2026:PHHC:028859

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-18427-2024 (O&M)

DELHI PUBLIC SCHOOL GHAZIABAD SOCIETY

... Petitioner

Versus

EDUCATIONAL TRIBUNAL, GURUGRAM AND ANOTHER

...Respondents

1.	The date when the judgment is reserved	January 20, 2026
2.	The date when the judgment is pronounced	February 24, 2026
3.	The date when the judgment is uploaded on the website	February 24, 2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Amandeep Singh Talwar, Advocate
for the petitioner.

Mr. Suryaveer Singh Surjewala, Advocate
(through video conferencing) and
Mr. Karan Ranjha, Advocate
for respondent no.2.

TRIBHUVAN DAHIYA, J.

The petition has been filed seeking a writ of *certiorari* setting aside the judgment passed by the District Judge-cum-Educational Tribunal, Gurugram, dated 12.12.2023, Annexure P-4, whereby appeal filed by the second respondent against his termination from service has been partly allowed, directing his reinstatement; however, the claim for grant of benefit of 6th and 7th Pay Commission has been declined.

2. The facts of the case in brief are, the second respondent was appointed as Trained Graduate Teacher (TGT) Mathematics in Chiranjiv Bharati Public School vide letter dated 01.07.1993, Annexure P-3. The School was taken over by the petitioner-Society on 01.04.2016, as also

service of the second respondent as confirmed employee on the terms and conditions he was working with the erstwhile School. After about a year and a half, the Society terminated the second respondent from service vide letter dated 30.12.2017, Annexure R-18, informing that his services were no longer required in the School. The order reads as under:

> In accordance to letter dated 4th November 1997 of your confirmation issued by Chiranjiv Bharti School, and in conjunction with the Letter of Continuation issued by DPSG dated 1st April 2016, which states that we are continuing your employment with the existing terms and conditions, we wish to inform you that your services are no longer required in DPSG Palam Vihar.
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> You are being terminated from your services with immediate effect. DPSG will honour the terms and conditions which govern your services.

2.1 In terms of Condition 3 of the letter of confirmation dated 06.01.2010, issued to the second respondent, he was entitled to three months' notice or salary in lieu thereof on termination of service. The amount was however not paid to him by the Society at the time of termination, and the second respondent kept on asking for it. The fact has been recorded in the note sheet dated 26.02.2018, which forms part of the record before the Tribunal, Annexure P-2; relevant extract whereof reads as under:

- He has served the DPSG-Palam Vihar for 24 years 3 months and 29 days and is eligible for Gratuity Payment.
- On December 30, 2017 a termination letter was issued to him wherein it is stated that "you are being terminated with immediate effect."

- We have not given three months' notice period as required in his appointment letter. As per the clause no.3 of his appointment letter "The school management have the right to terminate your services by giving you three months' notice in writing or by payment of three month's gross salary in lieu of such notice."
- His salary for the month of December'17 was put on hold.

2.2 The fact of his pursuing the matter of releasing dues/notice period salary et cetera with the Society is also recorded in note sheet dated 18.04.2018, which also forms part of Annexure P-2; relevant extract whereof reads as under:

- It's been over 3 months since his last working date and till now he has been patiently following up with HR about his dues and have not raised any litigation considering the same it is recommended that his entire dues i.e. 3 months gross salary and gratuity be paid to Mr. Pawan Kumar in his final settlement at the earliest.

Based on the above, the Chairman Sir is requested to instruct Finance Department to release the dues to Mr. Pawan Kumar accordingly.

2.3 After much persuasion, the Society paid amounts of ₹7,62,452, and ₹1,31,910, vide two cheques dated 07.05.2018, to the second respondent as full and final payment. At that time, he was asked to sign a form "Declaration by Employee" dated 18.05.2018, which reads as under:

> I, Pawan Kumar, son of Lt. Nand Kishore hereby confirm that I have worked in this organization from date 02.07.1993 to date 31.03.2018. They terminated my services from 30.12.2017 that I have received payment of Rs.762452 + 131910 as on date

> 07.05.2018 and that from the organization and that there are no dues pending to be received from this organization. That I indemnify and hold the organization, its offices, directors, employees, servants, agents and other representatives (when applicable) harmless from and against any other claim.

