

(2015) 04 P&H CK 0242

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6785 of 2008 (O&M)

Jitender Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 3 SCT 680

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Gourav Mohunta, for the Appellant; Shruti Goyal, Addl. A.G,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Tewari, J.

CM No. 10437 of 2014 1. This is an application for early hearing for which notice was issued for today. With the consent of learned counsel for the parties, application is allowed and the main case is taken up for hearing today.

CWP No. 6785 of 2008

2. By this writ petition, the petitioners have challenged the order removing them from service during the period of their probation.

3. The petitioners were appointed as Lecturers in various subjects and, were at the relevant time on probation. On 10.12.2007, the following order was passed: -

"With ref. to your letter dated 08.12.07, I have to say that the Management has verbally directed me that these three lecturers (Dr.Gajender Singh, Sh.Jitender Sharma and Sh.Sunil Kumar) have been terminated from their services having indulged in anti-social activities and the facts you all have admitted in your written statement given to the President on 29th September 2007. Hence you are not required to put your signatures in the staff attendance register.

So far as the salary of October and November 2007 is concerned when you were not on duty since 30th September, 2007 how can be asked for the salary of these months."

4. The solitary contention of learned counsel for the petitioners is that under the Haryana Affiliated Colleges (Security of Service) Rules, 1993 (for short "the Rule"), Rule 8 deals with employees on probation and is to the following effect: -

"8. Probation. - (1) The persons appointed to any post in the Service shall remain on probation for a period of two years in the first instance, if appointed by direct recruitment and one year if appointed otherwise.

(2) On the completion of the period of probation of a person the appointing authority may -

a) if his work or conduct has, in its opinion, been satisfactory, confirm such person from the date of completion of his probation period or if a permanent post is not available, declare that he has completed his probation satisfactory; or

(b) if his work or conduct of a person in its opinion has not been satisfactory, -

(i) dispense with his services, if appointed by direct recruitment, or revert him to his former post if appointed otherwise or deal with him in such other manner as the terms and conditions of his previous appointment permit;

ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation :

Provided that the total period of probation, including extension, if any, shall not exceed three years :

Provided further that if it is proposed to take action under sub- clause (i) or (ii) then the case of the official shall be referred to a committee consisting of the following members: -

1) President or his nominee;

2) Dean of Colleges of the University or his nominees

3) Nominee of Government on the Managing Committee;

4) Principal of the College concerned;

5) Principal of another college not under the same Managing Committee. The Managing Committee shall take a final decision in the matter in accordance with the recommendations of this Committee;

(iii) If the Managing Committee does not agree with the report of the Committee constituted under rule 8 (b) (ii) or the committee is unable to come to a decision by majority then the matter will be referred by the Principal to the Director whose decision will be final. However, an employee against whom an order of termination of services has been passed without complying with the provision of

these rules, may, within period of thirty days of the date of communication of orders make an application to the Director whose decision will be final in the matter."

5. As per the petitioners, even if the services of a probationer has to be dispensed with on account of his work or conduct not being found satisfactory, the matter has to be referred to a committee and in the present case no such committee was formed but only on the verbal directions of the management committee, the impugned order was passed.

6. In reply, it has not been denied that no committee was formed in terms of the above mentioned Rules. Once this fact is not disputed the impugned order has to be set aside.

7. Learned counsel for the respondents has argued that even if the impugned order is set aside on the ground that it was passed by an authority who could not do so without the recommendations of the committee yet an opportunity has to be granted to the respondents to now take action as per the Rules after forming the committee. In this connection he has relied upon the judgment of the Hon"ble Supreme Court in the matter of Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, (2011) 4 JT 252 : (2011) 3 LLJ 165 : (2011) LLR 673 : (2011) 4 SCALE 398 : (2011) 5 SCC 142 : (2011) 1 SCC(L&S) 750 : (2011) 2 UJ 1514 " wherein their Lordships held as follows :-

"46. In Managing Director, ECIL, Hyderabad etc. etc. v. B. Karunakar etc. etc., (Supra); and Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector, AIR 2009 SC 161 : (2008) 119 FLR 395 : (2008) 10 JT 521 : (2009) 1 LLJ 609 : (2008) 12 SCALE 748 : (2008) 12 SCC 30 : (2009) 1 SCC(L&S) 126 : (2009) 1 SLR 434 , this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the inquiry afresh from the stage where it stood before alleged vulnerability surfaced. However, for the purpose of holding the fresh inquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages etc. is determined by the disciplinary authority in accordance with law after the fresh inquiry is concluded.

47. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or

mechanical but flexible and realistic. Vide: U.P.S.R.T.C. Vs. Mitthu Singh, AIR 2006 SC 3018 : (2006) 111 FLR 7 : (2006) 8 JT 151 : (2006) 3 LLJ 778 : (2006) 8 SCALE 109 : (2006) 7 SCC 180 : (2006) SCC(L&S) 1590 : (2006) 5 SCR 672 Supp : (2006) AIRSCW 4154 : (2006) 6 Supreme 475 ; Secretary, Akola Taluka Education Society and Another Vs. Shivaji and Others, (2007) 114 FLR 326 : (2007) 5 JT 328 : (2007) 5 SCALE 409 : (2007) 9 SCC 564 : (2007) 2 SCC(L&S) 679 : (2007) 4 SCR 949 : (2008) 1 SLJ 167 ; and M.D., Balasaheb Desai Sahakari S.K. Ltd. Vs. Kashinath Ganapati Kambale, (2009) 120 FLR 510 : (2009) 1 JT 521 : (2009) 2 LLJ 210 : (2009) 1 SCALE 112 : (2009) 2 SCC 288 : (2009) 2 SLJ 508 .

48. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh inquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled for subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs."

8. Having gone through the said judgment, I am of the considered view that the exposition of law made therein would apply to the present case. In the circumstances, the impugned order is liable to be set aside. It has been brought to my notice that w.e.f. 13.08.2014, respondent No. 3-College has been taken over by respondent No. 1-State of Haryana.

9. Learned Assistant Advocate General states that in this situation the setting aside of the order of termination can not automatically mean that the petitioners would be reinstated with all consequential benefits.

10. Learned counsel for the petitioners has very fairly stated that he would not oppose this action but since the petitioners have now been out of service for the past almost 7 years, some time limit should be fixed within which the respondent No. 1 should take whatever action it wants to take.

11. Learned counsel for respondent No. 1 is not in a position to deny the logic or equity of this prayer.

12. Resultantly, the respondent No. 1 is directed to reconsider the case of the petitioners. The action to be taken within a period of 3 months from the date of receipt of certified copy of this order.

13. Petition is allowed in the above terms. The impugned orders are set aside.