

Before K. Kannan, J.

MALKIAT SINGH JOSAN,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 18856 of 2010

1st January, 2012

Constitution of India - Art. 226 - Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 - Ss. 2B, 3,4 & 7A - Petitioner retired as Director of Physical Education sought grant of terminal benefits including arrears of salary payable to him by way of writ petition - whether writ petition maintainable or remedy lies before Education Tribunal - Held that provisions of Punjab Affiliated Colleges (Security & Service of Employees) Act, 1974 contains provision for dismissal, removal or reduction in rank - Educational Tribunal cannot assume jurisdiction on any other subject - Writ maintainable.

Held, that I have seen that the provisions, which the Act, 1974 contemplate are suspension (Section 2-B), dismissal, removal and reduction in rank (Section 3) and the procedure for dismissal and removal (Section 4). The Education Tribunal constituted under Section 7-A cannot assume jurisdiction on any other subject. I would, therefore, reject the argument that the remedy of the petitioner would be only before the Education Tribunal and not through this writ petition.

(Para 10)

Vikas Bahl, Advocate, for the applicant-petitioner.

Anil Kumar Sharma, Addl. AG, Punjab, for respondent No.1.

D.S. Patwalia, Advocate, for respondents No.2 and 3.

K. KANNAN, J. (ORAL)

CM NO.109 OF 2010

(1) CM is allowed.

(2) Replication filed on behalf of the petitioner to the written statement filed by respondents No.2 to 3 is taken on record.

(3) CM stands disposed of.

(4) Reply filed on behalf of the 1st respondent is taken on record.

(5) The petitioner, who is a retired staff in a College as a Director of Physical Education, seeks for grant of the terminal benefits that would include the arrears of salary payable to him on the basis that he was entitled to the selection grade on completion of 16 years of service from the date of his appointment. There had been a previous round of litigation filed at the instance of the petitioner when he made a claim that he was entitled to selection grade w.e.f. 01.04.1993 in CWP No.14633 of 2000. The writ petition was contested by the respondents on the ground that the petitioner had been appointed in the place of one G.S. Chandi, whose services have been terminated by the College and in a dispute between G.S. Chandi and the College, he secured the cancellation of the order of his termination and ordered to be restored in the post. When the attempt was made to terminate the services of the petitioner, the petitioner himself filed CWP No.3000 of 1992 challenging the order but by virtue of the directions given by this Court was allowed to continue in post. The later writ petition in CWP No.14633 of 2000 came to be filed after his superannuation claiming the service benefits that included a claim for selection grade.

(6) The Court passed an order on 18.12.2008 to verify the fact alleged by the petitioner that the selection grade had been granted to every other person, who had completed 16 years of service irrespective of whether the person had completed two refresher courses or not.

(7) The matter was brought before this Court again on 18.12.2008 when the Court found that he was entitled to all the pensionary benefits including the selection grade to which he was entitled. The Court further directed the respondents to release all the consequential benefits above-mentioned within a period of 3 months. It is an interpretation of this order that falls for consideration in this writ petition. While the petitioner would understand this order to recognize his right to claim the selection grade from the date when he completed 16 years of service, the respondents would contend that this right would endure to the petitioner only from the date when the petitioner had completed the two refresher courses.

(8) The counsel appearing for the petitioner would contend that the issue of whether passing of refresher courses was relevant was already taken up before the Court in the previous writ petition and the Court was satisfied that the petitioner had attended two refresher courses and it was only in such a context that the Court had allowed for “all the benefits to be given including the selection grade to which he was entitled to”. The counsel for the petitioner would take a second string to bow, as it were to contend that in any event, the requirement of refresher courses was inapplicable to persons, who had been appointed before 01.01.1986 in terms of memo issued by the Government Punjab, Department of Education to the Director of Public Instructions, Punjab on 19.09.1992. The said instructions read as follows:

“Subject: Relaxation from refresher courses to the Lecturers, D.P.Es and Librarians of Govt./Private Affiliated Colleges.

Reference your letter No.409(S) 28/4-88-Services (2) dated 28.7.92 and Punjab Government Memo No.12/7/86-5Edu.I/3758 dated 4.8.92 on the subject cited above.

- 2. Govt. agree to your proposal for relaxation in participation in Refresher Course to Lecturers/Librarians/ D.P.Es working in Government and Private Affiliated Colleges appointed before 1.1.86 for granting them Senior Scale/ Selection Grade to 31.12.1993.*
- 3. You are also directed to prepare a Calendar for sending Lecturers/Librarians/ D.P.Es both in Private Aided and Government Colleges for attending Refresher Courses with effect from 1.1.94 onwards and to circulate it to all concerned well in advance so that every person knows when his/her refresher course is to commence and also the College Authorities know about the same. This Calendar should cover all the eligible persons in a phased manner to attend the refresher course.”*

(9) The petitioner would further contend that these instructions were applied to several other teachers and on the basis of the information secured through RTI, the respondents would contend that they were not applied to several other persons, who had been appointed before 01.01.1986. The

respondents would qualify this exemption by saying that they were all applicable to sanctioned posts but since the petitioner was required to be accommodated by virtue of a successful challenge made by G.S. Chandi after his termination, the entire payments to be made to the petitioner had to be done without obtaining any grants from the State and, therefore, the benefit of this exemption cannot be applied to the petitioner.

