

(1997) 12 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 13275 of 1992

Smt. Kamlesh Kumari

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: Dec. 9, 1997

Acts Referred:

- Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 - Section 4
- Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 - Rule 17(4)

Citation: (1998) 118 PLR 433

Hon'ble Judges: H.S. Bedi, J

Bench: Single Bench

Advocate: P.S. Patwaria and Nidhi Gupta, for the Appellant; Vinod Kumar Sharma, G.S. Grewal, A.G. and H.S. Gill, D.A.G. for Respondent Nos. 1 to 3, for the Respondent

Final Decision: Allowed

Judgement

H.S. Bedi, J.

The facts taken from the petition are as under :-

The petitioner was appointed as a Headmistress in the Mandi Harding Ganj High School, Kapurthala (hereinafter referred to as "the School"), a privately managed government aided school. In the months of June, 1985, the petitioner intercepted certain objectionable letters written by one Vipan Kumar son of Mr. Bal Krishan (stated to be one of the most influential members of the School Managing Committee) to a girl student of the school. This misconduct was brought to the notice of the petitioner by the girl student herself vide Annexure P-1 to the petition and a report was also lodged by the father of the girl with the police. The petitioner being the Headmistress of the school and thus being fully responsible for the maintenance of discipline and for the security of the girl students brought the

complaint to the notice of the Managing Committee. It is the petitioner's case that instead of taking action against Vipan Kumar, the Managing Committee under the influence of Bai Krishan, directed its wrath against the petitioner. Various documents have been put on record to indicate that the petitioner continued to suffer harassment on account of the steps that she had taken and at some stage, she also apprehended danger to her life. Faced with this attitude of respondent No. 5, the managing Committee, the petitioner proceeded on leave on 7th August, 1985 on the basis of her application Annexure P-25 in which she referred obliquely to the shabby treatment meted out to her; and before doing so, handed over the entire school record to the clerk against receipt Annexure P-26 dated 8.8.1985. The Managing Committee also held an emergent meeting and decided vide its resolution dated 11.8.1985, Annexure P-28 to the petition that the petitioner should be allowed to proceed on two years leave without pay so that the controversy which had cropped up could, in the meanwhile, settle down. The Committee also resolved that the petitioner had conducted herself with dignity and responsibility while working as Headmistress of the School and two certificates of appreciation Annexures P-29 and P-30 dated 17.8.1985 were also given to her. It is the petitioner's case that she had not applied for long leave but had been forced to go by the Managing Committee. She, accordingly, filed repeated representations including Annexures P-32 to P-34 to the Managing Committee calling upon them to permit her to join her duties. It is further the petitioner's case that though the Managing Committee had itself vide Annexure P-28 ordered two years leave to the petitioner but the said leave was cancelled vide letter dated 15th October, 1985 Annexure P-36 to the petition and she was also placed under suspension with retrospective effect from 17.8.1985 and a chargesheet dated 9.11.1985 Annexure P-37 was also served on her; one of the main allegations being that she had been absent without leave. The petitioner applied to the Managing Committee for the supply of the evidence that was to be used against her but received no reply. She, nevertheless, submitted her explanation on 5.2.1986 vide Annexure P-39 to the petition. While the matter was yet pending before the managing Committee, the petitioner filed a representation to the D.P.I. (Schools), Punjab, under Rule 17(4) of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 (hereinafter called "the Rules") praying that she be reinstated and also be given subsistence allowance as per rules for the period of her suspension. Vide Annexure P-41 dated 1.7.1986 the D.P.I. (Schools) directed the Managing Committee to pay the subsistence allowance and to allow her to join her duty as her suspension beyond six months was bad in the light of Rule 13 of the Rules. The Managing Committee, however, did not comply with the order of the D.P.I., and, informed her that infact no order of suspension had been passed against the petitioner. On receipt of this letter, the D.P.I, vide Annexure P-42 dated 19.8.1986, wrote to the Managing Committee that the fact that the petitioner stood suspended was evident from letter. No. 542/A/S.P.L. dated 15.10.1985 written by the Managing Committee to the D.P.I, and as such, the petitioner be paid the subsistence allowance and also

