

# SUPREME COURT OF INDIA

Satwati Deswal

Vs.

State of Haryana

C.A.No.7397 of 2009

(Tarun Chatterjee and R.M.Lodha JJ.)

06.11.2009

## JUDGMENT

**Tarun Chatterjee, J.**

1. Leave granted.

2. This appeal by special leave has been filed against the judgment and final order dated 17th of May, 2007 passed by the High Court of Punjab & Haryana at Chandigarh in CWP No. 7460 of 2007. By the impugned judgment, the High Court had dismissed the writ petition filed by the appellant on the ground of maintainability and relegated the appellant to take statutory remedy of appeal.

3. Heard the learned counsel appearing for the parties and examined the impugned judgment as well as the other materials on record.

4. In our view, this appeal must succeed on a very short point. Before we take up the ground on which this appeal should be allowed, we may state the relevant facts leading to the filing of this appeal, which are as follows:-

“The appellant [M.A. B.Ed. M.Sc (Computer)] was appointed as a lecturer in 2003 in a recognized school in the State of Haryana and was subsequently promoted to the post of Principal on account of her seniority. Her appointment and promotion were duly approved by the concerned authorities, but by a non-speaking and unreasoned order dated 11th of September, 2006, her services were terminated by the Manager of the School, namely, the respondent No.5 herein. Admittedly, in this case, no show-cause notice was issued to her nor the order of termination was passed by initiating any departmental proceeding after giving opportunity of hearing to the appellant. This order of termination was challenged by the appellant by way of a writ petition before the High Court, which was dismissed by it on the ground that the appellant had an alternative remedy to file an appeal under the rules before the appellate authority against the order of termination.”

5. In our view, the High Court had fallen in grave error in the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vices of the act were in question.

6. The aforesaid exceptions recognized by this Court were taken note of by this Court in the case of *A.V.Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhvani & Anr.*<sup>1</sup>, in which the Constitution Bench laid down the principles of the above exceptions when writ application could be entertained even if an alternative remedy was available to an aggrieved party. The same view was expressed by this Court in the case of *L.K. Verma v. H.M.T. Ltd. & Anr.*<sup>2</sup> and *M.P.State Agro Industries Development Corporation & Anr. v. Jahan Khan*<sup>3</sup>.

7. Such being the position and in view of the admitted fact in this case that before termination of the services of the appellant, no disciplinary proceeding was initiated nor any opportunity of hearing was given to the appellant. It is clear from the record that the order of termination was passed without initiating any disciplinary proceedings and without affording any opportunity of hearing to the appellant. In that view of the matter, we are of the view that the writ petition was maintainable in law and the High Court was in error in holding that in view of availability of alternative remedy to challenge the order of termination, the writ petition was not maintainable in law.

8. Apart from that, on a cursory look of the statutory provision of the Constitution of the Parishad Working Committees, it would be clear that before imposing any major penalty against an employee, namely, an order of termination of service, an inquiry must be held in the manner specified in the statutory rules by which the disciplinary authority shall frame definite charges on the basis of allegations on which an inquiry shall be proposed and opportunity must be given to the employee to submit a written statement stating therein whether he/she desires to be heard in person and no order of termination also can be passed without the approval of the Managing Committee. On this count alone, therefore, the High Court was, in our view, in grave error in dismissing the writ petition of the writ petitioner.

9. Accordingly, the impugned judgment of the High Court is set aside and the order of termination passed against the appellant is quashed and the writ petition stands allowed. However, it would be open to the authorities, if so desire, to initiate disciplinary proceedings against the appellant for her termination from service and if such disciplinary proceedings are initiated, the authorities shall give proper opportunity of hearing and permit the parties to adduce evidence in support of their respective stands and after giving such opportunity, the disciplinary authorities thereafter shall give hearing to the appellant and then pass a final

order on the question of termination of service of the appellant in compliance with the concerned statutory rules applicable to the appellant.

10. For the reasons aforesaid, the impugned order is set aside and the order of termination passed against the appellant is quashed. The appeal is allowed. There will be no order as to costs.

<sup>1</sup>*AIR 1961 SC 1506*

<sup>2</sup>*AIR 2006 SC 975*

<sup>3</sup>*AIR 2007 SC 3153*