**IN THE HIGH COURT OF PUNJAB AND****HARYANA**

Civil Writ Petition No. 21179 of 2010

Decided On: 22.05.2012

Appellants: **Devinder Kumar**
**Vs.**Respondent:**State of** **Haryana** **and Others**

**Hon'ble Judges/Coram:**K. Kannan, J.

**JUDGMENT**

**K. Kannan, J.**

1. The writ petition is for a direction against the respondents for allowing him to rejoin against a sanctioned post of a teacher with all consequential benefits w.e.f. 12.9.2009. The petitioner's grievance is founded on the fact that he had been working as a Sanskrit teacher against a sanction post in the fifth respondent school at Mustafabad Yamunanagar. The petitioner had responded to an advertisement in the post of Assistant Block Research Co-ordinator under theHaryana Prathmik Shiksha Pariyojna Parishad on deputation basis. The third respondent namely the State Project Director of the Parishad had sought for permission to the fifth respondent-School to relieve the petitioner and on being issued the No Objection Certificate the petitioner had joined the third respondent on 8.8.2005. On 7.9.2009 it appears that the third respondent had relieved the petitioner from deputation and he was asked to rejoin theschool in his parent department "(sic). On reporting back at the school the petitioner would claim that he was not permitted to join and the fifth respondent-Management was making out a condition that if only he would not ask for 25% of the salary that obtains to the Management share of liability against 75% of liability to be borne by the State for the aided post, he would be allowed to join. The petitioner did not accept such a condition and therefore he was not permitted to join. There is particularly no document in writing showing that the fifth respondent had made such a demand but the petitioner would refer to the several communications which he had sent to the government complaining of the fifth respondent's refusal to allow for the petitioner to rejoin the school. It is also brought on record that the government itself issued notices to the School directing the Management to take the petitioner back but these directions had been flouted. The State Government has filed its objection virtually conceding to the petitioner's demand insofar as it states that the respondent school had not properly responded to the demands and even a show cause notice had been issued by the DirectorSchool Education Haryana to the Manager of the School on 13.7.2011 to explain why the government shall not take over the Management and appoint an administrator under Section10(1) of the Haryana School Education Act, 1995 for flouting the state direction. This is in a way trying to exculpate themselves from the wrong attributed to the respondents generally by the petitioner and show it is the management of the School that has been preventing the petitioner from rejoining and the government itself had done everything to ensure that the directions were complied with.

2. The fifth respondent had filed a reply contending that at the relevant time when the petitioner was relieved, the Managing Committee was not itself functioning and the relieving order had been issued by the Principal who was not competent to relieve him. Learned counsel appearing on behalf of the fifth respondent would also point out that at the time when the petitioner was asked to be relieved they were only informed that the deputation period was for a period of one year and although the petitioner had joined as early as on 8.8.2005, he had not reported back at the School on the completion of one year, nor did the petitioner seek for extension of his period on deputation. Consequently, it must be taken that the petitioner had abandoned his employment with the School and therefore the fifth respondent cannot be made liable for demands contained in the writ petition.

3. It is an admitted case that the School is an approved aided school and the petitioner had been working as a teacher in a sanctioned post. It is a matter of record that the fifth respondent obtains 75% aid and the School is governed by the State enactments relating to administration, of aided schools that grants security of tenure to the employee and allows for scales admissible under the Act and the relevant rules. It is again a matter of record that the third respondent-Parishad has issued an order of appointment to the petitioner as ABRC, Bilaspur on deputation for a period of one year or till joining of a contractual employee whichever was earlier. A copy of this communication has been issued to the School through the Principal. Again the school has itself issued a letter to the Director on 23.7.2005 that it has no objection to relieve him for taking up the post of ABRC. A subsequent letter dated 8.8.2005 from the School through the Principal shows that he was relieved from duty on 8.8.2005.

4. It is not too clear from the documents filed before Court as to what transpired to the year 2006 to 2009. I am prepared to take that there was no specific order of the Parishad repatriating the petitioner to the School. Same way there was nothing on record to show that the School was demanding the presence of the petitioner or had taken any action for not reporting for duty after the one year period. A person that is sent on deputation for a particular period who does not report, does not vanish into thin air. An action that is required to be taken must initially be by the Management that a teacher who was relieved had not reported for duty and engaged in some form of communication either with the teacher or the State Educationauthorities for appropriate direction. If it was a sanctioned post that the petitioner was working and if the School wanted him back it was verily within its rights to secure his presence and if he did not report, escalate its action after disciplinary enquiry and taking sanction from the State for filling up the post by the vacancy that could have been caused. The other procedure could have been if it so happened that the post itself had become redundant, it should have been still possible for the Management to report to the State for abolition of the post. If the Management did neither but allowed for the continuation of the sanctioned post without taking action against the petitioner, the petitioner was entitled to secure his entry when he was being relieved from the deputation.

5. When the relieving order had been given and when he reported to the school, the Management not having taken any steps in the meanwhile for terminating the services, was bound to allow the repatriation and take him back in service. This assumes greater relevance when it is seen in the context of the State itself giving a direction for re-admitting him, for it bears responsibility for 75% of the salary. The defiance on the part of the Management to allow him the benefit of re-entry into service was clearly a dereliction on their part that was actionable. I will find no cause to find fault with the State under the given circumstances, as I have already elicited above, that the Director of the School had issued a show cause notice under Section 10 as a defiance on the part of the Management. Learned Counsel for the Management states that there was nothing to show cause that the Management had granted any permission to the petitioner to be relieved and that the petitioner taken any permission for extension of the period for rejoining. I would take this to be a strange argument, for the onus must be on the Management to show that the relieving order that was issued was without its concurrence that it was the Principal who had issued the relieving order and that the petitioner had connived with the Principal to secure a relieving order to join the third respondent as an attempt to wash away its responsibility. If the Principal was acting without concurrence, there ought to have been some action against the Principal himself. I have not been shown through any particular line of action as having been initiated against the Principal. If there is none it only shows that the School was looking for a scapegoat and find lame excuses not to comply with the directions of the State.

6. The willful refusal to readmit the petitioner from School is per se in contravention of the scheme of the rules that govern school administration. The doggedness by the Management could only be judicially reprimanded by issuing to the School a direction to re-admit the petitioner and also pay salary and benefits from the date when he reported for duty on 12.9.2009 till date and shall continue to be liable till the petitioner is entitled to be in service. Even for a State aided School, the principal liability to pay the teacher shall be only on the management for the master servant relationship exists only between the School Management and the teacher, as laid down by the Hon'ble Supreme Court of India in Swami Anandi Mukta v. V.R. Rudani,  : A.I.R. 1989 S.C. 1607. The fifth respondent shall not be entitled to any aid in respect of 75% which they are entitled to till they re-appoint, since they cannot take advantage of their own wrong. The fifth respondent is directed to pay all the arrears of salary within a period of four weeks with interest at 12% per annum and report to respondent No. 2 to 4 namely the Director General School Education Haryana and The District Education Officer Yamunanagar of the compliance of these directions. If these directions are not complied with, the respondent Nos. 2 and 4 are directed to take appropriate action against the fifth respondent and if they fail, the petitioner will be at liberty to approach this Court to complain for any inaction on the part of the State authority. There is also a prayer for giving the petitioner the benefit of raised pay scale w.e.f. 1.1.2006. The respondents 2 and 4, shall issue appropriate instructions to the 5th respondent as regards the entitlement or otherwise of such benefits within two weeks from the date of receipt of copy of the order. The fifth respondent shall also be visited with costs which I would assess at Rs. 25,000/- payable to the petitioner. The writ petition is allowed with above directions.