be permitted to join duty immediately. The Managing Committee, however, instead of complying with the order of the D.P.I, dismissed the petitioner vide order dated 18.7.1986 vide Annexure P-43 to the petition. This order was, however, revoked by the Managing Committee itself vide Annexure P-44 dated 30.7.1986 but a fresh order Annexure P-46, dismissing her from service was passed on the basis of a resolution of the Managing Committee dated 17.9.1986. The petitioner, thereafter, filed a representation before the D.P.I. (Schools) impugning this order inter-alia on the ground that as the prior approval of the D.P.I, had not been taken as envisaged u/s 4 of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 (hereinafter called "the Act") read with Rule 18(3) of the Rules, the said order was bad in law. The D.P.I., however, did not take any action on her representation for quite some time allegedly on account of the influence that had been put on him by the Managing Committee. The matter was finally heard in 1987 and it is the petitioner's case that the D.P.I. directed her to go and join her duties on the assurance that she would soon receive a copy of the order. The petitioner was, nevertheless, not allowed to join duty and instead of receiving an order in her favour from the D.P.I, (as stated by her), she received a copy of a letter dated 29.9.1987 written by the D.P.I, directing the Managing Committee to appear before him on 28.10.1987. The petitioner appeared before the D.F.I, on that date as well and arguments were re-heard and on 23.10.1987, the petitioner received a copy of the letter dated 23.10.1987 Annexure P-51 to the petition from Sh. S.S. Kishan Puri, D.P.I, addressed to the Managing Committee which directed as under :-

- (i) To fix another date for giving opportunity a second time in respect of the charges levelled against the petitioner;
- (ii) The date 28.10.1987 which had been fixed for hearing of the appeal stood postponed and
- (iii) The petitioner was directed to co-operate with the sub-committee already appointed.

The petitioner, thereafter, filed an appeal u/s 4(2) of the Act before the School Tribunal and the order Annexure P-51 to the petition was set aside by the tribunal vide Annexure P-56 and a direction was issued to the D.P.I, to decide the representation filed by the petitioner on merits, as it was not open to him to order a de-novo enquiry. Sh S.S. Kishan Puri, D.P.I. (Schools) heard the matter once again on 20.7.1988 and vide order dated 9.9.1988, Annexure P-55-A to the petition granted ex-post-facto approval to the penalty of dismissal proposed by the Managing Committee in its resolution dated 17.9.1988. The D.P.I. confirmed the findings of the Managing Committee that the petitioner had forged the order Annexure P-28 and the appreciation letters Annexures P-29 and P-30. The petitioner aggrieved by the decision of the D.P.I. filed appeal No.10 of 1988 before the Schools Tribunal, u/s 4 of the Act vide memo of appeal Annexure P-56 to the petition. The Presiding Officer of the School Tribunal, S. Paramjit Singh, I.A.S., was pleased to stay the order of the

D.P.I. Annexure P-55A and further order that the case be fixed for hearing on 15.11.1988. The appeal was heard on a number of occasions and ultimately, the petitioner received a copy of the order dated 19.11.1990 Annexure P-58 to the petition dismissing her appeal. The petitioner, thereafter, approached this Court in C.W.P. No. 1676 of 1991 (Annexure P-59) and after notice of motion the respondents including the managing Committee put in appearance. It was noted by the Court that one of the primary allegations against the petitioner was that she had forged the signatures of Mohan Lal, President of the Managing Committee of the School on the document Annexure P-28 to the petition to show her as being "on leave for two years". On June 6, 1991 the Division Bench Court ordered that the admitted signatures of Mohan Lal aforesaid as also the disputed ones on Annexure P-29 be got examined from Dewan K.S. Puri the Handwriting Expert from Patiala. The report of the Hand-writing Expert was, thereafter, received and he opined that the disputed signatures on Annexure P-29 were, in fact, those of Mohan Lal aforesaid. Vide its order dated 30.9.1991, the Division Bench accordingly, disposed off the writ petition with a direction that the report of the Handwriting Expert alongwith the copy of the order of the Division Bench be forwarded to the School Tribunal, for reconsideration of the case. The matter was, thereafter, heard by Sh. Hari Ram, the Presiding Officer of the Tribunal and vide his order dated 21.2.1992, the appeal was once again dismissed. The Tribunal noticed that there were in all of about 19 charges against the petitioner and even if the charge relating to forgery was to be dropped for whatever reason the other charges were sufficient to maintain the petitioner's dismissal. The Tribunal also observed that it was possible that the petitioner had been able to get a blank paper signed by Mohan Lal and the contents relating to Annexure P-29 could well have been typed on that paper subsequently. Aggrieved thereby, the petitioner approached this Court by way of this writ petition once again and argued the matter in person. The petition was, however, dismissed in limine on 30.9.1992. The petitioner thereafter, filed SLP No. 1221 of 1993 in the Hon'ble Supreme Court and after the SLP was granted. Civil Appeal No. 3833 of 1993 was duly registered.