2.4 Thereafter, the second respondent filed an appeal before the Tribunal for quashing the order of termination and seeking a direction to the petitioner herein to pay the remaining benefits of 6th and 7th Pay Commission along with Dearness Allowance (DA) from 01.01.2006 onwards. The appeal was partly allowed by the Tribunal vide impugned judgment dated 12.12.2023, in the following terms:

> 49. As a sequel to above mentioned observations the present appeal deserves to be partly allowed. Hence the same is hereby partly allowed. The instant appeal with regard to prayer of appellant for reinstatement in service is hereby allowed and the respondent is directed to reinstate the appellant within three months from the date of this judgment. However for the conferment of benefit of 6th Pay Commission and 7th Pay Commission the instant appeal is hereby dismissed. The appeal stands partly allowed, accordingly. Memo of costs be prepared accordingly. The original service record of the appellant, placed on record by the respondent, be returned to the respondent as per rules after retaining its photocopy. After due compliance the appeal file be consigned to the record-room.

3. In this factual background, learned counsel for the petitioner has first contended that after accepting the full and final payment of three months' notice period salary and other dues, and giving a declaration dated 18.05.2018 to that effect, the second respondent was not entitled to file an

appeal before the Tribunal, as he had willingly waived off his right to do so by signing the declaration. In support of the contentions, he has placed reliance upon the Supreme Court judgment dated 16.11.2021 rendered in *Chairman, State Bank of India and another* v. *M.J. James*, 2022 (2) SCC 301. *Secondly*, he has contended that the second respondent is not entitled to claim damages for termination of his services, since the same was strictly as per the terms and conditions of his contract of service with the Society. Also, he failed to specifically plead as to how the damages were admissible to him in these circumstances. *Lastly*, it has been contended that in directing the reinstatement of the second respondent in service, the Tribunal has gone against the settled law on the issue that even in the case of wrongful termination of contract of service with a private management, employee is not entitled to reinstatement as the contract of service cannot be specifically enforced. In this regard he has placed reliance on the Division Bench judgment of this Court dated 14.12.2022 rendered in LPA Nos.389 and 390 of 2018 titled *M/s G.D. Goenka School* v. *Parveen Singh Shekhawat and others*.

4. *Per contra*, learned counsel for the second respondent contended that violation of the contract in terminating the second respondent's service has been admitted by the petitioner-Society in its note sheets dated 26.02.2018 and 18.04.2018. Part payment of three months' salary and the remaining dues was made to him only after much persuasion and waiting for over six months on 18.05.2018, and this fact has also been recorded in the note sheets aforementioned. This violation of the terms of the

contract, accordingly, entitles the second respondent to payment of damages. It has also been pointed out that at the time of termination, the second respondent had rendered more than twenty four years of service in the School; had he continued in service, he would have retired in September 2021. Reference has also been made to his pay slip for the month of March 2016 to indicate the salary being drawn by him, which shows his total monthly earnings as ₹55,686; pay slip for the month of April 2014 shows his monthly earnings as ₹49,940. Lastly, it has been contended that the petitioner never acquiesced to the fact that termination of his service was in terms of the contract of service. He was made to sign the declaration at the time of receiving the cheques. And at that time also, he refused to give in writing that he had received full and final payment, as the declaration originally mentioned. Therefore, there was no bar on him to approach the Tribunal by filing the appeal in question.

5. Submissions made by learned counsel for the parties have been considered.

6. As apparent on record, the second respondent was appointed in the School as TGT (Mathematics) vide letter dated 01.07.1993. After more than twenty-four years his services were terminated vide order dated 30.12.2017 with immediate effect, being no longer required. In terms of his contract of service with the Society, as incorporated in the terms of his appointment and confirmation, he was entitled to three months' notice or salary in lieu thereof. It stands conceded by the Society that at the time of termination the second respondent was not paid three months' salary which

was mandatorily required, nor was he given three months' advance notice prior thereto. This makes the termination illegal being violative of the terms of contract of service. The salary by way of cheques was finally given to him only on 07.05.2018. The note sheets produced by the Society record that he had been following up with the Human Resource Department for clearance of his dues. And at the time of making payment of dues/salary after about five months of termination, he was made to sign a declaration on a printed proforma, dated 18.05.2018. This document has been relied upon by the Society to contend that the termination was in compliance with the terms and conditions of the contract of service as agreed to by the second respondent by affixing his signatures thereupon. The violation of terms on the part of the Society is writ large which cannot be ignored or explained away in this manner. Merely because at the time of handing over cheques of the remaining dues, the second respondent was made to sign a printed declaration accepting the amount and indemnifying the organisation/Society as well as its employees and directors from any harm, it cannot be used against him in the subsequent litigation initiated for assertion of his rights. This declaration was not in derogation of the second respondent's right to challenge the termination being violative of the contract of service he entered into with the Society. No such stipulation was there in the declaration either. Additionally, it cannot be lost sight of that the Society was in a domineering position vis-à-vis the second respondent, and that is the reason he had no option but to sign on the dotted lines to get the dues. On that basis, he cannot be said to have given up his rights. Similar view was

taken by this Court in CWP-913-2024 titled *Halwasiya Vidya Vihar Senior Secondary School Society, Bhiwani* v. *Saroj Arya and others*, where a teacher was terminated from service by the Management for no reason, and refused her dues also. On the asking for the same, she was given a fresh appointment. Pursuant thereto, she joined service and challenged the termination. The plea by the Management that she could not challenge the termination after accepting the fresh appointment was rejected by the Court with the following observations:

> 6. … Merely because she accepted the fresh appointment on consolidated salary and agreed to its terms and conditions, it cannot be said she has given up the right to challenge her termination from service, vide order dated 23.09.2013. It was only due to the petitioner's imperious position that she was forced to bow to its wishes and accept the appointment on whatsoever terms it was being offered. Being a desperate act, it cannot be in derogation of her rights. Besides, it is a conceded position that the termination order is not legally sustainable. Further, accepting the argument of learned senior counsel that the first respondent cannot be allowed to turn around and challenge the order of termination after accepting subsequent appointment, will be a double whammy for her - suffering illegal termination and not being allowed to challenge it even, which cannot be countenanced.

6.1 Further, the judgment in *M.J. James* case (*supra*) relied upon by learned counsel for the petitioner does not advance its case in any manner; reliance has been placed upon its following paragraph:

> 39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches".

> Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.

Apparently, the Court has held that acquiescence is concurrence noted by a conduct that makes evident a party's intention to abandon an equitable right. The conduct has to be of the kind from which the other party is justified in inferring such an intention. The facts of the instant case do not in any manner indicate that the second respondent ever had an intention to abandon his right to challenge the termination of his services. It was on the asking of the Society that he had to sign the printed declaration which essentially was an acknowledgement of the amount of dues he received, and nothing more. He has not done anything, nor taken any stand inconsistent with his right to challenge the termination.

7. The Society where the second respondent has worked as Teacher, is undisputedly a private educational institution not getting any grant-in-aid from the Government. Accordingly, the contract of service entered into between the Society and the second respondent, is a contract which is not in the realm of public law. Also, it does not show that the terms of contract were regulated in terms of any statutory requirements. Accordingly, the second respondent cannot be held entitled to reinstatement in service, but is entitled to compensation instead. This has been so held by the Supreme Court in *Kailash Singh* v. *Managing Committee, Mayo College, Ajmer and others*, 2018 (18) SCC 216. The case related to termination of two employees of a private unaided educational institution by the management on account of conducts attributed to them. The termination was held to be in violation of the Rajasthan Non-Government Educational Institutions Act, 1989, for want of consent of the Director. Despite the termination being unlawful, the petitioners were not held entitled to reinstatement in service since their relationship with the management was contractual in nature, and award of damages/compensation was held to be the appropriate remedy. Relevant paragraph of the judgment is extracted hereinbelow:

> 21. We may also note that were the appellants to file a civil suit, the evidence would have been recorded, and the matter gone into a greater detail in a factual context. This is relevant from both aspects of seeking restoration of services and quantification of damages. The significant aspect is that there should not be specific performance of a master-servant contract of service, and damages should be the appropriate remedy.

8. Since the second respondent's termination is in breach of the contract of service, as discussed hereinbefore, he is entitled to compensation in lieu of reinstatement. On the issue of payment of compensation to an employee in lieu of reinstatement on account of wrongful termination of contract, a reference can again be made to *Kailash Singh* case *ibid*. It lays down that the methodology to calculate compensation is based on the principles of wrongful termination of an employee under the master-servant relationship. It upheld the principle of awarding compensation in the form of back wages, keeping in mind the aggravating and mitigating circumstances. The observations in the judgment in this context are as under:

> 31. …Thus, the principles of the Industrial Disputes Act, 1947 cannot be, ipso facto, imported into a factual matrix of the present nature, for, as a consequence of the illegality in the termination of the services of the appellants, compensation has to be granted. The methodology of calculation would be based on the principle of wrongful termination of an employee, under the master-servant relationship. This, in turn, would import into it the requirement of the appellants endeavouring to mitigate their losses. In fact, in this context, we may observe that the claim for back-wages has apparently been raised for the first time only in the present proceedings, arising from the manner in which the High Court dealt with the matter, where it granted some compensation.
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> 32. The principle of awarding adequate compensation in the form of back-wages, keeping in mind aggravating and mitigating circumstances would, thus, have to be

> observed. The amount cannot be measly, nor can it be a bonanza. The High Court, in its wisdom, awarded the compensation of five (5) years' back-wages on the last pay drawn. Not only that, an additional benefit was conferred by providing for provident fund and retiral dues, to be calculated on the premise as if the services would be continued till the appellants attained the age of superannuation.
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> 33. We have no reason to find that such an aforesaid principle can be said to be fallacious or wrong, so as to call for our interference, except to the extent discussed hereafter.
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> 34. We are firstly of the view that it would not be appropriate to determine the amount on the basis of the last pay and allowances drawn. The calculation should be based on the actual pay and allowances liable to be drawn for the years in question, dependent on the period for which this amount is to be calculated.

The Division Bench in *G.D. Goenka School* case (*supra*) also followed the law laid down in *Kailash Singh* case for awarding compensation in lieu of reinstatement for wrongful termination to a teacher.

9. To quantify the damages payable to the petitioner it is apposite to take into account the fact that he has been terminated after more than twenty-four years' service in the School. In *Kailash Singh* case (*supra*) the two petitioners therein had been illegally terminated after about sixteen years of service, and were granted damages in the form of salary and allowances payable for a period of eight years by adding their provident fund amounts and other retiral dues. It is a fact on record that in March,

2016, the second respondent was drawing gross salary of ₹55,686 (basic pay-22,364, dearness allowance-26,613 and house rent allowance-6,709). His services were terminated more than a year and a half later on 30.12.2017, and his salary would certainly have increased further by that time. Accordingly, his monthly gross salary at the time of termination is assessed to be ₹57,000. Considering the circumstances as discussed hereinbefore, this Court deems it fit to award compensation equivalent to five years' pay and allowances to the second respondent for the illegal termination of his services, instead of reinstatement with back wages as ordered by the Tribunal.

10. The petitioner is accordingly directed to pay an amount of ₹34,20,000 (57,000 x 60) to the second respondent with interest at the rate of six per cent per annum from the date of termination till actual payment. The amount is to be paid within two weeks of receiving a certified copy of the judgment, thereafter it will carry interest at the rate of nine per cent per annum till actual payment. The impugned judgment of the Tribunal, dated 12.12.2023, is modified to the extent indicated above, and the petition stands disposed of.

11. Pending application(s), if any, shall also stand(s) disposed of.

February 24, 2026 **(TRIBHUVAN DAHIYA)**
Jaspreet Kaur **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes