

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 10th OF APRIL, 2024

WRIT PETITION No. 5487 of 2024

BETWEEN:-

SMT. PRIYANSHI GARG W/O SHRI ANKIT



.....PETITIONER

(BY SHRI RISHI TIWARI, ADVOCATE)

AND

**UNION OF INDIA SECRETARY MINISTRY OF
1. DEFENCE, SOUTH BLOCK, NEW DELHI
(DELHI)**

**ARMY WELFARE EDUCATION SOCIETY
THROUGH THE SECRETARY CUM
2. MANAGING DIRECTOR BUILDING NO. 202
SHANKAR VIHAR DELHI CANTONMENT NEW
DELHI (DELHI)**

**ARMY PUBLIC SCHOOL THROUGH THE
3. PRINCIPAL MHOW DIST INDORE (MADHYA
PRADESH)**

**4. PRINCIPAL ARMY PUBLIC SCHOOL MHOW
MHOW DIST INDORE (MADHYA PRADESH)**

**5. CHAIRMAN ARMY PUBLIC SCHOOL MHOW
DIST INDORE (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI MAHESH KUMAR SHARMA, ADVOCATE FOR RESPONDENT NO.4
AND SHRI HIMANSHU JOSHI, DY. SOLICITOR GENERAL FOR UNION OF
INDIA)***

This petition coming on for admission this day, the court passed the following:

ORDER

1] This writ petition has been filed by the petitioner Smt. Priyanshi Garg, a contractual employee, under Article 226 of the Constitution of India assailing the order dated 12/02/2024, passed by respondent No.4, the Principal, Army Public School, Mhow, District Indore (M.P.) whereby, the services of the petitioner who was posted as Primary Teacher has been terminated by invoking Clause 4 of the contract.

2] In brief, the facts of the case are that the petitioner was appointed by respondents on *ad hoc* basis as Primary Teacher in the Army Public School on 15/09/2021, and subsequently she signed an agreement?? dated 03/06/2022 and she was offered the appointment for the post of Primary Teacher (PRT) for a period of 3 years, w.e.f., 24/06/2022 to 31/03/2025. Accordingly to the petitioner, she was diligently performing her duties as Primary Teacher, however, she sought permission for maternity leave benefit by sending her request to the respondent No.4 under the Maternity Benefit Act, 1961 (hereinafter referred to as 'the Act of 1961'), and also sent an email on 03/02/2024 mentioning that she had earlier applied for the same but she was verbally informed by the Principal that due to insufficiency of funds available with the respondents, she has an option to go on leave without pay (LWP), however, as the petitioner was not inclined to accept the leave without pay, she sent the email on 03/02/2024 requesting for the benefit of the Act of 1961, however, instead of extending the aforesaid benefit, the respondents have served the impugned notice to the petitioner on 12/02/2024, which is

two months prior notice for termination of her service, citing Clause 4 of the agreement, and being aggrieved of the same, the present petition has been filed.

3] Counsel for the petitioner has submitted that the impugned notice has been issued in retaliation of the petitioner's email dated 03/02/2024. It is also submitted that the petitioner was also compelled to send a copy of the email to the National Commission for Women because the verbal instructions made to the petitioner by respondent No.4. It is also submitted that the impugned notice is nothing but an arbitrary exercise by respondent No.4 of her powers to bypass the provision of the Act of 1961.

4] Counsel has also drawn the attention of this Court to the fact that after the petition was filed, the respondents, in their reply have relied upon certain old complaints made against the petitioner by some parents of the students studying in the Army Public School and the last such complaint made against the petitioner was in the month of August 2023, however, the respondents have never issued any warning, although advisory was issued on 09/08/2023, but no further action has been taken against the petitioner since last around six months.

5] Shri Tiwari, learned counsel for the petitioner has also drawn the attention of this court to para No.8 of the Full Bench Judgement of the Supreme Court in the case of *Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others reported as (1978) 1 SCC 405* to substantiate his submissions that in public orders, publicly made in exercise of a statutory

authority cannot be made arbitrarily. It is submitted that although the respondent School is an unaided School, still they were required to comply with the provisions of the Act of 1961 without any prejudice.

6] Reply to the aforesaid petition has also been filed by the respondents rebutting the averments made in the petition, and shri Saurabh Shrivastava, learned counsel appearing for respondents has also drawn the attention of this Court to the complaints made against the petitioner by the parents of the students who were being taught by the petitioner as in the earlier complaint dated 18/08/2022, certain temperamental issue and discriminatory behaviour of the petitioner was brought to the notice of the School, and in another complaint dated 08/08/2023, the students were shifted to a different section because of the misunderstanding between the petitioner and the parents.

7] Counsel has also drawn the attention of this Court to the noting made by the Principal of the School in respect of the complaint made against the petitioner as also to the advisory issued to the petitioner on 09/08/2023, in which, she was asked to give her explanation in writing in 3 days' time failing which it was also directed that the School will be at liberty to take appropriate action against her, however, the petitioner has never replied to the aforesaid advisory except that she has already submitted an application on 07/08/2023 which was prior to issuance of the advisory.

