**1IN THE HIGH COURT OF PUNJAB AND****HARYANA AT CHANDIGARH**

C.W.P. No. 17736 of 2011

Decided On: 29.03.2012

Appellants: **Vidya Parisad, Bahalgarh**
**Vs.**
Respondent: **The Director, Secondary****Education,****Haryana, Siksha Bhawan, Sector 5, Panchkula and Another**

**Hon'ble Judges/Coram:**
Hon'ble Mr. Justice K. Kannan

**JUDGMENT**

**K. Kannan, J.**

1. The writ petition is at the instance of management of a school that had originally appointed the 2nd respondent to the post of a Sanskrit teacher after an interview held on 14.08.2004 for which approval had also been given by the Commissioner-cum-Director General of School Education on 07.02.2006. Acting on the alleged complaint by a person by name Vinod Sharma, who was a candidate for the post for the Sanskrit Teacher questioning the eligibility of the 2nd respondent's candidature, the District Education Officer had appointed Block Development Officer to enquire into the circumstances of appointment of the 2nd respondent. The enquiry yielded to a finding that the appointment was not regular when the 1st respondent declared the appointment of the 2nd respondent as invalid by order dated 07.02.2011 and directed the petitioner management to relieve her within a period of 7 days. The management purported to have relieved her from duty on 17.02.2011. Aggrieved at the decision, which was said to have been taken without involving the 2nd respondent in any form of enquiry or giving an opportunity to show cause against such dismissal, she filed a writ petition before this Court in C.W.P. No.3354 of 2011, which was ordered on 24.02.2011 that the status quo was to be maintained. The 2nd respondent sought for a direction for enforcement of the order and the Director of Secondary School Education joined issues to demand the Principal of the petitioner-management to comply with the orders.

2. The petitioner-management replied contending that the termination of the teacher had been effected on 17.02.2011 and sent to her through a registered post while the order of the High Court directing the status quo to be retained was made only on 24.02.2011 and therefore, there was no compulsion for taking her back in service. The Director of School Education subsequently passed an order on 08.04.2011 recalling the earlier order passed by him on 07.02.2011 directing the termination of service of the 2nd respondent. It is this order dated 08.04.2011 that is in challenge by the management.

3. The school management contends that the appointment that had been issued to the 2nd respondent initially on the recommendation of a Selection Committee duly constituted was not a correct decision. The 2nd respondent was only a Graduate with Sanskrit as an elective subject with B.Ed qualification. The person with such qualification should not have been considered when there were other candidates, who had the requisite qualification as laid down under the Rules for the post of Sanskrit Teacher. The statutory Rules provided the following minimum qualification: (i) Shastri/B.A (Honours in Sanskrit) from a recognized University or (ii) LTC/O.T in Sanskrit conducted by Haryana Education Department or an equivalent qualification recognized by the Haryana Education Department or (iii) B.T./B.Ed with Sanskrit as teaching subject from a recognized University. As per the Rules a candidate with B.A and B.Ed could be considered only when the candidates with the primary qualifications referred to above were not available. In this case there were 7 candidates, who amongst the 11 interviewed, possessed the preferential qualification and therefore, the 2nd respondent could not have been considered at all.

4. The petitioner also has an excuse as to why the management itself was a party to a wrong decision of making the selection of the 2nd respondent, even when she was not eligible for consideration when there were other candidates who had the requisite qualification. They would state that the 2nd respondent's husband was already working in the Education Department and it was only on account of his pressure that the wrong selection was made. The petitioner has further grievance that when the 1st respondent was recalling his own order, he had failed to give any reason as to how the 2nd respondent could have been considered as eligible when there were other candidates who had preferential qualifications. Without adverting to the admitted error in selection of a candidate, the 2nd respondent could not have been considered for appointment. The petitioner would characterize the order passed by the 1st respondent recalling his own order as without any application of mind and therefore vitiated.

5. The Director has filed a reply contending that the initial order, which was made on 07.02.2011 itself was a mistake for he could not have directed a removal of the 2nd respondent from service without a proper enquiry, when the appointment had been approved earlier on 07.02.2006 and in pursuance of which the 2nd respondent was actually working as Teacher. The removal from service without following a procedure of setting up an enquiry was impermissible under the Rules and what was contemplated to be done was only a direction to constitute such an enquiry but it had been wrongly communicated as though the 2nd respondent was required to be immediately terminated from service. The impugned order withdrawing the earlier order directing the termination was, therefore, to set right the error already made on 07.02.2011.

