

(2015) 09 SC CK 0094

In the Supreme Court Of India

Case No : Civil Appeal Nos. 6691-6692 of 2015 (Arising out of S.L.P. (Civil) Nos. 17176-17177 of 2013) and Civil Appeal Nos. 6693-6694 of 2015 (Arising out of S.L.P. (Civil) Nos. 8082-8083 of 2014)

Gurdas Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 11 AD (SC) 67 : (2015) 4 CGLJ 350 : (2015) 4 ESC 609 : (2016) 148 FLR 4 : (2015) LabIC 4175 : (2015) 9 SCALE 423 : (2015) 10 SCC 314 : (2016) 1 SCC(L&S) 98 : (2015) 9 SCJ 484 : (2015) 4 SCT 196

Hon'ble Judges : M. Yusuf Eqbal, J;C. Nagappan, J

Bench : Division Bench

Advocate : A. Sharan, Senior Advocate, Natasha Vinayak, Tushar Bakshi, Monika Arora, Sarad Kumar Singhania, Gaurav Upadhyay, Saurabh Ajay Gupta, Nishant Bishnoi, Advocates for Kuldip Singh and Praveen Chaturvedi, for the Appellant

Final Decision : Dismissed

Judgement

M. Yusuf Eqbal, J—Leave granted.

2. These appeals by special leave are directed against the judgment and order dated 26.3.2013 passed by the High Court of Punjab and Haryana in LPA Nos. 76 and 78 of 2012, whereby Division Bench of the High Court dismissed the Letters Patent Appeals preferred by the Appellants-teachers upholding the decision of the learned Single Judge who disposed of their writ petitions with certain directions.

3. The facts of the case in brief are that various writ petitions at the instance of teachers of two of the Sanskrit Institutes at Patiala and Nabha were filed, which were clubbed and segregated by the learned Single Judge under two heads. First, the cases in the nature of public interest that were filed by the affected teachers themselves that the Sanskrit Mahavidyalya, Patiala and Sanskrit Institute at Nabha shall not be brought down to the level of school since they

conduct courses at par with colleges beyond the level of matriculation and that the institutes shall be run with teachers of college cadre. Secondly, the claims at the instance of the teachers that they are entitled to the scales of pay commensurate with the Lecturers and Professors of colleges since the syllabi for the courses are approved by the Punjabi University at Patiala and the qualifications for teachers are as prescribed by the University.

4. The common ground for all the teachers, who have filed various writ petitions, is that in a suit filed by one Acharya Lekh Ram Dixit against State of Punjab, when he was sought to be transferred from the Sanskrit Mahavidyalaya, Patiala to a school, he claimed relief of restraint order on the ground that the institute was equivalent to a college and any such transfer would not be permissible. The Court accepted the contention and decreed the suit and also held that he would be entitled to the scale of pay of a Lecturer in colleges. This was the central plank on which several teachers working in these two institutes claimed the same relief.

5. The factual background of the matter, as pleaded before the learned Single Judge, is that the Sanskrit Mahavidyalaya Patiala is reported to have come into existence in the Patiala State for imparting education in the classical language of Sanskrit in the year 1860. Later English and Mathematics languages had been introduced in the year 1862 and in 1870, the Maharaja of Patiala created an Education Department and the institute was affiliated to the Calcutta University in the year 1874. The Viceroy of India Lord North Brooke laid the foundation stone of Mahindra College Patiala and Lord Rippon inaugurated the college building in the year 1884. The courses offered at the Mahavidyalaya were Shastri, Vishara, Prajana all in Sanskrit and Gyani, Vidwan and Budhiman all in Punjabi. The classes in Sanskrit and Punjabi were separated from the college and moved to the separate institutions in the name of Sanskrit Vidyalaya and Gurmukhi Vidyalaya, Patiala in 1912. These two Vidyalayas were amalgamated in 1963 and a new institution namely the Government Institute of Classical and Modern Indian Language (MIL), Patiala was established. The Punjabi University at Patiala laid down the qualification of teaching staff of the affiliated institution for Oriental Titled (OT) and MIL examination. For the Sanskrit teaching staff, the qualification was BA+Shastri+Prabhakar for teaching Prajana and Visharad and for still higher course of Shastri, MA Sanskrit+Shastri+Acharya were needed.

