IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28215-2017(O&M)
Date of decision:-4.10.2021

PGSD High School, Hissar through its Secretary Sh.Dawarka Parshad Aggarwal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ranjit Saini, Advocate
for the petitioner.

Mr.Sharad Aggarwal, AAG, Haryana.

Mr.Chanderhas Yadav, Advocate
for the respondent No.4

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H.S. MADAAN, J.

Case taken up through video conferencing.

Petitioner – PGSD High School, Hissar through its Secretary Sh.Dawarka Parshad Aggarwal has filed the instant writ petition against respondents i.e. State of Haryana through Secretary, Department of Education (Secondary Education), Chandigarh, Director, Secondary Education, Haryana, Panchkula, District Education Officer, Hissar and Karan Singh, craving for issuance of a writ in the nature of certiorari for quashing of order dated 27.11.2017 (Annexure P9) passed by respondent No.2 – Director, Secondary Education, Haryana, Panchkula vide which

order dated 5.8.1987 passed by petitioner – school terminating the services of respondent No.4 – Karan Singh has been set aside as well as order dated 21.8.2017 passed by respondent No.3 - District Education Officer, Hissar rejecting the appeal filed by respondent No.4 against the termination order dated 5.8.1987 and such respondent No.2 directing reinstatement of respondent No.4 – Karan Singh in service with immediate effect along with all the notional benefits.

Inter alia, in the petition it is contended that respondent No.4 – Karan Singh was appointed as Sweeper on regular basis by the petitioner – school on 30.11.1984; as per the terms and conditions of his employment, he was to remain on probation for a period of one year, which could be extended for such further period as the competent authority under rules may determine; the service conditions of respondent No.4 were governed by Haryana Aided School (Security of Service) Act, 1971 and Rules framed under the Act in the year 1974; that as per the Rule 8 of Haryana Aided School (Security of Service) Rules, 1984, a person appointed to the post is to remain on probation for a period of two years, if appointed by direct recruitment and one year if appointed otherwise and on completion of period of probation, the appointing authority may confirm such person, if his work and conduct in its opinion was satisfactory or declare that the said employee has completed his period satisfactorily. However, if work and conduct of the employee was not found satisfactory, then his services could be dispensed with, if appointed by direct recruitment and if otherwise, then to revert him to his former post or extend his period of probation; however the total period of

probation including the extension could not exceed three years; that because work and conduct of respondent No.4 – Karan Singh was not satisfactory, the petitioner – school terminated his services vide order dated 5.8.1987.

Feeling aggrieved, respondent No.4 – Karan Singh raised an industrial dispute and the matter was referred to the Presiding Officer, Industrial Tribunal – cum – Labour Court, Hissar, which vide award dated 16.9.1993 held that termination of services of respondent No.4 was justified and he was not entitled for any relief. The reference was answered accordingly.

Then respondent No.4 – Karan Singh filed CWP No.15853 of 1993 before this Court for quashing of award dated 16.9.1993 passed by Presiding Officer, Industrial Tribunal – cum – Labour Court, Hissar, which came up for hearing and the writ petition was dismissed vide judgment dated 21.10.2013. Respondent No.4 challenged that order by filing LPA No.92 of 2014, which came up for hearing on 7.8.2015 and this Court while permitting petitioner/respondent No.4 – Karan Singh to withdraw the appeal granted him liberty to avail alternative remedy.

Though under the rules, there is no provision of filing any representation or petition against the order passed by the management terminating the services of the employee during the probation period, still respondent No.4 filed an appeal before respondent No.3 – District Education Officer, Hissar on 28.9.2015. The said appeal was dismissed by respondent No.3 vide order dated 22.3.2016. Then respondent No.4 – Karan Singh filed an appeal before respondent No.2 – Director, Secondary

Education, Haryana, Panchkula and the matter was again taken up by respondent No.3 and the said appeal was dismissed by respondent No.3 vide order dated 21.8.2017. Then respondent No.4 – Karan Singh filed an appeal before respondent No.2 – Director, Secondary Education, Haryana, Panchkula, who set aside the order dated 21.8.2017 passed by respondent No.3 and quashed the termination order dated 5.8.1987 and reinstated the respondent No.4 in service with all notional benefits vide order dated 27.11.2017. That order is under challenge in the present writ petition.

Notice of the writ petition was given to the respondents, who put in appearance through counsel.

Respondents No.1 to 3 have filed a joint written statement, whereas respondent No.4 came up with a separate written statement. In the joint written statement filed on behalf of respondents No.1 to 3, the impugned order is defended as legal and valid. Similarly in the written statement reply filed respondent No.4, he has asserted that the impugned order passed by respondent No.2 does not suffer from any illegality or infirmity and there is no reason to set aside the same.

