

(1968) 03 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1829 of 1964

Khalsa College, Amritsar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-03-1968

Acts Referred:

Constitution of India, 1950 — Article 30
Punjab University (Amendment) Act, 1962 — Section 27, 27(1), 31, 31(1), 31(2)
Punjab University (Amendment) Rules — Rule 10, 15, 9

Citation : AIR 1968 P&H 403

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Advocate : Atma Ram and Ajmer Singh, for the Appellant; J.S. Wasu, Senior Advocate for A.G. (Punjab), H.R. Sodhi, Senior Advocate and N.K. Sodhi, for the Respondent

Final Decision : Partly Allowed

Judgement

D.K. Mahajan, J.—This is a petition under Article 226 of the Constitution of India and calls in question the service rules, also called the Service Regulations, governing the service and conduct of teachers in non-Govt. affiliated colleges. The attack is on Service Rules Nos. 9, 10, 15 and 17. The petitioner is the Honorary Secretary of the Khalsa College, Amritsar. Besides the State of Punjab, the Registrar of Punjab University, Principal of University Evening College, Rohtak, Shri Pritam Singh, Lecturer, University Chemical Engineering Department, Punjab University, Chandigarh and Shri Madan-pal Singh, Lecturer, Saraswati Training College, Amritsar, have been made respondents.

2. The principal contention of the learned counsel for the petitioner is that the aforesaid service rules are violative of Article 30 of the Constitution of India and Sections 27 and 31 of the Punjab University Act. Section 27 deals with the affiliation of colleges to the University and Section 31 confers power on the Senate, with the sanction of the Government, to frame regulations, consistent

with the University Act, to provide for all matters relating to the University. According to the University all these regulations have been made under Clauses (t) and (u) of Sub-section (2) of Section 31. For facility of reference, I have set down below Article 30 of the Constitution and the relevant parts of Sections 27 and 31 of the University Act:--

"Article 30. (1)--All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

Section 27: Affiliation-

(1) A college applying for affiliation to the University shall send a letter of application to the Registrar and shall satisfy the syndicate-

(a) *****

(b) that the qualifications of teaching staff, their grades of pay and the conditions governing their tenure or office are such as to make due provision for the courses of instruction to be undertaken by the college;

(c) Section 31 : Regulations-

(1) The Senate, with the sanction of the Government, may, from time to time, make regulations consistent with the Act to provide for all matters relating to the University.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-

* * * * *

(t) adequate arrangement to ensure security of service for teachers of the college affiliated to the University; and

(u) adequate arrangement for proper administration of the colleges other than Government Colleges affiliated to the University "

The rules which have been impugned, are also set down below: --

"9. The age of retirement of an employee in an affiliated college shall be 60 years and may be extended up to 65 years depending on the physical and mental fitness of a teacher.

10 The Governing Body of a non-Government college shall include in its management, in addition to the Principal who shall be an ex-officio member, two representatives of teachers elected by teachers of not less than five years' standing, provided that-

(i) the two representatives so elected shall be of not less than ten years" standing; and

(ii) if two teachers of ten years" standing are not available on the staff of a college, one representative shall be elected of not less than five years standing. The term of office of such representative shall be the same as for the remaining members of the Governing Body, provided that in no case it shall exceed 3 years. Provided further that casual vacancy shall be filled by election within 3 months of the vacancy occurring and the members so elected shall continue for the rest of the term of the outgoing member.

15. Any dispute arising in connection with the termination of the services of a Principal/ teacher except when he is on probation, shall be referred to the arbitration of a committee consisting of the Vice-Chancellor or his nominee and a nominee each of the management and the teacher.

Each party to dispute shall submit the name of its nominee within a fortnight of the issue of the letters asking them to do so. The Committee shall have power to enquire into all the aspects of the case and its decision shall be final and binding on the parties.

The Vice-Chancellor or his nominee, as the case may be, shall, if he is satisfied that the constitution of the Committee or a decision by the Committee within a reasonable time is being delayed due to non-co-operative attitude of any of the parties or their nominees, be competent to give an award in the case.

The Indian Arbitration Act of 1940 shall apply to an arbitration under this Regulation for matters not specifically provided for.

17. In addition to the benefits given under the Provident Fund Rules, the management shall grant at the time of retirement of a teacher or on his death to his nominee or nominees, for efficient and faithful service, a gratuity equal to his half month's average pay (pay means an employee's full substantive pay and includes a personal allowance but no other allowance) for every year of service. The average pay will be calculated on the basis of pay drawn by him during the total period of his service in that institution provided that no gratuity shall be given to a teacher who has not completed at least twenty years" continuous service in that institution."

