

PETITIONER:
STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:
TARA SINGH SHAHI

DATE OF JUDGMENT: 17/04/1996

BENCH:
AHMAD SAGHIR S. (J)
BENCH:
AHMAD SAGHIR S. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
JT 1996 (6) 26 1996 SCALE (3)716

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S. SAGHIR AHMAD, .J.

Guru Nanak College at Gurdaspur was a private institution affiliated to Guru Nanak Dev University. Respondent was appointed as Principal of the college by a resolution of the Managing Committee adopted on 27th of May 1975. His appointment was approved by the Vice Chancellor on 30th of June, 1975 and thereafter he was confirmed on that post with effect from 31st of May, 1976.

2. Guru Nanak college, as also three other colleges were proposed to be taken over by the Government under its Memo dated 30th of September, 1987 on the condition that only those staff member who possessed the requisite qualification would along be absorbed and that too as "new entrants" while the Principal of the college would be brought in as senior-most lecturer and not as principal. This Memorandum was considered by the Managing Committee of the college in its meeting held on 18th of May, 1983 and was approved. Consequently, a gift deed dated 11th of July, 1983 was executed between the management of the college and the State Government in which the management was described as donors and it was provided, inter alia. as under:

"1. In pursuance of the said agreement, the donors hereby transfer to the Govt., by way of gift all the properties in the form of buildings, fields, gardens, staff quarters, lands, equipments, furniture, library books, science apparatus and other assets etc. at present attached with the college or standing in the name of the college as are specified in Schedule A including the right of college management and control of the Guru Nanak College Gurdaspur

District, Gurdaspur to have and to hold the same to the Government absolutely for ever.

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4. It is agreed that Government shall not accept any liability or responsibility for the period prior to the taking over of the college by them. All such liabilities shall be cleared by the Managing Committee of the college concerned.

5. It is agreed that the college on being taken over by the Government should not be over-staffed and only such staff will be kept as is justified on the basis of actual workload in accordance with the prescribed norms for different categories of staff. Confirmed and regularly appointed staff through prescribed channels and approved by the University/department will be taken on ad hoc basis subject to the approval of the Punjab Public Service Commission where applicable.

6. It is agreed that such members of the Staff of the college as fulfil necessary qualifications and are considered suitable for absorption in Government service by the P.P.S.C. Sub-Board/Departmental Committee shall only be taken over in Government service and then treated as new contracts. But the Principal will be taken over only as senior most lecturer of the concerned college. The Government scale in respect of respective categories shall be permissible to them and there shall be no personal grade for any one. Their pay in the Government scale will be fixed on the basis of their length of service in equivalent/identical or higher time scale. There shall be no guarantee in regard to protecting their existing pay and allowances or any other per fitness.

7. It is further agreed that the staff, subject to their suitability may be regularized but shall, however, be subject to the condition laid down in clause 8.

8. It is agreed that the members of the staff will be treated as fresh entrants and they will be placed at the bottom of the old Government employees in their respective cadre including the principal who will be absorbed as senior most lecturer intense of the

concerned college."

3. In pursuance of the aforesaid. gift deed, the staff members of the college were absorbed in Government service and the respondent who, prior to the taking over of the college by the Government was working as Principal, was brought in as Senior-most lecturer.

4. The respondent wanted to be absorbed as Principal of the college and since it was not done, he represented to the Government and when no action was taken on his representation. he filed the writ petition in the Punjab & Haryana High Court which was allowed by the Single Judge on 6th of August, 1992 with a direction to the appellants to absorb him as principal of the college. It is this judgment which was upheld by the Division Bench of the High Court and is now being questioned here in this Court.

5. Learned counsel appearing for the State of Punjab has contended that the claim of the respondent for absorption as Principal of the college was wholly out of place and the High Court was in error in issuing a direction for the respondent absorption as Principal of the college. It is pointed out that the respondent, in his capacity as Principal of Guru Nanak College. was already a member of the Managing Committee and in the crucial meeting of that Committee. held on 18.5.83, in which the taking over of the college was approved on the terms set out in the gift deed, he was present and therefore, cannot claim the post of principal of the college as it was specifically provided in the gift deed that the principal would be brought in only as a senior-most lecturer and not as principal.

6. The respondent admittedly was the Principal of the private institution which was taken over by the Government under a gift deed dated 11th of July, 1983 in which the terms and conditions on which the members of the staff would be absorbed were set out. A perusal of these conditions which have already been reproduced above, would indicate that while the Government was not bound to absorb each individual member of the staff unless he possessed the requisite qualifications, the erstwhile Principal was to be absorbed as senior-most lecturer and not as principal. Since members of the staff were absorbed in terms of the gift Deed, as new entrants. they were placed at the bottom of the seniority in the related cadre.

7. The respondent took over as senior-most lecturer in the college with effect from 11th of July, 1983 and has been working as such. He, however, filed the writ petition in the High Court on 11.1.88 invoking the writ jurisdiction of the Court after about four and a half years. His petition was thus liable to be rejected on the ground of delay and laches.