I have heard learned counsel for the parties besides going through the record.

A perusal of the appointment order of respondent No.4 placed on record as Annexure P1 goes to show that as per terms and conditions mentioned in the order, the petitioner was to remain on probation for a period of one year, which could be extended for such further period as the competent authority under the rules may determine. The services of respondent No.4 were dispensed with vide order dated

5.8.1987, copy of which being Annexure P2. The operative part of the order is as follows:

> *"You are not coming on duty in the school since 4.7.1987 nor you have sent any application for leave. You have been written vide this school letter dated 27.7.87 but you have not submitted any reply. Efforts were made to call you by sending special messenger but you have not submitted any satisfactory reply. Due to you absence dirtiness has spread around the school for which you are responsible. You were already warned once that you are not performing you duties well and remained absent. You have given assurance in writing that in future you will not do this mistake. From the above facts it is clear that you don't interested in the service. Therefore, today on 5.8.87 your services are hereby terminated. You can collect your old dues by coming on any working day in the school."*

Feeling aggrieved by this order, respondent No.4 had raised an industrial dispute, which was adjudicated by Presiding Officer, Industrial Tribunal – cum – Labour Court, Hissar and vide order dated 16.9.1993, the termination of services of respondent No.4 was held to be justified and in order and it was observed that respondent No.4 – workman was not entitled to any relief. That order was challenged by respondent No.4 in this Court by way of filing CWP No.15853 of 1993, which was decided on 21.10.2013 by a speaking and well reasoned order. For ready reference, the relevant part of the judgment is being reproduced as under:

Appointment letter (Annexure R-1) of the petitioner is self-speaking. It reveals that the petitioner was taken in employment with certain terms and conditions. The petitioner was initially on probation for one year. Such probation could be extended upto three years.

Respondents No.2 and 3 had given full opportunity and liberty to the petitioner to regulate and self-discipline himself but he allegedly had been depicting remissness in performance of his duties. Respondents No.2 and 3 had been generous and benevolent enough; they had been granting him extension in probation period every year and had also been advising him to improve his functioning. It was the final extension of probation period which was for the third consecutive year.

Merely because services of the petitioner were dispensed with during the probation period, his termination cannot be said to be stigmatic. Assertion of learned counsel for the petitioner is that impugned order (Annexure P-1) was penal in nature as it was preceded by indictment of the petitioner in a departmental inquiry and further that the impugned order had been passed without hearing the petitioner and, thus, was of no legal consequence. This assertion of the petitioner is completely mis-founded. No doubt, if dispensing of services of a probationer is in the nature of a punishment, it would become unsustainable. However, if order of termination is innocuous and is not penal in nature, it is legally sustainable.

The petitioner was working as a Sweeper. It is an admitted case of the petitioner that he was not attending his duties

since 4.7.1987. There was neither any intimation nor information by him seeking leave of the authorities. He was called upon to join his duties vide communication of 27.7.1987. Special messenger was also sent to request him to join his duties. Neither he gave satisfactory reply nor furnished any explanation. Non-performance of duty by a Sweeper for days together would entail havoc. Consequences would be grave, especially in the rainy season when there would be garbage all around. During the month of July, it would even further be disastrous. No explanation, either oral or in writing, was submitted by the petitioner.

In these circumstances, when it was an admitted case of absence from duty, when despite opportunity having been given by respondents No.2 and 3 in writing and through special messenger calling upon the petitioner to join his duties and when he had not come present, there is nothing wrong in dispensing with services of the petitioner during his probation period. There was no necessity of holding a departmental inquiry when absence from his duty was admitted by the petitioner.

The workman – respondent No.4 had challenged the judgment of the Single Bench before a Division Bench by way of filing LPA. The order passed on 7.8.2015 in that case was as under:

"Learned counsel for the appellant submits that in view of the decision of this Court in "Shiv Bahadur Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and others, in LPA No.510 of 2014 decided on 10.09.2014, he may

be allowed to withdraw the present LPA with liberty to avail alternative remedy as has been given in the said decision.

Mr..R.S. Saini, Advocate for the respondents has no serious objection to the same.

Accordingly the present appeal is dismissed as withdrawn with liberty to the appellant to avail alternative remedy in accordance with law."

In nutshell, we can say that the Labour Court and this Court had come to the conclusion that since services of the workman were dispensed with during the period of his probation, there was no necessity of holding any departmental inquiry. As respondent No.4 – Karan Singh had withdrawn the LPA, this finding is final and binding upon respondent No.4 and he cannot wriggle out of the same. Rather he is estopped from challenging this finding in terms of Section 115 of the Evidence Act and furthermore this finding operates as resjudicata in terms of Section 11 CPC.

