
(1985) 07 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 27 of 1980

R.K. Bhardwaj

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 02-07-1985

Acts Referred:

Citation : (1985) 14 ILR HP 457

Hon'ble Judges : V.P. Gupta, J;H.S. Thakur, J

Bench : Division Bench

Advocate : P. Malhotra, for the Appellant; L.S. Panta, D.A.G. and H.K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Thakur, J.—Aggrieved by the judgment passed by the learned single Judge of this Court, on October, 13, 1980, the Appellant has preferred this Letters Patent Appeal.

2. A few facts relevant to determine the appeal may be stated. The Appellant started his service carrier as an instructor in drawing, in a private institute then known as "Tarakaran S.D. Technical Institute, Baijnath". He was appointed to the said post on November 14, 1958, in the grade of Rs. 150-10-240-EB-15-300, exclusive of dearness allowance. Later on, this institute came to be known as "S.D. Polytechnic, Baijnath". The institute was taken over by the erstwhile State of Punjab w.e.f. 1-7-1964, on the basis of an agreement arrived at between the Management of the Institution and the then Governor of Punjab. After the Institution was taken over by the Punjab Government, it was re-named as "Goswami Ganesh Dutt, Government Polytechnic, Baijnath".

3. It is found by the learned single Judge that the original agreement executed between the Management of the S.D. Poly-technic, Baijnath, and the then Punjab Government by which this institute was taken over is not forthcoming. According to the belief of the Appellant, the said agreement contained some conditions that

the employees working in the said institute would be absorbed in Government service and that their initial pay would be protected. According to the learned single Judge, this belief of the Petitioner appeared to be without foundation.

4. After the aforesaid institute was taken over by the erstwhile State of Punjab, the Appellant was offered a purely temporary post of Drawing Instructor in Civil Engineering, at the Government Polytechnic, Baijnath, on the terms and conditions contained in the letter of appointment dated 10-9-1965, found at Annexure-C. According to the terms of this appointment letter, the Appellant was offered appointment on a purely temporary basis, firstly, for a period of three months or till a candidate was recommended by the Subordinate Services Selection Board, Punjab, whichever was earlier. The service was terminable without any notice and the Appellant was offered the initial pay of Rs. 150/- p.m., in the pay scale of Rs. 150-10-200/ 10-300 plus such allowances as were sanctioned from time to time. This offer was to stand, cancelled in case the Appellant did not join within seven days from the date of issue of the letter. The Appellant appears to have joined in response to this letter of appointment. Subsequently, his application for appointment on regular basis was forwarded to the Subordinate Services Selection Board, Punjab and the Appellant appears to have been selected for appointment. After his selection by the aforesaid Board, he was issued fresh letter of appointment on 27-10-1966, a copy whereof is found at Annexure-G. It was clearly mentioned in this letter of appointment as well that the initial pay of the Appellant would be Rs. 150/- in the pay scale mentioned above, plus such allowances as sanctioned from time to time.

5. The Appellant's claim is that he made representation that his pay of Rs. 260/- p.m., which he was drawing at the time when the Institute was taken over by the then Punjab Government should have been protected. According to him, that representation was still under consideration when with the enactment of the Punjab Re-organisation Act, his services were allocated to then Union Territory of Himachal Pradesh. He has asserted that he continued to represent before the Himachal Pradesh Government for his pay being fixed at Rs. 260/- but to no effect. The Appellant consequently filed the writ petition praying for issue of direction to the Respondents to fix his pay in the pay scale of Rs. 150-10-200/10-300, after allowing him the benefit of his previous service rendered from 10-11-1958 to 13-9-1965.

