IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13490-2018 (O&M)
Pronounced on: 11.02.2025

M/S DPSG Gurugram **…Petitioner(s)**

Versus

State of Haryana and others **…Respondent(s)**

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. A.S. Talwar, Advocate for the petitioner

Mr. Harish Rathee, Sr. DAG, Haryana

Mr. Mayur Kanwar, Advocate for respondent no.2

TRIBHUVAN DAHIYA, J.

The petition has been filed, *inter alia*, seeking a writ of *certiorari* quashing the judgment, dated 08.01.2018, passed by District Judge-cum-Appellate Tribunal, Gurugram, setting aside the second respondent's termination order dated 17.09.2016, and holding him entitled to reinstatement in service with immediate effect with full back wages/salary along with interest at the rate of six per cent per annum from the date of his termination.

2. Facts of the case in brief are, the second respondent was appointed as co-curricular teacher at Chiranjiv Bharati School, Sushant Lok, vide letter of appointment dated 12.09.2011, Annexure P-1. He was confirmed in service as PRT-Physical Education Teacher vide letter dated 15.01.2013, Annexure P-2; after confirmation, the appointment could be determined by giving three months' notice as per clause 27 of the terms of appointment.

2.1. Chiranjiv Bharati School was taken-over by the petitioner Society with effect from 01.04.2016, as also the second respondent's services on the terms and conditions he was initially appointed. After working for some time, the petitioner served one month notice upon the second respondent for non-continuation of his service with effect from 12.09.2016. The reasons cited for the purpose were, failing to properly discharge the duties, aggressive attitude, and provoking other staff members, parents and students against the School. Pursuant thereto, he was terminated from service vide letter dated 17.09.2016. The termination was challenged by the second respondent by filing an appeal before the Tribunal, which was allowed vide impugned judgment dated 08.01.2018, ordering reinstatement as well as payment of full back wages/salary along with interest.

2.2. The judgment was rendered by the Tribunal on the following issues:

i) Whether termination of services of appellant by respondent no.1 is justified and in accordance with service contract?

ii) Whether this Tribunal has jurisdiction to entertain and try the present appeal?

2.3. Learned counsel for the parties are *ad idem* that the second issue does not arise for adjudication before this Court since there is no dispute on the Tribunal's jurisdiction to try the appeal.

2.4. So far as the first issue regarding termination of service of the second respondent is concerned, the Tribunal held it to be violative of the Principles of Natural Justice as well as the terms of appointment. The relevant findings to that effect are as under:

> 9. …Now, moot point in the present appeal is as to what was the ground of termination of services of appellant? Although,

nothing has been mentioned in the reply by respondent No.1 regarding the ground of termination of services of appellant but perusal of notice dated 12.9.2016 Ex.P5 and termination letter dated 17.9.2016 Ex.P4 reveals that appellant was allegedly not discharging his duties. He was disrupting the school activities and failed to carry on the task assigned to him. If at all appellant was not discharging his official duties diligently or disrupting the school activities by not improving his conduct and school administration was not satisfied with his services then at least a regular domestic enquiry should have been initiated against him and he should have been allowed to join the said enquiry and ultimately his services could have been terminated on the principles of fair hearing, equity and justice. In the case in hand, respondent No.2 has not followed the principles of natural justice and terminated the services of appellant arbitrarily, whimsically and capriciously. Thus, looking from any angle show cause notice Ex.P5 and termination letter Ex. P4 were not legal and valid and were in gross violation of principles of natural justice and fair play.

3. In this factual background, learned counsel for the petitioner contended that irrespective of the second respondent's termination being in violation of the terms of contract and illegal, he was not entitled to be taken back in service because he had entered into a contract of personal service with the petitioner which could not have been specifically enforced by ordering reinstatement. At the most, he can be held entitled to compensation, that too in terms of provisions of the Indian Contract Act, 1872 (for short, 'the Act of 1872'). He further contends that as per Section 14(d) of the Specific Relief Act, 1963, (for short, 'the Act of 1963'), the contract of service between the petitioner and the second respondent was of determinable nature. Therefore, compensation for loss or damages for the breach of contract is to be determined in terms of Section 73 of the Act of 1872. And the second respondent will only

be entitled to compensation of three months' salary *in lieu* of the notice period which would otherwise have been given in case his services were to be terminated in terms of the contract. No compensation/damages can be awarded in excess to the amount of three months' salary.

