

PETITIONER:
STATE OF PUNJAB AND ORS.

Vs.

RESPONDENT:
DEV DUTT KAUSHAL ETC. ETC.

DATE OF JUDGMENT 28/08/1995

BENCH:
JEEVAN REDDY, B.P. (J)
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JEEVAN REDDY, B.P. (J)
RAY, G.N. (J)

CITATION:
1996 AIR 85 1995 SCC Supl. (4) 748
JT 1995 (6) 225 1995 SCALE (5) 67

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P. JEEVAN REDDY. J.

Leave granted in Special Leave Petitions.

A common question arises in this batch of appeals. For the sake of convenience, we may state the facts in Civil Appeal No. 1102 of 1995 (State of Punjab and Ors. v. Prof. Dev Dutt Kaushal, Lecturer), the facts of which case alone were placed before us as representative of the facts in other appeals.

The respondent joined a private educational institution, M.R. College, Fazilka, as a Lecturer on November 26, 1956. After one year, his service were confirmed. His date of birth is October 29, 1931. According to the conditions of service obtaining in the said private educational institution, the age of retirement was fixed at sixty years which could be extended upto sixty five years in certain situations. The said college was taken over by the state Government on June 30, 1983 and since then is being run as a government college. The respondent was continued in service after such take over. On October 31, 1989, he was retired from service on attaining the age of fifty eight years which is the age of superannuation prescribed under the government rules. Since his service under the government was less than ten years, he was not granted any pension. He made a representation not only for pension but also for allowing him to continue in service till he attains the age of sixty years. Since no action was taken on his representation, he approached the Punjab and Haryana High Court by way of a writ petition seeking appropriate directions to the government to allow him to continue in service till he attains the age of sixty years and also to grant him the pension taking into consideration the total length of service rendered including the service under the private educational institution. The writ petition was dismissed by a learned Single Judge in view of the terms and

conditions of the gift deed which was executed at the time of take over of the said college by the government. The respondent preferred a Letters Patent Appeal which has been allowed by a Division Bench purporting to follow the decision of this Court in State of Orissa and Anr. V.N.N. Swamy and Ors. Etc. (1977 (2) S.C.R. 774). The correctness of the said view is questioned in this batch of appeals.

According to the service conditions obtaining in the aforesaid private college, the teachers were not entitled to any pension on their retirement from service. They were only entitled to the contributory provident fund.

It would be appropriate to notice the terms and conditions of the gift deed executed by the management of the aforesaid college in favour of the government since it records the terms and conditions subject to which the government had agreed to take over the college. The gift deed specifically records that the management had applied to the government to take over the college and that the government had agreed to do so on the terms and conditions recorded therein. The conditions relevant to our purpose are Clauses 4, 5, 6, 8, 10 and 13. They are:

"4. It is agreed that Govt. Shall not accept any liability or responsibility for the period prior to the taking over of the college by it i.e. prior to 30-6-83. All such liabilities shall be cleared by the Managing Committee of the college.

5. It is agreed that the college on being taken over by the Govt. should not be over staffed and only such staff will be kept as is justified on the basis of actual work load 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 over on adhoc basis subject to the approval of the Panjab Public Service Commission where applicable.

6. It is agreed that such members of the staff of the college as fulfill necessary qualifications and are considered suitable for absorption in Government Service by the Punjab Public Service Commission/Sub-ordinate Service Selection Board/Departmental Committee shall only be taken over in Government Service and then treated as new entrants. But the Principal will be taken over only as Senior most lecturer of the concerned college. The Government scales 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 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 pre-requisites.

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 interse of the concerned college.

10. It is further agreed that for other administrative and financial matters not specifically mentioned in the foregoing paragraphs the college shall be governed by such rules, regulations/instructions and orders as are issued by the Govt. from time to time and as may be applicable to other Government college in the State.

13. The college will be considered to have been taken over w.e.f. 30 June, 1983."

A reading of the above clauses discloses the following features: the government had stipulated and the management had agreed that the government shall not accept any liability or responsibility for the period prior to taking over of the college, i.e., June 30, 1983. All such liabilities, it was stated, shall be cleared by the managing committee of the college. It was further stipulated that on such take over, the government will absorb only such staff as is justified on the basis of the actual work load in accordance with the norms prescribed under the government. It was further stipulated that only confirmed and regularly appointed staff through prescribed channel and approved by the University/Department alone will be taken over and that too on adhoc basis. This appointment under the government was to be subject to the approval of Punjab Public Service Commission wherever applicable. It was further stated in express words that on such appointment under the government, the teachers shall be treated as "new entrants". The principal was to be appointed only as the senior-most lecturer of the concerned college and not as the principal. It was also specified that on such appointment the teachers so absorbed and treated as fresh entrants will be placed at the bottom of the existing government employees in the relevant cadre. It was specified that there shall be no guarantee in regard to protecting their existing pay or any other perquisites and that they will be fitted in the government pay scales admissible to the respective categories. At the same time, an exception was made in the case of fitment in the scale, viz., their pay in the government scale will be fixed on the basis of their length of service in equivalent/identical or higher time-scale. The gift deed made it clear that for other administrative and financial matters not specifically mentioned in the said deed, the college shall be governed by such rules, regulations, instructions and orders as are issued by the government from time to time and as may be applicable to other government colleges in the State. The date of take over was specified as June 30, 1983. It is in the light of these terms and conditions that the respondent's claims in the writ petition have to be examined because it is on these terms and conditions that the staff of the said private college was taken over by the government and they became government employees.

The first claim of the respondent is that he is entitled to continue in service till he attains the age of sixty years. It is not possible to agree. It is admitted on

all hands that the age of retirement of the college lecturers under the government is fifty eight years. In view of the terms and conditions of the gift deed mentioned above, it is plain that the respondent's plea cannot be accepted. There is no clause or condition in the gift deed preserving or saving the age of retirement prescribed in the said private college. Actually on the take over of the college, the teachers/lecturers had no right as such to be absorbed or to be appointed under the government. Their appointment in government service was subject to fulfillment of certain conditions specified above. The gift deed repeatedly states that on such appointment, they shall be treated as "new entrants" and shall be placed at the bottom of the seniority list, as on the date of the absorption, in the relevant grade/category. The gift deed further stated that in matters not specifically provided for therein, the government's rules, regulations and orders will apply. In such a situation, it is obvious that the claim for continuance till the attainment of sixty years is simply not acceptable.

Now coming to the claim for pension, it may be noted that according to the government rules, no lecturer is entitled to pension unless he puts in ten years service. There is no dispute about this position. There is equally no dispute that respondent had not served for ten years under the government. The contention of the respondent, however, is that the service rendered by him in the college while it was under the private management should also be counted and his pension fixed on that basis. We are again unable to appreciate this contention. As stated above, the respondent was not entitled to any pension according to the service conditions obtaining in the private college. Had the college not been taken over by the government and had he retired in the normal course, he would not have been entitled to any pension. He was entitled only to contributory provident fund. It is only under government service that pension is provided for. But such pension is available only if an employee puts in ten years of service under the government. Now the gift deed does not say that for the purpose of pension, the service rendered in the college while it was under the private management shall also be counted. On the contrary, it says that the government shall not be responsible and shall not accept any liability for the period prior to the taking over of the college and that all such liabilities shall be cleared by the managing committee of the college - which means that on the date of taking over of the college, the respondent was entitled to be paid the contributory provident fund by the then management of the college. Indeed, it is stated by the learned counsel for the State that it was so paid to and received by the respondent. The correctness of the said statement has, however, not been put in issue and, therefore, we do not express any opinion on the correctness of the said statement of fact. All that we need say is that the respondent was entitled to receive the contributory provident fund according to the relevant rules on the date of take over of the said college from the private management. If he has not been so paid, his remedy lies against the managing committee of the college in office prior to the date of taking over. It may also be noticed that the gift deed expressly specifies the only exception to the rule of "new entrants" it recognised viz., for the purpose of fitment in the appropriate scale of pay, their service in the said grade under the private management shall be taken into account. No other exception is provided for or recognised by the gift deed. Accepting the respondent's

