

(7) Till the amount of cost is recovered from the erring/responsible officials/officers, the State of Haryana will deposit the same with the Haryana State Legal Services Authority, Chandigarh, within a period of four weeks.

(8) As a consequence of the dismissal of the application for condonation of delay in filing the appeal, the appeal also stands dismissed.

(9) A copy of this order be forwarded immediately to the Chief Secretary, Government of Haryana, for compliance. The compliance report shall be filed before the Registrar (Judicial) of this Court with a period of four months.

R.N.R.

Before Mehtab S. Gill and Augustine George Masih, JJ

RAM GOPAL,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 7744 of 2007

30th October, 2008

Constitution of India, 1950 — Art 226—Haryana Aided School (Security of Service) Act, 1971—Haryana Aided School (Security of Service) Rules, 1974—Haryana School Education Act, 1995—Haryana School Education Rules, 2003-1971 Act & 1974 Rules repealed—Termination of services of S. S. Master of Govt. aided private school—Termination after coming into force of 1995 Act and 2003 Rules— Management of School failing to seek approval of department as required under Rule 87 of 2003 Rules—Order passed by Director quashed being not sustainable in law.

Held, that the stand of the Management with regard to the applicability of the earlier Act and Rules is understandable as they want

to take the benefit of the said Acts and Rules to terminate the services of the petitioner, but it does not behove of the State of Haryana to take a similar stand which is contrary to the statute and does not act in furtherance with the public policy. It is virtually saying that the statute which has been made by the State of Haryana is non-existent and unenforceable.

(Para 10)

Further held, that the Court cannot shut its eyes to the unreasonable stand of the State of Haryana. The Court has to pass the orders in accordance with law and merely because the State which has actually passed the statute is not saying that it has the effect of the statute does not reduce the applicability of the statute to the field where it holds good and is applicable too.

(Para 11)

Further held, that Section 25 of the Haryana School Education Act, 1995 clearly states that the Haryana Aided Schools (Security of Service) Act, 1971 has been repealed. The Rules framed under the 1995 Act, i.e. Haryana State Education Rules, 2003 were notified on 30th April, 2003 and therefore were applicable on the date when the petitioner's services were terminated i. e. on 30th June, 2003. In view of this, there is no doubt that the services of the petitioner after coming into force of the Haryana State Education Act, 1955 on its notification and enforced on 20th July, 2001 and the Haryana School Education Rules, 2003 notified on 30th April, 2003 framed under the 1995 Act would be applicable to the case of the petitioner. Hence, order passed by the Director, Secondary Education, Haryana dated 13th April, 2004 cannot be sustained and is hereby quashed.

(Para 12)

R. K. Malik, Sr. Advocate with Yashdeep Singh, Advocate *for the Petitioner*

Harish Rathee, Sr. DAG Haryana.

Pritam Saini, Advocate *for Respondent No.4.*

AUGUSTINE GEORGE MASIH J.

(1) Through this writ petition the petitioner is paying for issuance of a writ of certiorari to quash the order dated 13th April, 2007 Annexure P-7 passed by the Director, Secondary Education, Haryana respondent No.2,—*vide* which order dated 3rd June, 2005 passed by the District Education Officer, Kaithal, respondent No.3 has been set aside.

(2) The case of the petitioner is that he was appointed as Social Studies Master by duly constituted Selection Committee in Hindu Senior Secondary School, Kaithal, which is a Government aided private school. The petitioner was appointed,—*vide* letter dated 30th July, 2000. During the period of probation,—*vide* order dated 3rd June, 2003 the services of the petitioner were terminated by the Management of the Hindu Senior Secondary School, Kaithal. On the date of his appointment Haryana Aided School (Security of Service) Act 1971 (hereinafter referred to as 1971 Act) and Haryana Aided School (Security of Service) Rules, 1974 (hereinafter referred to as 1974 Rules) were applicable. However,—*vide* notification dated 30th July, 2001, the Haryana School Education Act, 1995 was enforced. Section 25 of the said Act provided for repealing of the earlier Act which reads as follows:—

“25. The Haryana Aided Schools (Security of Service) Act 1971 (Haryana Act No.10 of 1971) is hereby repealed.”

(3) Under Section 8 of the Haryana School Education Act, 1995, no employee can be terminated from service except with the prior approval of the Director or his nominee. Section 8 (2) of the Haryana School Education Act 1995 reads as follows:—

“8(2) .Subject to any rules that may be made in this behalf, no employee of a recognized private aided schools shall be dismissed, removed, reduced in rank nor shall his

services otherwise terminated except with the prior approval of the Director or his nominee :

Provided that this section shall not apply where employee is dismissed, removed or reduced in rank on the ground of conduct which had led his conviction on a criminal charge involving moral turpitude.”

(4) Under the Haryana School Education Act, 1995 (hereinafter referred to as 1995 Act) the State of Haryana framed Haryana School Education Rules, 2003 (hereinafter referred to as 2003 Rules) which were notified on 30th April, 2003. Rule 87 of the said rules deals with cases of probation which reads as follows :—

“87. Every employee shall on initial appointment, be on probation for a period of one year which may be extended by the appointing authority for another one year and services of an employee may be terminated during the period of probation if the work and conduct of the employee, during the said period, is not in the opinion of the appointing authority, satisfactory. In such cases speaking orders shall be made by the appointing authority :

Provided that no termination from the service of an employee on probation shall be made by a school, except with the prior approval of the Department.