6. The first contention of the Appellant was that in terms of the agreement executed between the Management of the S.D. Polytechnic, Baijnath, and the erstwhile State of Punjab, the Punjab Government was bound to accept the claim of the employees that they were entitled to the pay they were drawing at the time of the agreement. It is already pointed out earlier above, that the original agreement is not forthcoming and; even a certified copy of the same is not available. The learned single Judge has, however, observed that the fact remains that in his earlier representation made to the Government, copies whereof are found at Annexures-K-I to K-IV, it was never the case of the Appellant that the

agreement aforesaid contained any such clause as is now contended by him. The Appellant then relied upon para-3 of the letter dated 6-2-1965, addressed by the Director of Technical Education, Punjab, to the Secretary, Subordinate Services Selection Board, (copy found at Annexure-D), in support of his claim that the agreement aforesaid contained a clause that the services of the employees of S.D. Polytechnic, Baijnath, would be taken over by the Punjab Government and their pay would be protected. Para-3 of the letter may be extracted:

According to the terms of agreement, the Government is not bound to take in government service the members of staff of the institution and has discretion to take over such staff in government service as may be considered suitable by it. As already stated, to avoid dislocation, the staff members mentioned in the list enclosed were taken over by the Government. In certain cases the members are drawing much more pay than initial of their grades and their pay, therefore, needs to be protected.

It is apparent from the language of this letter that there was no term in the agreement which provided that the Government was bound to take over all the employees of the S.D. Polytechnic, Baijnath, into its service. In fact, it was purely discretionary with the Government to take only such members of the staff as were considered suitable.

7. The next contention of the Appellant was that the erstwhile Punjab Government had framed an uniform policy in the matter of taking over of private institutions and the terms of that policy were contained in Memo. dated 19-3-1965, (copy found at Annexure-E). The counter contention, however, of the Respondents is that the decision contained in the said Memo, has no application to the instant case inasmuch as this Memo, applies to institutions which were taken over by the Education Department only. According to the Respondents, the said institute was taken over by the Government in the Technical Education Department and not in the Education Department and the cases of the employees of the said institute, taken over by the Government, had to be decided in accordance with the agreement entered into by the Government with the Management of the Institution. A perusal of the Memorandum (Annexure-E) shows that this Memorandum was issued by the Education Department of the erstwhile State of Punjab and no copy of the same was endorsed to the Technical Education Department or to any Technical Institution. As such, the stand of the Respondents appears to be correct.

8. It was also contended on behalf of the Appellant that his case for fixation of pay at Rs. 260/- had been recommended by the Director of Technical Education, Punjab vide letter dated 14-4-1966 (Annexure F). It is true that the Director, Technical Education recommended the case of the Appellant but the recommendation so made was not accepted by the Government and carries no weight.

9. The other contention of the Appellant was that one Shri V.K. Puri, who was

employed as a Lecturer in mathematics in the said institute was given the benefit of his past service and his initial pay was fixed at Rs. 245/- in the pay scale of Rs. 220-15-320/20-400 w.e.f. 16-10-1964 when his services were taken over by the Government. Similarly, it was urged that the pay of the staff of the former National Institute of Engineering, Hoshiarpur, which was taken over by the Government, was also protected. In the case of Shri Puri, however, his pay was fixed at Rs. 245/- p.m. on the basis of the recommendation made by the Punjab Public Service Commission which called Shri Puri for interview and found him suitable for the post of Lecturer in mathematics. The Punjab Public Service Commission had recommended the protection of pay of Shri Puri at Rs. 245/- p.m. In the case of the Appellant, no such recommendation was made by the Subordinate Services Selection Board on whose recommendation the Appellant was appointed in service. It may be noticed that as regards the staff of the National Institute of Engineering, Hoshiarpur, which was taken over by the Government, their pays were protected in accordance with the agreement arrived at between the institution and the Government, That example, therefore, cannot be pressed in service in the instant case, where no such terms were settled between the S.D. Poly-technic, Baijnath and the Government, when this Institute was taken over.

10. It is urged by Mrs. P. Malhotra, learned Counsel for the Appellant, that the Director of Technical Education is bound by the instructions of the Director of Education and the employees of the Technical Institution were fully entitled to the protection of their pay. The contention appears to be without any force. It is specifically asserted by the Respondents that there are separate Directorates for Education and Technical Education. This plea appears to be convincing. In case the Department of Technical Education was under the Director of Education, there was no necessity to have a separate Directorate of Technical Education. It is also contended by Mrs. Malhotra that the Appellant had accepted the offer of his appointment with protest and, as such, he had reserved his right to claim the benefit of his past service. The offer of appointment was made to the Appellant under certain conditions. In case those terms were not acceptable to him, he had every right to reject the offer but he had no option to accept some of the terms and reject the rest. The very fact that the Appellant joined the service in terms of the appointment offered to him estops him from claiming better terms than those offered to him. In the case of Mr. Puri, the Public Service Commission had specifically recommended the protection of his pay. On the contrary, in the case of the Appellant, the Subordinate Services Selection Board did not make any such recommendation in favour of the Appellant. As such, the case of the Appellant is different to that of Mr. Puri.