3. Mr. Atma Ram, learned counsel for the petitioner, has urged that Rules 10 and 15 are violative of Article 30 of the Constitution, whereas Rules 9 and 17 are violative of the Punjab University Act. The contention regarding Rule 10 is that by the process of election by the teachers of two representatives to the Governing Body, there is a chance that a non-Sikh will be able to serve on the Governing Body and, therefore, it will be undue interference with the educational institution maintained by a particular religious denomination. Article 30 has been the subject matter of interpretation by the Supreme Court in a number of decisions and I need only refer to *In re Kerala Education Bill, 1957* AIR 1958 SC 956 and

Sidhrajibhai v. State of Gujarat AIR 1963 SC 540, and particularly to the observations of S. R. Das, C.J., in paragraph 23 of the former report, which are to the following effect:---

"The first point to note is that the Article 30 gives certain rights not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher University education and go out to the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the Article under consideration are the words "of their own choice". It is said that the dominant word is "choice, and the content of that Article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Article 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that article may be classified into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and (3) those which want only recognition but not aid." Applying every word of the observations of their Lordships of the Supreme Court to the facts of the present case, it cannot be said that there is any certainty that a non-Sikh teacher can be elected to the Governing Body. Even if he can be elected to a Governing Body of 29 persons, the presence of 2 representatives will not in any manner alter the real and true composition of that Governing Body. The object of Service Rule 10 is merely to give representation to teachers to that Body. Moreover, it is open to the Governing Body not to appoint any person as a teacher, who is a non-Sikh, and if they appoint any person on the teaching staff, who is a non-Sikh they cannot make a grievance that a non-Sikh has been elected to the Governing Body. Therefore, the contention of Mr. Atma

Ram that Rule 10 is violative of Article 30 of the Constitution is pointless and must be repelled.

4. So far as Service Rule 15 is concerned, it merely provides a machinery for the settlement of disputes between the Governing Body and the staff. I put it to Mr. Atma Ram that if a dispute arose and was taken to Court, would it violate Article 30 of the Constitution. His categorical reply was that it would not. On the same parity of reasoning, I fail to see how a dispute which is to be settled by arbitration, would be violative of Article 30 of the Constitution. It is also a matter of common knowledge that arbitrations are provided to shorten lengthy civil litigations, and, therefore, it cannot be said that the provision of arbitration for settlement of dispute in Rule 15 offends the provisions of Article 30 of the Constitution of India. This contention is, therefore, also repelled.

5. Coming to Rules 9 and 17, so far as Rule 9 is concerned, it merely prescribes the retirement age, i.e., the age is fixed at 60, unless the management decides to give extension, and the extension can only be set up to the age of 65, but it can only be granted if the employee in the affiliated college is physically and mentally fit to teach. Mr. Atma Ram was under the impression that after the age of 60, the management was bound to give extension up to the age of 65 if the teacher was mentally and physically fit. This impression completely loses sight of the fact that the extension up to the age of sixty-five is not as a matter of right but is discretionary. Rule 9 uses the word "may" and not shall and in the context, it is not possible to read "may" as "shall". Therefore, it is quite clear that the management can retire a teacher after he has attained the age of 60 and has the discretion to utilise his services even after the age of 60, if it considers not to rehire him at the age of 60, provided the other two requirements of the rule are satisfied. Therefore, the apprehension that Service Rule 9 puts an obligation on the management to retain a teacher in service beyond the age of 60 years and up to the age of 65, is not well founded.

6. Coming now to Rule 17, the contention of the learned counsel is that neither Clause (t) nor Clause (u) of Section 31 (2) of the University Act warrants such a provision. This contention appears to me to be sound. Mr. H. R. Sodhi, when he was faced with this contention, could only lay his hands on Section 27 (1) (sic) of the Act and laid stress on the phrases "grades of pay" and the "conditions governing their tenure of office". Now, so far as the grades of pay are concerned, they have nothing to do with gratuity and pension. Similarly, tenure of office has nothing to do with gratuity and pension. There is no provision in Section 27, which requires the University to prescribe either the pension or make a provision for gratuity so far as the teachers of the affiliated colleges are concerned. Nor is there any provision in Section 31 and the only provision, to which the learned counsel for the respondent drew my attention was Clauses (t) and (u) of Section 31 (2). Clause (t) merely talks of adequate arrangement to ensure security of service. It does not talk of either gratuity or pension. In my opinion, either gratuity or pension has anything to do with the security of service. Security of

service has reference merely to the full tenure of office, i.e., retention up to the age of superannuation. So far as Clause (u) is concerned, it has absolutely no applicability. In these circumstances, Mr. Sodhi sought to contend that Section 31 (1) will cover the case. Section 31 (1) merely states that the Senate, with the sanction of the Government, can make regulations consistent with the Act to provide for all matters relating to the University. The learned counsel is unable to explain how a provision for pension or gratuity for the teachers of private colleges affiliated to the University, has anything to do with matters relating to the University. Of course, in a very remote sense, everything has to do something with the University, but it will be stretching the language of the statute too far to hold that the gratuity and pension are the matters which fall within the ambit of Section 31 (1). In this view of the matter, the contention of the learned counsel for the petitioner that Regulation 17 is outside the powers conferred on the University by the Act is well founded.

7. For the reasons recorded above, I allow this petition only to this extent that Service Rule 17 is declared violative of the University Act. The other rules, i.e., Rules 9, 10 and 15 are upheld. In view of the partial success of the petition, there will be no order as to costs.