

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10661 OF 2010
(Arising out of SLP(C) No.10369 of 2005)

PARAMJIT SINGHAPPELLANT.

VERSUS

**DIRECTOR, PUBLIC
INSTRUCTIONS & ORS.**

.....RESPONDENTS.

JUDGMENT

ANIL R. DAVE, J.

1. Leave granted.
2. Being aggrieved by the Judgment and Order dated 7th February, 2005 in CWP No.3267 of 2004 passed by the High Court of Punjab and Haryana at Chandigarh, this appeal has been filed by Khalsa High School, Mansa, District Mansa, Punjab, through its Manager.

3. The facts giving rise to the present litigation in a nutshell are as under:

4. Respondent nos. 3 to 7 were appointed on probation as teachers by the management of the appellant's school. They were appointed on probation with a clear understanding that they were to remain on probation for a period of one year and if during the said period of probation, their work was not found to be satisfactory, their services would be terminated. The said fact had been incorporated in their appointment orders and the said understanding was also in consonance with the provisions of Rule 8 of the Punjab Privately-Managed Recognized Schools Employees (Security of Services) Rules, 1981 (hereinafter referred to as 'the Rules'). As work of the said teachers was not found to be satisfactory, the period of probation was extended by a further period of six months, but even during the extended period, their work was not found to be satisfactory and, therefore, services of the said teachers had been terminated without stigmatizing them in the orders, whereby their services were terminated.

5. Being aggrieved by the order of termination, the said respondents had approached the Director Public Instructions (Schools) Punjab by way of a representation and even before the representation could be decided, they approached the Punjab State School Tribunal by filing an appeal against the orders of termination. The Tribunal had passed an interim order dated 13th February, 2003 whereby the appellant was restrained from terminating services of the respondent-teachers.

6. Ultimately, the Tribunal by an order dated 27th January, 2004 had allowed the appeal and had directed the appellant-school to reinstate the teachers with back-wages. The said order was challenged by the appellant by filing CWP No.3267 of 2004 in the High Court of Punjab and Haryana and the said petition was rejected by an order dated February 7, 2005.

7. The Tribunal had allowed the appeal by considering the termination as the penal. According to the Tribunal, departmental inquiry ought to have been held before termination of services of the teachers. Moreover, no approval of the Director was obtained as required under the Provisions of Section 4 of the Punjab Privately

Managed Recognized Schools Employees (Security of Service) Act, 1979 (hereinafter referred to 'the Act') and, therefore, also the orders of termination were bad in law.

8. The aforestated order passed by the Tribunal was confirmed by the High Court.

9. We have heard the learned counsel and have also gone through the relevant rules and the judgments referred to by the learned counsel.

10. It is a settled legal position that termination of a probationer on account of his non-satisfactory performance can never be treated as 'penal'. In spite of the said settled legal position, the Tribunal considered termination as 'penal' and the said view was confirmed by the High Court. In the circumstances, we do not approve the reasoning of the Tribunal confirmed by the High Court that the termination of the aforestated teachers was penal in nature. As the termination was not penal in nature, no departmental inquiry was required to be conducted before the termination.

11. However, we are of the view that prior approval under Section 4 of the Act ought to have been obtained from the Director as it is mandatory. Even in case of termination of service of a probationer, prior approval is must.

12. We, therefore, hold that the termination was not in accordance with law because no prior approval of the Director was obtained by the appellant-management before terminating services of the respondent-teachers. We, however, quash the direction regarding payment of arrears of salary to the teachers.

13. In the circumstances, we confirm the order with regard to reinstatement of the respondent-teachers. If the respondent-teachers have already been relieved, they shall be reinstated but without arrears of salary in view of the fact that they have not worked and, therefore, principle of “no work, no pay” should be applied. However, so as to compensate them, if the said respondent-teachers have already been relieved, they would be paid compensation of Rs.25,000/- each because the order of termination was not just and legal. They shall be reinstated immediately.

14. Needless to say, that it would be open to the appellant-management to take approval of the Director as required by law, if the management desires to terminate services of the respondent-teachers for their non-satisfactory performance. We also clarify that we have not gone into correctness of the decision of the appellant-employer with regard to quality of performance of the teachers.

15. The appeal is partly allowed and disposed of with the aforestated directions but without any order as to costs.

.....J.
(Dr. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

New Delhi
December 16, 2010.