11. We have otherwise also minutely examined the record and perused the judgment of the learned single Judge, we are satisfied that the very fact that an appointment letter was issued to the Appellant and he accepted the appointment so offered, does not entitle him to claim the benefit of his past service. At any rate, there is no such agreement on record in terms of which the Government

was obliged to take the Appellant into its service and to protect his pay. Again, after the case of the Appellant was recommended by the Subordinate Services Selection Board, Punjab, he was offered afresh appointment on the terms contained in Annexure-G and even then the initial pay offered to him was Rs. 150/- p.m. It was optional for the Appellant to have accepted or refused this offer. It was of course open to the Appellant to make representations later on for his pay being fixed keeping in view his past experience but it was for the Government to take a decision whether to allow him any benefit of his past service or not. The Appellant had no vested right to claim that the Government must give him the benefit of his past service. In fact, as already pointed out above, the Government was not bound even to take him into its service. The Appellant in his representation (Annexure-K-II) to the Secretary, Technical Education, Himachal Pradesh, has himself admitted in para 8 of the said representation that the Government of Himachal Pradesh vide letter dated 21-8-1970, from the Secretary, Technical Education to the Director of Technical Education, Himachal Pradesh, outrightly rejected the case regarding the protection of pay. Even prior to this letter, through a communication (Annexure-LI), the Secretary, Technical Education, had specifically written to the Director of Technical Education that the case regarding the pay protection and pay fixation of the staff taken over from the defunct S.D. Polytechnic, Baijnath, was considered by the Government and rejected. This communication has also been affirmed by a letter (Annexure L-II), dated 14th April, 1971. In reply to para 8 of the writ petition, the Director of Technical Education, Himachal Pradesh, has specially stated that the original agreement is not available with the Government but record is quite clear that the agreement did not contain any clause under which the Government undertook to protect the salaries of the persons who were drawing higher or more salaries in the pay scale fixed by the Government. Again, in para 10 of the said reply, it has been asserted by the Director of Technical Education that the S.S.S. Board, Punjab agreed to regularise the appointment of the Petitioner along with the Ors. but no mention whatsoever was made about the protection of pay, which means that the said Board after considering the case of the Petitioner had recommended his case for appointment at the minimum of the pay scale. Shri Kewal Krishan, Director of Technical Education, Punjab, has filed reply to the writ petition on behalf of the State of Punjab. In reply to para 9 of the writ petition, it has been stated that the decision contained in Punjab Government Memo No. 1663-EDIV (36/5)-65/4511, dated 19-3-1965, has no applicability to the instant case inasmuch as it applies to the institutions taken over by the Education Department only. The S.D. Polytechnic, Baijnath, was taken over by the Government in the Technical Education Department and as such the cases of employees of S.D. Polytechnic, Baijnath, taken over by the Punjab Government have to be decided in accordance with the agreement entered into by the Government with the Management of the Institution." In reply to para 12(a) of the writ petition, it is stated that "the case of Shri M.L. Chauhan referred to by the Petitioner is not relevant. The pay of Shri M.L. Chauhan was fixed by the Punjab Government keeping in view the

recommendations of the S.S.S. Board. Moreover, his case was covered under an independent set of agreement entered into by the State Government with the Management of the National Institute of Engineering, Hoshiarpur, whereas the case of the Petitioner has to be decided in accordance with the agreement entered into by the State Government with the Management of the Institution whose employee the Petitioner was."

12. In view of the above position, it cannot be said that the Appellant has been discriminated against in the matter of protection of his pay.

13. We are thus of the opinion that the Appellant has no vested right to claim protection of his pay that he was drawing in the defunct private institution.

14. The result of the above discussion is that the Letters Patent Appeal is dismissed but with no order as to costs.