

Before Rajesh Bindal, J.

**MANAGING COMMITTEE OF SHAHEED DARSHAN SINGH
PHERUMAN COLLEGE FOR WOMEN—Petitioner**

versus

ANJU CHAWLA AND ANOTHER—Respondents

CWP No. 10416 of 2011

August 30, 2012

- A. *Constitution of India 1950 - Art. 226 - Punjab Affiliated Colleges (Security of Service) Act 1974 - Ss. 3, 4, 5, 6 & 7-A(12) - Challenge to order passed by Education Tribunal setting aside dismissal of Lecturer - On mutual consent of parties in earlier Writ Petition matter referred to Tribunal by High Court - Under Section 7-A(12) of the Act the Tribunal has jurisdiction to hear all kinds of disputes between Managing Committees and Employees as defined under the Act - Act provides no protection to employees working on non-aided posts - Held, there being no alternative remedy with the petitioner, High Court can decide the matter on merits.*

Held, that this court is not recording a definite finding on the jurisdiction of the Tribunal to go into the cases pertaining to the employees, who were working on the aided or unaided colleges on non-aided posts, for the reason that in the present case, respondent no. 1 had approached this court earlier by filing Civil Writ Petition No. 10291 of 2010 Anju Chawla v. State of Punjab and others. The matter was referred to the Tribunal and after decision, the parties are again before this court. Even if the Tribunal had no jurisdiction, the matter is required to be considered by this court. The matter can still be considered even ignoring the order of the Tribunal. Even if the arguments of the counsel for the management is accepted, after setting aside the order being without jurisdiction, the matter will still have to be considered by this court on merits, there being no other alternative remedy. The issue will be considered in an appropriate case at an appropriate stage.

(Para 13)

B. *Constitution of India 1950 - Art. 226 - Service Law - Appointment against regular post - Probation period of one year - Extended by another year - Management sought to remove Lecturer from the post on grounds that work and conduct not good - Assessment based on material not relevant to the main duty assigned to Lecturer and also that a number of students opting for the subject had fallen - Such assessment not legally sustainable - Writ Petition filed dismissed.*

Further held, that annexure P-4 is a circular dated 22.10.2008, mentioning that the duty of campus beautification and cleanliness had been allotted to some lecturers including the petitioner, but they did not bother to check and instruct the class-IV employees. They were asked to take occasional round so that the campus remains neat and clean. This has no relevance with the main duty of respondent no.1 which is teaching and cannot be said to be such a serious incident for which an employee could be removed.

(Para 16)

Further held, that Annexure P-5 is a communication addressed to respondent no.1 on 13.2.2009 stating that large number of students had reported that her behaviour with them was harsh and rude. On the one hand, the stand of the Management is that there were only 20 students in Hindi subject with whom respondent no. 1 was to interact during the course of teaching. On what occasion large number of students came in contact with respondent no. 1 has not been specified. Nothing has been referred to state that respondent no. 1 was assigned any other duty in terms of which she could have interacted with other students, who reported her behaviour.

(Para 17)

Further held, that Annexure P-6 is another communication addressed to respondent no. 1 on 29.1.2010 referring to some verbal instructions given for taking interest in activities of the Central association, which has no relationship with the teaching assignment. No doubt, an employee can be assigned other duties in addition to the main duty but still this ground could not lead to removal from service, if considered in isolation.

(Para 18)

Further held, that hence, to form an opinion on the basis of material, referred to above, that the work and conduct of respondent no. 1 during her probation period was not good, cannot be legally sustained.

(Para 20)

Mr. G. S. Bal, Advocate, *for the petitioner*
in CWP No. 10416 of 2011 and *for the respondents*
in COCP No. 1588 of 2011.

Aparna Jain, Advocate, *for respondent no. 1*
in CWP No. 10416 of 2011 and *for the petitioner*
in COCP No. 1588 of 2011.

RAJESH BINDAL J.

(1) This order will dispose of Civil Writ Petition No. 10416 of 2011 and COCP No. 1588 of 2011.

