

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

(Through Video Conferencing at Srinagar)

*Reserved On: 10.07.2020.
Pronounced On: 04.08.2020.*

WP (C) No. 971/2020
CM No. 2400/2020
CM No. 2401/2020

Satvinder Singh

.....Appellant(s)

Through: -

Mr. Sachin Gupta, Advocate

V/s

Presentation Convent Senior Secondary School through its Principal Gandhi Nagar, Jammu and Anr.

.....Respondent(s)

Through: -

Ms. Garima Gupta, Advocate

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge.

JUDGEMENT

1. In this petition, the petitioner on the foundation of the case setup implores for following reliefs:-

- (a) Allow the present writ petition; and
- (b) Quashing the order no. Press/Gn/34/2020 dated 26.02.2020 whereby the services of the petitioner have been terminated.
- (c) Commanding and directing the respondent to reinstate the petitioner as physics teacher and to pay the salary.
- (d) Any other writ, order or direction which this hon'ble court may deem fit or proper in the facts and circumstances of the case.

2. The background facts as stated by the petitioner under the cover of which the petitioner claims the reliefs aforesaid are that the petitioner was initially appointed as TGT (teacher) in Presentation Convent Secondary School Gandhi Nagar, Jammu, (herein after for short the school) on temporary basis w.e.f. 14.11.2018 to 31.03.2019 vide order dated 14.11.2018 and while working as such to the satisfaction of the respondent- school, vide order dated 01.04.2019 petitioner was

appointed on probation basis w.e.f 01.04.2019 and his appointment was said to be subject to the service rules of the school. The petitioner further states in the petition that he has been working to the satisfaction of the respondents as a teacher, without any complaint from any quarter. The petitioner next states in the petition that the respondents, however, of late started cooking a false story against him looking for ways to remove him, as a result of an altercation with respondent No. 2. A notice is stated to have been served upon the petitioner on 19.11.2019 alleging that the petitioner has taken leave for more than sanctioned days and that he has been habitual of coming late to the school and not remaining present in the staff room during free periods. The petitioner next states in the petition that the aforesaid notice dated 19.11.2019, was promptly responded to and allegations denied. According to the petitioner though for next couple of months things were very smooth yet suddenly the services of the petitioner were terminated vide communication dated 26.02.2020, being impugned in the petition, *inter-alia* amongst other on the grounds, that the service condition of the employees of the school are governed by the Presentation Convent Senior Secondary School Rules of 2007, (hereinafter for short the Rules) framed by the school and a mechanism is provided therein under Rule 5 for proceeding against an employee for any misconduct and that though the respondent initially followed rules in the matter and served a notice of allegations upon the petitioner yet upon being replied the same denying all the allegations leveled therein, the respondents without affording an opportunity of being heard to the petitioner and without holding any enquiry issued communication dated 26.02.2020 in violation to the Rules of 2007. Petitioner next has urged in the grounds that the respondents-school is imparting educational activities similar and closely related to those performed by the State in its sovereign capacity and that in the whole process an element of public interest is involved and that the actions of respondents qua the petitioner fall within the ambit and scope of public duty/ public functions as such renders their said actions amenable to writ jurisdiction of this court.

3. *Per contra*, respondents in their objections filed in opposition to the writ petition have resisted and controverted the contentions and grounds raised and urged by the petitioner in the writ petition and have sought dismissal of the writ petition *inter-alia* upon a preliminary / maiden objection qua the maintainability of the writ on the premise that the respondent-school is a private unaided minority educational institution and not a State under Article 12 of the constitution hence not amenable to writ jurisdiction of this Court. The respondents in their objections have further contended that the order under challenge dated 26.02.2020 has been issued after following due procedure and after affording an opportunity to the petitioner to explain his grave misconduct which according to the respondents consists of availing of leave of 17.25 days (not available to a probationer) being against the mandate of Rules 6.4 (iv) of the Rules of 2007 as also petitioner being a habitual late comer to the school transpiring from daily attendance log book and also not remaining present in staff room during free periods. The respondents in the objections have next contended that the services of the petitioner came to be terminated only after petitioner admitted the allegations leveled against him in the show cause notice and as such further enquiry was not necessary in the matter and that consequently in the process principles of natural justice were not violated.

4. Heard and considered the rival submissions made by the counsel for the parties.

5. The pivotal issue that needs to be addressed in the first instance in the matter is the preliminary/ maiden objection raised by counsel for respondent qua the maintainability of the writ petition. The aforesaid issue, however, is no more res-integra in view of law laid down by Apex Court reported in *Marwari Balika Vidyalaya Vs. Asha Srivastava and Ors., reported in 2019 (4) SCALE (600)*, wherein the Hon'ble Supreme Court based upon (2012) SCC 331 titled as *Ramesh Ahluwalia Vs. state of Punjab and Others* as also *Raj Kumar Vs. Director School Education and Ors, reported in (2016 (6) SCC 541)* has held that writ

application is maintainable against a purely unaided educational institution performing public functions.

In the present case the respondent educational institution is unaided minority educational institution yet same is subject to the control and supervision of the Jammu and Kashmir School Education Act of 2002 read with Jammu and Kashmir School Education Rules of 2010 (hereinafter for short Act and the Rules). **Section 3** of the said Act makes the provisions of the Act applicable to all the schools in the state be it a private or government school. **Section 11** of the Act prohibits establishment and running of a private school without the permission of the competent authority which under section 2 of the Act is an appointee of the Government. **Section 12** of the Act provides for only those private schools to function which are recognized under the Act and **section 13** deals with management of private schools. **Section 19 and 20** of the Act respectively provide for teaching and non-teaching staff in private schools and conditions of their service required to be framed and notified.

