

(2009) 01 P&H CK 0228

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 14386 of 2006

Yashvir Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 12, 2009

Acts Referred:

- Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 - Rule 17, 17(7)

Citation: (2009) 2 ILR (P&H) 627 : (2009) 3 SLR 582

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Advocate: Manpreet Singh, for the Appellant; CharuTuli, D.A.G. and Inderpreet Singh, for the Respondent

Final Decision: Allowed

Judgement

Permod Kohli, J.

Instead of deciding the stay application, with the consent of the learned Counsel for the parties, the main writ petition itself is taken on board for final disposal.

2. I have heard the learned Counsel for the parties at length and perused the record of the case.

3. The Petitioner is aggrieved of his termination from service,-- vide order dated 24th September, 2005 (Annexure P-13) as also the order passed by the Presiding Officer, State Schools Tribunal, Punjab, Chandigarh, dated 6th September, 2005 (Annexure P-12) whereby the appeal of Respondent No. 4 has been accepted, against the order of the DPI(S), Punjab dated 17th December, 2004 (Annexure P-II).

4. Briefly stated, the facts of the case, as emerge from the record, are that the Petitioner was serving as PT Teacher and was posted in the Respondent No. 4 School at Ropar. He was served with a charge-sheet dated 9th/25th November, 2002

(Annexure P-I) on the basis of certain allegations of misconduct. Reply was called from him. The Petitioner responded to the charge-sheet. The competent authority on consideration of the reply, rejected the same. It may be relevant to notice that even before the reply could be filed by the Petitioner, enquiry had already been initiated into the charges against the Petitioner in the year 2002. The Enquiry Officer on the same date i.e. 6th May, 2003 completed the enquiry report and submitted the same to the Disciplinary Authority. The Disciplinary Authority, i.e. Respondent No. 4, forwarded the enquiry report with recommendation to the DPI (S), Punjab, proposing dismissal of the Petitioner from service. The DPI Punjab,--vide his order dated 17th December, 2004 (Annexure P-11), rejected the proposal of the school for dismissal of the Petitioner from service.

5. Aggrieved of the order of the DPI (S), Punjab, Respondent No. 4-School preferred an appeal before the State Schools Tribunal, Punjab, Chandigarh. The said Tribunal,--vide its one of the impugned order dated 6th September, 2005 (Annexure P-12) allowed the appeal and set aside the order of the DPI (S), Punjab and approved the termination of the Petitioner from service. Consequent upon the decision of the Tribunal,--vide the second impugned order dated 24th September, 2005 (Annexure P-13), service of the Petitioner has been terminated by the school management.

6. Though a number of grounds have been raised in the writ petition to challenge the impugned order, yet the thrust of the argument of the learned Counsel for the Petitioner is on the illegality and propriety of the Enquiry Report, Annexure P-6. In paragraphs 19 and 22 of the writ petition, a specific averment has been made regarding the non-observance of the principle of natural justice. It is specifically contended that the Enquiry Officer himself assumed the job of cross-examination and did not permit the Petitioner to cross-examine the witnesses. In the enquiry report, Annexure P-6, the Enquiry Officer has categorically admitted that he himself cross-examined the witnesses. Even though Enquiry Officer has right to ask question to witnesses, refusal to allow charged officer to cross-examine the witnesses, itself-is violative of principles of natural justice and is sufficient to vitiate the enquiry.

7. Apart from that, there are specific rules framed by the Government which are known as The Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 (hereinafter referred to as "the Rules"). Rule 17 of the rules deals with the procedure for imposing penalty. Relevant extract of Rule 17 of the Rules is reproduced here under:

17. Procedure for imposing penalties: (Sections 5, 6 and 15).

(1) Whenever the punishing authority is of opinion that there are ground for inquiring into the truth of any imputation of misconduct or misbehavior against an employe, it may itself inquire into or appoint under this rule as authority to inquire into the truth thereof.

(7) During the course of inquiry the employee shall be entitled to cross-examine the witnesses examined in support of the articles of charges* and to give evidence in person and to have such witnesses as may be produced, examined in his defence.

8. Sub-rule 7 of Rule 17 of the Rules clearly provides for right of the employee to cross-examine the witnesses, examination in support of articles as also his right to lead evidence. It is now admitted position that the Petitioner was not permitted to cross-examine the witnesses produced against him in support of the charges or even he was denied opportunity to lead evidence. There is gross contravention of statutory rules. Such violation also vitiate the enquiry.

9. Consequently, the present writ petition is allowed. The orders of the Disciplinary Authority and also the Tribunal which has resulted into passing of the impugned termination/dismissal order of the Petitioner from service, are liable to be set aside.

10. In view of the above, impugned order of the Tribunal dated 6th September, 2005 (Annexure P-12) and the termination order passed by Respondent-School dated 24th September, 2005 (Annexure P-13) are hereby quashed. The Petitioner is directed to be reinstated into service forthwith. However, the Petitioner shall not be entitled to any arrears during the interregnum, though the salary of the Petitioner shall be fixed by giving him notional benefits of increments etc. during the period the Petitioner remained out of service. While quashing the aforesaid termination order, I allow the Respondent-School to initiate afresh enquiry, if so desired. If the Respondent-School intends to initiate fresh enquiry, the same be initiated and completed within a period of three months, failing which the Respondent-school shall not be entitled to proceed against the Petitioner. No costs.