
(1992) 07 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 20 of 1991

Hindu College

APPELLANT

Vs

N.D. Malhotra and Another

RESPONDENT

Date of Decision : 30-07-1992

Acts Referred:

Constitution of India, 1950 — Article 41

Citation : (1994) 1 ILR (P&H) 40

Hon'ble Judges : S.S. Sodhi, J;J.B. Garg, J

Bench : Division Bench

Advocate : H.L. Sibal and R.K. Chhibbar and Anand Chhibbar, for the Appellant;
H.S. Riar, Addl. A.G. for State and Romesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—Denial of gratuity to their retiring teachers by privately managed Government Aided Colleges on the plea that no aid had been extended to them towards their liability on this count was the issue raised in this Letters Patent Appeal, while in the connected writ petitions, these colleges seek a direction to the State Government to grant them aid for payment of gratuity to their employees.

2. Liability for payment of gratuity of privately managed Government aided colleges, towards their teachers and employees, under the relevant University Regulations and Ordinances, was never questioned and now further Mr. Hira Lal Sibal Senior Counsel, appearing for the Appellants was constrained to refrain from taking any exception to the learned Single Judge holding such colleges liable for payment of gratuity to their teachers even in the absence of any grant from the Government to meet such liability. This being founded upon the view expressed by the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, where it was observed:

Under the relationship of master and servant, the management is primarily responsible to pay salary and other benefits to the employees. The management cannot say that unless and until the State compensates, it will not make full payment to the Staff.

3. The only point canvassed by the counsel for the Appellants was with regard to directions to Government as sought in the writ petition that 95 percent aid be provided to privately managed government aided colleges also towards meeting their liability for payment of gratuity to their employees. In support Counsel sought to contend that the words "salary" in this context deserve to be construed as inclusive of rights flowing from salary like gratuity, dear-ness allowance and interim relief. No such construction is indeed warranted. The expressions "salary" and "gratuity" have a well established different and distinct meaning and they cannot, therefore, be treated as being part of the same. i.e., within the expression "salary" alone.

4. Next Counsel sought to press in the provisions of Article 41 of the Constitution, which reads as under:

41. Right to work, to education and to public assistance in certain cases.--The State shall, within the limits of its economic capacity and developments make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

5. The answer here is provided by the judgment of the Supreme Court in State of Assam and Another Vs. Ajit Kumar Sharma and Others, , where it was observed, "what grants the State should make to private educational institutions and on what terms are matters for the State to decide."

6. Later, in Union of India v. Tejram Prashramjibomhate 1891 (3) S.C. C. 11, it was held that no Court or Tribunal can compel the Government to change its policy involving expenditure. It was so held while dealing in a matter concerning posts and payment of salaries to school teachers.

7. No case thus arises for the issuance of any directions of the kind sought by the Appellants namely that aid should be provided by the State Government to privately managed Government aided schools to meet their liability towards gratuity payable to their employees. This is a policy matter for the State Government to decide.

8. Both the Letters Patent Appeals as also the writ petition are consequently hereby dismissed with costs. Counsel fee Rs. 1,000 (one set only).