6. The 2nd respondent would file her objection to the petitioner's plea contending that it was wrong to suggest that the 2nd respondent did not have the requisite qualification. The qualification that she had won a graduate degree and the B.Ed course with Sanskrit as a teaching subject and it was surely an eligible qualification as per the Rules and when the 2nd respondent had been considered along with other candidates, who had the preferential qualification, the selection committee on an overall assessment of candidates had recommended her candidature, which could not be stated to be wrong. The reference in the Rule that if persons with qualification in Shastri/B.A or LTC/OT or equivalent were not available then person with BA/B.Ed educational qualification could be considered as including a situation when a suitable candidate amongst the preferential qualification was not available and therefore, the Selection Committee that appointed the 2nd respondent was fully justified in selecting the 2nd respondent on relative merit assessment and she could not have been removed from service even without holding a proper enquiry and giving her an opportunity to show cause against why the termination order was not possible. The alleged enquiry conducted by the Block Education Officer was a farce and the report had been secured behind her back. The 1st respondent-State had no right to pass an order of termination without undertaking the procedure for termination in the manner contemplated under the relevant Rules. When the writ petition was filed, the State knew its own folly and had recalled that order and only because the impugned order itself had been withdrawn by the State her own earlier writ petition had been disposed of as infructuous. The petitioner had attempted to stall even the disposal of the earlier writ petition by originally seeking to file a reply and later contesting the matter before the Court but when the Court found that there was nothing to be contested the petitioner has challenged it by means of this writ petition. The respondent would further deny that her husband had any role to play in securing her selection since he had been transferred out of DO's office even before the selection was made. On the other hand, it was the petitioner, who had a wrong motivation in attempting to scuttle their own selection made through a lawfully constituted committee. The selection was made in the year 2004 and the alleged complaint said to have been made on 01.11.2007 is itself a fabrication. The 2nd respondent had actually taken charge as a Teacher pursuant to the selection held in the year 2004 and when the appointment order was issued after sanction from Government even in February, 2006, a belated complaint in November, 2007 was entertained by the petitioner only to harm the 2nd respondent. At no stage of the proceedings was the alleged complainant Sh. Vinod Sharma even approached the Court challenging the selection made. This itself would show that the management was literally trying to fabricate evidence against her and were trying to resile from a lawful appointment made after a proper selection process.

7. On the question of whether the 2nd respondent could have been found eligible for consideration, it would be necessary to reproduce the exact language as contained in the relevant Rule relating to the qualifications:-

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| --- | --- | --- | --- |
| Sr. No. | Designation of Post | Minimum qualification | Scale of pay |
| 1. | (C&V) Sanskrit Teacher or Teachress | (i) Shastri/B.A. (Hon's in Sanskrit) from a recognized University; (ii) LTC/OT in Sanskrit conducted by the HaryanaEducation Department or an equivalent qualification recognized by the HaryanaEducation Department.ORB.T./B.Ed with Sanskrit as teaching subject from a recognized University.Note: in case, the candidates of above qualifications are not available then B.A. with Sanskrit as an Elective Subject with B.T./B.Ed from a recognized University with Sanskrit as a teaching subject shall be considered. | 5500-175-8400-EB-175-9000 |

8. The reference to a BA/B.Ed qualification with Sanskrit as a teaching subject as minimum qualification for a candidate obtains only if the candidates with other qualification mentioned normally Shastri/B.A./LTC/OT or equivalent were not available. It is nobody's case that there were no other candidates. It is, therefore, evident that the 2nd respondent could not have been "considered" for selection when there were other candidates with the requisite qualifications. Learned counsel appearing for the 2nd respondent would argue that the availability must be understood as the suitability for selection as well. It is difficult to stretch the expression availability in the fashion in which the 2nd respondent would attempt to contend before this Court. It is surely not a situation where the 2nd respondent did not have the requisite qualification. The qualification that she had was surely an alternative qualification if persons with preferential qualifications were not available. Consequently, if only the Selection Committee had found initially that all the persons, who possessed the preferential qualifications were not suitable, then and only then the question of "consideration" of the candidature of the 2nd respondent could have arisen. The decision of the Selection Committee is merely communicated in a laconic fashion with following expressions:

The interview for this post was conducted on 14.08.2004 at 3.00 P.M. by the selection committee. 11 candidates come present at the time of interview. Out of them the selection committee recommends the name of Smt. Neelam wife of Sh. Raghubir Singh for appointment to this post.

