**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**LPA No.2070 of 2019 (O&M)**
**Date of Decision: 23.05.2025**

Nishan Public School

…Appellant

Versus

Manoj Saini and others

…Respondents

***CORAM:*** ***HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA***
***HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. Mohit Garg, Advocate
for the appellant.

Mr. Parminder Singh, Advocate
for respondent No.1.

None for respondent No.2.

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**SANJEEV PRAKASH SHARMA, J.(Oral)**

**CM No.4762-LPA of 2019**

For the reasons mentioned in the application, the same is allowed and the delay of 41 days in filing the present appeal is condoned.

**LPA No.2070 of 2019**

1. This is an appeal preferred against the judgment passed by learned Single Judge dated 11.09.2019 in ***CWP No.18263 of 2019***, whereby learned Single Judge has dismissed the writ-petition moved by the appellant challenging the order passed by the Education Tribunal, Karnal dated 25.03.2019.

2. It is a case where respondent had preferred an appeal before the Educational Tribunal, Karnal, against the verbal order of 26.02.2018 of the Principal holding that the appellant's services had been terminated as she

deemed to have abandoned her services. The Tribunal after examining the facts of the case noticed that the respondent had been appointed as a Hindi Teacher on consolidated salary on 13.07.2007 and on regular salary on 01.04.2008 and had been continuing in service and that she had been suffering from Idiopathic Intracranial Hypertension for which she was admitted in Medanta Hospital, Gurgaon on 21.12.2017 and remained admitted upto 29.12.2017 and was advised to remain on rest till 25.01.2018. She moved an application on 13.01.2018 applying for leave upto 25.01.2018. She was further advised to take rest and on 26.01.2018, she again applied for leave upto 28.02.2018 and upon receiving Fitness Certificate, she joined the school on 26.02.2018 itself but was not allowed to resume her duties. The Tribunal having examined the case and contentions of the parties has issued the following directions:-

> *"9. As a consequence of the discussion foregoing, the appeal is allowed. The appellant is deemed to be in service of respondent school from 21.12.2017. She shall be entitled to the consequential benefits. The respondents are directed to release the benefits within three months from today, failing which the arrears shall attract interest @ 9% per annum from 21.12.2017 till the date of payment. The period of absence of the appellant shall be treated as leave of the kind due. Parties shall bear their own cost. Memo of costs be prepared. File be completed and be consigned after due compliance."*

3. The said order was challenged before learned Single Judge on the ground that as per Note appended to Rule 40 of the Bye-Laws of the Central Board of Secondary Education, an application for leave or extension of leave should ordinarily be made in good time before the date from which the leave or its extension is sought. If any employee does not apply within

seven days of the expiry of leave for further leave, or has been absent from the school without leave for ten school days, the employee may be deemed to have deserted his post and learned Single Judge has found that the services of the respondent cannot be said to be terminated as the employee cannot be deemed to have deserted her post as there were applications moved for extension of leave.

4. Learned counsel for the appellant-Corporation has vehemently argued that the orders passed by learned Single Judge as well as the Educational Tribunal deserve to be set-aside as respondent No.1 ought to have moved her first application for seeking leave after she was discharged from the hospital on 29.12.2017 which she has not done as she has moved her first application only on 13.01.2018. In these circumstances, she would be deemed to have deserted her post and has abandoned her services. Learned counsel submits that the Certificate issued on 17.01.2018 only grants two weeks' time to respondent No.1 for rest but she has ultimately joined on 26.02.2018.

5. On the other hand, learned counsel for respondent No.1 states that the respondent was reinstated in service on 11.12.2019 and again terminated from service on 30.12.2019 stating that she has not submitted her Fitness Certificate. Respondent No.1 had again filed an application before the Tribunal which was also allowed and she was directed to be reinstated which was challenged by the appellant-School in ***CWP No.6071 of 2025*** while stating that an LPA is already pending with regard to the earlier order of reinstatement. The said writ-petition is stated to be pending before learned Single Judge on 28.07.2025.

6. While we have noticed the afore-said facts, we need not deal on the said aspect in the present case but suffice it to notice that it is a case where the school appears to be acting arbitrarily and attempting to exploit the

situation to terminate the services of the respondent one way or the other.

7. A look at the Note to Rule 40 as noticed above clearly stipulates that if an application for leave has been moved, further leave extensions should be moved as expeditiously as possible. In the present case, as we have noticed, the concerned Teacher had informed the school authorities about her being unwell and also that she had been admitted for her treatment in Medanta Hospital.

8. The application for extension of leave has also been moved as noticed by the Educational Tribunal. It is not a case where the appellant has challenged the facts of her being unwell. In circumstances where a person may be unwell, it is not expected that the said person, who has been asked to take complete rest, should immediately be vigilant enough to move application for seeking leave after he/she is discharged from the hospital. The contention of learned counsel for the appellant that immediately on discharge from the hospital, she should have moved an application for seeking leave is only misconceived and not acceptable to us. It is not a case where the concerned Teacher has placed any forged certificate of her being unwell.

9. In a celebrated case in ***Krushnakant B. Parmar vs. Union of India and another, 2012(2) SCALE 545,*** the Supreme Court has even in cases where departmental inquiries are conducted, has observed as under: -

> *"18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.*

> *19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct."*

10. In the present case, no inquiry has been conducted and we agree with the observations made by learned Single Judge which are as under:-

> *" The genesis of the order and the appointment letter shown to this Court reveals that there is no order of terminating services of respondent No.1 and therefore, she cannot be said to be out of service, rather deemed to be in service. It is settled law that if a person remained on leave and had not sent intimation owing to medical exigency then in such an eventuality, note as extracted above, would not apply as a person may not be in a position to submit leave. In such circumstances, petitioner-employer ought to have examined the case of such employee in a pragmatic and reasonable manner but not in stricto sensu. Moreover, the appointment letter did not envisage applicability of aforementioned rules. On going through the Bye Laws, every school is required to frame its own rules. This Court specifically raised a query qua promulgation of any rules by petitioner school but no affirmative answer was received. If at all, petitioner was so serious, they could have initiated ex parte enquiry even if employee had not joined enquiry but cannot refuse respondent No.1 to attend school in theabsence of order of termination.*
>
> *In such circumstances, order under challenge cannot be said to suffering from any infirmity to form an opinion different than the one already formed by the Tribunal. No ground for interference is made out.*
>
> *Dismissed."*

11. We, therefore, do not find any reason to differ from the view taken by learned Single Judge and the present appeal is, accordingly, dismissed.

12. Pending miscellaneous application(s) also stand disposed of.

**(SANJEEV PRAKASH SHARMA)**
**JUDGE**

**23.05.2025** **(MEENAKSHI I. MEHTA)**
neetu **JUDGE**

*Whether speaking/reasoned:* *Yes*
*Whether Reportable:* *Yes*