This appeal was allowed vide order dated 3.8.1993 in the following words:-

"Having heard counsel we are of the opinion that this was not a matter which the High Court should have dismissed in limine. Certain issues need adjudication but lest any observation made by us may cause prejudice, we refrain from doing so. We would, however, like the High Court to re-examine the matter and pass a speaking order so that this Court may be able to appreciate its view, if such an eventually arises. We, therefore, allow this appeal and remit the matter to the High Court as observed hereinabove making no order as to costs. Having regard to the time which has already elapsed we are sure that the High Court will accord priority to it."

It is in this situation, that the matter has come to this Court once again. The petition was, accordingly, admitted by the Division Bench. Replies have been subsequently

filed on behalf of the Managing Committee and most of the allegations levelled by the petitioner detailed above, have been denied. It has been stated that the resolution Annexure P-28 dated 17.8.1985 ordering her to go on leave for two years and the relieving order and the letters of appreciation Annexures P-29 and P-30 both dated 17.8.1985 were, in fact, forgeries. It has been pleaded that allegations of serious misconduct had been levelled against the petitioner and despite having been called upon to do so, she had not tendered any explanation thereto, and as such, the Managing Committee had no option but to order her dismissal.

2. Mr. P.S. Patwalia, the learned counsel appearing for the petitioner has first and foremost argued that the petitioner's service could not have been terminated without the prior approval of the D.P.I. as prescribed by Section 4 of the Act and Rule 18(3) of the Rules and as the approval had admittedly not been taken, the order Annexure P-46, dated 19.9.86 was wholly unjustified in law. He has also urged that the action of the Managing Committee was vitiated by the mala-fides that its members bore towards the petitioner and once it was found that Annexure P-29, a Certificate of Appreciation that had been issued by Mohan Lal the President of the Managing Committee (and though denied by him) found by the High Court to have, in fact, been issued, it was evident that no misconduct could be alleged against the petitioner.

3. As against this, Mr. Sharma, representing the Managing Committee has urged that ex-post facto approval to the dismissal of the petitioner had been accorded by the D.P.I. (Schools), Mr. S.S. Kishanpuri, vide Annexure P-55-A dated 9.9.1988 and this filled in the lacuna, if any, that existed. It has further been argued by Mr. Sharma, as had been contended before the School Tribunal, that assuming for a moment that the signatures on Annexure P-29 were, in fact, those of Mohan Lal, yet, it could not be said with certainty that the contents had been written at his direction and it was possible that the petitioner had been able to secure a signed blank paper and had filled in the contents herself.

4. I have heard the learned counsel for the parties and have gone through the file carefully.

5. The fate of the petition would hinge substantially on the provisions of Section 4 of the Act read with Rule 18 of the Rules. These provisions are reproduced below:-

"Sec. 4. Dismissal, removal etc. of employees :-

(1) Subject to any rule that may be made in this behalf, no employee shall be dismissed, removed or reduced either in rank or within a time scale nor shall his services be otherwise terminated except with the prior approval of the Director.

(2) Any employee who is dismissed, removed or reduced either in rank or within a time scale under Sub-section (1) may, within three months from the date of communication to him of the order of such dismissal, removal or reduction, appeal

against such order to the School Tribunal.

(3) The Managing Committee aggrieved with the order of the Director may also appeal to the School Tribunal within a period of three months from the date of communication of the order".

Rule-18. Action on inquiry report :-

(Section 15) (1) The Punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such article of charge, if the evidence on record is sufficient for the purpose.

(2) If the Punishing Authority, having regard to the evidence on all, or any of the articles of charges, is of the opinion that any of the penalties specified in rule 16 should be imposed on the employee, it shall -

(a) furnish to the employee a copy of the report of the inquiry held against him and its finding on each article of charge or where the enquiry has been held by an inquiring authority appointed by it a copy of the report of such authority and a statement of its findings on each article of charge together with brief reason for its disagreement, if any, with the findings of the inquiring authority;

(b) give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within fifteen days of receipt of the notice or within such further period not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty ;

Provided that such representation shall be based on the evidence adduced during the inquiry.

(3) The Punishing authority shall after considering the representation, if any, made by the employee, determine what penalty,if any, should be imposed on the employee and make such order as it may deem fit;

Provided that no order of dismissal, removal, reduction in rank or within a time scale or termination shall be passed without the prior approval of the Director:

(4) The Director shall not accord or refuse approval under Sub-section (1) of Section 4 of the Act, unless an opportunity of being heard has been afforded to the official concerned or the managing committee as the case may be".

It will be evident from a reading of the aforesaid provisions that before an order of termination or dismissal from service is made, the prior approval of the D.P.I. has to be taken. To my mind, prior approval means previous approval and as such any post facto sanction would not fill in the lacuna. Mr. Patwalia, has also, in support of this argument, relied upon a D.B. judgment of this Court in Dr. J.B. Dilawari, Department of Gastroenterology, Post Graduate Institute of Medical Education and Research,

Chan-digarh v. The Post Graduate Institute of Medical Education and Research, Chandigarh and Ors. 1984 (2) S.L.R. 685. The rule which was under scrutiny before the Division Bench is reproduced below:-

"R-7- Creation of Posts and Appointment thereto:-

(1) The Institution may create posts, subject to specific provision in budget, on such scales of pay as are approved by the Central Government classify them into grades and specify their designation:-

Provided that no teaching post above the rank of Associate Profession may be created except with the previous approval of the Central Government.

(2) x. x. x. x.

(3) x. x. x. x.

While construing this rule, the Division Bench observed as under :-(Para 26).

"If post facto approval is good enough then the word "previous approval" loses all meaning. Previous approval means prior approval. If before taking a given decision, one is mandatorily required to prior approval therefore of another person or institution, then the approval of that person or institution must come first and then it would rest with the person who had sought the prior approval to take the said decision or not".

It is apparent from what has been quoted above that the word "previous" "and" "prior" have been taken to be interchangeable by this Court and previous means prior and prior means previous. To my mind, the ratio of the afore cited judgment fully applies to the facts of the present case.

6. I have also considered the issue with regard to the malafides that have been alleged against the managing committee-respondent No. 5. It has been argued by Mr. Patwalia that the petitioner had been ordered to go on two years" leave vide Annexure P 28 dated 11.8.1985 and as a consequence, she had also handed over the charge to the managing committee and on which the President of the School, Mohan Lal had issued a letter Annexure P-29 dated 17.8.1985 which was a letter pertaining to the taking over of the charge from the petitioner cum a letter of appreciation and that a mere reading of this document would indicate that the allegations against the petitioner were unfounded. He has also pointed out that Mohan Lal aforesaid had condemned this document as being a forgery but it had been accepted as genuine by this Court in the earlier writ petition and as such, was to be relied upon. This argument must now be examined, Annexure P-29 is reproduced below: -

"TO WHOM IT MAY CONCERN".

"Certified that Smt. Kamlesh Kumari, M.A. B.Ed., has served in this institution as Headmistress with effect from 1.6.976 F.N. to 17.8.1985 A.M. as on this day. She has proceeded on a long leave i.e. for two years without pay.

It is further certified that she has handed over all kinds of school records and accounts to me complete in all respects. There stands nothing against her.

During the whole of her stay in this School, she proved to be an honest and pains taking Headmistress.