plea in this behalf would amount to reading yet another exception into the said gift deed, viz., for the purpose of pension also the service under the private management shall be counted. This we cannot do for more than one reason. Wherever it wanted to so provide, the gift deed itself specified the exception to the rule of "new entrants"; hence, no other exception can be read into it. Secondly, the gift deed provides expressly that in matters not expressly provided for in the gift deed, the rules, regulations, instructions and orders issued by the government from time to time shall apply. In this view of the matter, the second claim of the respondent is also liable to be rejected and this is what the learned Single Judge of the High Court had opined. The Division Bench, however, reversed him purporting to follow the decision of this Court in N.N. Swamy. It is, therefore, necessary to carefully examine the facts and the principle of the said decision to ascertain whether the principal or ratio of the said decision has any relevance herein.

The facts of N.N. Swamy are the following: a private college known as "khallikote College" was taken over by the government on and with effect from March 9, 1971. A formal agreement was executed between the managing committee of the college and the Governor of the State recording the terms and conditions of transfer. They provided that the transfer of the college to the government was of all the assets of the college but without any liability. The managing committee continued to be liable for the outstanding liabilities, if any, of the college for which the government was not liable. The six writ petitioners, (who were respondents before this Court) were all Readers in different faculties in the said college on the date of taking over. They were in the pay scale of Rs.510-860/- and were actually drawing pay less than Rs.600/- per month on the date of take over. Two other, who were juniors (indeed one of them was only a lecturer and not even a Reader) were in the pay scale of Rs.600-1000/- and were drawing the pay of Rs.600/- or above on the date of take over. On March 23, 1971, the government issued a circular containing conditions governing the taking over of the services of the teaching staff of the said college. Para 5 of the said circular provided that "adhoc appointments shall be issued to all Professors and such of the Readers in position, who on the date of takeover were in receipt of pay of Rs. 600/- per month or more, in the scale of pay Rs.600-1000/- against posts of Readers. Readers who on the date of takeover were in receipt of pay of less than Rs.600/- per month and all lecturers in position on that date shall be given adhoc appointment against the post of lecturers in the scale of Rs.260-780/- with effect from the date of take over. "Pursuant to the said Para 5, appointment as Readers was denied to the said six petitioners on the ground that they were drawing pay of less than Rs.600/- per month on the date of take over. Since the adhoc appointment was not given to them as Readers on the said ground, their cases were also not referred to the Public Service Commission for regular appointment as Readers. The said six lecturers complained against the same by way of a writ petition in the Orissa High Court. Their claim was examined by the High Court, as also by this Court, only with reference to the circular dated March 23, 1971. This Court opined that the aforesaid Para 5 of the circular was arbitrary and void being violative of Article 14 of the Constitution. It was pointed out that the stipulation that Reader must be drawing pay of not less than Rs.600/- per month on the date of take over has no nexus

with the object underlying the prescription of qualifications. It was pointed out that the pay scales in private institutions are generally lower than similar government institutions and that disqualifying a Reader from appointment to the said category under the government only on the aforesaid ground was discriminatory. It was pointed out that another Reader who was junior to all the said six writ petitioners was appointed as Reader only because he was drawing a salary of Rs.660/- per month on the date of take over.

Another aspect dealt with in N.N. Swamy related to the computation of the period of qualifying service, which contention appears to have been raised for the first time before this Court. The submission was this: on July 30, 1970, i.e., prior to the taking over of the said college by the government, the government had prescribed qualifications for appointment as a Reader. One of the qualifications prescribed was "atleast eight years of teaching experience as a lecturer"; the service of the said writ petitioners in the category of lecturers rendered under the private management cannot be taken into account and, therefore, they cannot be promoted as Readers since they have not put in eight years service as lecturers under the government. With respect to this submission, the Court question, this Court (Bench comprising Goswami and Shinghal, JJ.) made the following observations:

"When a fairly well-recognised institution, as in this case, run for more than a century, is completely taken over by the Government for management, it is not merely taking over the land and buildings, tables and chairs. It has to tackle, at the same time, a human problem, that is to say, the fate of the teachers and the staff serving that institution. The institution, with which we are concerned, was taken over, by consent, as a going educational concern and it goes without saying that it must be administered on sound lines having regard to quality, efficiency and progress in all respects. It is understandable that the employees had to join the new service under the Government, for the first time, and so could be, in that sense, fresh entrants. But to say that the teaching experience of the Readers in the private institution is completely effaced to the extent that they will not be even eligible, on the plea of absence of teaching experience in Government service, for consideration for appointment as Readers is a seriously grim issue. We feel assured that such an argument had not been canvassed by the State in the High Court on the basis of the Rules of July 19, 1971. Since these Rules came into force after the take over for which a separate circular had already been issued to take care of the special exigency. Action under the Government circular of March 23, 1971, alone, was in controversy in the High Court. The said circular took in

recognition of the service in the private college in the case of two Readers (Nos. 9 and 10 in Annexure I). The only differentia was, therefore, the salary drawn by the Readers on the date of take over. That action based on the salary aspect under the said circular had to stand the test of Article 16 in the High Court, as well as, before us. The argument in favour of complete erasure of the past teaching experience in the private college, first time presented before us, fails to take note of the distinction between eligibility and suitability.

(Emphasis added)

It is evident from the above except that the contention relating to eight years' service as a prerequisite was urged for the first time before this Court and had not been urged before the High Court. This Court, therefore, observed that the circular of March 23, 1971 provided for appointment of only two Readers (juniors to the said six writ petitioners) only because they were in receipt of pay of Rs.600/- or above and disqualified the said writ petitioners on the ground of drawing pay less than Rs.600/- and that once the said ground of distinction is struck down as violative of Article 16, the plea of lack of teaching experience, argued for the first time before this Court, should fail. It cannot, therefore, be said that this Court has ruled that the service rendered under the private management should be taken into consideration. All that it said is that denial of such service is "a seriously grim issue". But since there was no occasion for pronouncing upon the said contention, no final opinion was expressed. The said decision, therefore, does not support the case of the respondents herein.

Another case relied upon by the learned counsel for the respondents before us is the decision of this Court in Chander Sain v. State of Haryana & Ors. (1994 (1) S.C.C.750). Having regard to Para 10 of the conditions subject to which the private institution was taken over and particularly in the light of Para 3 of another memo dated March 28, 1979, this Court held that the government was bound to take into account the service rendered by the teachers under the private management for the purpose of calculating the gratuity payable. According to the orders in force prior to the taking over of the said institution, the teachers in private colleges were entitled to same gratuity as was payable to similar teachers in government service. Actually, the government was contributing seventy five percent of the total deficit of the private colleges relating to salary, gratuity, etc. for the posts approved by the government. The stand of the state of Haryana in that case was that teachers who had retired before the take over alone were entitled to gratuity calculated on the basis of the service rendered by them under the private management and not those who are absorbed in government service and retired thereafter. Such a plea was held to be unacceptable. Since the said decision turned on the particular facts and the language of the circulars concerned in that case, it is not necessary to set out the facts of the said decision.

For the above reasons, these appeals are liable to be allowed and are accordingly allowed herewith. The judgment of the Division Bench is set aside and the judgment of the learned Single Judge is restored. There shall be no order as to costs.

Before parting with this case, we must refer to a circumstance brought to our notice. It is stated that in the year 1992, the Government of Punjab has framed a scheme under Rule 22-A of the Punjab privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 under which scheme, it is stated by the learned counsel for the respondents, the teachers in the private Schools taken over by the government are entitled to count their service under the private management for the purpose of pension. We do not express any opinion on the said contention. It is enough to observe that if any of the respondents in these appeals is entitled to any benefit under the said scheme, he is entitled to claim the same according to law. It may also be in these appeals only, Civil Appeal No. 1104 of 1995 pertains to a teacher in a school while in all other appeals pertain to lecturers in colleges. The learned counsel asked us to clarify further that if in future the Government of Punjab frames a scheme with respect to lecturers similar to the aforementioned scheme, this judgment should not stand in the way. In our opinion, the said apprehension is wholly unfounded. This judgment does not preclude the government from conferring such benefits as they may think appropriate on the respondents and other similarly placed persons nor does this decision stand in the way of such persons claiming the appropriate reliefs under such scheme, as and when framed.