6. It has been pleaded that the Institution at Patiala had been originally affiliated to Punjab University, Chandigarh but w.e.f. 13.06.1969, it was affiliated to the Punjabi University, Patiala. The University's letter to the institute clearly showed that it was treated as a college and came within the purview of the University. It was again the University that laid down qualification, pay scale and qualification of the teaching staff for the Mahavidyalaya at Patiala. The Senate of the University had made the recommendation with reference to qualifications and pay scales on 25.12.1970 and the State of Punjab itself approved the Mahavidyalaya as a college on 22.6.1972.

7. The stand-off between the teaching staff and the State really started only when the State of Punjab tried to bring the institute to the level of school when aforesaid Acharya Lekh Ram filed a civil suit stating that he was a teacher in a college cadre and could not be transferred to school. The suit had been decreed by the Special Judge, Patiala and the order of transfer to a school was declared as illegal. The case was contested by the State upto this Court and at all levels, the trial Court decree was affirmed. The special leave petitions preferred against High Court decision were dismissed at the admission stage. The Plaintiff in that suit had also applied for release of arrears on the basis that he was entitled to scales of Lecturer in a college and the DPI (Colleges) had also released the arrears on 25.09.1989.

8. The Appellants' further case is that the institutes were always treated as college. Considering the pleadings and contentions of the parties and observing that the State itself has not made any serious dispute in this regard, the learned Single Judge directed that the Institute of Oriental Languages shall be treated as equivalent to college and it has come under the control of the Director of Public Instructions (Colleges). It is affiliated to the Punjabi University at Patiala. If it is recognized as college, there is no scope for the Director of Public Instructions (Schools) to have any authority to make transfers from the school cadre to this institute.

9. With regard to parity of scales, learned Single Judge, while disposing of the writ petitions, held that

All those persons, who have been brought from school cadre and repatriated or liable to repatriation shall have no claim to parity in scales. On the other hand, the persons, who have been appointed at the institutes themselves directly and who possess qualifications as lecturers as prescribed by the University or who have been brought from college cadre from any other college shall alone be entitled to the scales of pay equivalent to that of Lecturers. The scales shall be worked out from the date of their engagement at the institutes and the amounts shall be calculated and be paid to them within 8 weeks from the date of receipt of copy of the order. If amongst the teachers in the institutes, there are teachers who are brought from the school cadre but who have qualified to be Lecturers in a college, with qualification so acquired, the scales could be considered for revision and for retention in the institute itself and placed in the college cadre. Their scales will be revised only from the day when orders are passed for the retention in the institutes and when a decision is taken to treat them as coming within the college cadre. This exercise shall be completed by the Director of Public Instructions Colleges and the appropriate sanctions shall be issued by the Government for appropriate revision of their scales commensurate with their qualifications and the status as persons belonging to the college cadre, within 8 weeks from the date of receipt of the copy of this order.

10. Aggrieved by the decision of the learned Single Judge, the Appellants-writ Petitioners of the three of the aforesaid writ petitions preferred Letters Patent

Appeals before the Division Bench of High Court, which proceeded on the following two issues:

- i) Whether these school cadre teachers have a right to be retained in two institutes or they can be transferred to school cadre?
- ii) Whether the Appellants admittedly belong to school cadre are entitled to the pay scales of Lecturers of the colleges on the principle of "equal pay for equal work" on the ground that they have been teaching in the colleges?

11. The Division Bench of the High Court observed that the Appellants were working in the Institute at Nabha claimed parity of salary with teachers working in Colleges and they would make pointed reference to the fact that through instructions dated 04.03.1975, Secretary to Government, Punjab Education Department to the Director of Public Instructions; Punjab had sanctioned the en-cadrement of the posts of Pradhanacharya and Acharya of Sanskrit Mahavidyalaya, Nabha in the college cadre in the pay scale of Rs. 400-600 and Rs. 300-600 respectively. The State of Punjab in its counter contended that the Appellants had never been appointed from the college cadre but they belonged to the school cadre. The Appellants, however, disputed this position by making reference to the letter of Assistant Secretary, Education Department to the Deputy Director, College, Education stating that the Appellants were working in the college wing of the Sanskrit Mahavidyalaya ever since it was upgraded as college in the year 1972.

12. Be that as it may, after having heard learned Counsel appearing for the parties, the Division Bench of the High Court upheld the judgment of the learned Single Judge holding that:

...merely because the Appellants were made to teach in a college, would not mean that they are to be equated with the college lecturers and the principle of "equal pay for equal work" would apply. These Appellants were appointed in a school cadre as per the qualifications which are prescribed for school teachers. The contention of the Respondents that the essential qualification of passing NET Exam is not possessed by the Appellants, could not be disputed by the Appellants. That apart merely because the Appellants have higher qualification would not mean that they automatically become entitled to the pay scales of higher post than the post to which they are appointed.

Thus, merely because the institute where the Appellants are teaching is affiliated with the University and thus gets the status of a college would not mean that the Appellants shall also be entitled to the pay scales of lecturers. Further, the contention of the Appellants that they fulfill all the qualifications laid down for appointment to the post of Lecturers is not correct. Even otherwise, that cannot be a ground for extending the benefit of "equal pay for equal work", as the Appellants were appointed in school cadre on the basis of the qualifications meant for school cadres and the procedure for appointment of school cadres is totally different from the lecturers. For all other reasons mentioned above we

uphold the judgment of the learned Single Judge.

13. With regard to the issue whether these school cadre teachers have right to be retained, the Division Bench held that when it is found that the Appellants are school cadre teachers, they would have not any right to remain in two institutes which have now conferred the status of colleges. They can, therefore, always be transferred to school cadres.

14. Hence, the present appeals by special leave by the aggrieved teachers.

15. We have heard Mr. A Sharan, learned Senior Counsel appearing for the Appellants, Ms. Monika Arora, learned Counsel appearing for the Appellant in one set of appeals and Mr. Suresh Ajay Gupta and Mr. Praveen Chaturvedi, learned Counsel appearing for the State and Respondents respectively. We have also perused the impugned judgment passed by the High Court. The admitted facts are that the Appellant No. 1 Gurdas Singh possessed requisite qualifications i.e. Shastri, Acharya and M.A. (Sanskrit) and was transferred from NJSA College, Kapurthala on 18th August, 1989. He has been serving in the Respondent Institute for the last 26 years. Similarly, Appellant No. 2 Sitar Mohammad possesses qualification of M.A., Punjabi, Gyani (Hons. in Punjabi). He was transferred from Government Middle School, 9 Kala Patiala to the Respondent Institute in August, 1979. He worked for about 27 years 5 months and retired in December, 2007. Similarly, Subhash Chander, Appellant having requisite qualifications of Prabhakar Shastri, M.A. (Sanskrit), was transferred from Government Senior Secondary School, Patiala in 1990 and have been working there for the last 25 years. It is also not in dispute that the Appellants have been teaching to the students in the college.

16. From perusal of the letter issued by the Punjab University, Chandigarh dated 27.6.1965 addressed to the Principal of all the Institutions affiliated with the University inviting attention to the office circular dated 27.11.1963, it is clear that the decision was taken at the meeting of the syndicate held on 19.10.1963 laying down the minimum qualifications for both the teaching staffs of the affiliated Institutions. It was further decided by the University that those teachers who are confirmed hands and over 40 years of age will be approved on the basis of their long teaching experience etc. even if they do not exactly fulfill the qualification.

17. As noticed above, the Appellants have been working for the last 25 years in the Respondent Institutions and teaching the students of the college. The reason given by the High Court is that for the purpose of claiming pay-scale at par with the college teachers, the minimum requirement is that one has to clear the State Level Eligibility Test. In our view, that condition will not apply so far the Appellants are concerned as because on the date when they were appointed and transferred to the college there was no requirement for having the qualification of State Level Eligibility Test. The qualification of the candidate is considered at the time of appointment and not after rendering 25 years of service in the

college.

18. The submission of the State counsel is that the Appellant is only Acharya and, therefore, he can only get the benefit of merger. We are unable to accept the submission made by the learned Counsel. Further, the High Court is not correct in holding that merely because the Appellants have higher qualifications would not mean that they automatically become entitled to the pay-scale of higher post than the post to which they were appointed. The ratio decided in the case of State of Haryana v. Kamal Shahrawat will not apply in the facts of the present case for the simple reason that the Appellants have been serving in the college as a lecturer for the last 25 years.

19. After giving our anxious consideration in the matter, we are of the view that in the special facts and circumstances of the present case, the Appellants are entitled to get the pay-scale at par with the teachers of the Respondent college inasmuch as they have been discharging the same duties and also possessing the required qualification. However, this order will not create a precedent.

20. The appeals are accordingly allowed with no order as to costs.