8] Counsel has also drawn the attention of this Court to the Teacher's Classroom Observation of the petitioner's conduct and shortcomings.

9] It is also submitted that otherwise also, the respondents would be extending the benefit of the maternity leave to the petitioner, however, looking to the conduct of the petitioner, her services have also been terminated after the maternity benefits are extended to her. Counsel has also submitted that since the respondents do not want that the petitioner's future would be prejudice in any manner, that is why the order of termination does not reflect upon the conduct of the petitioner in the School, and only para No.4 of the agreement has been invoked by the respondents to terminate her services.

10] In rebuttal, counsel for the petitioner has submitted that so far as the complaints made against the petitioner are concerned, the same are stale and do not give any cause of action to the act against the petitioner after a period of six months. It is also submitted that the respondents have acted arbitrarily in terminating the services of the petitioner only because she claimed the benefit of the Act of 1961 which is also reflected from the petitioner's email where it is stated that she was orally informed by respondent No.4 that she has to opt for leave without pay (LWP). Thus, it is submitted that the petition be allowed.

11] Heard learned counsel for the parties and perused the documents filed on record.

12] From the record, this Court finds that the petitioner was appointed temporarily and is a contractual employee of Army Public School, and an agreement in this regard was executed on 24/06/2024 wherein, it is provided that the petitioner's services shall be for a period of 3 years only as it would begin from 24/06/2022 and shall

terminate on 31/03/2025.

13] In para 15 of the reply, which reads as under, the respondents have already admitted that they would provide to the petitioner the maternity benefits, but would maintain her dismissal:-

“15. In spite, the Principal (Respondent No. 4) assured the petitioner that as per rules and regulations of the AWES, she will be given the benefit of maternity leave, but in order to create pressure for withdrawal of 02 months termination notice, the petitioner filed a complaint before the Honble National Commission for Women (NCW) complaining, that she is being denied the benefit of maternity leave and she has been terminated for asking the maternity leave benefit.”

14] So far as Clause 4 of the contract is concerned, on which the respondent has relied upon, the same reads as under:-

“4. Party No.2 can terminate the services of Party No.1 by giving two months notice or salary in lieu. Likewise the Party No.1 may also resign by giving two months notice or salary in lieu thereof. Party No.1 can leave the service of the school only on acceptance of his/her resignation by the Party No.2. If Party No.1 abstains from the school before acceptance of his/her resignation by the Party No.2, the security deposit of Party No.1 will stand forfeited.”

15] So far as dismissal of a woman during her absence from employment or pregnancy is concerned, it is governed by Section 12 of the Maternity Benefit Act, 1961, which reads as under:-

“12 Dismissal during absence or pregnancy:- (1) When a woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during or on account of such absence or to give notice of discharge or dismissal on such a day that the notice will expire during such absence, or to vary to her disadvantage any of the conditions of her service.

(2)(a) The discharge or dismissal of a woman at any time during her pregnancy, if the woman but for such discharge or dismissal would have been entitled to maternity benefit or medical bonus referred to in section 8, shall not have the effect of depriving her of the maternity

benefit or medical bonus:

Provided that where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both.

(b) Any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.

(c) Nothing contained in this sub-section shall affect the provisions contained in sub-section (1)."

(emphasis supplied)

16] A bare perusal of the aforesaid provision clearly reveals that sub clause (b) of Section 2 of the same reveals that any woman deprived of maternity benefit or medical bonus, or both, or discharged or dismissed during or on account of her absence from work in accordance with the provisions of this Act, may, within sixty days from the date on which order of such deprivation or discharge or dismissal is communicated to her, appeal to such authority as may be prescribed, *and the decision of that authority on such appeal, whether the woman should or should not be deprived of maternity benefit or medical bonus, or both, or discharged or dismissed shall be final.*

17] Admittedly, the respondents have already consented that they are going to extend the benefits of the Act of 1961 despite the fact that the petitioner's services have been terminated, in such circumstances, when the relief, which could have been granted to the

petitioner in this petition under Art.226 of the Constitution of India has already been granted to the petitioner, the question of dismissal of the petitioner, which is a disputed question of fact arising out of a contract, has to be dealt with the by the prescribed authority only, before whom, an efficacious alternative remedy, by way of an appeal, as provided under the Act of 1961, is available to the petitioner.

18] In such circumstances, no further relief can be granted to the petitioner in this petition, and the same is hereby *disposed of*, with a liberty reserved to the petitioner to take recourse of the alternative remedy as is provided under Section 12 of the Act of 1961, if so advised.

19] It is made clear that this court has not reflected upon the merits of the case, and the time spent by the petitioner in prosecuting this petition shall be excluded from any period of limitation.

20] Wit the aforesaid direction, the writ petition stands *disposed of*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi