

(1995) 08 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 952 of 1995

Punjabi University

APPELLANT

Vs

M.R. Garg

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Punjab University Act, 1947 — Section 21

Citation : (1996) 112 PLR 484

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : S.S. Nijjar and G.S. Bajwa, for the Appellant; Balram Gupta and J.S. Puri, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This is defendant's regular second appeal.

2. Plaintiff a Reader in the Law Department, Punjabi University, Patiala, challenged the rejection of representation vide letter dated 19.9.1989 with a further prayer that he is entitled to be considered for the post of Professor as per his application and by way of interim injunction prayed that till the case of the plaintiff is considered and decided by the university as per rules and regulations by calling for the interview, one vacancy of Professor lying vacant be not filled up.

3. The university contested the case on a number of grounds which need not be given in detail as the present controversy relates to determination whether the Registrar of University was competent to file appeal without their being any formal resolution of the Syndicate as the appeal was dismissed by the Additional District Judge on this ground as well.

4. An objection was raised by the respondent- plaintiff that the appeal filed by the University was not maintainable as the same had not been filed by the competent person. There was no resolution of the Syndicate authorising the Registrar to file the appeal.

5. The appellant relied upon the proceedings of the Syndicate dated 23.1.1970 for the view that the Registrar had been authorised to defend the suit for and on behalf of the University and so the appeal filed by the Registrar was competent.

6. The Lower appellant court after carefully examining the contentions raised and on relying upon the judicial pronouncements of this Court held that the appeal filed by the University was not maintainable and so dismissed the same

7. At the motion hearing counsel placed reliance upon the decision of this Court in case reported as *The Morinda Co-operative Sugar Mills Limited Morinda through its Managing Director v. Khem Singh and Ors.* (1989) 96 P.L.R.665 for the proposition that the facts of each case have to be examined before rejecting the appeal for want of proper resolution by the Board/University and notice of motion was issued to the respondent who has put in appearance.

8. Defending the filing of appeal by the Registrar, the learned counsel for the appellant placed reliance upon the resolution dated 23.1.1970 vide which the Registrar has been specifically authorised to defend the cases instituted against the University and file suits in the Court on behalf of the University. According to this resolution, the Registrar has also been authorised to sign and verify the plaint, written statements, petitions, applications and appeals etc. and do all such acts necessary for the prosecution of the cases. So, in view of this resolution dated 23.1.1970 vide which the Registrar has been specifically authorised to do all acts necessary for the prosecution of cases will automatically including the filing of appeal as well and so the appeal filed by the Registrar even without a resolution by the Syndicate or by any other competent authority was perfectly valid and so the additional District Judge erred in dismissing the appeal primarily on this ground. Elaborating the counsel made reference to the other provisions contained in the Calendar of Punjabi University (Volume I) wherein the Registrar has been authorised to perform such other duties as may from time to time be assigned to him by the Syndicate and to exercise all such and discharge his duties under the overall control of the Syndicate. It was thus argued that vide resolution dated 23.1.1970 and other relevant provisions as given in the Calendar of the University authorises the Registrar to exercise such other powers without any formal resolution by the Syndicate. The case when examined in the light of these provisions leaves no manner of doubt that the Registrar was competent to file appeal against the judgment and decree of the trial Court. Lastly, he submitted that each case has to be examined on its facts i.e. whether separate resolution is required for filing appeal or not and so the reliance placed by the appellate Court on some of the judgments of this Court was wholly misplaced in the context of this case.

9. The learned counsel for the respondent-plaintiff argued that the judgment and decree of the Additional District Judges dismissing the appeal on merit as well as its maintainability is according to law and deserves to be affirmed. By referring to the resolution dated 23.1.1970/23.3.1992 (reference to which was made by the counsel for the appellant) the counsel argued that the same hardly helps the

appellant in any manner. A bare perusal of the resolution leaves no room for doubt that it merely authorises the Registrar to defend cases instituted against the University and file suits on behalf of the University and no further. So unless there is a specific resolution by the Syndicate authorising the Registrar to file the appeal, the appeal filed by the Registrar is wholly incompetent. Learned counsel placed reliance upon the decision of this Court in case reported as Punjab Wakf Board v. Kishan Chand (1988) 93 P.L.R. 702 and Panjab University and Another Vs. Tilak Raj Dogra, .