4. *Per contra*, learned counsel appearing on behalf of the second respondent contends that the Act of 1872 will not be applicable to the terms of appointment agreed to between the petitioner Society and the second respondent, nor can the amount of compensation be determined in the light of provisions contained therein. The compensation is payable to the second respondent due to illegal termination from service. In this regard he has relied upon a Division Bench judgment in *M/s G.D. Goenka School* v. *Parveen Singh Shekhawat and others*, 2023 (1) CLR 200, and has claimed compensation in terms thereof. He further contends that at the time of termination the second respondent was drawing salary of ₹35,732. (This has not been disputed by learned counsel for the petitioner by submitting that he was drawing almost the same amount of salary.)

5. Arguments advanced by learned counsel for the parties have been considered.

6. As apparent on record, the second respondent was appointed as co-curricular teacher vide letter dated 12.09.2011, and was subsequently confirmed in service vide letter dated 15.01.2013, on the terms and conditions contained in the letter of appointment. His services were terminated by the Society vide letter dated 17.09.2016, which was set aside by the Tribunal vide impugned judgment dated 08.01.2018, ordering his reinstatement in service as well as payment of full back wages/salary along with interest. The Tribunal's findings that the termination order is illegal, arbitrary and capricious has not been

contested by learned counsel for the petitioner. The only contention raised by him is that despite the termination being in violation of the terms of appointment/contract, the second respondent could not have been reinstated in service. It is because as per the settled law, a contract of personal service cannot be specifically enforced by ordering reinstatement of an employee. Accordingly, at best, he can claim compensation for the wrongful termination. And in terms of Section 73 of the Act of 1872, the maximum amount of compensation can be three months' gross salary *in lieu* of the notice period, as the contract of service stipulates.

6.1. The petitioner Society has appointed the second respondent on the terms and conditions contained in the letter of appointment/contract of service. Undisputedly, the contract is not regulated by any statute and has no public law element. It determines the relations of parties *inter se*. Hence, the same is an ordinary contract of service regulated under the Act of 1872 and the principles contained therein. A reference in this regard can be made to the law laid down by the Supreme Court in *St. Mary's Education Society and another* v. *Rajendra Prasad Bhargava and others*, (2023) 4 SCC 498, holding as under:

> 75.3. … In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

Accordingly, there is no substance in the argument raised by learned counsel for the second respondent that the contract of service entered into with the Society will not be governed by the Act of 1872.

7. In this view of the matter, the only question arises for consideration is, *whether for the wrongful termination of contract of service the second respondent is entitled to only the limited compensation of three months'*

salary for the notice period? To decide the issue, the nature of contract of service entered into between the petitioner Society and the second respondent needs to be seen. A perusal of the letter of appointment containing the terms of contact would show that it was not entered into for any specific period. The services were to be on probation for a period of one year which the second respondent successfully completed, and stood confirmed. The contract also stipulates that after confirmation, the second respondent will be allowed to resign from service by giving clear three months' notice in writing or by payment of three months' gross salary *in lieu* thereof; likewise, the Society also has been given the right to terminate the service. The relevant terms of appointment are as under:

> 1. Your employment shall be effective September 12, 2011. Your services shall be on one year of probation. After satisfactory completion of probationary period, your services shall deemed to be confirmed, unless the contrary to the same is communicated to you in writing. If your work and conduct during the period of probation is not found satisfactory, your services are liable to be terminated without notice before the expiry of the period of probation.
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> 2. to 26. xxx xxx xxx
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> 27. After your confirmation, you will be allowed to resign from your services by giving a clear Three month's notice in writing, or by payment of Three month's Gross salary in lieu of such notice. The School Management likewise would have the right to terminate your services by giving you Three month notice in writing or by payment of three month's gross salary in lieu of such notice. Gross salary would include all allowances and exclude Incentive, Provident Fund and Gratuity. Similarly, the notice period on resignation during probation shall be One month or One month's Gross salary in lieu of such notice.

