IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No. 389 and 390 of 2018 (O & M)
Reserved on: 22.11.2022
Date of Decision: 14.12.2022

M/s. G.D. Goenka School .....Appellant(s)

Versus

Parveen Singh Shekhawat and others ....Respondent(s)

AND

LPA No. 390 of 2018 (O & M)

M/s. G.D. Goenka School .....Appellant(s)

Versus

Ajay Singh Shekhawat and others ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Akshay Bhan, Sr. Advocate,
with Mr. Gurmohan Singh Bedi, Advocate,
Mr. Pawandeep Singh, Advocate,
Mr. Amandeep Singh, Advocate,
for the appellant.

Ms. Parveen Shekhawat and Mr. Ajay Singh Shekhawat,
respondents-in-person.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of two letters patent appeals i.e. LPA Nos. 389 and 390 of 2018, as the same arise out of the similar orders passed by the Appellate Tribunal and a common order of the learned Single Judge. The present letters patent appeal has been filed by the employer-school against the order dated 08.12.2017 passed by the Appellate Tribunal

comprising of the District Judge under the Haryana Education Act, 2003 and the subsequent order passed by the learned Single Judge in CWP Nos. 2310 of 2018 and 2335 of 2018 wherein, the writ petitions were dismissed in *limine*. The District Judge, Gurugram came to the conclusion that the employees who are husband and wife were confirmed employees in view of the letter dated 14.09.2005 and the termination done on 29.06.2015/21.07.2015 was done on the basis of the notices which had been issued prior to the amendment of the Staff Service Regulations. The show cause notices as such were issued whereby the performance of the employees was held to be sub-standard and the children of the school were not happy on account of which the notices had been served was the alleged ground for termination of services of the employees. The same having been scrutinized showed that there was only one month notice given whereas in the appointment letter dated 17.08.2004 and in the confirmation letter, the period of notice was required to be of 3 months. Resultantly, it was held that the action of the appellant-management was to the detriment to the interest of the employees and implementing the new terms and conditions for termination of services retrospectively though noticing that the school was a private autonomous body and was having liberty of having its own regulations and policy decisions. However, it was held that the policy of 'hire and fire' and of acting with whimsical and capricious attitude was detrimental to the employees and violative of the principles of natural justice. At least a regular domestic enquiry should have been initiated against the employees and they should have been given an opportunity to face and join inquiry before the services could be terminated on the principle of fair hearing, equity and justice. Resultantly, in the absence of the requisite three months' notice

instead of one month before termination, the finding was recorded that the termination order was not justified and accordingly it was set aside since it was violative of the principles of natural justice. The couple was held entitled for reinstatement in service with immediate effect with full back wages/salary alongwith interest @6% per annum from the date of the termination of service i.e. from May, 2015 onwards till final realization.

The writ petitions filed, as noticed, were dismissed by the learned Single Judge in a terse manner while placing reliance upon the judgment of the co-ordinate Bench in the ***Management of S.D. Model Senior Secondary School and another vs. District Judge-cum-Service Tribunal and another, 2014 (13) RCR (Civil) 328*** and the fact that the Apex Court in ***TMA Pai Foundation vs. State of Karnataka, (2002) 8 SCC 481*** had directed constitution of Educational Tribunals. The argument raised as such that the power to set aside the dismissal order did not vest with the Tribunal was not accepted by holding that it would result in denuding the judicial power of the Tribunal to adjudicate the case. The argument that the Haryana School Education Code would govern was rejected on the ground that the Code does not deal with the service law disputes and it was held that there was no legal error in the order of the Tribunal. The argument that the contract *inter se* was of a personal service which was not specifically enforceable in law was rejected on the ground that in view of the statutory protection afforded to the employees of the private recognized schools in Haryana, all shades of service disputes are to be settled by the Tribunal.

