



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

CWP-463-2020

Date of Decision: 26.08.2025

D.A.V. College Managing Committee and Another

...Petitioners

Versus

Chandigarh Administration and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. R.S. Cheema, Advocate
for the petitioners.

Ms. Aashna Gill, Advocate
for respondents No.1 and 2
(through Video Conferencing).

Mr. Shobit Phutela, Advocate and
Ms. Arundhati, Advocate
for respondent No.3.

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 20.03.2019 whereby Director Higher Education, Chandigarh has ordered to conduct fresh inquiry in terms of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short '1970 Rules').

2. Respondent No.3 is an employee of petitioner No.2-Mehr Chand Mahajan, D.A.V. College, Sector 36-A, Chandigarh. He was arrested by police on 10.11.2016 on the complaint of Manoj Garg, husband of Ritu Garg alleging harassment and sending obscene messages through Whatsapp. The petitioner placed him under suspension vide order dated 16.11.2016. He was issued chargesheet dated 08.02.2017. The

petitioner appointed Inquiry Officer who conducted inquiry. The report of Inquiry Officer was placed before governing body of the petitioner. The governing body proposed punishment of termination of services. The respondent vide communication dated 05.05.2018 forwarded its proposal to Director in terms of Section 4 of Punjab Privately Managed Affiliated Colleges (Security of Service of Employees) Act, 1974 (for short '1974 Act'). The proposal was sent for approval along with record. The respondent vide communication dated **20.03.2019** ordered to conduct inquiry against respondent No.3 under Rule 8 of 1970 Rules. The respondent further appointed Harjeet Singh, I.A.S. (Retired) as inquiry officer to enquire into charges against respondent No.3.

3. Mr. R.S. Cheema, Advocate assailing order dated 20.03.2019 passed by Director-respondent No.2 submits that impugned order has been passed beyond jurisdiction. The Director has no jurisdiction to conduct *de novo* inquiry. He has limited jurisdiction either to accept or reject proposal of the Management. He has no power to conduct fresh inquiry.

4. Learned counsel for the private respondents as well as official respondents submit that as per Section 4(3) of 1974 Act, the Director has power to accept or reject proposal of penalty of dismissal or removal from service. The Director is not supposed to act mechanically. He has been vested with power to consider representation of the employee. He has to verify whether employee has been victimised or there is *malafide* intention on the part of Management. This fact can be ascertained only through *de novo* inquiry. In the absence of *de novo* inquiry, it is not possible to ascertain whether there is *malafide* or

victimisation on the part of Management or not.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. From the perusal of record, it is evident that entire controversy revolves around reading of Sections 3 and 4 of 1974 Act which are reproduced as below:

“Section 3- Dismissal, removal or reduction in rank not be ordered except after inquiry

No employee shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Section 4 – Procedure to be observed before dismissal or removal

(1) The penalty of dismissal or removal from service shall not be imposed unless the same is approved by the Director.

(2) Whereafter the inquiry referred to in section 3, it is proposed to impose the penalty of dismissal or removal from service, the proposal shall be referred to the Director alongwith the relevant record and intimation about the proposal having been so referred shall be sent to the employee concerned also simultaneously.

(3) The employee may, within a period of thirty days of the receipt of the intimation referred to in sub-section (2), make a representation against the proposed penalty to the Director who may, after examining the record and giving to the parties an opportunity of being heard, by an order in writing, give his approval to the imposition of the proposed penalty of dismissal or removal from service, as the case may be, or refuse to give approval if the proposal is found to be mala fide or by way of victimisation or not warranted by the facts and circumstances of the case.

(4) Any party aggrieved by an order of Director under sub-section (3) may file an appeal to the College Tribunal, which may after giving to the parties an opportunity of being heard, pass such order as it may deem fit.”

7. A conspectus of Sections 3 and 4 reveals that Management has power to dismiss or remove or reduce in rank any employee. The said power can be exercised after conducting inquiry. The Management is bound to inform the delinquent charges against him and grant opportunity of hearing. As per Section 4 of 1974 Act, the order of dismissal from service cannot be passed unless it is approved by Director. Section 4 (2) of 1974 Act provides that proposal of dismissal from service shall be forwarded to Director along with relevant record. An intimation shall also be sent to employee concerned. The concerned employee has right to file representation before the Director. It is prerogative of Director to accept or reject proposal of dismissal from service. The Director may reject proposal if he finds that proposal is outcome of *malafide* or victimisation or is not warranted by facts and circumstances of the case. Any party feeling aggrieved from order of Director may file an appeal to Education Tribunal.

8. The respondent is claiming that as per Section 4 (3) of 1974 Act, the Director has power to conduct *de novo* inquiry. The said inquiry is inevitable because Director cannot come to a conclusion that employee has been victimised or there is *malafide* intention on the part of Management unless and until inquiry is conducted. The contention of respondent seems to be misconceived. The Director is not having inherent powers. His powers are circumscribed by Section itself. Section 4(3)

clearly provides that Director has power either to accept or reject proposal of dismissal from service or reduction in rank. The management is bound to forward record along with its proposal to dismiss an employee. The object of forwarding record is to make the Director familiar with the opinion of Inquiry Officer as well as documents brought on record while conducting inquiry. He has to consider representation of the affected party. On the basis of representation of the aggrieved party as well as record submitted by Management, he has to form an opinion as to whether approval should be granted to the proposal of dismissal from service or not. He has no right to conduct fresh inquiry. The Director has no inherent power. He is supposed to act within the limits prescribed by the Act. He is not an appellate or revisionary authority.

9. It is true that where an Act confers a jurisdiction, it impliedly grants power of doing all such acts as are essentially necessary to its execution. The Director while considering proposal of Management does not act as an Administrative Authority whereas exercises powers of quasi judicial authority. It cannot act mechanically. He has to apply his mind. He has to protect employee from being victimised or victim of *malafide*. It can exercise incidental or ancillary powers to actuate his power to accept or reject proposal of Management. Order to conduct fresh inquiry and that too by an Officer appointed by him cannot be called as exercise of incidental or ancillary power. He has no inherent powers, thus, cannot conduct inquiry to ascertain authenticity of enquiry already conducted. As per Section 3, Management is bound to conduct enquiry. Proper opportunity has to be granted to the employee. In the absence of specific provision, Director cannot conduct second enquiry. He is bound to

consider proposal along with record forwarded by Management and representation of the employee. The Director in the case in hand has exercised power under 1970 Rules which cannot be invoked while deciding proposal under Section 4(3) of 1974 Act.

10. The respondents have raised objection of alternative remedy. They claim that petitioner was supposed to file appeal before Education Tribunal against impugned order. Contention of respondents cannot be countenanced because respondent has not passed impugned order under Section 4(3) of 1974 Act whereas impugned order has been passed exercising powers conferred by 1970 Rules. In any case, the impugned order has been passed beyond jurisdiction. It is settled proposition of law that writ petition is maintainable against an order which is beyond jurisdiction. In case of question of jurisdiction, alternative remedy is no bar to entertain writ petition.

11. In the wake of above discussion and findings, this Court is of the considered opinion that impugned order deserves to be set aside and accordingly set aside. The matter is remitted back to Director to pass order, in accordance with law, on the proposal of the Management. Let the needful be done within two months from today.

12. The parties at the first instance are directed to appear before Director Higher Education, Chandigarh on 02.09.2025 and thereafter as directed by him.

(JAGMOHAN BANSAL)
JUDGE

26.08.2025
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No