
(2013) 12 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 5008, 5305 of 2013 (O&M) and C.O.C.P. No. 1101 of 2013 (O&M)

Pawan Kaushish

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) 2 SCT 573

Hon'ble Judges : M.M. Singh Bedi, J

Bench : Single Bench

Judgement

M.M. Singh Bedi, J.—This order will dispose of the above noted three petitions i.e., CWP-5305-2013 Pawan Kaushish v. State of Haryana and others; CWP-5008-2013; M.L.N. Senior Secondary School, Radaur, Yamuna Nagar v. State of Haryana and others and COCP-1101-2013 Pawan Kaushish v. State of Haryana and others. In C.W.P. No. 5305 of 2013, the petitioner has challenged the order dated 13.2.2013, Annexure P14, passed by the Principal Secretary to the Government of Haryana, School Education Department, setting aside the decision of the Governing Body of M.L.N. Senior Secondary School, Radaur, District Yamuna Nagar, terminating the services of Malkhan Singh respondent No. 5 on the ground that the said decision is contrary to the directions of the High Court in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012.

2. In C.W.P. No. 5008 of 2013, M.L.N. Senior Secondary School, Radaur, Yamuna Nagar, has also challenged the same order. In COCP No. 1101 of 2013, petitioner Pawan Kaushish has sought action against the Principal Secretary, Department of Education, for disobeying the order passed by this Court in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012.

3. The facts of the case as gathered from the writ petition Pawan Kaushish v. State of Haryana C.W.P. No. 5305 of 2013, are that an advertisement dated

2.10.2009, was published for filling up a regular sanctioned post of PTI Teacher in M.L.N. Senior Secondary School, Radaur, Yamuna Nagar. 42 candidates applied for the said post. Selection Committee was under pressure to select and appoint Malkhan Singh respondent No. 5 who was already working as D.P.E. from 19.7.1999 to 18.2.2000 and thereafter from 1.7.2004 till the order of termination was passed by the Management of the above said School. M.L.N. Senior Secondary School, Radaur, Yamuna Nagar, is an aided school. Malkhan Singh respondent No. 5, during the course of his service, had shown himself a student of B.C.PE. College, Balipal Balasore (Orissa) in the Course of M.P.Ed. Session 1999-2000. He was also working as regular teacher in the school during the said session. A copy of the M.P.Ed., certificate of respondent Malkhan Singh has been placed on record as Annexure P2. An experience certificate issued by the School indicating that during the year 1999-2000, he was working in the said School. These two certificates are contrary to each other as such, the certificate Annexure P2, is fake and forged. Merit list of the candidates was prepared and name of the petitioner and Malkhan Singh was at Sr. No. 40 & 28 respectively. Malkhan Singh was selected. The name of the petitioner was next on merit to Malkhan Singh. Malkhan Singh had been awarded 77 marks which contained 10 marks for his higher qualification whereas the petitioner was granted 71 marks. Both, petitioner and Malkhan Singh had been given 10 marks each for higher qualification. The experience certificate was issued by M.L.N. Senior Secondary School, Radaur, Yamuna Nagar. The certificate of M.P.Ed in the year 1999-2000 as per B.C.PE. College, Balipal Balasore (Orissa), was absolutely fake certificate as in the year 1999-2000, he had been drawing salary of Rs. 1500 per month regarding which a school certificate had been issued to Malkhan Singh. The petitioner claims that the certificate issued by B.C.PE. College, Balipal Balasore (Orissa) is a forged and fabricated document. The petitioner had filed C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012 and challenged the appointment of Malkhan Singh on various grounds. It was pleaded that Malkhan Singh had used forged and fabricated certificate and the Selection Committee had wrongly granted him marks for higher qualification. The petitioner had issued a legal notice to the respondents on 17.10.2011 for quashing the selection and appointment of Malkhan Singh. In response to said legal notice, the respondent school intimated the counsel for the petitioner that disciplinary proceedings had been initiated against Malkhan Singh. A copy of said letter dated 5.11.2011, has been appended with the petition as Annexure P8.

4. The petitioner had filed a writ petition C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012. The said writ petition was contested by School Management and District Education Officer Yamuna Nagar. It was averred in the written statement that the approval has been granted for the termination of services of respondent No. 5 Malkhan Singh, on the basis of report of District Education Officer, Yamuna Nagar. The Principal Secretary did not file any reply nor sought any permission or any leave to do so. The writ petition was allowed vide judgment Annexure P13 passed by Rakesh

Kumar Garg J. and the Management was directed to do the needful for appointment of the petitioner. A direction was issued for appointment of the petitioner. However, on the statement of counsel for the petitioner, it was held that he would not be entitled to monetary benefits prior to the date of his joining on the post. However, he would be entitled to all other benefits notionally for the said period. The Principal Secretary had taken a specific stand approving the termination of Malkhan Singh respondent No. 5.