(2) In the writ petition, the petitioner- the Management of Shaheed Darshan Singh Pheruman College for Women, Rayya, District Amritsar (hereinafter to be called as 'the Management') has challenged the order dated 12.5.2011 passed by the Educational Tribunal, Punjab (for short, 'the Tribunal'), whereby the termination order of Ms. Anju Chalwa – respondent no. 1, as Lecturer in Hindi, in the College has been set aside. In the contempt petition filed by Ms. Anju Chawla (hereinafter to be called as 'respondent no. 1') the grievance is that despite directions, the order of the Tribunal has not been complied with.

(3) Briefly, the pleaded facts are that a post of Lady Lecturer in Hindi was advertised on 17.5.2003. It was mentioned in the advertisement that the post was regular but uncovered. It was on a consolidated salary. Respondent no. 1 applied for the post and was selected. On 5.7.2008, she was issued appointment letter in the scale of Rs. 8,000-275-13,500, subject to the approval of the University. It is mentioned in the aforesaid letter that appointment of respondent no. 1 will be on probation for a period of one year which is extendable for further one year, if necessary. On completion of probation period, she may be confirmed on the post. Vide communication dated 1.7.2009, the probation of respondent no. 1 was extended for a period of one year from 7.7.2009 to 6.7.2010. Vide communication dated 10.5.2010, respondent no. 1 was informed that her services were no longer required as per terms and conditions of the appointment and the letter be treated as one month's notice and she shall stand relieved on 8.6.2010 (AN).

(4) Aggrieved against the aforesaid communication dated 10.5.2010, the petitioner preferred Civil Writ Petition No. 10291 of 2010 *Anju Chawla versus State of Punjab and others* before this court, in which notice of motion was issued. However, subsequently in terms of the stand taken by learned counsel for the parties, vide order dated 16.2.2011, the matter was referred to the Tribunal. On consideration of the matter, the claim made by respondent no. 1 was allowed and she was directed to be reinstated back in service along with other benefits as she was enjoying on 8.6.2010. It is the aforesaid order which is impugned by the Management before this court in the writ petition.

(5) Learned counsel for the Management submitted that it is clear from the advertisement issued that the post was uncovered i.e. un-aided. In terms of provisions of Section 6 of the Punjab Affiliated Colleges (Security of Service) Act, 1974 (for short, 'the Act'), no protection has been granted to the employees who were working on non-aided posts which grants them protection in terms of provisions of Sections 3, 4 and 5 thereof. The appointment letter clearly mentioned that respondent no. 1 will be on probation for a period of one year which was extendable for further one year and during that period her services could be dispensed with without assigning any reason. In the present case, the work and conduct of respondent no. 1 was not satisfactory for which she was informed from time to time. Reference was made to communications, Annexures P-4 to P-7, but still she did not improve her work and conduct.

(6) Learned counsel for the Management further submitted that the post was advertised on a consolidated salary considering the fact that there were few students in Hindi subject. After respondent no. 1 was appointed, the number has still decreased on account of which a regular teacher in Hindi is no more required. The management now proposes to appoint a lecturer on ad-hoc or part time basis only for taking up of Hindi classes. The reinstatement of respondent no. 1 in service will put undue burden on the Management as sufficient workload will not be available to assign classes to her.

(7) On the other hand, learned counsel for respondent no. 1 submitted that it is too late to permit the Management to raise the plea that the Tribunal did not have the jurisdiction to go into the dispute between the Management

and respondent no. 1, as respondent no. 1 was not protected under the provisions of the Act. Respondent no. 1 had initially challenged her removal from service by filing writ petition in this court. It was during the course of hearing before this court on account of the stand taken by learned counsel for the Management that the matter was referred to the Tribunal. Section 7A (12), (13) of the Act clearly provides that the Tribunal can go into all the disputes between the Management/College and employees.

