

(2012) 11 P&H CK 0163

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5471 of 2012 (O and M)

Sandesh Kumar

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: Nov. 27, 2012

Acts Referred:

- Punjab Affiliated Colleges (security Of Service Of Employees) Act, 1974 - Section 2(a), 2(e), 4

Citation: (2013) 170 PLR 113

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Pankaj Gupta, for the Appellant; Nilesh Bhardwaj, D.A.G., Punjab for State, Mr. Ashok Tyagi for Respondent No. 3 and Mr. Arjun Partap Atma Ram, for the Respondent

Judgement

Rajesh Bindal, J.

The petitioner, who was appointed as Lecturer in Sanskrit in the Guru Nanak Ayurvedic Medical College & Research Institute, Gopalpur, Ludhiana (for short, "the college"), in November 2000, has filed the present writ petition challenging his termination of services vide impugned order dated 3.3.2012 without any enquiry. At the time of issuance of notice of motion on 23.3.2012, operation of the impugned order was stayed.

2. Learned counsel for respondent No. 5 raised a preliminary objection stating that the College is unaided private self financed institution. The services of the petitioner are governed by the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974, hence, the jurisdiction pertaining to the service matters of respondent No. 5 college lies with the Educational Tribunal. In support of his plea, reliance was placed upon the observations made by Hon'ble the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, where it was required that for redressal of the grievances of the teachers, Educational Tribunal be set up.

Amendment was made in the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (for short, "the Act") providing for constitution of Tribunal in the State of Punjab. The petitioner, if so, advise, has to avail of his remedy before the Tribunal. 4. On the other hand, learned counsel for the petitioner submitted that in terms of the provisions of the Act, dismissal or removal or reduction in rank of an employee cannot be ordered except after enquiry for which there is a procedure provided, in Section 4 thereof. For imposition of penalty of dismissal or removal, approval of the Director is mandatory. It is only the order of the Director which is appealable before the Tribunal. As in the present case no approval of the Director has been sought, the order passed by the College Authorities itself is not appealable before the Tribunal.

4. Heard learned counsel for the parties on the issue of maintainability of the writ petition in this court.

5. The fact which is not in dispute is that the respondent college is an affiliated college. Hon'ble the Supreme Court in T.M.A. Pai Foundation's case (*supra*), observed as under:-

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit, of the students. Where allegation of misconduct are made it is imperative that a disciplinary, enquiry is conducted and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the petitioner of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriately relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of

seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State - the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex-post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.

6. In terms of the observations made by Hon'ble the Supreme Court in the aforesaid judgment, amendment was made in the Act and Section 7-A was added therein for constitution of Educational Tribunal. The Statement of Objects and Reasons as provided in the Act are as under:-

Whereas Hon'ble Supreme Court of India in C.W.P. No. 317 of 1993 and other connected writ petitions (T.M.A. Pai Foundation v. State of Karnataka and others) had directed, vide its judgment dated 31st October, 2002, to create Educational Tribunals for redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service.

2. Whereas the Government of Punjab has decided to create Educational Tribunal and for that purpose it has been decided to amend "The Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974" so that the judgment of Hon'ble Supreme Court of India is complied with."

7. In terms of provisions of Section 7-A(12) of the Act, the Tribunal has the jurisdiction to hear all cases of disputes between the "Managing Committees" and the "employees", as defined in the Act and the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979. The term affiliated college has been, defined in Section 2(a) of the Act. Respondent No. 5 is an affiliated college, is not in dispute. Section 2(e) defines the term "employee" which means a person in the employment of an affiliated college and excludes a work-charged employee. Hence, the Educational Tribunal constituted under the Act will have jurisdiction to entertain a lis between the management and the employee.

8. The contention of learned counsel for the petitioner that the procedure provided under the Act has not been followed, hence, the petitioner will not have the remedy

to approach the Tribunal is merely to be noticed and rejected. Violation of an established procedure, if applicable, may be a ground to challenge an order passed against an employee. The same itself will not oust the jurisdiction of the Court/Tribunal to entertain the lis.

9. For the reasons mentioned above, in my opinion, the preliminary objection raised by learned counsel for respondent No. 5 is sustainable. The Tribunal will have the jurisdiction to entertain the issue. Hence, the present writ petition is transferred to the Tribunal for adjudication of the lis between the parties. The Tribunal shall not decide the same as a writ petition rather it should be assigned a number as is given by the Tribunal to the cases filed before it.

10. The parties are directed to appear before the Tribunal on 31.12.2012 for further proceedings. The interim order passed by this court on 23.3.2012 shall continue till final decision by the Tribunal. However, the respondents shall be at liberty to apply for modification thereof, which shall be considered on merits.

11. The writ petition stands disposed of. A copy of the petition be retained for records.