5. It is pertinent to mention here that respondent No. 5 Malkhan Singh had also filed a writ petition and also an appeal before the Principal Secretary School Education against the order dated 6.7.2012 vide which approval for termination of his services was given by the Governing Body of the M.L.N. Senior Secondary School, Radaur, Yamuna Nagar, in its meeting dated 6.9.2011. Vide orders dated 13.2.2013, the appeal of respondent No. 5 was accepted and the order dated 6.7.2012 and recommendation dated 19.10.2011, the decision of the Management terminating the services of Malkhan Singh, were quashed. The services of respondent No. 5 had been terminated by the Management of the School vide order dated 6.7.2012, as such, the Court felt that there was no impediment for appointment of the petitioner on the post of PTI in M.L.N. Senior Secondary School, Radaur, Yamuna Nagar. The respondent-Management has been directed to do the needful for appointment of the petitioner within a period of one month. The validity of order Annexure P14 dated 13.2.2013, passed by Principal Secretary School Education, Haryana, setting aside the order dated 6.7.2012, passed by Director School Education and recommendation dated 19.10.2011 of the management of M.L.N. Senior Secondary School, Radaur, Yamuna Nagar, has been challenged in this petition. The petitioner filed a contempt petition No. 10 of 2013 for non-compliance of the order dated 9.10.2012 and questioned the validity of Annexure P14 dated 13.2.2013, on the ground that the said order had been violated.

6. The petitioner claims that the order Annexure P14 has been passed without application of mind in contravention to Rules 165, 166, 181 and 182 of the Haryana School Education Rules, 2003. Rules 163 to 185 have been omitted vide notification dated 19.1.2007. The services of respondent No. 5 having been dispensed with during the period of probation, as such no major punishment had been imposed upon him. No charge-sheet was required to be issued under Haryana School Education Rules 2003, as amended. The rules which have been relied upon by Principal Secretary stand omitted vide notification dated 19.1.2007. The petitioner has averred that as per Haryana School Education Act, 1995 under Rule 8 approval of Director is required for dismissal, removal or reduction in rank but since services of respondent No. 5 had been terminated during period of probation, no appeal was maintainable before the Principal Secretary at the instance of respondent No. 5.

7. Respondent Nos. 1 to 3 have filed written statement averring therein that the official respondents are bound by the judgment of the High Court in C.W.P. No.

23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012. The writ petition C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012 has been allowed. In the said petition, the petitioner had sought quashing of the selection and appointment of Malkhan Singh respondent No. 5, being based on forged certificate of M.P.Ed. Respondent No. 5, had not filed any reply in the said petition. The said petition was allowed with a direction that the petitioner should be given appointment within a period of one month. So far as respondent No. 5 is concerned, it was ordered that he was at liberty to seek his remedy in accordance with law against the order dated 6.7.2012. It appears that respondent No. 5 has not filed any writ petition. Respondent No. 5 has taken up a stand that the petitioner has got no locus standi. It was not a case of waiting list. In the absence of any waiting list, the appointment could not have been given to the petitioner by the Court while deciding the writ petition. It was claimed that services of respondent No. 5 as PTI Teacher had been illegally terminated by the Principal Secretary, Secondary Education, Haryana, vide order dated 6.7.2012 and respondent No. 5 has been held to be entitled to join the services vide order Annexure P14 which is the subject matter of controversy in the present case. It was argued that since respondent No. 5 had joined pursuant to his selection and the vacancy stood exhausted, the petitioner could not have claimed the right being next in merit to respondent No. 5.

8. It was averred by respondent No. 5 that he had experience for having worked as PTI teacher in the year 1999-2000 and in the years 2004 to 2009 with notional breaks and from 7.7.2009 his experience in terms of years is 4 years 7 months as such, he has got preferential right as per Haryana Education Amended Rules, 2007 which provides that while filling vacancy of teaching posts, the Managing Committee may give preference to the employees already working in the school on non-sanctioned posts.

9. Counsel for the petitioner submits that the order Annexure P13 has finally crystallised the rights of the petitioner for appointment with a direction that respondent No. 5, though has been given liberty to seek his remedy in accordance with law against the order dated 6.7.2012, had wrongly filed an appeal as he had been terminated during the period of probation. His services could have been terminated without any notice to him. Moreover, the order Annexure P14 dated 13.2.2013, cannot supersede the order passed by Court in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012.