(8) Learned counsel for respondent no. 1 further submitted that it is totally misconceived to contend that the appointment of respondent no. 1 was temporary. A perusal of the appointment letter dated 5.7.2008 (Annexure P-2) clearly shows that she was appointed against a regular post. She was on a probation for one year which was extendable for further period of one year and was to be confirmed thereafter. Without there being any reason, her probation period was extended after completion of one year of service. The communications, Annexures P-4 to P-7, which are sought to be referred to show the work and conduct of respondent no. 1, are not related with her teaching. In one of the communications, the reason assigned is regarding some alleged duty of beautification and cleanliness of the campus. In other communication, reference has been made that large number of students of the college have reported that her behaviour was harsh and rude, whereas in one of the communication, reference has been made to activity of the association. The statement made in one of the aforesaid communications, is self contradictory. On the one hand, the stand of the college is that number of students in Hindi have decreased considerably, on the other hand, the stand is sought to be taken that large number of students have complained against respondent no. 1. When she was not having interaction with students of other subjects, there was no question of any complaint. In fact, this is an after thought. The communication dated 22.5.2010 (Annexure P-7) is after the petitioner had already been issued the letter dated 10.5.2010 removing her from the post of Lecturer in Hindi with one month's notice.

(9) Learned counsel for respondent no. 1 further submitted that the petitioner Management is trying to mislead this court while stating that number of students has decreased after respondent no. 1 was appointed, hence, there was no need to retain her in service as the work was not there. She submitted that when respondent no. 1 was appointed, the strength of

the students in Hindi subject was 20 and the total strength in the College and school, which are being run in the same campus, was 57, whereas in the year 2010 the students in the college have increased from 20 to 24. She further submitted that the students are not opting Hindi as subject, which is our National Language, for the reason that the college is discouraging them stating that they do not have a regular teacher in the subject.

(10) It was further submitted by learned counsel for respondent no. 1 that appointment of respondent no. 1 was approved by the University. It is a case where though the petitioner management is seeking to dispense with her service by passing a simpliciter order during the period of probation, however, the same is punitive and the object of the petitioner management is merely to remove respondent no. 1 from the services, whereas on completion of probation period, she was required to be confirmed on the post. There is nothing on record to show that the work and conduct of respondent no. 1 is not upto the mark. The reason sought to be assigned cannot stand judicial scrutiny.

(11) Heard learned counsel for the parties and perused the paperbook.

(12) As far as the objection raised by learned counsel for the petitioner management regarding jurisdiction of the Tribunal to go into the subject matter of dispute on the plea that the post on which respondent no. 1 was appointed was non-aided, is concerned, a reference was made to Section 6 (iv) of the Act. In terms thereof, the provisions of Sections 3, 4, and 5 of the Act are not applicable to an employee, who was not working on aided post. The aforesaid provision was added vide Punjab Act No. 11 of 2008. Section 7-A (12) of the Act provides that the Tribunal shall have the jurisdiction to hear all kinds of disputes between the Managing Committees and the employees as defined under the Act. The objects and reasons attached with the Punjab Affiliated Colleges (Security of Service) Amendment Bill, 2007 (for short, 'the Amendment Bill 2007') provide that the Tribunal was constituted in terms of the observations made by Hon'ble the Supreme Court in *T.M.A. Pai Foundation versus State of Karnataka and others (1)* to create Educational Tribunals for redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service.

(13) This court is not recording a definite finding on the jurisdiction of the Tribunal to go into the cases pertaining to the employees, who were working on the aided or unaided colleges on non-aided posts, for the reason that in the present case, respondent no. 1 had approached this court earlier by filing Civil Writ Petition No. 10291 of 2010 *Anju Chawla versus State of Punjab and others*. The matter was referred to the Tribunal and after decision, the parties are again before this court. Even if the Tribunal had no jurisdiction, the matter is required to be considered by this court. The matter can still be considered even ignoring the order of the Tribunal. Even if the arguments of the counsel for the management is accepted, after setting aside the order being without jurisdiction, the matter will still have to be considered by this court on merits, there being no other alternative remedy. The issue will be considered in an appropriate case at an appropriate stage.

(14) As far as the merit of the case is concerned, respondent no. 1 was appointed after selection for the post of Hindi Lecturer for which advertisement was issued in the newspaper. Appointment letter was issued to her on 5.7.2008 clearly providing that she has been appointed as Lecturer in Hindi subject to the approval of the University, which was ultimately granted. She was on probation for one year which was extendable for further period of one year, if necessary. On completion of probation period, she was entitled to be confirmed on the post.

(15) No doubt, on review the employer was entitled to extend the probation of an employee after completion of initial period and review the work and conduct till such time the maximum period is over. Apparently exercising that authority, the petitioner management extended the period of probation of respondent no. 1 for a period of one year upto 6.7.2010, however, during the period of probation she was informed vidcommunication dated 10.5.2010 that her services were not required. When the termination order was challenged by respondent no. 1, the management sought to defend the same by raising two folds pleas. Firstly, the work and conduct of respondent no. 1 was not good. For the purpose, reference was sought to be made to documents placed on record as Annexures P-4 to P-7, which need to be analyzed.

(16) Annexure P-4 is a circular dated 22.10.2008, mentioning that the duty of campus beautification and cleanliness had been allotted to some lecturers including the petitioner, but they did not bother to check and

instruct the class-IV employees. They were asked to take occasional round so that the campus remains neat and clean. This has no relevance with the main duty of respondent no.1 which is teaching and cannot be said to be such a serious incident for which an employee could be removed.

(17) Annexure P-5 is a communication addressed to respondent no. 1 on 13.2.2009 stating that large number of students had reported that her behaviour with them was harsh and rude. On the one hand, the stand of the Management is that there were only 20 students in Hindi subject with whom respondent no. 1 was to interact during the course of teaching. On what occasion large number of students came in contact with respondent no.1 has not been specified. Nothing has been referred to state that respondent no. 1 was assigned any other duty in terms of which she could have interacted with other students, who reported her behaviour.

(18) Annexure P-6 is another communication addressed to respondent no. 1 on 29.1.2010 referring to some verbal instructions given for taking interest in activities of the Central association, which has no relationship with the teaching assignment. No doubt, an employee can be assigned other duties in addition to the main duty but still this ground could not lead to removal from service, if considered in isolation.

(19) As far as Annexure P-7 dated 22.5.2010, is concerned, complaining about non-deposit of certain registers and files, has no relevance as it was issued after respondent no. 1 had already been served with a notice dated 10.5.2010 removing her from service.

(20) Hence, to form an opinion on the basis of material, referred to above, that the work and conduct of respondent no. 1 during her probation period was not good, cannot be legally sustained.

(21) As far as the plea raised by counsel for the management regarding reduction in workload is concerned, from the material on record, it is evident that at the time when respondent no. 1 was appointed, the college had 20 students in Hindi subject in different classes. The figure has now increased to 24. The fact that there are 24 students studying Hindi in the college was not denied by the petitioner management. Hence, the plea raised is incorrect. In addition thereto, it has been observed by the Tribunal in its order that in the same campus, the college and school are being run

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by the management. The total number of students are 57. Though in college the number of students is 24 and 33 are studying in school and there is no bar for the management to ask a Hindi teacher to take lectures of Hindi of 10+1 and 10+2 classes. Once the college could appoint a teacher on regular basis against unaided post in the year 2008 with 20 number of students, there was no good reason to remove her service when number has increased to 24 and further she can be assigned classes of 10+1 and 10+2 in the school in the same campus. The Tribunal has further observed that nothing was produced to show that the financial condition of the petitioner had gone so week that it cannot afford teaching faculty.

(22) For the reasons mentioned above, I do not find any merit in the writ petition. Accordingly, the same is dismissed.

COCP No. 1588/2011

(23) As far as the contempt is concerned, the same is disposed of with a direction to the management to reinstate the petitioner in the contempt petition in service within one month from the date of receipt of the copy of the order.