When the matter went before District Education Officer, Hissar – respondent No.3, the said appeal was dismissed by respondent No.3 vide order dated 22.3.2016. Then respondent No.4 – Karan Singh filed an appeal before respondent No.2 – Director, Secondary Education, Haryana, Panchkula and the matter was again taken up by respondent No.3 and the said appeal was dismissed by respondent No.3 vide order dated 21.8.2017. However, Director, Secondary Education, Haryana, Panchkula – respondent No.2 vide order dated 27.11.2017 copy Annexure P9 concluded as under:

"*Therefore, the order dated 21.8.2017 passed by District Education Officer, Hissar are hereby set aside and the termination order dated 5.8.1987 passed by the Head Master PGSD High School, Hissar in r/o Sh.Karan Singh of the said school are also quashed with immediate effect by reinstating him in service along with all the notional benefits which were admissible to him if he had continued in service as a Sweeper in PGSD High School, Hissar. The Secretary PGSD High School, Hissar is directed to comply with these orders immediately under intimation to the Officer.*

I pass an order accordingly."

The order had left the petitioner – school aggrieved.

The impugned order passed by Director, Secondary Education, Haryana, Panchkula suffers from various infirmities showing that it has been passed without due application of mind by misappraisal of the factual position and wrong interpretation of law ignoring the judgments passed by this Court in earlier writ petition discussed above. Director, Secondary Education, Haryana, Panchkula proceeded on the assumption that services of the official had been terminated as a punishment for some misconduct attracting Section 3 of the Rules, whereas it was not so and rather services of the petitioner were dispensed with during the period of probation for the reason of his work and conduct being not satisfactory in terms of Rule 8 of Haryana Aided School (Security of Service) Rules, 1984. Dispensing with services of an employee without holding an inquiry during the period of probation can

be legally and validly done. Such action of the employer for the reason of the act and conduct of the employee being not satisfactory does not mean that it is stigmatic in nature requiring holding of an inquiry. The whole approach of Director, Secondary Education, Haryana, Panchkula was misdirected and erroneous. The order passed by him cannot stand judicial scrutiny and is not sustainable. It has to be kept in mind that the employee took recourse to the departmental remedy under Haryana Aided School (Security of Service) Act, 1971 after exhausting judicial remedy when it should have been vice-versa.

The appeal filed by the employee was after about 30 years of the termination order at a highly belated stage without giving any justification for not doing it earlier soon after passing of the order. The petitioner has stated in the replication that as per Haryana Voluntary State Education Rules, the Government has decided to take over the posts of Sweepers, Maali, Chowkidar, Peon, Waterman etc. working in aided schools, therefore officials working on these posts have been moved to Government schools. The petitioner/school is no more an aided school and is a private institution. Thus respondent No.4 has no claim over the aided post, which has been taken over by Haryana Government.

Learned counsel for the petitioner has referred to a judgment passed by a Division Bench of this Court in case ***Anita Sharma Versus State of Haryana and others, 2011(3) S.C.T. 38*** wherein dealing with case of appellant, who was appointed as Social Studies, Mistress on probation for a period of two years, though later on her probation was extended by one year, however, her services were terminated on account

of unsatisfactory work, it was held that since services of the appellant were terminated before completion of maximum period of three years provided by Haryana Aided Schools (Security of Service) Rules, 1974, no right had accrued to appellant to hold the post on permanent basis.

He had referred to another judgment by a Division Bench of this Court in that regard titled ***Ram Devi Versus Director, Secondary Education Haryana, Chandigarh and another, 1998(3) RSJ 132***. Para No.2 of that judgment being quite relevant is reproduced as under:

> *2. We have heard counsel for the petitioner and in our opinion, there is no merit in the writ petition. The argument of the learned counsel for the petitioner is that the order dated 15.5.1995 dispensing with the services of the petitioner was in fact an order of removal passed on account of the alleged mis-conduct of the petitioner and since the procedure prescribed by Section 3 of the Haryana Aided Schools (Security of Service) Act, 1971 (for short the Act) had not been complied with, the order was liable to be set aside. It is urged that the Vice President of the school had charge-sheeted the petitioner on 8.5.1995 and even though she submitted a detailed reply the same was not considered and the petitioner has been punished for the irregularities/short comings pointed out therein. There is no merit in this contention. The petitioner was on probation and her work and conduct was being watched by the institution. The same was not found satisfactory and the Vice President brought to her notice the irregularities and lapses committed by her during her short tenure as a Principal. No doubt,*