10. Admittedly, the Registrar of Punjab"; University, Patiala, filed the appeal without any resolution passed by the Syndicate authorising him. Primarily, the appellant has placed reliance upon the following resolution dated 23.1.1970 amended vide resolution No. 298 dated 23.3.1992 which, reads as under :-

"The Registrar shall defend cases instituted against the University and file suits in the Court on behalf of the University except in regard to examination matters.

The Controller of Examination shall defend cases concerning examinations instituted against the University and file suits in the Court on behalf of the University regarding examinations.

Both these officers will have the power to sign and verify the plaint, written statements, petitions, applications, replications and appeals etc. to swear and affirm affidavits and generally to make and complete all other documents connected with legal proceedings on behalf of the University and do all acts necessary for the prosecution of the cases."

The appellant has also placed reliance upon the decision of this Court in The Morinda Co-operative Sugar Mill's case (supra) as well as some of the provisions of the Punjabi University Calendar dealing with the appointment of the Registrar and his duties etc. A bare perusal of these provisions makes it abundantly clear that the Registrar can institute a suit on behalf of the University as well as defend any suit instituted against the University and so has the power to sign, verify the plaint, written statements, petitions applications, replications and appeal etc. and do all acts concerning the prosecution of the case. According to the counsel, such an authorisation empowers a Registrar to file appeal even without a resolution by the Syndicate.

11. I find no merit in this plea of the appellant. This resolution authorises merely filing of suits or defending the one which has been filed against the University and in addition thereto to sign and verify the plaint, written statements, petitions etc. In the absence of any such authorisation by the Syndicate the appeal was rightly held to be incompetent. Even the decision of this Court in The Morinda Co operative Sugar Milk's case (supra) does not help the appellant in any manner. No doubt the Court while examining the question whether the Managing Director of a Co-operative Mill could file appeal without any proper resolution passed, placed reliance upon the by-laws of the society and so held that the Managing Director had the power to sue and to be sued on behalf of the Mill. It was in

these circumstances that it was held that the appeal filed by the Managing Director without any resolution was competent. All the same, it was made clear that it is a question of fact in each case as to whether a separate resolution is required for filing the appeal or not? The resolution dated 23.1.1970 as amended vide resolution dated 23.3.1992 does not authorise the Registrar to file an appeal without a such resolution by the Syndicate.

12. The view of this Court whether the appeal filed without a proper resolution is competent is consistent. The matter came up for consideration in case reported as *Murti Shri Raghunath Ji v. Joginder Singh etc.* 1971 Cur. L.J. 47, wherein it was held as under :-

"After the suit had been partly decreed, the committee had to again decide whether to go up in appeal against that order or not. If the rules and regulations had authorised the Secretary or the President or both to take a decision in that respect, then they could individually or jointly take such a decision. But if the said rules and regulations did not give that power to the office bearers concerned, then the Committee had to by means of a resolution, take a decision of filing an appeal and also authorise some body to take steps in that direction. That is necessary, because some expense has to be incurred in filing the appeal and for that purpose the Committee has to apply its mind whether it is worthwhile so or not."

This view was reiterated in case reported as *Patiala Aviation Club, Patiala v. The Presiding Officer, Labour Court, Ludhiana* (1974) 76 P.L.R. 416.

13. In another decision of this Court in case reported as *Panjab University and Another Vs. Tilak Raj Dogra*, while construing Section 21 of the Panjab University Act, (7 of 1947) held as under :-

".....The power to represent University in legal proceedings will not clothe the Registrar with the power to decide, in what case or class of cases the litigation should be brought by the University and what unfavourable decisions should be taken to the appellate Court by the University, Section 21 of the Act, however, authorises the Registrar to represent the University in Court in cases in which the University through lawfully passed resolution of the Senate, decided to sue or to file an appeal. We, thus hold that the view adopted by the learned Additional District Judge was correct and no resolution having been passed by the University to prefer an appeal, the Registrar was not competent to present an appeal."

14. Following the decision rendered by the Division Bench of this Court, I am of the view that the appeal filed by the Registrar without any resolution by the Syndicate was incompetent and rightly held by the Additional District Judge to be not maintainable. Thus, finding no merit in the present appeal, the same is dismissed.