No notice shall be necessary or required to be given in case you are dismissed or removed from services as a result of misconduct/disciplinary action against you.

7.1. A reference can be made to the provisions of Section 14 of the Act of 1963 as well as Section 73 of the Act of 1872, based upon which it has been argued that amount of compensation payable is only three months' gross salary.

The Act of 1963

14. Contracts not specifically enforceable.- The following contracts cannot be specifically enforced, namely:--

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.

The Act of 1872

73. Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

> **Compensation for failure to discharge obligation resembling those created by contract.-** When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.
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> *Explanation.*- In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

7.2. Section 14 of the Act of 1963 provides for the contracts which cannot be especially enforced and includes: (a) a contract where substituted performance has been obtained by a party under Section 20; (b) a contract which requires performance of continuous duty which cannot be supervised by the Court; (c) a contract dependent on personal attributes of the parties that cannot be enforced specifically in material terms; (d) a contract which is determinable in nature. The contract herein falls under category (d) being of determinable nature as the parties have been given the right to terminate the same on three months' notice or payment of gross salary *in lieu* thereof, and will also be covered under category (b) as its enforcement requires continuous performance of duty which the Court cannot oversee. Resultantly, it cannot be specifically enforced.

7.3. Further, Section 73 of the Act of 1872 provides for compensation for loss or damage caused by breach of a contract, and entitles the party which has suffered on account of the breach to receive compensation from the party who has broken the contract. The compensation is payable for the loss or damage which (*i*) arose from the breach in *the usual course of things*, or (*ii*) was

known to the parties at the time of making the contract to be the likely result of the breach. The first situation refers to the loss or damage which can reasonably be considered to be arising from the breach in the ordinary course of things keeping in view the kind of transaction entered into. The second situation refers to the loss or damage which can be within the comprehension of a reasonably prudent person to be the likely result of breach at the time of entering into the contract. Consequently, it will rule out damages for the loss attributable to any unforeseen happening or development which could not have been known earlier when the contract was entered into. The quantum of loss so assessed will undoubtedly differ keeping in view the nature of transaction/contract entered into.

7.4. The second paragraph of Section 73 lays down that such compensation is not to be given for any remote or indirect loss or damage sustained on account of the breach. Meaning thereby, the damage must be such which has a direct or realistic connection to the breach. Further, in the third paragraph, the Section provides for compensation on failing to discharge an obligation which is akin to the one created by a contract. The defaulting party has to pay such compensation on the same lines as the breach of a contract; it is on the assumption that the party in default has in fact contracted to discharge the duty. Explanation to the Section is to the effect that in assessing the damages the means which existed for remedying the inconvenience caused due to violation of the contract must be taken into account. Accordingly, there are two qualifications attached to assessing the amount of compensation payable; *firstly*, it is not to be given for any remote and indirect loss or damage and, *secondly*, the means which existed for remedying the inconvenience caused by breach of the contract/the mitigating circumstances are to be taken into

consideration. The absence of a direct connection of loss to the breach renders the same unviable and consequently inadmissible. The Court has to look upon the immediate and direct consequences of the breach which are obvious and clear. Besides, the mitigating circumstances existing to the party which could have lessened the loss need to be discounted from the payable amount of compensation. The affected party must be vigilant enough to take the steps needed to remedy the situation, or else endure the loss for failure to do so. This underlines the equitable principle that no party is to be unduly benefitted from the compensation to be awarded. It is not meant to be a windfall for anyone and, at the same time, must measure up to the loss actually caused in the natural course of things or within 'reasonable contemplation' of the parties at the time of entering into the contract. Hence, the compensation is to be assessed by taking into account the mitigating circumstances, if any, in the light of facts germane to the contract for the loss which is 'dominant cause' of the breach.

