join service by the Management. This forced them to file a joint writ petition, CWP-2473-2014 titled *Sushila Devi Science Mistress and another v. State of Haryana and others*, seeking a direction to reinstate them in service in terms of the order passed by the third and second respondents. The petition was allowed by a co-ordinate Bench, vide order dated 26.03.2015, directing the petitioners' (private respondents herein) reinstatement in service forthwith with all consequential benefits, by observing as under:

It is against this backdrop of facts that the present petition has to be decided. The undisputed facts are that despite their termination having been set aside and the appeal of the respondent No.4 against that having been dismissed and there being no stay, the respondent No.4 has been able to manage to avoid granting the due relief to the petitioners.

In the circumstances, the petition is allowed. The respondent No.4 is directed to reinstate the petitioners forthwith with all consequential benefits. It is further directed to compute the salary and allowances of the petitioners for the period they have been illegally deprived of the fruit of the orders in their favour and pay the arrears within a period of one month from the date of receipt of a certified copy of this order. In case the necessary payment is not made, the petitioners shall be entitled to claim the same with interest at the rate of 8% per annum from the date/s the amount/s fell down.



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At this stage, learned counsel for respondent No.4 prayed that back wages should not be granted to the petitioners since they have not worked on the posts. In normal circumstances, this plea may have been entertained but seeing the obstructive conduct of respondent No.4 and its attempt to somehow or the other avoid giving the benefit to the petitioners, I reject this plea.

3.4 Thereafter, the Management filed the instant petitions before this Court challenging the orders setting aside dismissal of the private respondents by DEO, and the orders dismissing the Management's appeals against it.

3.5 At the same time, the Management also challenged the order of co-ordinate Bench, dated 26.03.2015, before the Division Bench by filing LPA No.975 of 2015, which was disposed of vide judgment dated 20.09.2016, with the following directions:

(8) As noticed earlier, respondent No.1 (Sushila Devi) has unfortunately died on 13.12.2014. We are not inclined to go into the merits of this appeal qua her. We are informed that the deceased has left behind three legal representatives, namely, her husband and two children (one major and one minor). The appellant-Management is directed to release all the consequential arrears and other terminal benefits to the legal representatives of the deceased in accordance with law. The needful shall be done within a period of four months from the date of receipt of certified copy of this order.

(9) As regard to respondent No.2, we have heard learned counsel for the parties at a considerable length. It is not in dispute that the orders passed by the District Education



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Officer, Haryana and Director, Secondary Education, Haryana in their appellate capacities, are separately under challenge at the instance of the management in CWP Nos. 24873 & 25087 of 2015, which is still pending and since the legality of those orders is yet to be determined by this Court, we find no justification to accept the claim for consequential benefits at the instance of respondent No.2, at this stage. Till the above-cited writ petitions are decided on merits, such a claim being premature, respondent No.2 is held entitled to arrears of pay only w.e.f. the date of the order of learned Single Judge in these proceedings i.e. from 01.04.2015 onwards. These directions are without prejudice to the rights of the parties which are sub-judice in above-stated pending writ petitions.

4. In this factual background, learned counsel for the petitioner(s) contends that the impugned orders are liable to be set aside as the same have been passed on the assumed violation of Rule 110(d)(iii) of the Haryana School Education Rules, 2003 (for short, 'the 2003 Rules') by the Management in passing the termination orders. This is without basis as requirements of the Rule have been complied with. He has referred to the show cause notice, dated 14.09.2007, to contend that its copy was duly endorsed to the second and third respondent; similarly, the order of dismissal dated 18.10.2007, was also endorsed to both these respondents for information. It satisfied the requirements of Rule 110, and there was no reason for setting aside the orders of dismissal/termination.

5. Learned counsel for the private respondent(s), on the contrary, contends that the requirement under the 2003 Rules is clear and specific, that



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prior approval of the competent authority is required to be taken before dismissing an employee. Since such approval was not taken by the Management, nor conveyed by the competent authority ever, the impugned orders of dismissal were not sustainable. The same have been rightly set aside, directing the petitioners' reinstatement in service.

6. Heard.

7. The only issue arising for consideration in the case is, whether before awarding the major penalty of dismissal from service to the private respondent(s), the procedure laid down under the 2003 Rules was followed by the Management. To consider this issue, it is appropriate to refer to Rule 110, which reads as under:

110. Procedure for imposing major penalty sections 24(2), 8 and 9.

(a) (b) (c) xxx xxx xxx

(d) The disciplinary authority shall consider the record of the inquiry officer and record its findings on each charge and if the disciplinary authority is of opinion that any major penalty should be imposed, it shall:

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken against him and calling upon to submit his representation within the specified time of not less than 30 days;

(iii) on receipt of the representation, if any, made by the employee, determine what penalty, if any, shall be imposed on him before communicate its final decision to him it shall be referred to the appropriate authority for approval. The



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appropriate authority shall convey the approval/ disapproval to the managing committee within thirty days. If no decision is taken within such period, it shall be treated as approved. The managing committee thereafter communicates its final decision to the employee with a copy to the appropriate authority.

8. A perusal of the Rule 110(d)(iii) of the 2003 Rules shows, in case disciplinary authority/Management is of the opinion that any major penalty should be imposed on an employee, he/she is to be furnished a copy of the inquiry report, and given the notice in writing stating the action proposed to be taken, and call upon the employee to submit a representation within a period of thirty days. On receipt of the representation, if any, what penalty to be imposed is to be determined. Before communicating the final decision to the employee, it shall be referred to the appropriate authority/Director, Secondary Education for approval. The authority concerned is required to convey its approval or disapproval within a period of thirty days, failing which it has to be treated as approved. The Management is to thereafter communicate its final decision to the employee, also giving a copy to the authority. Accordingly, there is an explicit mandatory requirement to seek *prior approval* of the appropriate authority before imposing major penalty against a delinquent employee. Whereas, the petitioner passed the order(s) of dismissal against the private respondent(s) and conveyed it to them as well only by endorsing a copy of the order to the appropriate authority. Concededly, prior approval of the competent authority was not sought before communicating the penalty of dismissal from service. Mere endorsing a show cause notice and order of dismissal to the appropriate authority is not sufficient compliance of the requirement of sub-clause (iii), nor can it be

termed akin to seeking approval prior to imposition of penalty, as contended by learned counsel for the petitioner(s). Accordingly, the requirement under Rule 110(d)(iii) stands breached, and no exception can be taken to the impugned orders passed by the third and second respondent setting aside the private respondents’ dismissal from service and ordering their reinstatement in service on that account.

9. In view of the discussion, the petitions are dismissed, and the petitioner(s)/Management is directed to release all due/outstanding service/retiral benefits to the private respondent(s) with interest at the rate of seven per cent per annum from the due date to the date of actual payment, within a period of four weeks of receiving a certified copy of this order.
10. A photocopy of this order be placed on the connected file.

(TRIBHUVAN DAHIYA)
JUDGE

11.09.2024
Ad

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