I wish her every success.

Sd/-

Mohan Lal

President, Mandi Harding Ganj

Girls High School, Kapurthala

It will be noticed that this document can be divided into three parts, firstly that the petitioner had proceeded on a long leave for two years without pay; secondly that the she had handed over all the school record and accounts complete in all respects and there was nothing against her and finally, that during her stay in the school, she had been proved to be an honest and a pains taking Headmistress. The Managing Committee's stand that Annexure P-28 ordering her to go on leave for two years was a forgery, becomes suspect in the light of Annexure P-29, which refers to the leave mentioned above. Moreover further corroboration to the genuineness of the document Annexure P-28 can be found from the fact that the President had been authorized to take action as per Annexure P-28 and he complied with its requirements as per Annexure P-29. It is further evident from annexure P-29 that the petitioner had handed over the entire charge of the record and the accounts and that there was no matter pending against her. It appears to me, therefore, that the charge sheet which pertained to the alleged misconduct with regard to the second and third issues covered by Annexure P-29 referred to above was without substance and wholly unjustified, Mr. Sharma's arguments that the signatures in question could possibly be those of Mohan Lal, but the contents could still be forged is only to be rejected. It bears repetition that the positive case of the Managing Committee and of Mohan Lal was that documents Annexures P-28, P-29 and P-30 were all forgeries. It has already been noted that in so far as Annexure P-29 is concerned, this Court had already ruled otherwise in the earlier Civil Writ Petition and the co-relation of Annexure P-28 and P-29 do clearly indicate that the resolution Annexure P-28 had also in fact, "been passed.

7. The question now arises as to the relief that is to be given to the petitioner. It has been argued by Mr. Sharma that even assuming that the petitioner has to succeed on the ground that no prior approval of the D.P.I., had been taken and if the Court had to set aside the order Annexure P-60, on this short ground alone, the managing committee should be permitted to proceed in accordance with the Act and the Rules

and to once again pass an appropriate order thereunder. To my mind, this argument is wholly without merit at this stage. The petitioner had joined as a Headmistress way back in 1976 and she had worked in the capacity till 1985 when she had been suspended and then dismissed from service. She has during the period subsequent been to the D.P.I, and to the School Tribunal twice over, to this Court once before, and to the Hon'ble Supreme Court once against the dismissal of the present writ petition in limine, and it is in the eventuality that this order has been set aside that she has been heard yet again today. The petitioner has, accordingly, travelled a long, arduous and agonising path and the prolonged litigation which has consumed the most productive part of her life, must now terminate. It is also evident from what has been mentioned above that the action of the Managing Committee was wholly unjustified not only in law but even as being wholly malafide and it can legitimately be said that the allegations in the charge sheet dated 9.11.1985 Annexure P-37 were without basis. The petitioner, I am told, will superannuate in 1979, which gives her less than two years in service. This Court in D.C. Aggarwal and Anr. v. State Bank of India and other 1991 (2) S.L.R. 578, observed as under :-

"On the same analogy, I hold that in the instant case, not only service but very harsh-punishment has been awarded to the petitioner and it was not warranted by the facts proved on the file. The petitioner has been made to suffer agony for more than eight years. It will meet the ends of justice if the agony is stopped now and for all times to come."

8. The State Government, thereafter, took the matter in appeal before the Supreme Court and in the judgment reported as State Bank of India and Ors. v. D.C. Aggarwal and Anr AIR 1993 S C 1117, it was observed that though the High Court's interference on the quantum of sentence had been assailed before the Court yet the Court did not deem it fit to go. In other words, the opinion with regard to the direction that no fresh enquiry etc. be held, had by implication, been approved. The malafides of the Managing Committee are writ large and de-novo enquiry would only be a farcical exercise with a pre-deter-mined result. This petition is, accordingly allowed, the orders Annexures P-36, P-46, P-55-A and the charge sheet Annexure P-37 are quashed and a further direction is issued that the petitioner will be permitted to join her duty forthwith and that no fresh proceedings on the basis of the old allegations would be initiated against her. The petitioner will also have her costs which are assessed at Rs. 5,000/-.