the petitioner submitted a detailed reply but instead of punishing the petitioner, the Manager of the school thought that since she was on probation her services could be dispensed with in terms of the appointment order. He, therefore, dispensed with her services without resorting to the procedure prescribed for imposing a punishment. It is well settled that whenever the competent authority is satisfied that the work and conduct of a probationer is not satisfactory his services can be dispensed with on account of his unsuitability. Where a probationer is guilty of misconduct, the employer will have a choice either to terminate his services in accordance with the terms and conditions of his employment or it may decide to take punitive action against the probationer. If the employer decides to take punitive action it will have to hold a formal inquiry and follow the procedure prescribed by law and afford an opportunity of hearing. On the other hand, it is open to the employer not to take any punitive action and only dispense with the service as the delinquent employee was only a probationer. In the instant case, the Manager of the school decided to dispense with the service of the petitioner and did not take any punitive action. Therefore, it was not necessary for him to allow the procedure prescribed by Section 3 of the Act. No fault can thus be found with the action of the management in dispensing with the services of the petitioner on the ground that the work and conduct were not found satisfactory during the period of probation.

On the other hand, learned counsel for the respondent No.4 has also placed reliance upon various judgments. First being ***S.B.N.S.D. Girls Senior Secondary School Versus State of Haryana and others, 2016(1) RSJ 568*** wherein dealing with a case where petitioner was working as a Peon against duly sanctioned post and there was no instances of unsatisfactory work, the petitioner was working in the school as per interim order in her favour but the management of the school had not sought any further direction or modification of the interim order nor early hearing of the case suggested that during integrum, there was no serious complaint against the working of respondent No.3, as such there was no reason to dispense with the services on the ground that work or conduct was allegedly unsatisfactory in 1997-98.

He has further pressed into service ***Managing Committee of Bharti Shiksha Samiti Versus State of Haryana and others, 2002(2) RSJ 473***, which was a case where managing committee of an aided school had terminated the services of respondent – teacher for the reason that she did not correctly disclose the factual position about her earlier experience when she applied for the post of Head Mistress. It was observed that before terminating her services, the managing committee was required to hold a regular department inquiry by following the procedure envisaged under Rule 28 of the 1974 Rules and as it was not so done, the order of termination was held to be passed in violation of provisions of the Act and the Rules and no defect was found with the orders passed by the DEO and the Director Secondary Education in setting aside the termination order.

He has further placed reliance upon ***Satyawati Versus State***

of Haryana and others2016(4) SCT 60 and ***Rajinder Singh Versus Punjab and Haryana High Court, 2017(5) SLR 720*** in support of his contention that an inquiry into the matter was required to be held before dispensing with services of petitioner.

However, those judgments referred to by learned counsel for respondent No.4 do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

Now the question arises as to whether in view of clear and categoric findings recorded by the Labour Court and affirmed by Single Judge of this Court, such findings having attained finality since LPA filed by the workman had been withdrawn by him, now the workman cannot wriggle out of those findings. Rather it is a clear cut case of *res judicata*. The matter having been decided by the Court of competent jurisdiction, it cannot be reopened and the administrative authorities cannot override the decisions by the Courts of competent jurisdiction. Although learned counsel for respondent No.4 has contended that originally the period of probation of respondent No.4 was for one year, which was not extended by way of passing specific orders, therefore terminating services of such respondent without adopting proper procedure i.e. serving any charge-sheet upon him, getting his reply, instituting an inquiry against him and then acting on the basis of such report, the order dispensing with services of respondent No.4 cannot be sustained.

However, learned counsel appearing for the petitioner has categorically stated that the workman himself had raised the industrial

dispute, which was adjudicated upon by the Labour Court, Hissar having jurisdiction in the matter vide a detailed judgment, copy of which being Annexure P3. In that very judgment while deciding issue No.1, there is reference to admission of Karan Singh in his cross-examination that after he was appointed vide letter dated 30.11.1984, initially he was on probation, which period was extended. There is reference to letters dated Ex.M8 and Ex.M9 respectively, proved in evidence by the management to show that probation period of workman was extended up to 30.11.1987. Therefore, the termination of services having taken place vide order dated 5.8.1987 within period of probation and there was no necessity of management holding any inquiry for doing that.

The order passed by the management dispensing with services of workman is not stigmatic. Therefore, no inquiry into the matter was required to be conducted. The impugned order passed by respondent No.2 – Director, Secondary Education, Haryana, Panchkula setting aside the order dated 5.8.1987 passed by the management dispensing with the services of respondent No.4 cannot be upheld and is liable to be set aside. The order is certainly not as per law. The reinstatement of respondent No.4 was wrongly ordered by respondent No.2. The same is hereby set aside by way of acceptance of the present writ petition.

The petition stands allowed accordingly.

4.10.2021 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No