
(2012) 11 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14824 of 2011 (O and M)

Savita Arora

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Punjab Affiliated Colleges (security Of Service Of Employees) Act, 1974 — Section 11, 9(b)

Citation : (2013) 170 PLR 116 : (2013) 3 SCT 106

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : R.K. Bansal, for the Appellant; Nilesh Bhardwaj, D.A.G., Punjab for State, Mr. R. Kartikeya for Respondent Nos. 3 to 5 and Mr. Vipul Jindal, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner, who retired as Lecturer in Mathematics from S.S.D. Girls College, Bathinda, on 31.5.2010, filed the present writ petition seeking quashing of the communication dated 21.4.2011 (Annexure P-15), whereby she was declined payment of gratuity, leave encashment, arrears on account of dearness allowance and benefits accrued on account of revision of pay scale with effect from 1.1.2006. The writ petition was taken up for hearing on 27.11.2012 along with a bunch of other cases and on the basis of statement made by counsel for the State, the same was allowed in terms of LPA No. 920 of 2012 - Arya College Rishi Dayanand Marg and another v. State of Punjab and others, decided on 01.10.2012. Counsel for respondent Nos. 3 to 5 was not available at that time. He made a request after some time stating that in the case in hand the management is conceding the claim of the petitioner on all other counts as made in the petition, however, the petitioner is not entitled to payment of gratuity. After accepting the request of counsel for respondent Nos. 3 to 5, the present writ petition was kept pending for today and the other cases were disposed of.

2. Learned counsel for the petitioner submitted that in terms of Section 4 of the

Punjabi University Act, 1961 (for short, "the 1961 Act"), the University has been given power to frame statutes, ordinances or regulations. Section 15 of the 1961 Act specifies the subject on which the statutes can be framed by the University. Referring to Sub-sections (c), (g) and (i) of Section 15 of the 1961 Act, learned counsel for the petitioner submitted that it enables the University to frame statutes providing for payment of gratuity to the employees working in the affiliated colleges.

3. Learned counsel for the petitioner further referred to Chapter-XX of the Punjabi University Calendar Volume-III, Part-II, which is an Ordinance pertaining to the Service and Conduct Rules of Teachers in Non-Government Colleges. In clause (3) thereof, it is provided that the appointment of every employee in a non-government college admitted to the privileges of the University shall be in writing in the form of a contract to be prescribed by the University from time to time. The form thereof has been provided in the University Calendar as Appendix-I (Annexed as Annexure R-6/1). Condition No. 5 of the Contract of employment (Annexure P-4), signed by the employee with the management in terms of the aforesaid provision of the University Calendar, provided that the employee shall be entitled to the benefit of the Standard Provident Fund Rules as are followed by the Punjab Education Department and gratuity in accordance with the Rules made by the Punjabi University. In terms of the powers conferred on the University and as provided for in the Contract of Employment in terms of Clause 39 in Chapter XX of Punjabi University Calendar, Volume-III, Part-II, in addition to the benefit of the Provident Fund, a teacher at the time of retirement is entitled to the payment of gratuity equivalent to 1/4th of his pay last drawn for each completed six monthly period of qualifying service subject to 16 1/2 times the pay. The maximum amount of gratuity shall not exceed the amount fixed by the Punjab Government from time to time for its employees. Referring to the aforesaid provisions, learned counsel for the petitioner submitted that the petitioner cannot be denied the benefit of gratuity.

4. Learned counsel for the petitioner further submitted that in para 9 of the written statement filed by respondent Nos. 3 to 5, it has been admitted that Service Conduct Rules as framed by the Punjabi University are applicable.

5. Learned counsel for the petitioner further argued that in all other colleges which are affiliated to the Punjabi University, the gratuity is being paid to the employees. In the case pertaining to DAV College, Bathinda, which is affiliated to the Punjabi University, a direction was given by learned Single Judge, against which LPA No. 1196 of 2012 D.A.V. College, Bathinda and another v. Rajnish Kumar and others, was filed. The same was disposed of by a Division Bench of this court with a bunch of other appeals on 1.10.2012, specifically holding that there is no dispute that the management therein was liable to pay gratuity to the employees. Referring to the aforesaid provisions and the judgment, it is submitted that the petitioner is also entitled to payment of gratuity as provided under the Punjabi University Calendar.

6. On the other hand, learned counsel for the State as well as the University submitted that the entire claim made in the present writ petition is covered by the judgment of this court in Arya College Rishi Dayanand Marg's case (supra).