10. The controversy which is required to be settled by this Court is whether the judgment in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012, will hold field for the post of PTI in M.L.N. Senior Secondary School, Radaur, Yamuna Nagar, or an order passed by the Principal Secretary, School Education, Haryana Department, Annexure P14 dated 13.2.2013, will be deemed to be an order superseding rights of the parties

determined in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012.

11. Counsel for respondent No. 5 has submitted that Malkhan Singh has been given liberty to seek his remedy against the order dated 6.7.2013. The Principal Secretary, had allowed the appeal of Malkhan Singh. The High Court having given liberty to Malkhan Singh, he could have filed an appeal under the Haryana School Education Rules, 2003.

12. Counsel for the respondents has submitted that judgment Annexure P13 is per incuriam and is required to be ignored.

13. After considering all the facts and circumstances of the case, I am of the considered opinion that the order dated 09.10.2012 passed in favour of the petitioner in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012, holding that the petitioner is entitled to the appointment without monetary benefits for the period prior to the joining on the post had become final. The said order was required to be challenged by respondent No. 5, in case he was not satisfied with the said order. His appointment against the sanctioned post after his appointment pursuant to the advertisement was a fresh appointment. His services were liable to be terminated during the period of probation. The Principal Secretary which is an Appellate Authority could have entertained the appeal against the order of dismissal, reduction in rank or removal under Rules 181 & 182 of the Haryana School Education Rules, 2003. No appeal appears to be maintainable against the order of termination during probation period. The order Annexure P14 dated 13.2.2013, passed by the Principal Secretary, is contrary to the order passed in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012, in which respondent No. 5 was also a party.

14. Counsel for the respondent has also argued that approval of Director was not obtained while terminating the services of respondent No. Counsel for the petitioner submits that approval is required in case of dismissal, removal or reduction in rank under rule 8(31) of the Haryana School Education Rules. The order Annexure P14, has the effect of qualifying the order passed by this Court in C.W.P. No. 23807 of 2011 titled Pawan Kaushish v. State of Haryana and others, decided on 9.10.2012, as such, the petition is allowed. The order dated 13.2.2013, Annexure P14, is hereby set aside.

CWP-5008 of 2013

In view of above observations, the petition filed by M.L.N. Senior Secondary School, Radaur, Yamuna Nagar, CWP-5008-2013 also deserves to be allowed. It is not out of place to mention here that counsel for the petitioner has submitted that in case permission is granted to the School, the School is ready to adopt the selection process afresh and make afresh appointment in accordance with rules. In case said approach is permitted it will again tantamount to qualifying the order passed by this Court in Annexure P13. The writ petition filed by petitioner

Pawan Kaushish is allowed. Order dated 13.2.2013, Annexure P14, is hereby set aside. It is not out of place to mention that the counsel for respondent No. 5 has referred to *Manual Singh v. The Chairman, National Research Development Corporation and others* C.W.P. (Civil) 2553 of 2007, decided on 10.8.2009, by Delhi High Court wherein the termination order of the petitioner was held to be bad on the ground that dismissal order was stigmatic and punitive violating the protection guaranteed to temporary servants u/s 311(2) of the Constitution of India. He also cited *State of Punjab Vs. Ragbir Chand Sharma and Another*, , holding that a panel of selected candidates ceased to exist and the appointment cannot be offered in case vacancy arises subsequently on resignation. He also cited *Rakhi Ray and Others Vs. The High Court of Delhi and Others*, , holding that appearance of name in selection list does not confer indefeasible right of appointment. Unexhausted select list/waiting list becomes meaningless and cannot be pressed in service.

I have considered the above said judgments and I am of the opinion that in view of the judgment of this Court passed on 9.10.2012, in favour of the petitioner, the petitioner cannot be denied appointment. This Court cannot act as an Appellate Court to determine the lacunae in the judgment passed by a Coordinate Bench of this Court. The judgment which has become final deserves to be implemented in its letter and spirit. Thus, the petition is allowed. Order dated 13.2.2013, Annexure P9, is hereby set aside. A direction is issued that the petitioner will be appointed on the post of PTI within a period of one month after the receipt of a certified copy of this order.

COCP-1101 of 2013

As a direction has been given to implement the judgment dated 9.10.2012, present contempt petition has become infructuous.

Disposed of as infructuous, at this stage, without prejudice to the rights of the petitioner to approach this Court in case of non-compliance of the order.