7.5. In this regard it is apt to refer to the following observations by the Supreme Court in *Kanchan Udyog Limited* v. *United Spirits Limited,* (2017) 8 SCC 237, concerning causal connection between the breach and the loss, as also its quantification:

> **27.** In *Galoo Ltd.* the emphasis was on the common sense approach, holding that the breach may have given the opportunity to incur the loss but did not cause the loss, in the sense in which the word "cause" is used in the law. The following passage extracted therein from *Chitty on Contracts*, 26th Edn. (1989) Vol. 2, pp. 1128-29, Para 1785 may be usefully set out: (WLR p. 1370 A-B)
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> > "… 'The important issue in remoteness of damage in the law of contract is whether a particular loss was within the reasonable contemplation of the parties, but causation

must also be proved: there must be a causal connection between the defendant's breach of contract and the plaintiff's loss. The courts have avoided laying down any formal tests or causation: they have relied on common sense to guide decisions as to whether a breach of contract is a sufficiently substantial cause of the plaintiff's loss."

28. *Wellesley Partners LLP* itself carves out an exception to the principle that: (Ch p. 550 G)

69. … a contract breaker is liable for damage resulting from his breach if, at the time of making the contract, a reasonable person in his shoes would have had damage of that kind in mind as not unlikely to result from a breach."

After noticing *The Achilleas* it was observed: (Ch p. 550 H)

"69. … *The Achilleas* shows that there may be cases, where based on the individual circumstances surrounding the making of the contract, this assumed expectation is not well-founded."

The observations noticed therein from paras 23 and 24 of *Parabola case* are also considered relevant as follows: (QB p. 486 E & G)

"23. ... The next task is to quantify the loss. Where that involves a hypothetical exercise, the court does not apply the same balance of probability approach as it would to the proof of past facts. Rather, it estimates the loss by making the best attempt it can to evaluate the chances, great or small (unless those chances amount to no more than remote speculation) taking all significant factors into [consideration]....

24. … The Judge had to make a reasonable assessment and different Judges might come to different assessments without being unreasonable. An appellate court will therefore be slow to interfere with the Judge's assessment."

7.6. Further, on the issue of payment of compensation to an employee *in lieu* of reinstatement on account of wrongful termination of contract, a

reference can be made to the law laid down by the Supreme Court in *Kailash Singh* v. *Managing Committee, Mayo College, Ajmer*, 2018 (18) SCC 216. The case related to termination of services of two employees/appellants of a private unaided educational institute by the Management on account of misconduct attributed to them. The termination was held to be in violation of the Rajasthan Non-Government Educational Institutions Act, 1989, for want of consent of the Director. Despite the termination being wrongful, the employees were not held entitled to reinstatement in service as their relationship with the Management was determined by a contract of service which could not have been enforced specifically, and award of compensation was held to be the appropriate remedy. The methodology to calculate the compensation is based on the principles of wrongful termination of an employee under the master-servant relationship. It upheld the principle of awarding compensation in the form of back wages, keeping in mind the aggravating and mitigating circumstances. The observations in the judgment are as under:

> 31. …Thus, the principles of the Industrial Disputes Act, 1947 cannot be, ipso facto, imported into a factual matrix of the present nature, for, as a consequence of the illegality in the termination of the services of the appellants, compensation has to be granted. *The methodology of calculation would be based on the principle of wrongful termination of an employee, under the master-servant relationship*. *This, in turn, would import into it the requirement of the appellants endeavouring to mitigate their losses*. In fact, in this context, we may observe that the claim for back-wages has apparently been raised for the first time only in the present proceedings, arising from the manner in which the High Court dealt with the matter, where it granted some compensation.
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> 32. *The principle of awarding adequate compensation in the form of back-wages, keeping in mind aggravating and mitigating*

