
(2014) 03 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 328 of 2014 (O and M)

Dr. Nirmal Singh	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10 151
Constitution of India, 1950 — Article 226

Citation : (2014) 03 P&H CK 0044

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : Kanwaljit Singh, Assisted by Mr. Balwinder Singh, for the Appellant; APS Mann, Additional Advocate General, Punjab, Mr. H.S. Sethi, Advocate for Respondent No. 3, Mr. G.K. Chatrath Assisted by Ms. Anu Chatrath Kapoor, Advocate in C.M. No. 639 of 2014, for the Respondent

Final Decision : Dismissed

Judgement

Jaswant Singh, J.

C.M. No. 639 of 2014

1. Present application under Order 1 Rule 10 read with Section 151 CPC has been moved by the applicant-Manish Bansal for being impleaded as respondent No. 4 in this writ petition, as he is an aspirant for the post of Principal to be vacated by petitioner and to be filled up pursuant to Advertisement (P.9). No orders are required to be passed in the present application in the light of detailed order passed hereinbelow.

C.M. No. 1204 of 2014

2. Instant application is allowed. Counter affidavit dated 27.1.2014 already filed on behalf of respondent No. 3 is permitted to be treated as reply on behalf of respondent Nos. 1 & 2.

3. The present writ petition under Article 226 of the Constitution has been filed by the petitioner praying for issuance of a writ in the nature of Certiorari for quashing the Advertisement dated 14.12.2013 (P.9) and the decision of the Government dated 5.12.2013 (P.10) whereby the terms and conditions of the appointment of the petitioner for the post of Principal, Malout Institute of Management and Information Technology, Malout (for short "M.I.M.I.T. Malout") have been ignored; further a writ in the nature of mandamus directing the respondents to permit the petitioner to continue on the said post in terms of the earlier Advertisement and the appointment letter on the parity of extension granted to one Dr. T.S. Sidhu, Principal Shaheed Bhagat Singh State Technical Campus, Ferozepur.

4. Petitioner is claiming that he is Doctorate in Mechanical Engineering and has served in different Organizations/State Government including the Assistant Professor in Beant College of Engineering and Technology, Gurdaspur (for short "B.C.E.T") and subsequently he was designated and selected as Professor after rendering of eight years service as Assistant Professor. It is further alleged that the petitioner was selected and offered an appointment for the post of Principal, M.I.M.I.T., Malout vide letter dated 2.3.2010 (P.1) in pursuance of the Advertisement dated 20.6.2009 (P.4). Petitioner joined on the post of Principal on 3.3.2010 for a period of three years as stipulated in the appointment letter itself and thereafter the said term was extended for one year vide letter dated 18.2.2013 (P.5).

5. It is further alleged that similar to the petitioner, one Dr. T.S. Sidhu was also appointed as Principal, Shaheed Bhagat Singh State Technical Campus, Ferozepur (for short "SBSSTC, Ferozepur") initially for a period of three years and thereafter the same was amended to five years and thereafter he has been given the further extension for a period of five years by the Board of Governors of the SBSSTC, Ferozepur in the 8th Meeting held on 13.7.2010 (P.6 & P.7).

6. It is further claimed that there is no adverse circumstance or comments against the petitioner throughout his service career rather he has been working with honesty and integrity and, thus, an assurance has been given that his appointment will be renewed till the age of superannuation i.e. 60 years. It is further alleged that the action of the respondents while issuing fresh Advertisement dated 14.12.2013 (P.9) for the post of Principal M.I.M.I.T. Malout on the basis of the order dated 5.12.2013 is wholly erroneous and discriminatory. It is further alleged that to the best knowledge of the petitioner, the impugned Advertisement has been issued only to accommodate Associate Professor of Applied Science and to defeat the rights of the petitioner, which he is legitimately expecting in view of the facts and circumstances of the case.

7. It is also submitted that the petitioner submitted a representation dated 6.11.2013 (P.13) for extension of his tenure but no decision has been taken by

the Board of Governors, rather a non-speaking order is conveyed to the petitioner for fresh Advertisement by alleging that a new Principal would be recruited having new thoughts and new techniques, which is absolutely untenable and arbitrary exercise of powers.

