

CASE NO.:
Appeal (civil) 1731 of 2008

PETITIONER:
Mukesh Kumar Badoni

RESPONDENT:
State of Punjab and others

DATE OF JUDGMENT: 04/03/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1731 OF 2008
(Arising out of SLP (C) No. 24789 of 2003)

S.B. SINHA, J.

Leave granted.

1. Appellant was employed as a Chowkidar by the respondent No.3. He applied for his appointment to the said post of Chowkidar upon having come to learn that the same was lying vacant. Respondent No.3 had issued an offer of appointment in his favour on or about 3rd August, 2002. His appointment was to be on probation for one year and subject to approval of Director of Public Instructions Pnnjab, Chandigarh. He was, however, relieved from his duties with effect from 28th July, 2003 on the premise that his services were no longer required by the College.

3. He served a legal notice upon the authorities of the College as also the Director of Public Instructions. Respondent No.3 in reply to the said notice on the Advocate of the appellant dated 20th October, 2003, inter alia stated :-

"3. Ref. to para No.3 your client was appointed as chowkidar on 3.8.2002 after retirement of Shri Ram Bahadur on 31.3.2002 with the pay scale of 2620 + DA & other allowances as per Govt. rate. Ref. to your points under para No.3, it is stated that his case was sent to the DPI (C) Punjab, Chandigarh for approval but the same was rejected by the DPI (C) Punjab, Chandigarh due to non-clearance of Punjabi as a subject in 8th Std. vide letter No.2314 grant II, dated 28.3.2003.

4. Ref. to para No.4 as stated earlier that his approval for the post of chowkidar was rejected by the DPI (C), Punjab, Chandigarh vide above said letter no. due to non-clearance of Punjabi as a subject in 8th Std. & no grant was received for his post till date from the DPI (C), Punjab, Chandigarh and the college has made the payment of his salary by Managing Committee account. Thus there is no question of his extension of probation at this stage."

4. An advertisement was also issued in regard to the filling up of the said post.

5. Appellant thereafter filed a writ petition before the Punjab and

Haryana High Court. The said writ petition has been dismissed by reason of the impugned judgment dated 2nd September, 2003.

6. Mr. Shekhar, learned senior Counsel appearing on behalf of the appellant would submit that the respondents having preruniated its stand from stage to stage, the impugned judgment is wholly unsustainable. He drew our attention to the fact that the stand taken before this Court that the Director of Public Instructions had refused to accord his approval is factually incorrect and in that view of the matter the impugned judgment should be set aside.

7. This Court noticing the specific stand taken that the Director of Public Instructions had refused to accord approval of the appointment of the appellant, directed to file an affidavit in regard thereof; pursuant whereto Maninder Dhillon, Deputy Director (C&P) has affirmed an affidavit stating:-

"3. That this is the actual letter which was received in the office and was returned in original to the D.A.N. College of Education for Women, Nawa Shahar Doaba with objections to produce the following documents.

- i) Signed copy of the joining report.
 - ii) Certificate of Punjabi Pass
4. That the fact of refusing the letter in original and receipt thereof by the college representative is evident from the noting portion of the file No.8/14-07-Grant-II(3) page 22 & 23."

8. By reason of the said purported letter dated 28th March, 2003, thus, the application of the appellant together with other documents were sent back to the College so as to enable it to send the same back together with the certificate that the appellant holds the requisite qualification as also the signed copy of his joining report.

9. It is now conceded before us that the Director of Public Instructions expressly had not refused to accord its approval to the appointment of the appellant in the College. Such a stand, therefore, ought not to have been taken. It is expected of an educational institutional to take a fair stand before a Court of Law.

10. It, however, appears from the records of the case that the sanction for the said appointment was not received by the Institute. The salary of the appellant was being paid by the College itself from its funds and not from the grant received from the State. It is not in dispute that the institution in question being a Girls Institution, a Chowkidar is required to possess a certificate of knowledge of the Punjabi language.

11. Appellant has passed his Matriculation examination from Uttar Pradesh. As noticed hereinbefore, the Appellant in view of the reply of the College to the learned Advocate for the appellant must have knowledge that one of the requisite qualifications required for his appointment was that he must had Pnnjabi as a subject in VIII class.

12. In his writ petition, however, the appellant did not state that he possessed the said qualification. Even in the special leave petition he did not make any statement that he holds the requisite qualification. If he does not possess the requisite qualification, this Court and also for that matter the High Court, could not issue a writ, which would be futile in nature.

13. It may be that the respondents had taken different stands at different stages but the fact remains that his services have not been approved by the Director of Public Instructions. He does not possess the requisite qualification. Unless an express approval of the competent authority is

granted, he cannot be permitted to continue in services with the College.

14. For the reasons aforementioned, we are of the opinion that it is not a fit case where this Court could exercise its jurisdiction under Article 136 of the Constitution of India. The appeals fails and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

JUDIS