Senior Counsel for the appellant, with all vehemence, has submitted that it is a contract of personal service while falling back on Section 73 of the Contract Act, 1872 to submit that at the most, it was a case

of damages as such for payment of compensation. It was accordingly submitted that in pursuance of interim orders, Rs.10,00,000/- each to both the husband and wife had been paid on an earlier occasion which was sufficient as such to compensate them and reinstatement had wrongly been ordered. Counsel has placed reliance upon the judgment of the Apex Court in ***Secretary, A.P.D. Jain Pathshala and others vs. Shivaji Bhagwat More and others, (2011) 13 SCC 99*** to contend that reinstatement could not be done and only a declaration could be issued that the contract of personal service subsists. Similarly, reliance was placed upon the judgment in ***Kailash Singh vs. Managing Committee, Mayo College, Ajmer and others, (2018) 18 SCC 216*** to submit that even if there was a breach of contract, compensation is payable and the issue of reinstatement was not the right relief to be granted.

The employees appearing in person stated that the orders passed by the District Judge and the learned Single Judge are justified and submitted that they were unceremoniously thrown out from service after having rendered over a decade of service without any complaint and the termination was against the terms of the letter of appointment and, thus, reinstatement had been rightly ordered.

A perusal of the paper book would go on to show that vide letter dated 17.08.2004, appointment was offered as a Physical Education Teacher by the appellant-school to the lady which was at basic pay of Rs.5,500/- and the scale was of Rs.5,500-175-9000 and the approximate gross emoluments were to be Rs.13,300/-. They were entitled to the rent free accommodation + D.A., C.C.A., leave encashment as admissible to Physical Education Teacher Mrs. Parveen Shekhawat. Similarly, her husband Ajay Singh Shekhawat's basic pay was Rs.7,500/- and the scale was of Rs.7500-200-10500 against his

appointment as Post Graduate Teacher (Physical Education). The gross emoluments were Rs.25,000/- in his case. As per the terms of the letter of appointment, the appointment was to be governed by Service and Conduct Rules of the School presently in force or as amended from time to time as per Clause 2. The appointment was on probation and there was a right with the employer to terminate by giving 30 days' notice during the said period, which was to be extended to 90 days after confirmation. The relevant portion reads thus:-

> *"2. Your appointment will be subject to and governed by Service and Conduct Rules of the G.D.Goenka World School presently in force and / or as amended from time to time.*
>
> *3. Your appointment will be on probation for one year. During this period, your services can be terminated by either side, without assigning any reason, by giving 30 days' notice or 30 days' salary in lieu thereof. However, upon confirmation, the services can be terminated by either side by giving 90 (ninety) days prior notice or 90 (ninety) days' salary in lieu thereof."*

It is not disputed that both the husband and wife were duly confirmed vide separate letters of even date of 14.09.2005 (Annexure P-3) w.e.f. 01.09.2005. Apparently, some complaints were received against them by the parents of the children studying in the school in April, 2015 (Annexure P-4 colly) that they were not taking their role seriously. Resultantly, notice was issued to them on 03.06.2015 that they were taking the positions for granted in the school and there was lack of interest displayed by both of them. They were to reply to the said notice within 10 days and the same was followed up on 15.06.2015 that they had not cared to respond and a last

opportunity was given to do so within 7 days or appropriate action would be taken in accordance with the Rules and termination of the contract. The notice reads as under:-

SUBJECT: SECOND NOTICE OF ENQUIRY

Dear Mr & Mrs Shekhawat,

We are constrained to write, once again, that despite our earlier notice date 03 June 2015 calling upon of both of you to furnish your response to the allegations made therein, you have not cared to respond, either verbally or in writing; nor has your performance improved to demand reprieve.

The School Management continues to feel embarrassed owing to several complaints against both of you, alleging lack of interest thereby exemplifying your under-performance.

Therefore, in these circumstances, we hereby call upon of you, as a last opportunity, to submit your reply/response in writing within a period of 7 days from the date of receipt of the present notice.

Please also, take note that in the event of your failure to furnish your reply in the aforesaid inquiry proceedings, it shall be presumed by the School that both of you have no explanation to offer and the school would be left with no other alternative but to take appropriate action you in accordance with rules, including termination of your contract."

