



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

217

CWP-31020-2018

Date of Decision:29.08.2024

KAPIL KUMAR

...Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. K. L. Arora, Advocate
for the petitioner.

Mr. Krishan K. Chahal, Additional A. G., Haryana.

Mr. Sukhandeep Singh, Advocate
for respondents No.3 and 4.

TRIBHUVAN DAHIYA, J. (Oral)

This petition has been filed, *inter alia*, seeking a direction to the respondents to grant pay scales and other allowances, as revised from time to time, leave and contributory provident fund benefits to the petitioner, as admissible to other Lecturers in the College.

2. Facts of the case in brief are, the petitioner was appointed as Lecturer in Music in the third respondent-College, with effect from 01.08.2005, vide letter dated 31.07.2005, Annexure P-1. It was on a consolidated salary of ₹8,000 per month with stipulation that in case the subject/course is not continued or the post is abolished due to any reason by the University or the College itself, the appointment shall automatically stand terminated. After working for a couple of years, he was relieved from duty vide letter dated 28.01.2009, Annexure P-2, on the ground that his services



were no longer required. The relieving/termination from service was challenged by the petitioner by filing a civil suit for declaration with consequential relief of mandatory injunction before the Civil Judge (Junior Division), Faridabad, which was decreed vide judgment and decree dated 03.12.2013, Annexure P-3, directing the defendants/College to reinstate the petitioner and pay salary with interest. The College filed an Appeal against the said judgment before the District Judge, Faridabad, which was dismissed, vide judgment dated 30.10.2014, Annexure P-4, as also the Regular Second Appeal filed before this Court, vide judgment dated 17.04.2018, Annexure P-5. Thereafter, the petitioner submitted joining report in the College, vide letter dated 04.06.2018, Annexure P-6, but was not allowed to join. He, therefore, had to send the joining report by registered post, requesting that he be allowed to join duty and paid arrears of salary with interest, as per the decree. He also filed an Execution Application before the trial Court, seeking execution of the decree dated 03.12.2013. With these facts, he approached this Court by filing the instant petition.

2.1 It is also apparent on record that the petitioner was not appointed as Lecturer in Music against a sanctioned aided post; the appointment was on contract basis under a self-finance scheme. The fact is apparent from memo dated 21.05.2001, Annexure R-3/1, from the office of second respondent-Director of Higher Education, whereby the College was given 'No Objection Certificate' for introduction of music as a subject in B.A. from the session 2001-02. One of the conditions was that no financial assistance/grant in any form at any stage would be given by the State Government for the purpose, and the College would have to bear all the recurring and non-recurring expenditure of the classes for all times to come. Later, the subject of Music in



B.A. was discontinued from the session 2019-20, as apparent from the communication dated 18.02.2019, Annexure R-3/3, sent by the College to Dean, College Development Council, Maharishi Dayanand University, Rohtak.

2.2 During pendency of the instant petition, the petitioner compromised the matter with the College before the Executing Court by accepting an amount of ₹7,26,486 in full satisfaction of the decree, and withdrew the Execution Petition. Accordingly, the same was dismissed as withdrawn, vide order dated 04.05.2019, Annexure R-3/2, which reads as under:

Today the case was fixed for arguments on the objections. However, Learned counsel for the Decree-Holder appeared and suffered a statement in the court to the effect that if he be given amount as per the calculation submitted by JD and he will withdraw the present execution petition.

After some time both the counsel appeared and suffered a statement to the effect that matter has been compromised. Learned counsel for the JD suffered a statement to the effect that in view of the statement suffered by learned counsel for the Decree-holder Sh. C.P. Parashar in the morning, he tendered cheque of Rs.7,26,486/- as per the calculation submitted by Jds on 04.01.2019. Thereafter learned counsel for the DH Sh. C.P. Parashar suffered a separate statement to the effect that he received cheque no. 012277 dated 14.04.2019 of the sum of Rs.7,26,486/- from the learned counsel for the JDs in full satisfaction of the decretal amount and withdraws the execution



petition being fully satisfied on behalf of DH. Keeping in view the statement of Learned counsel for the DH, present execution petition is dismissed as withdrawn fully satisfied. File be consigned to record room, after due compliance.

3. In this factual background, learned counsel for the petitioner has contended that despite the compromise arrived between the parties before the Executing Court, the petitioner would be entitled to the claimed benefits as “he was allowed to join the College on 05.01.2019, and remained on duty for three days, thereafter, he met the Principal outside the College for taking him on duty but the latter informed that the post of Lecturer in Music was no longer in existence”. These facts have been mentioned in the replication filed on behalf of the petitioner to the written statement of third and fourth respondents.

4. *Per contra*, learned counsel for the College contends that the petitioner was never allowed to join, and that subject of Music had been discontinued with effect from 18.02.2019. Besides, the petitioner has willingly compromised the matter with the College by accepting the due amount before the Executing Court in full and final satisfaction of his claim in terms of decree. Therefore, the instant petition is not even maintainable.

5. Heard.

6. It is evident on record that the petitioner was appointed contractual Lecturer in Music on consolidated salary against an un-sanctioned post, as grant-in-aid was not being paid by the Government against it. Besides, the subject/course of Music in B.A. for which the petitioner had been appointed, was self-financing as apparent from the memo, dated 21.05.2001,

issued by the Director permitting its introduction. Since there was no



admission in the subject, the course was discontinued by the College with effect from 18.02.2019. Instead of executing the decree, dated 03.12.2013, the petitioner entered into a compromise by accepting ₹7,26,486 towards full satisfaction of the decree, whereby termination letter, dated 28.01.2009, had been declared illegal and the defendants/College was directed to reinstate him in service from the date of termination, and pay salary along with interest at the rate of six per cent per annum. This led to dismissal of his Execution Petition as withdrawn on 04.05.2019. After the compromise, the petitioner has no right to maintain the instant petition seeking pay, allowances and other benefits of service, etc., as his entire claim in this regard stands settled in terms of the compromise entered into by him with the College before the Executing Court. And there is no material on record to establish that he ever joined the service thereafter.

7. In view thereof, there is no merit in the petition and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

29.08.2024
Ad

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