> *circumstances would, thus, have to be observed*. The amount cannot be measly, nor can it be a bonanza. The High Court, in its wisdom, awarded the compensation of five (5) years' back-wages on the last pay drawn. Not only that, an additional benefit was conferred by providing for provident fund and retiral dues, to be calculated on the premise as if the services would be continued till the appellants attained the age of superannuation.
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> 33. We have no reason to find that such an aforesaid principle can be said to be fallacious or wrong, so as to call for our interference, except to the extent discussed hereafter.
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> 34. We are firstly of the view that it would not be appropriate to determine the amount on the basis of the last pay and allowances drawn. *The calculation should be based on the actual pay and allowances liable to be drawn for the years in question, dependent on the period for which this amount is to be calculated*. (Italics by this Court)

Apparently, the principles for determining compensation due to illegal termination of a contract of service have been decided by the Supreme Court following the requirements of Section 73 of the Act of 1872, though without mentioning it in so many words. The Division Bench in *G.D. Goenka School* case (*supra*) also followed the law laid down in *Kailash Singh* case for awarding compensation *in lieu* of reinstatement for wrongful termination to a teacher.

8. In the facts of the instant case, the petitioner Society has concededly breached the ordinary contract of service entered into with the second respondent and is, accordingly, liable to pay compensation for the loss or damage caused to the latter due to the breach since the contract cannot be specifically enforced. In terms of Section 73 of the 1872 Act, as discussed herein before, the quantum of compensation is to be determined for the loss and damage which is dominant cause of the breach keeping in view the proximate as well as the mitigating circumstances; it is not to be determined on the basis

of stipulation in the contract of service requiring payment of salary *in lieu* of three months' notice prior to termination, as contended by learned counsel for the petitioner. The argument is misconceived being in violation of the provision of Section 73. The loss cannot be restricted to salary for the notice period because a stipulation in the contract of service cannot circumscribe the statutory provision. Besides, this stipulation is meant for a situation where termination is lawful, and not otherwise. When a party/petitioner has itself violated the contract, it cannot be allowed to invoke any of the stipulations in the contract to remedy the situation for itself, as is being sought to be done herein. This will amount to giving benefit to the petitioner of its own wrong which is impermissible being against the principles of equity.

8.1. Resultantly, the compensation payable to the second respondent is to be quantified in the light of all these factors, viz., harassment caused due to abrupt termination of service in breach of the contract, humiliation, financial constraints, stress and strain of looking for future employment, psychological trauma and damage to reputation. This is dominant and proximate cause of abrupt illegal termination of confirmed service in the normal course of things within the contemplation of any reasonable man; besides, knowledge of such a loss can very well be attributed to the petitioner at the time it entered into the contract with the second respondent. Apart from these aggravating factors, the mitigating circumstances existing to the second respondent in the facts germane to the contract, are also required to be taken into consideration. However, it is not the petitioner's case that despite availability of an employment equal in status to the one held by the second respondent, it was not accepted by him. Nor has it been established that any other means were available to the second respondent to lessen the loss or inconvenience caused due to breach of contract

by the petitioner. Accordingly, it cannot be said that any such circumstance existed to him which could have remedied the situation. At the time of termination from service he, undisputedly, was drawing ₹35,700 as actual monthly pay; allowances to the tune of fifteen per cent can safely be taken to be admissible to him apart from this pay. His gross salary is therefore assessed to be ₹40,000. Considering the circumstances, as discussed herein above, this Court deems it appropriate to award compensation equivalent to five years pay and allowances to the second respondent for the illegal termination of his service, instead of reinstatement with back wages as ordered by the Tribunal.

9. The petitioners are accordingly directed to pay an amount of ₹24,00,000 (40,000 x 60) to the second respondent with interest at the rate of six per cent per annum from the date of termination till actual payment. The amount is to be paid within two weeks, thereafter it will carry interest at the rate of nine per cent per annum till actual payment. The impugned judgment of the Tribunal, dated 08.01.2018, stands modified to the extent indicated above, and the petition stands disposed of.

10. Pending application(s), if any, also stand(s) disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

11.02.2025
Payal

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*