8. What is the binding effect of the gift deed and to what extent it would regulate the conditioner service of the members of the staff was considered by this Court in State of Punjab & Ors.Vs. Dev Dutt Kaushal & Ors.. 1995 (4) Supp. SSC 784=JT 1995 (6) SC 225 by a Bench of which one of us (Hon'ble B.P.Jeeven Reddy, J.) was a Member. The Petitioner in that case had claimed the benefit of retirement at the age of 60 years instead of 58 years on the basis of his being a lecturer in a private institution which was subsequently taken over by the Government under gift deed containing terms and conditions similar and identical to those contained in the gift deed in the Instant case. It was held by this Court that in view of the terms and conditions of the gift deed, it was not possible to accede to the request of the petitioner for being superannuated at the age of 60 years as it was specifically provided in the gift deed

that in respect of matters which were not specifically provided for by the gift deed, the Government Rules would apply under which the age of retirement was 58 years. Consequently, the claim of the petitioner was rejected.

9. The gift deed of that case is identical in its tenor and contents to the gift deed in the instant case and, therefore the question as to the binding nature of the gift deed on the Management and Members of the staff is concluded by the aforesaid decision.

10. Recruitment to and conditions of service of the post of principal and other Class-I posts in the government colleges were regulated by Rules known as Punjab Educational Service (College Cadre) (Class-I) Rules, 1976 made under Article 309 of the Constitution.

Rule 9 provides as under:

"9. (i) No person shall be appointed to a post in the Service by direct recruitment unless he possesses the educational qualifications. Professional training, and other qualifications as specified in appendix "B" .

(ii) A person appointed to a post in the service by direct recruitment shall possess knowledge of Punjabi of Matriculation or its equivalent standard which he shall have to acquire the requisite knowledge within a period of six months of his appointment after which he shall be required to pass a test of the aforesaid standard as may be specified by the State Government, otherwise his services shall be liable to termination.

11. Method of recruitment. indicated in Rule 10. is quoted below:

"10. (1) Appointment to the posts in the Service shall be made in the manner indicated below:-

(i) In the case of Director of Public Instruction (Colleges) by selection from amongst the members of the Service;

(ii) In the case of other posts in the Service-

(a) 50 per cent of the posts by promotion from amongst the member of Punjab Educational (College Cadre) Service (Class- II) or by transfer or deputation from other- State Governments, Government of India or the universities having such experience, Government of

India or universities having such experience as is specified in appendix "B".

(b) 50 per cent of the posts by direct recruitment."

- (2) All appointments to the posts by promotion shall be made on the basis of seniority-cum-merit and no person shall have any right for promotion merely on the basis of seniority.

- (3) Whenever a vacancy occurs or is about to occur, the Government shall determine the manner in which it shall be filled.

12. Qualifications prescribed for appointment to the post of Principal were indicated in Appendix "B" which is quoted below:

"APPENDIX "B"

[Rule 9 (i)]

"Qualifications and experience for appointment to the Service (i) by direct recruitment, (ii) by promotion

(i) By Direct Recruitment:

- (a) M.A. First Division or High Second Division (50 %) in relevant subject or an equivalent degree of a foreign University with 8 years' teaching experience.

- (b) Ph.D. with .8 years' teaching experience.

(ii) By Promotion:

Experience of working as a Lecturer for a minimum period of eight years."

13. By Notification dated 27.11.81. the Governor of Punjab relaxed the Rules in the case of service lecturers in Punjab Government Colleges as under:

"(1) The upper age limit of 45 years prescribed under rule 8 of the Rules *ibid*, be relaxed to the extent of 52 years of age.

- (2) Qualifications for appointment to the service by direct recruitment under rule 9(i) Appendix 'B' of the rules *ibid* has been prescribed M.A. First division or High Second Division (55%) in the relevant subject or an equivalent degree of a recognized University be relaxed to the extent that the educational qualifications for these personnel should be the same which were prescribed at the

time of their selection as lecturers."

14. This Notification was issued in exercise of powers conferred under Rule 19 of the Punjab Educational Service (College Cadre) (Class-I) Rules, 1976.

15. It is pointed out that since respondent was M.A. Second Division with 52% marks, he was not qualified to be appointed to the post of Principal as the qualification required for appointment on that post was "M.A. First Division" or "High Second Division(55%)". It is thus apparent that respondent not being qualified for appointment to the post of Principal could not legally claim such appointment nor was it possible for the High Court to have issued a Mandamus that the respondent be appointed or absorbed on that post. Articles 14 & 16 which contain the Rule of Equality do not envisage that a person who is not qualified for appointment can still claim such appointment merely on the basis of Fundamental Rights available under Article 14 and 16. He cannot, in fact, invoke the provisions of those Articles as he has first to possess the essential qualification before invoking the Rule of Equality. The finding of the Single Judge of the High Court that the respondent possessed the requisite qualification is, therefore, erroneous. The Division Bench also was in error in confirming the findings though it had not expressly adverted itself to this question.

16. Contention of the learned counsel for the respondent that in view of the Circular dated 6th of February, 1981 issued by the Guru Nanak Dev University Amritsar in which the qualification for appointment to the post of Principal in the University were laid down, the respondent shall be deemed to possess the requisite qualification, cannot be accepted as the government took over the college in 1983 and had already prescribed the qualifications for posts of lecturers and Principal in the Government College by Rules made under Article 309 of the Constitution. Appointments and promotions with the provisions contained in these Rules and not in any other manner.

17. In view of the above, we allow this appeal. The judgment and order dated 6.8.92 passed by the Single Judge and upheld by the Division Bench of the Punjab & Haryana High Court on 25.1.95 is hereby set aside and the writ petition of respondent is dismissed but without any order as to costs.