8. Respondent No. 3/Board of Governors of the Malout Institute has filed its separate reply and submitted that as per Bye-laws of the Institute, although there is no post of Principal but there is only one post of Director, however, as per the Notification dated 22.1.2010 issued by the AICTE, qualification prescribed for the post of Director/Principal has been treated as one and in some of the Institutes, it is called Principal and in other Institutes, it is described as Director but both are performing same duties, thus the Director is equivalent to the Principal. It is further submitted that Bye-laws 3.1 of respondent No. 3/M.I.M.I.T. reads as under:

3.1 General

(a) The appointment to the post of Director shall be made strictly on the basis of merit.

(b) The grade and qualifications of the post of Director shall be such as prescribed by the Board.

(c) The appointment to the post of Director shall be made by the Board for a tenure of 3 years in consultation with the State and Central Government. The tenure may be renewed at the discretion of the Board.

(d) The Director may resign his post even before the expiry of 3 years giving three month's notice or 3 month's salary in lieu thereof. Likewise, the Board may dispense with the services of the principal by giving three months notice or three month's salary in lieu thereof.

9. In view of the above, it is submitted that the appointment to the post of Principal is a tenure post for a period of 3 years, which can be renewed by the Board of Governors at its discretion, which has not been further granted in case of the petitioner and his once extended period is to expire in March 2014 and thus, it has rightly been decided to advertise the post of Principal to consider the claim of eligible candidates in accordance with law.

10. Learned counsel for the petitioner argues that in the light of terms of the advertisement (P.4) (at Page 96) the appointment was for initial period of 3 years with possibility of renewal depending on the merits of the case and thus, the petitioner has a legitimate expectation to continue in the light of his individual merits and record, which is available with the college and the same cannot be illegally denied by the respondents. In support, learned counsel cites Ram Pravesh Singh and Others Vs. State of Bihar and Others, It is further argued that no doubt in the light of provisions Bylaw-3.1, discretion vests with the Board of Governors regarding the grant of extension, however, the same is subject to judicial review by this Court. From the material placed on record, it is evident

that the discretion has not been properly exercised rather the same is totally arbitrary. In support, learned counsel placed reliance upon Mrs. Asha Sharma Vs. Chandigarh Administration and Others, Vinod Kumar Vs. State of Haryana and Others, 2 Nagarjuna Construction Co. Ltd. Vs. Govt. of Andhra Pradesh and Others, 1, Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, Canara Bank Vs. V.K. Awasthy, State of U.P. and Others Vs. Ashok Kumar Nigam, . It is further argued that the similar appointment was made in favour of Sh. T.S. Sidhu as Principal, SBSSTC however, the said Principal has been granted five years extension and approved by the Government whereas the petitioner has been discriminated and denied the same.

11. On the other hand, learned counsel for respondent No. 3 has argued that in terms of the advertisement and appointment letter, on expiry of the initial period of three years, the petitioner cannot claim extension as a matter of right. In support he cites State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal, P. Venugopal Vs. Union of India (UOI), . He further contends that to challenge the discretion exercised by the answering respondents, the petitioner has to show a legal enforceable right and corresponding duty. Merely because on the earlier occasion, the petitioner had been granted one year extension and further in view of the reasons recorded in P-10 cannot be made the basis to show that the discretion has not been properly exercised. It is further argued that no elaborate reasons are required to be passed in such like cases. In support he cites 2001 (2) AWC 1291 (SC) . It is further contended that the petitioner cannot claim any parity on the basis of the extension granted to one T.S. Sidhu as in that case, decision was taken by a different Governing Body of a different College, which is a separate legal entity.

12. After having considered the rival submissions of the learned counsel for the parties and perused the paper book with their able assistance, this Court does not find any merit in the present case and the same deserves to be dismissed due to the following reasons.

13. It would be apposite to notice that there is no quarrel on the preposition of law as per the cited cases that the extension of service beyond the tenure period cannot be claimed as a matter of right and the same is subject to the discretion of the Employer. It is also not in dispute that the discretion cannot be exercised in an arbitrary manner and the same is to be based on some objective evaluation on material placed on record. It is also not in dispute that the exercises of the discretion in the present case was administrative in nature and was not required to be enumerated in detail.

14. Now adverting to the facts of the present case, it is evident that the core question to be considered in the present writ petition is as to what is the nature of appointment for post of Director/Principal i.e. whether it is a tenure post or not and whether the petitioner can claim the extension as a matter of right upto the age of superannuation i.e. 60 years or not?

