
(2018) 08 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21296 of 2015

Gourve Goyal

APPELLANT

Vs

Maharishi Dayanand University, Rohtak and others

RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Haryana Affiliated Colleges (Security of Service) Act, 1979 — Section 7, 17
Haryana Affiliated Colleges (Security of Service) Rules 1993, — Rule 26

Citation : (2018) 08 P&H CK 0079

Hon'ble Judges : RAJIV NARAIN RAINA, J

Bench : Single Bench

Advocate : Raman B. Garg, Gitanjali Chhabra, Shruti Jain Goyal, Anurag Goyal

Final Decision : Allowed

Judgement

1. This order will dispose of the above-captioned case as well as other writ petitions* tabulated at the foot of the order, as common questions of law

and fact are involved in them which can conveniently be decided by a common order. The facts are taken from CWP No. 21296 of 2015.

2. This petition has been filed challenging the order of the Educational Tribunal-cum-District Judge, Rohtak dated 10.09.2015. The Tribunal has erred

in finding that the mandatory procedure laid down in Section 7 of the Haryana Affiliated Colleges (Security of Service) Act, 1979 was not valid and

the procedural safeguards were not complied with. Having reached this conclusion, the Tribunal went on to remove the base of the appointment itself

as Assistant Professor in the Vaish College of Engineering, Rohtak/respondent No.3 by holding that the selection and appointment was not by a duly

constituted Committee of which they should have been a Principal/nominee of the Maharishi Dayanand University, Rohtak such an appointment was

flawed from the beginning. The Tribunal has further opined that the petitioner is pursuing further studies while in service without obtaining prior permission from the competent authority would not be a relevant consideration when the appointment itself was not made by a duly constituted Committee and was merely offered at the hands of the President of the Vaish Education Society, Rohtak/respondent No.2. For this reason, the appeal has been dismissed giving rise to this petition.

3. So far as prior permission for pursuing further studies is concerned, there is sufficient indication on record as presented on file that the Management was aware that the petitioner was pursuing further studies while teaching in the College. It was this reason which had prevailed upon the Administrator appointed by the State Government after he took over the Management of the College. The services of the petitioner were terminated without notice, hearing or holding an enquiry by the order dated 22.07.2013 passed by the Principal referring to the decision of the Administrator who is said to have ordered on consideration of the petitioner's submissions, termination of services relying on the findings of the enquiry committee and relevant records of the petitioner's fraudulent act of pursuing higher education while in service. Upon such consideration the order of dismissal was passed. The order of the Administrator may be on file but it was not communicated to the petitioner and only its essence has been noted in the impugned order of termination dated 22.07.2013 (Annex. P-11).

4. I have heard learned counsel for the parties and in my considered view this petition deserves to be allowed for the reason that the Tribunal failed to notice that the initial appointment itself was on ad hoc basis and on consolidated salary of Rs. 12,000/- per month to be paid from Self Financing Scheme of the College. The appointment was not against an aided post though the College is an aided institution. This patent error leaves a legal infirmity in the order of the Tribunal assuming that appointment was not legal when not made by a duly constituted Committee under the provisions of 1979 Act. The dismissal order is further in violation of procedure prescribed and for non-adherence to the provisions of Section 17 read with Rule 26 of the Haryana Affiliated Colleges (Security of Service) Act, 1979 read with Appendix 'C' to the Act.

5. The proposed dismissal statutorily requires approval of the Director but the

same was not taken by the Administrator before passing the order on file communicating the gist through the Principal of the College to the petitioner. Accordingly, the action of the respondents in dismissing the petitioner from service suffers from procedural impropriety and the action deserves to be invalidated so as to restore the balance of justice. It is well settled by the Supreme Court in *Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others*, 1978 AIR (SC) 851 that when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise and the same principle has been reiterated by the Supreme court in *Rashmi Metaliks Limited and another Vs. Kolkata Metropolitan Development Authority and others*; 2013 (10) SCC 95 as below:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at P.18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

6. For these reasons, the impugned orders dated 22.07.2013 and 10.09.2015 (Annex. P-11 & P-14) are quashed as they are not legally sustainable.

The petition is allowed with notional benefits but actual consequential benefits flowing from the date of the petition with continuity of service.