For all what emerges from the perusal of above provisions and the propositions and principles enunciated by the Hon'ble Supreme Court in the judgement (supra) is that the respondent- school even though an unaided private educational institution yet its establishment, running and functioning is regulated by and under the provisions of the aforesaid Act and the Rules. The preliminary objection (supra) raised by the respondents regarding maintainability of the writ petition therefore is not legally tenable and ***Trigund Chand Thakur Vs. State of Bihar and others (2019 (7) SCC 513)*** relied upon by the counsel for

respondents does not lend any support to the case of the respondents. **Thus writ petition is held maintainable.**

6. The pith and core of the case setup by the petitioner in the writ petition is infringement of Rules 2007, framed by the respondents – School being applicable to all employees of the school, be it permanent, probationary, temporary or contractual. **Rule 1.4**, of the Rules provides for classification of employees into permanent, probationary, temporary and contractual, whereas **Rule 2** provides for appointment, resignation and termination of the employees. **Rule 5** of the Rules provides for disciplinary measures. **Rule 5.1 – 5.3 being relevant and germane to the controversy are extracted and reproduced hereunder:**

All the employees of the school whether permanent or on probation can be disciplined by the principal for negligence of duty. Insolence or insubordination for any cause which in the discretion of the principal may cause harm to the interest of the institution. Any of the following acts constitute grave misconduct on the part of the employees:-

- (I) Willful insubordination or disobedience whether individually or jointly with other employees to any lawful and reasonable order of the principal or failure to comply with any rule of the code of conduct.*
- (II) Theft , fraud, dishonesty.*
- (III) Damage to or loss of goods, equipment or property of institute.*
- (IV) Taking or any giving gratification.*
- (V) Unauthorized absence i.e. absence without leave, without prior permission of the principal.*
- (VI) Disorderly or undisciplined behavior.*
- (VII) Habitual late attendance.*
- (VIII) Connection in a criminal case.*
- (IX) Habitual negligence of duty.*

The employee shall be informed about the misconduct in writing informing her/ him why disciplinary action should not be taken against her/ him. Pending the enquiry the Principal may suspend the employee. For the purpose of enquiry and to ascertain facts the Principal may set up a panel depending upon the nature of the conduct.

If the misconduct is proved the Principal may according to the gravity of the act involved, take any of the following disciplinary actions:-

- (a) Warning*
- (b) Censure*
- (c) Fine*
- (d) With-holding of increment*
- (e) Forfeiture of one or two increments with future effect*
- (f) Stoppage of promotion/ demotion*

(g) *Dismissal*

Normally all the grievance will be settled by the Principal, but if she/ he is not satisfied regarding the alleged misconduct, she/ he may refer the matter by submitting a petition to the Managing body with a copy to the Principal in writing. The Managing body will examine the petition and take necessary steps to resolve the issue expeditiously.

7. A perusal of show cause notice dated 19.11.2019, would reveal and suggest that the allegations leveled against the petitioner therein have been held by the respondents to constitute grave misconduct committed by the petitioner seeking an explanation thereto from him as also to show cause as to why disciplinary action be not initiated in terms of Rules of 2007. The intention of the respondents reflected therein in the notice manifestly demonstrate that the respondent intended to initiate a disciplinary action against the petitioner in tune with Rules of 2007. Further perusal of the nature of explanation / reply submitted of the petitioner to the said show cause notice suggest that the petitioner had denied all the allegations of the show cause notice essentially requiring therefore respondents to hold a disciplinary enquiry into the matter under Rules of 2007. The respondents though have had contemplated and initialed an enquiry against the petitioner however, seemingly have left the same half a way after receiving reply of petitioner to the said show cause notice and instead proceeded to issue impugned communication dated 26.02.2020, which admittedly will be said to have caused grave prejudice to the petitioner, in that, petitioner has been deprived to substantiate his defense laid by him against the allegations leveled in the show cause notice before an enquiry panel that was required to be setup (of course optional) by the Principal in terms of Rules 2007 occupying the field in the matter once set into motion were in principle required to be followed and complied with when respondents themselves intended to take recourse thereto as per show cause notice dated 19.11.2019. The objections set out and the defence taken by the respondents in opposition to the writ petition thereto, therefore, in view of above holds no ground.

8. Regard being had to the aforesaid facts and in view of preceding analysis, this petition is allowed, as a sequel to which, the impugned communication No. Press/Gn/34/2020 dated 26.02.2020 is quashed, directing the respondents to reinstate the petitioner against the post in question. The respondents, however, shall be at liberty to either initiate a fresh enquiry against the petitioner qua alleged misconduct or else to resume the enquiry already initiated against the petitioner from the stage it had been stalled / abandoned by the respondents, in accordance with the Rules of 2007 within a period of four weeks from the date of the order.
9. Disposed of along with all connected CM(s). No order as to costs.

Javed Iqbal Wani)
Judge

SRINAGAR

August 4th, 2020

“Ishaq ”

- i. *Whether the Order is speaking?* Yes/No.
- ii. *Whether the Order is reportable?* Yes/ No.