15. The relevant clause 3.1 of the Bye-laws as reproduced hereinabove makes it abundantly clear that the appointment to the post of Director/Principal shall be made by the Board of Governors for a tenure of three years in consultation with the State and Central Government and the tenure may be renewed at the discretion of the Board. Thus, the post of Principal/Director is a tenure post prescribed for a period of three years with a rider that the same can be renewed at the discretion of the Board. No doubt, the law is well settled by the Hon"ble Supreme Court that the discretion whenever vested in an Administrative Authority, the same is to be exercised fairly and not arbitrarily.

16. Admittedly, in the present case, the petitioner was appointed by the Board of Governors-respondent No. 3 for a period of three years as is apparently clear from the appointment letter (P.1) on certain terms and conditions and Clause No. 1 of the same reads as under:

Your appointment shall be initially for a period of three years, which can be extended as per the requirement of the College.

17. It is further clear from the Advertisement dated 20.6.2009 (P.4) that all the posts including the posts of Principals "are to be filled up in the State Managed Engineering Colleges, which are governed by the Societies registered under the Societies Registration Act and promoted by Punjab Government". It further transpires that Advertisement clearly stipulated that "the appointment shall be made initially for a period a three years with the possibility of renewal depending upon the merit of the case. The normal age of retirement is 60 years".

18. After going through Advertisement dated 14.12.2013 (P.9), it reveals that the College is governed by the Societies Registration Act 1860 and thus is a Society, although promoted by the Punjab Government. It is necessary to mention here that as per the preliminary objection No. 1 raised on behalf of respondent Nos. 1 & 2, it is specifically submitted that "again the case of the petitioner was placed before the Board of Governors in its 5th Meeting of Board of Governors held on 11.09.2013 vide item No. 5.24 of Malout Institute of Management & Information Technology for further extension. The Board of Governors after considering the same decided that the case be put up to the Chairman Board of Governors on a single file for taking decision. The decision of the Board of Governors is reproduced as under:

The item was discussed and after deliberation, it was resolved that the case be put up on a single file to the Chairman BOG for a decision in this case.

19. In view of the above decision, the Chairman Board of Governors decided has taken a conscious decision that the post of Principal of MIMIT, Malout is going to be vacant on 2.3.2014 on completion of tenure and the same "be filled after giving the Advertisement so that the persons, who should be of new thought and new techniques can be selected."

20. Therefore, respondent No. 3 has clearly applied its mind and fairly decided to

advertise the post of Principal, MIMIT, Malout to be filled up with a suitable person having the background of new thought and new techniques, which cannot be said to be arbitrary or discriminatory as it is upto the Board of Governors for the betterment of the Institutes to have a person with new thoughts and new techniques and this Court certainly will not interfere in such an exercise. The course adopted by respondent No. 3 is perfectly valid and justified and cannot be termed as unfair or unreasonable in view of the facts and circumstances of the present case.

21. So far as the contention of the petitioner that he has legitimate expectation is not acceptable and the judgment cited in Ram Pravesh Singh's case (supra) is not helpful to the petitioner as the Board of Governors have never agreed nor decided to grant any further extension beyond one year to the petitioner. Even it is not the case of the petitioner also that at any point of time, the Board has made any promise for further extension to his tenure and thus, there is no occasion to apply the principle of legitimate expectation in favour of the petitioner.

22. Other cases cited by the petitioner on the point of Judicial Review in exercise of discretionary power are also not applicable in view of the discussion made hereinabove due to the reasons that respondent No. 3 has rightly and fairly decided in its communication dated 5.12.2013 that post of Principal be filled up after giving the Advertisement so that the persons, who should be of new thoughts and new techniques can be selected. Thus, respondent No. 3 is well justified and empowered to follow such a course and the same cannot be commented as arbitrary exercise of any discretionary power vested in an Administrative Authority.

23. As regards, the claim of parity with another candidate Mr. T.S. Sidhu is not acceptable in view of the undisputed fact that both are working in two separate and distinct Institutions, which are different Societies registered under the Societies Registration Act and governed by their own Bye-laws and supervised by the Board of Governors. Undisputedly, said T.S. Sidhu has been granted extension in view of the circumstances and reasons given in P-6 and P-7 itself, which are self-explanatory and this Court is not adjudicating upon the legality of the same and respondent No. 3 is not bound to follow the course of extension adopted in one Institute and the same cannot be treated as a binding precedent upon it.

As a sequel to the aforesaid discussion, this Court finds no merit in the instant petition. Dismissed.