Apparently, on 19.06.2016 (Annexure P-6), the school asked them to try to change their term of the appointment letter by reducing the period of notice to 30 days and eventually on 29.06.2015, the school determined their contract and terminated their service with immediate effect

by coming to the conclusion that they had not cleared their positions and refuted the charge. The order reads thus:-

> *"Dear Mrs. Shekhawat,*
>
> *We are constrained to observe that despite having repeatedly called upon you to submit your explanation in writing in respect of the charge/allegation against you, as reflected from one earlier letters date 03-06-2015 and 15-06-2015, you have failed to come forward and clear your position, not only this, you have also failed respond or refute the charges as referred to in our earlier letters and therefore, it appears that you have no explanation to offer in respect of the allegations made against you.*
>
> *Consequently, we have been left with no other alterative but to take appropriate action in accordance with rules, and therefore, the School Management has taken decision terminate/determinate your contract of employment with immediate effect.*
>
> *You are requested to hand over charges to the concerned department and deposit all articles belonging to the School with in a period of one week, and to clear all your dues from the concerned department to enable us to finalize your exit carefully.*
>
> *Yours Sincerely*
>
> *(For G D Goenka World School)*
>
> *D.N.A. Mountford"*

Aggrieved by the said order, the petitioners chose to firstly approach the Assistant Labour Commissioner, who issued demand notice to the school and eventually, they approached the District Judge on 14.03.2016. The claim was accordingly made that they were being paid Rs.48,315/- in the

case of Mrs. Parveen Shekhawat and Rs.79,061/- in the case of Ajay Singh Shekhawat and that without any charge sheet, they had been terminated and the school gate had been closed on their faces. Accordingly, it was averred that the effort to amend the Staff Regulations was contrary to the appointment letter. The three children of the employees were also stated to be studying in the school and the entry was also denied and school leaving certificates had been issued and, therefore, they had been humiliated. It is thus pertinent to notice that neither any claim was made under any statutory provision or with reference to any protection under the Haryana School Education Rules in the petition. Resultantly, reinstatement was sought with full back salary alongwith interest @24% per annum.

The written statement filed by the School as such was that on account of the poor performance of the husband, who was the incharge of the boys section, the children were not happy and since they were not concentrating on their duties. Show cause notice had been issued with the follow up on 15.06.2015 and resultantly, on account of failure to furnish their replies, termination had been done on 29.06.2015 consistent with the Staff Service Regulations of the respondent-school. The amendment which was sought to be done was within the realm of the school and staff regulations as amended from time to time. The claim petition was stated to be pending before the Labour Court, Gurugram and on account of initiating parallel proceedings, objection was taken. It is an admitted fact that the proceedings before the Labour Court were withdrawn during pendency before the District Judge. Resultantly, it was averred that the relationship was contractual *inter se* and could be terminated in accordance with the Rules and Regulations. It was denied that there was any delay in payment of salaries and cheques for

the month of May had also been prepared, which the employees had failed to collect. The termination letter was stated to be in accordance with the Staff Service Regulations and the management possessed complete legal authority to amend the Staff Service Regulations in the manner they wish to. Even in the appointment letter, it was specifically mentioned that the same was subject to the Conduct Rules of the school in force or as amended from time to time. The entry in the school was denied on account of the fact that they were no longer employees and it was alleged that the children had been withdrawn from the school and they were no longer eligible for availing benefit of free education on account of the termination and that parallel proceedings as such were not justified.

It is, thus, apparent from the pleadings that even the school as such has not referred to any of its Rules, Regulations and the procedure which it had prescribed for terminating the services of the employees. In spite of specific orders passed on 03.02.2020, the bylaws governing the condition for the protection of the teachers employed with the schools has not been put forth. Even the documents put forth are the affiliation as such and the guide to school authorisation which, even senior counsel, fairly conceded that there were no such specific Rules which would govern the process of termination on account of any misconduct. Thus, an adverse inference is to be drawn necessarily against the appellant-school as it is not coming forth with its procedure laid down as the same would expose the fact that it has chosen not to follow its own rules.

Reliance can be placed upon the judgment in ***Union of India vs. Ibrahim Uddin and another, (2012) 8 SCC 148*** wherein keeping in mind the principles under Section 114(g) of the Evidence Act, it was held that it was

the duty of the party to produce the best evidence in its possession which would throw light on the issue in controversy. An adverse inference could be drawn in case such materials were withheld.

In the present case, as noticed, directions were issued as such on 03.02.2020 to place on record statutory provisions/regulations/by laws governing the conditions of affiliation and protection of the teachers mentioned with the schools of the appellant, if any. The same having not been produced, it can be safely said that the procedure prescribed under the Rules of the State Government have been withheld only on account of the fact that it would not suit the appellant as such to produce the said documents as it would expose its illegal action in dispensing with the services of the employees. Thus, on account of the non-compliance with the order of the Court, it is justified to draw an adverse inference.

It is a matter of record that the Haryana Government has issued notification dated 07.05.2013 in pursuance of the judgment of the Apex Court in *TMA Pai Foundation (supra)* which provides for redressal of the grievance of the employees of the un-aided educational institutions. The said notification reads thus:-

"***HARYANA GOVERNMENT***

SCHOOL EDUCATION DEPARTMENT

Notification

The 7 May, 2012

No. 7/45-2010 PS(2). - In pursuance of the judgement dated 30-10-2002 of the Hon'ble Supreme Court of Indian TMA Pai Foundation and others Versus State of Karnataka (2002) 8 SCC 481, wherein the

Hon'ble Court has observed that for the redressal of grievances of employees of unaided educational institutions who are subjected to punishment of termination of services, a mechanism will have to be evolved by constituting appropriate tribunals. The right of filing appeals would lie before the District and Sessions Judge or Additional District and Session Judge till the tribunals are set up.

Accordingly. District and Session Judges in the State of Haryana have been authorized to hear appeals of employees of aided/unaided technical education Institutions against decision of management within their jurisdiction, by the Hon'ble Punjab and Haryana High Court Chandigarh vide No. 234140AZ.II/EX.C.11, dated 10-08-200 The Tribunals already notified by the Hon'ble High Court will also hear appeals of employees of aided/unaided schools against the orders of management."

The Division Bench of this Court in *Management of S.D. Model Senior Secondary School (supra)* noticed the factum of the issuance of the said notification and held that the District and Sessions Judge or the Additional District and Session Judge would have the jurisdiction to decide all service disputes and, therefore, it was in exercise to the executive powers of the State and the remedy lay before them rather than the Civil Court which was found not to be expeditious. However, the remedy of the amount payable under the Payment of Gratuity Act, 1972 did not lie with the said Tribunal. It has been brought to our notice that by order dated 29.06.2004, the Director, Secondary Education while exercising the powers under Rule 34(1) of the Haryana School Education Rules, 2003 (in short 'the 2003 Rules'), granted permanent recognition to the appellant-school for Class I to

Class XII. Out of the various terms and conditions which were incorporated for the recognition which was for a period of 10 years, no financial assistance was to be granted by the Department of School and the Managing Committee was to abide by the provisions of the 2003 Rules and amendments, if any, made thereafter. They were also liable for dis-affiliation in case of violation of any other provisions of the Rules and are supposed to follow instructions issued by the Government/Director and supply information as and when required. The relevant terms and conditions read as under:-

> *"9. Recognition so granted shall be reviewed after every 10 years.*
>
> *10. No financial assistance shall be granted by the Department of the school.*
>
> *13. The Managing Committee shall follow the instructions issued by Government/Director from time supply the information to the Govt./Department as required.*
>
> *14. In addition to above the Managing Committee shall abide by the provisions of the Haryana School Rules, 2003 and amendments if any thereafter. The Managing Committee shall be liable for* ***(illegible)*** *in case of violation of any provisions of the rules."*

In such circumstances, we are of the considered opinion that the finding of the learned Single Judge on the Haryana School Education Code and the Rules would not apply are not sustainable. However, the view was rightly taken that the statutory protection afforded to the employees of the private schools of Haryana in all shades of service disputes were to be settled by the Tribunal would specifically be enforceable. The Haryana School Education Act, 1995 provides for the recognition of the school which reads

thus:-

> *"2(q) "recognition" means formal certification granted by an appropriate authority to a privately managed educational institution that the institution conforms to the standards and conditions laid down by the appropriate authority;"*

The Act provides the procedure which is to govern the establishment, recognition and management of aided schools and also provides for provisions applicable to the unaided minority schools. As noticed, the present institute is a unaided private school and under Section 24(2)(v), any other matter which is or may be prescribed under the Act is to be provided by Rules for the purposes of the Act. The 2003 Rules thus provide Rules for the aided schools, minority schools and the procedure of admission to recognized schools, aided or unaided under Chapter VI. Chapter VII provides of a contract of service and the procedure of service Rules for employees of unaided recognized schools and employees working in the aided schools on unaided posts. Rule 161 provides for signing of a contract as provided under Section 20. The same reads thus:-

> ***"161. Signing of contract - Section 20.*** *The managing committee of every recognised private school shall enter into a written contract of service in appendix B with every employee of such school. A passport size photo of each employee shall be affixed on the filled in proforma of contract of his service."*

Rule 180 provides for the disciplinary procedure prescribed keeping in view the nature of proceedings which may be initiated against an employee in various situations including the case of any criminal offence, charge of embezzlement, cruelty towards students or employees or

misbehaviour towards any parent, guardian or student and that any breach of any code of conduct. The said Rule provides that an employee can be placed under suspension for a period of six months and for reasons to be recorded, the continuation of suspension can be there beyond a period of six months. It further provides for subsistence amount which is to be payable and how the period is to be treated at exoneration after the disciplinary proceedings. Rule 181 talks of the penalty and also removal from service and reads thus:-

> ***"181. Penalties - Section 24(2).*** *The following penalties may, for good and sufficient reasons, including the breach of one or more of the provisions of the code of conduct may he imposed upon an employee:*
>
> *(a) minor penalties:*
>
> *(i) censure:*
>
> *(ii) recovery from pay, the whole or any part of any pecuniary loss caused to the school by negligence or breach of orders:*
>
> *iii) withholding of increment of pay:*
>
> *(b) Major penalties:*
>
> *(i) reduction in rank:*
>
> *(ii) removal from service, which shall not be a disqualification for future employment in any school:*
>
> ***Explanation:*** *The following shall not amount to a penalty within the meaning of this rule, namely:-*
>
> *(a) retirement of the employee in accordance with the provisions relating to superannuation:*
>
> *(b) replacement of a teacher who was not qualified on the date of his appointment by a qualified one;*
>
> *(c) discharge of an employee appointed on a short-term officiating vacancy caused by the grant of leave, suspension or the like."*

The procedure prescribed for imposing major penalty is under Rule 183 which thus provides that no order imposing any major penalty to an employee is to be made except after enquiry. The same reads thus:-

> ***"183. Procedure for imposing major penalty - Section 24(2)***. *- (1) No order imposing on any employee any major penalty shall he made except after an inquiry to be held, in the manner specified below:-*
>
> *(a) The disciplinary authority shall frame definite charges on the basis of the allegationon which the inquiry is proposed and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to employee and he shall be required to submit within such time as may be specified by the disciplinary authority but not later than two weeks, a writ- ten statement of his defence and also to state whether he desires to be heard in person*
>
> *(b) On receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if it considers necessary to do so, appoint an inquiry officer for the purpose.*
>
> *(c) At the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry recording his findings on each of the charges together with the reasons thereof,*
>
> *(d) The disciplinary authority shall consider the report of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall:-*

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action

(iii) on receipt of the representation, if any, made by the employee, determine what penalty, if any, should be imposed on the employee and com- municate its tentative decision to impose the penalty to the managing committee for its prior approval;

(iv) after considering the representation made by the employee against the penalty, record its findings as to the penalty, which it proposes to impose on the employee and send its findings and decision to the managing committee for its approval and while doing so the disciplinary authority shall furnish to the employee all relevant records of the case including the statement of allegations, charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made and the proceedings of the disciplinary authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the managing committee."

On the perusal of the above, it would be clear that the prescribed procedure has been put in place and the said procedure was never followed at any stage by the school while dispensing with the services of the respondents. It further provides that imposition of major penalty is only to be done by the disciplinary authority except after the receipt of the approval from the Managing Committee.

A perusal of the order of termination would also go on to show that it is signed by one D.N.A. Mountford and as per sub-clause 2 mentioned above, the imposition of major penalty is to be made by the disciplinary authority only after receipt of approval of the Managing Committee.

Rule 184 further provides that an employee is liable to be reinstated as a result of appeal. The same reads as under:-

> *"**184. Payment of pay and allowances on reinstatement - Section 24(2).** - (1) When an employee who has been dismissed or removed from service reinstated as a result of appeal or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal or removal, as the case may be, the managing committee shall consider and make a specific order :-*
>
> *(a) with regard to the salary and allowances to be paid to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal or removal, as the case may be; and*
>
> *(b) whether or not the said period shall be treated as the period spent on duty.*
>
> *(2) Where the managing committee is of opinion that the employee who had been dismissed or removed*

from service has been fully exonerated, the employee shall be paid the full salary and allowances to which, he would have been entitled had he not been dismissed or removed from service or suspended prior to such dismissal or removal from service, as the case may be:

Provided that where the managing committee is of opinion that the termination of the proceedings instituted against the employee had been delayed due to reasons directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representation, if any, made by the employee, direct, for reasons to be recorded in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowance as it may determine.

(3) The payment of allowance shall be subject to all other conditions under which such allowances are admissible and the proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances."

Rule 185 further talks about the fact that the employee has a right of appeal against the order of the disciplinary authority which is to be referred to the Disciplinary Committee. The same reads thus:-

*"**185. Disciplinary committee - Section 24(2).-***
(1) In case the employee wishes to appeal against the order of the disciplinary authority, the appeal shall be referred to a disciplinary committee. The disciplinary committee shall consist of the following:-
(a) the chairman of the school managing committee or in his absence any member of the managing committee nominated by him;

> *(b) the manager of the school, and where the disciplinary proceeding is against him, any other person of the managing committee nominated by the chairman;*
> *(c) a nominee of the Board/appropriate authority. He shall act as an adviser;*
> *(d) the head of the school, except where the disciplinary proceeding is against him, if the disciplinary proceedings are pending against him then the head of any other school nominated by the managing committee.*
> *(e) one teacher who is a member of the school managing committee nominated by the chairman of the managing committee.*
> *(2) The disciplinary committee shall carefully examine the findings of the inquiry officer, reasons for imposing penalty recorded by the disciplinary authority and the representation by the employee, and pass appropriate orders as it may deem fit."*

Thus, the argument of the learned counsel that there should not have been reinstatement directed by the Tribunal is without any basis since the procedure has been prescribed under the Act and the relevant Rules and the school is a beneficiary of a recognition granted to it by the State Government. As noticed above, it is bound by the Rules and the provisions of the Act but unfortunately neither of these provisions were adhered to at any point of time before the termination and nor has the school produced its own rules for which an adverse inference has to be taken against it. The matter was also dismissed in *limine* by the learned Single Judge without calling for response and, thus, there was no detailed consideration on the issue of procedure which was to be followed and the subsequent right of reinstatement.

Reinstatement is to be granted to protect the helpless employee against the illegal acts of the employer who was in a position to dominate. As per Blacks Law Dictionary, VI Edition, it means to reinstall, to re-establish, to place again in a former state, condition, or office. Thus, it is to restore to a state of position from which object or person had been removed. The illegal action as such taken by the employer which has adversely effected the employee when the relationship of employer-employee had been cut off has led to the source of income of the employee to be finished. It is to be noticed that on account of the said fact, the present respondents-couple's three children also would have faced harassment and humiliation on account of the fact that their parents had been unceremoniously shunted out of the school, the psychological impact of which cannot be gauged in any manner. Thus, the purpose as such of reinstatement is only to put the person back in position alongwith the necessary relief as such under normal circumstances with back wages. In *TMA Pai Foundation's case (supra),* the Apex Court noticed that the relationship between the management and employee is contractual in nature but in disciplinary proceedings which had to be conducted have to be done by keeping in mind the principles of natural justice. It was, however, held that disciplinary action has to be evolved by the management itself and regulations could be framed governing service conditions for teaching and the other staff subjected to punishment and termination from service. Resultantly, it was observed that appropriate Tribunal should be constituted. The relevant portions read thus:-

> *"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 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 the aggrieved teacher 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 specialized tribunal is set up, the right of filing the appeal would lie 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."*

Thus, it is apparent that the Apex Court was conscious of the fact that employees of unaided institutes also have to be duly protected. It is keeping in mind these observations and the argument raised by the counsel for the Institute that it is a case of a contract *inter se* and, therefore, there should be no reinstatement and keeping in mind the law laid down by the Apex Court also in ***Executive Committee of Vaish Degree College, Shamli vs. Lakshmi Naraian, AIR (1976) SC 888.*** The said view was also followed

in ***Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir and others, 1979 (4) SCC 160*** wherein, the claim for reinstatement by the Principal as such was converted by the High Court into decree for damages denying the order of reinstatement on the ground that the institution was a private one and there was a contract *inter se* both of them. The same view was taken in ***Dipak Kumar Biswas vs. Director of Public Instructions and others, (1987) 2 SCC 252*** wherein, an aided institute had discontinued the services of the Lecturer in English and one year's salary and allowances as damages had been granted by the High Court. The said order was modified to the extent that 3 year's salary and allowances be paid at the rates prevalent at the time of termination.