1. sd/

2. sd/

3. sd/

4. sd/-

9. It is not clear from the decision taken by the Selection Committee on 14.06.2004 that other candidates were not suitable and therefore, they had chosen to appoint the 2nd respondent. So long as there were candidates with preferential qualification available, the question of moving to the alternate qualification did not arise at all. The relative grading ought to must have been made only amongst candidates, who had the preferential qualification and only after finding that none of them was suitable for selection, the Selection Committee could have enlisted a consideration of the 2nd respondent's candidature. I have not adequate data and information before me of the reasons that constrained the Selection Committee to consider the 2nd respondent's candidature. The Selection Committee recommendation itself is not a subject of challenge in this writ petition; nor is the selection of the 2nd respondent challenged by any of the unselected candidates. On the other hand, the management is prepared to make self-deprecatory statement that selection was made by compulsions of the presence of 2nd respondent's husband in the EducationDepartment. I have rather strange situation of when the employer wants to contend that the particular offer of appointment that was made was wrongly made by selecting a candidate, who could not have been selected for selection when there were candidates, who had better qualification and whose primary consideration was missed under the Rules, owing to extraneous influence.

10. One thing becomes clear that when a selection was put through on a recommendation of the Selection Committee and when the 1st respondent had granted sanction to the selection of the 2nd respondent, the removal from service could not have been done otherwise then under the procedure established through Rules. A summary dismissal in the manner done by the order dated 07.02.2011 was impermissible. To that extent, when the challenge had been made by the 2nd respondent through a writ petition, she had a strong case to prosecute and when the Court also ordered status quo, it was recognizing that the order of termination which was made on 07.02.2011 was prima facie not valid. It is a different matter altogether that the status quo in that situation meant that status quo on the date of the writ petition on 24.02.2011 when according to the petitioner the respondent had already been terminated from service and informed so, through a registered post. There has been no adjudication on the validity of the order dated 07.02.2011 itself since the order was recalled subsequently by the 1st respondent. The withdrawal of the order passed would only mean that the order passed on 07.02.2011 could not have been sustained since it was patently against the procedure prescribed under the relevant Rules. The 1st respondent states through its counsel that after the enquiry officer's report was submitted, they had merely contemplated a procedure for departmental enquiry but it came to be issued wrongly as an order of termination itself. The order recalling the earlier order passed on 07.02.2011 cannot, therefore, be found to be unjustified since the termination could not have been effected without instituting an enquiry as contemplated under the Rules. The challenge to the order withdrawing the earlier order passed on 07.02.2011 cannot, therefore, be sustained. The petitioner's challenge ought to therefore fail.

11. Even while holding that the order passed on 07.02.2011 terminating the service could not have been passed, since the materials are now available that the selection committee had considered the candidature of the 2nd respondent even when there were other candidates available who had preferential qualification, it would become necessary for the 1st respondent to carry out the process that was started initially by appointing an Enquiry Officer. The Enquiry Officer's report cannot be taken to conclude the issue finally against the 2nd respondent. It must be taken only as a preliminary enquiry for collection of data that the decision of the Selection Committee making the recommendation was perhaps not correct. The order could have been only to conduct a enquiry regarding the appointment of the 2nd respondent and directing a show cause notice as to why the 2nd respondent's selection shall not be annulled in the manner contemplated under Section 8 of the Haryana School Education Act, 1995 read with the relevant Rules of 2003. The 1st respondent is directed to issue such a notice within 4 week from the date of receipt of copy of the order. The entitlement of the 2nd respondent to continue in service or not would be a matter that would depend on the powers that could be exercised during the conduct of enquiry. I would leave it to the best of wisdom of the authority, who is competent to pass such an order during the pendency of such enquiry requiring a show cause notice against why the 2nd respondent's appointment cannot be terminated. As regards the salary payable, the 2nd respondent has not worked since 17.02.2011, although the order of termination had been recalled on 08.04.2011. On the day when the order of termination was passed on 07.02.2011, the 1st respondent could have at best directed an enquiry to be constituted. Even suspension could not have been ordered without the sanction of the 1st respondent. The decision either to suspend or allow her to continue during the continuation of enquiry would conclude the issue of entitlement of her salary. At the time of constituting an enquiry in the manner contemplated under the Act and the relevant Rules and while giving effect to the order of this Court as regards the enquiry, the decision as regards payment of salary and the extent thereof shall be taken by the competent authority and the amount as determined shall be released to the 2nd respondent. The liability shall be joint and several against the 1st respondent and the petitioner. With these observations, the writ petition is disposed of and the challenge to the validity of the order dated 08.04.2011 is declined.