(10) The learned counsel appearing for the respondents takes up preliminary objection with reference to the maintainability of the writ petition itself. The learned counsel would place reliance on a judgment of this Court in **Dr. Anand Singh Malik versus State of Haryana and others (1)**. This Court was referring to the maintainability of the writ petition in a case where the termination of an employee by the College Management was challenged through a writ petition under Article 226 of the Constitution and the defence was that the remedy was to prefer an appeal before the Educational Tribunal. The judgment was rendered in the context of termination of services of a teacher and the Court was reproducing the observations made by Hon'ble the Supreme Court in **TMA Pai Foundation and others versus State of Karnataka and others (2)**. I will find no reason to apply the above decision to the facts of this case as the Educational Tribunal, which is constituted under the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (for short, 'the Act, 1974') contains provisions for dismissal, removal or reduction in rank and allows for an adjudication in respect of the subject covered under the Act. In this case, the matter relates to the applicability of the scales of pay to the petitioner and I would not find that the Educational Tribunal could have any jurisdiction on a matter, which the Act does not stipulate. The learned counsel Mr. Patwalia would still argue that Hon'ble the Supreme Court in **TMA Pai Foundation' case** was referring to the jurisdiction of Educational Tribunal in all cases relating to the service conditions of teachers in aided and unaided private institutions. The learned counsel would refer to the observations of Hon'ble the Supreme Court as made out in the judgment of **Dr. Anand Singh Malik's case**, which read as follows:

“64. 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

(1) 2011(6) SLR 277

(2) 2002(6) SLR 627 (SC)

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 aggrieved teachers 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 specialised tribunal is set up, the right of filing the appeal would be 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.”

I will not read these observations as meaning that in every situation of a dispute raised by a teacher in a private institution, the remedy will be only before the Educational Tribunal. It will amount to giving an unreasonable meaning to the decision, for, the rights of the parties will have to be governed by the express provisions of the Act and the judgment cannot be taken as laying down law for interpretation of the Act, 1974. In cases where any State enactment provided for such a course, evidently, the decision of Hon'ble the Supreme Court would apply. We cannot understand the meaning of Hon'ble the Supreme Court judgment without reference to the express provisions of the State enactment. I have seen that the provisions, which the Act, 1974 contemplate are suspension (Section 2-B), dismissal, removal and reduction in rank (Section 3) and the procedure for dismissal and removal (Section 4). The Education Tribunal constituted under Section

7-A cannot assume jurisdiction on any other subject. I would, therefore, reject the argument that the remedy of the petitioner would be only before the Education Tribunal and not through this writ petition.

(11) The subsidiary argument that is advanced by the respondents is that the petitioner was occupying an unaided post and, therefore, Act, 1974 itself does not apply. I must observe that such an argument as self-defeating, for if the Act would not apply, the question of allowing for the petitioner a resort to remedy before the Educational Tribunal on the basis of Hon'ble the Supreme Court's judgment, does not arise.

(12) The issue would, therefore, turn on whether the petitioner is entitled to the selection grade scales from the date when he completed 16 years of service. The matter cannot require even an adjudication of whether the petitioner was entitled to the benefit of exemption or not. I have already observed that the writ petition in CWP No.14633 of 2000 was itself for a direction that he shall be granted the selection grade w.e.f. 01.04.1993. When the writ petition was being allowed, it had concluded the issue of his entitlement from 01.04.1993 and it cannot be contended by the respondents that the High Court was not considering the issue when the entitlement would commence from. If the petitioner was making a reference about the fact that he had attended two refresher courses in the earlier writ petition, it should have been brought to the knowledge of the Court by the respondents that the petitioner had not completed these courses at the time when he had completed 16 years of service or the exemption instructions referred to above were not applicable. Admittedly, the instructions were available even at the time when the writ petition was disposed on 18.12.2008. The applicability or otherwise ought to have been pressed and an adjudication must have been taken at the time when the Court passed an order. The manner of disposal of the writ petition on 18.12.2008 admits of no ambiguity that the petitioner's claim was allowed in full and what was being relegated to the authorities was only to calculate and release the benefits to the petitioner. I will not, therefore, go into the issue of whether the petitioner, being in an unaided post, was entitled to the benefit of exclusion of the instruction or not. I would take that argument as not available for the respondents in the writ petition.

(13) The writ petition is allowed and there shall be a direction to the respondents to release the balance of arrears of pay calculated on the basis that the petitioner was entitled to the benefits of the selection grade on completion of 16 years of service and the terminal benefits shall also be calculated on such basis. The amount shall bear interest @ 6% per annum from the date of completion of the period of 3 months mentioned in the previous order namely 18.12.2008 till date of payment. The amount shall be paid within 3 months from the date of receipt of copy of this order.

S. Gupta

Before Rajesh Bindal, J.

ABNASH KAUR AND ANOTHER,—Petitioners

versus

SURINDER SINGH SANDHU AND OTHERS,—Respondent

Civil Revision No. 870 of 2012

10th February, 2012

Code of Civil Procedure, 1908 - Order XVI, XVIII & XXVI Rls. 1, 1A, 4, 4(1)(a), 16, 16A, 17, 18, 18A & 19 - Respondent/plaintiff filed a suit for declaration with regard to immovable property - Also filed application for appointment of Local Commissioner for examination of one witness as PW - Application allowed by trial court - Challenge thereto in contending that in terms of provisions of Order XVIII Rl. 4 CPC, examination in chief of a witness has always to be on affidavit, which has to be filed in court and it is only for purpose of cross examination that a commission can be appointed - Since in present case no affidavit is filed no commissioner can be appointed - Held that in the light of provisions of Order XVIII Rule 19 and Order XXVI Rule 4A CPC, affidavit can be tendered in the court and commission can also be appointed for recording the same - Petition dismissed.

Held, That where the witness has been brought by the party concerned himself, in such cases examination-in-chief is not to be recorded in court but shall be in the form of an affidavit. However, in the cases where summons