In the present case, much water has flown after the order of the termination which was 7 years back. The operation of the orders of the Tribunal were ordered to be stayed subject to deposit of sum of Rs.20,00,000/- in both the appeals on 03.08.2018 . It is not disputed that the amount was deposited with the Registrar (Judicial) of this Court and was directed to be released to the respondents on furnishing of adequate security without prejudice to their rights. Liberty was also granted to them to make a counter offer. Eventually, the said amount was also accordingly received by them and the matter has remained pending thereafter. An effort was made thereafter also by this Court that the matter be settled on account of the additional compensation, to which the respondents were not agreeable and only claimed reinstatement.

Keeping in view this background, we are of the considered opinion that the observations of the Apex Court in *Kailash Singh's case (supra)* would squarely cover the matter and instead of directing

reinstatement, the compensation element as such could be increased on account of the school having failed to follow the procedure prescribed under the Rules. In the said judgment, two employees, one of whom was a Class IV employee and the other a Lower Divisional Clerk whose services had been terminated unceremoniously by the unaided school after they had put in more than 15 years of service. The reason for their misconduct was the *dharna* which they had put on the annual day and the legal error the school had committed was that they had not taken the prior approval of Director, Education while passing the order of termination, which was the requirement under the Rajasthan Non-Government Educational Institutions Act, 1989. The Tribunal had passed an adverse order against the school which was upheld by the learned Single Judge of the Rajasthan High Court. Before the Division Bench, on account of the fact that the employees had lost the confidence with the management, relief was moulded to compensation equalling 5 years' salary on the basis of last pay and allowances drawn by them. It was also noticed that the said employees were staying in the school and had accordingly been asked to leave.

The employees preferred an SLP and the Apex Court, while placing reliance upon the judgment in *TMA Pai Foundation's case (supra),* came to the conclusion that there is a master-servant relationship *inter se* both and it was a contract of employment and was not capable of specific performance and the conduct of the employees was such that it had resulted in loss of confidence. Accordingly, it was held that sum of Rs.9.75 lakhs would be payable to one employee and for the other employee who was still in service, Rs.21 lakhs was the amount which had become payable as per the

calculations given by the parties. Accordingly, the Apex Court, while exercising its jurisdiction, quantified the amount payable as Rs.25,00,000/- in Kailash Singh's case and Rs.18,00,000/- in the case of the Lower Divisional Clerk who had already superannuated subject to the adjustment of Rs.5,00,000/- which had already been paid earlier.

Thus, applying the said principle and keeping in view the fact that there has been bad blood between the management and the respondents-employees in as much as three of their children had also been forced to leave the school where they were getting free education on account of the employment of their parents. Thus, we are of the considered opinion that the ends of justice would be served if Mrs. Parveen Shekhawat is paid a total amount of Rs.20,00,000/- as compensation on account of the illegal action of the school management in terminating the services without any enquiry as she was drawing around Rs.13,000/- at the time of appointment and Rs.48,000/- at the time of termination. Keeping in view the fact that her husband Mr. Ajay Singh Shekhawat was getting a higher scale and his gross emoluments were Rs.25,000/- at the time of appointment and Rs.79,000/- at the time of termination, we are of the considered opinion that he would be entitled to Rs.30,00,000/- as compensation. The above said compensation of Rs.50,00,000/- would be subject to the adjustment of Rs.20,00,000/- which they had already received way back in the year 2018.

Accordingly, in view of the above, the present appeals of the school are dismissed subject to the condition that the said amount be paid to the respondents by way of demand draft, bank transfer within a period of one month from the date of receipt of certified copy of the order. In case the

needful is not done, the respondents will be free to enforce the orders of reinstatement, as directed by the Tribunal and claim all necessary back wages. Resultantly, all pending miscellaneous applications stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

14.12.2022
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes/No
Whether reportable Yes/No