If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be, on the expiry of the period of probation of the extended period of probation, as the case may be, confirmed with effect from the date of expiry of the said period.”

(5) On the basis of the above Rules it is the contention of the petitioner that although when he was appointed i.e. 30th July, 2000 his services were governed by the provisions of the Haryana Aided Schools (Security of Service) Act, 1971 and the Rules framed thereunder i.e.

Haryana Aided Schools (Security of Service) Rules, 1974. But with the coming into effect of the Haryana School Education Act, 1995 and the Haryana School Education Rules, 2003 framed thereunder, services of the petitioner were governed under the said Act and Rules on their notification. The Haryana School Education Act, 1995 was notified on 20th July, 2001 and the Haryana School Education Rules, 2003 were notified on 30th July, 2003 and since the services of the petitioner were terminated on 30th June, 2003, therefore, this Act and the Rules framed thereunder, were to apply to the case of the petitioner. The earlier 1971 Act and 1974 Rules framed thereunder would have no application to the case of the petitioner.

(6) On termination of the services of the petitioner by the Management of the school in 30th June, 2003, the petitioner preferred an appeal. The District Education Officer on hearing the appeal decided the same in favour of the petitioner holding therein that the approval of the Department was very much required by the Management as per the provisions of Rule 87 of the Haryana Education Rules, 2003 and since the said approval has not been sought for nor granted by the Department before terminating the services of the appellant, the order of termination of the petitioner was set aside.

(7) Thereafter, the Management of the School respondent No. 4 preferred an appeal before the Director School Education, Haryana (respondent No. 2),—*vide* his order dated 13th April, 2007 the respondent No. 2 accepted the appeal of the Management and set aside the order dated 3th June, 2005 passed by District Education Officer, Kaithal. Copy of this order is appended as Annexure P-7 herewith. It is this order which has been challenged by the petitioner on the ground that the Appellate Authority i.e. the Director School Education respondent No. 2 has totally overlooked the provisions of the law and has made the provision of the Act and the Rules which have been repealed applicable to the case of the petitioner.

(8) Upon notice having been issued, the respondent have filed reply to the writ petition. The facts as pleaded in the writ petition has

not been disputed. It is the submission of the respondents that the petitioner was under probation and his probation period was extended and, therefore, on the date of his termination i.e. 30th June, 2003 the petitioner was still on probation. The services of the petitioner are governed by the Haryana Aided Schools (Security of Services) Rule, 1974 which has been framed under the Haryana Aided Schools (Security Service) Act, 1971 as on the date of his appointment i.e. 30th June, 2000 the said Rules were applicable. The State of Haryana has also asserted that the 1971 Act and the 1974 Rules framed thereunder governs the service of the petitioner on the date of his termination i.e. 30th June, 2003.

(9) We have heard counsel for the parties and with their assistance have gone through the facts and the provisions of the Act and Rules as referred to above.

(10) Strange as it may appear that the State of Haryana is taking a totally contrary stand to the provisions of the Act and Rules framed by it and is pressing into service the repealed 1971 Act and 1974 Rules. It has been admitted that the Haryana Aided Schools (Security of Service) Act, 1971 was repealed as per Section 25 of the Haryana School Education Act, 1995 which was notified on 20th July, 2001. It has further been admitted that the Haryana School Education Rules, 2003 which have been framed under the Haryana School Education Act, 1995 were notified on 30th April, 2003 and with coming into force of the said Rules of 2003 the earlier Rules i.e. Haryana Aided Schools (Security of Service) Rules, 1974 cease to have effect. It is also not disputed that the services of the petitioner were terminated on 30th June, 2003 and on the said date neither the 1971 Act nor the 1974 Rules framed thereunder were on the statute book. If that be so how could the services of the petitioner be governed by the said Act and Rules ? The stand of the Management with regard to the applicability of the earlier Act and Rules is understandable as they want to take the benefit of the said Acts and Rules to terminate the services of the petitioner, but it does not behove of the State of Haryana to take a similar stand which is contrary to

the statute and does not act in furtherance with the public policy. It is virtually saying that the statute which has been made by the State of Haryana is non-existent and unenforceable.

(11) The Court cannot shut its eyes to the unreasonable stand of the State of Haryana. The court has to pass the orders in accordance with law and merely because the State which has actually passed the statute is not saying that it has the effect of the statute does not reduce the applicability of the statute to the field where it holds good and is applicable too.

(12) Section 25 of the Haryana School Education Act, 1995 (reproduced above) clearly states that the Haryana Aided Schools (Security of Service) Act, 1971 has been repealed. The Rules framed under the 1995 Act i.e. Haryana School Education Rules, 2003 were notified on 30th April, 2003 and therefore were applicable on the date when the petitioner's services were terminated i.e. on 30th June, 2003. In view of this, there is no doubt that the services of the petitioner after coming into force of the Haryana School Education Act, 1995 on its notification and enforced on 20th July, 2001 and the Haryana School Education Rules, 2003 notified on 30th April, 2003 framed under the 1995 Act would be applicable to the case of the petitioner. In the light of the above, the order passed by Director, Secondary Education, Haryana respondent No. 2 dated 13th April, 2007, Annexure P-7 cannot be sustained and is hereby quashed.

(13) A direction is issued to the respondent to reinstate the petitioner immediately with all consequential benefits. The consequential benefit be disbursed to the petitioner within a period of one month from the date of receipt of copy of this order. However, it will be open to the respondents to pass fresh orders in accordance with law.

(14) This petition is disposed of in above terms.

R.N.R.