7. Learned counsel for respondent Nos. 3 to 5 (college and the management) submitted that Section 15(c) of the 1961 Act does not specifically provide for framing of any statute pertaining to gratuity. He further submitted that the University was constituted under the 1961 Act. Subsequent thereto, the Punjab Affiliated Colleges (Security of Service) Act, 1974 (for short, "the 1974 Act") was enacted. Section 9(b) of the 1974 Act provides that the State Government may grant to the employees appointed against the aided posts such pensionary benefits and on such terms and conditions as may be prescribed. Section 11 thereof provides that provisions of this Act shall have over riding effect on any provision contained in any other law for the time being in force including the regulation or statutes of any University.

8. Learned counsel for respondent Nos. 3 to 5 further submitted that in terms of the enabling provisions of 1974 Act, a scheme titled as the "Privately Managed, Affiliated and Punjab Government Aided Colleges, Pensionary Benefits, Scheme, 1996" was framed, which was to have effect from 1.4.1992. In terms thereof, for the purpose of payment, of gratuity, a Corpus Fund was required to be made. The petitioner had also signed a fresh agreement with the management in terms of the aforesaid scheme. In view of the provisions contained in the 1974 Act and the scheme framed thereunder, the earlier Act stood superseded and the petitioner will not be entitled to payment of the gratuity, However, he did not dispute the fact that 1996 scheme was never enforced. Reliance was placed upon judgment of this court in Punjab University Vs. Khalsa College, Amristar and Others, .

9. In response to the contentions raised by learned counsel for respondent Nos. 3 to 5, learned counsel for the petitioner submitted that Section 9(b) of the 1974 Act was inserted vide Punjab Act 8 of 1999, hence, any scheme thereunder could be framed thereafter and not prior thereto.

10. Heard learned counsel for the parties and perused the paper book.

11. The provisions of Section 15 of the 1961 Act specifically provide that the University can specify the subjects on which the statutes can be framed by the University.

12. Section 17 of the 1961 Act enables the University to issue Ordinance on various subjects laid down therein. In exercise of that power, the University has issued Ordinance, which has been published in Punjabi University Calendar Volume-III, Part-II in Chapter XX pertaining to the Service and Conduct Rules of Teachers in Non-Government Colleges. The appointment of every employee in a non-government college admitted to the privileges of the University has to be in writing in the form of a signed contract, format to be prescribed by the University from time to time. The form thereof has been provided in Appendix-I Clause 3

thereof is extracted below:-

3. The appointment of every employee in a non-government college admitted to the privileges of this college University shall be in writing in the form of a contract to be prescribed by the University from time to time and it shall be executed within one month from the date of appointment, (Appendix-I)

13. The contract signed by the petitioner with the management has been placed on record with the paper-book as Annexure P-4. Clause 5 thereof, which is extracted below, provided that an employee shall subscribe to and will be entitled to the benefit of the Standard Provident Fund Rules as are followed by the Punjab Education Department and gratuity in accordance with the Rules framed by the Punjabi University:-

5. That the First Party shall subscribe to, and be entitled to, the benefit of the Standard Provident Fund Rules as are followed by the Punjab Education Department and gratuity in accordance with the rules laid down by the Punjabi University.

14. The Punjabi University in Clause 39 of Chapter XX, as referred to above, provided for gratuity rules:-

39. Gratuity Rules.-

In addition to the benefit of the Provident Fund a teacher at the time of retirement shall be granted by the Governing Body a gratuity of a sum equivalent to one fourth of his pay last drawn for each completed six monthly period of qualifying service subject to 16 = (sixteen and half) times the pay; provided that in no case gratuity shall exceed the amount as fixed by the Punjab Government from time to time for its employees.

In the event of death of a teacher while in service the gratuity shall be subject to minimum of 12 times the pay of the teacher drawn at the time of his death; provided that in no case shall it exceed the amount as fixed by the Punjab Govt. from time to time for its employees.

15. In terms of the aforesaid Rules, a teacher at the time of retirement shall be granted by the Governing Body, a sum equivalent to one fourth of his pay last drawn for each completed six monthly period of qualifying service, as gratuity, subject to 16 1/2 (sixteen and half) times the pay. The maximum gratuity payable shall not exceed the amount as fixed by the Punjab Government for its employees from time to time.

16. In the light of the aforesaid powers conferred on the University and the statutes/rules framed by it, denial of payment of gratuity to a retired lecturer from the University is not legally sustainable. The reliance on judgment of this court in Punjab University's case (supra) by learned counsel for the respondents in support of his plea to deny the payment of gratuity to the petitioner is totally misconceived for the reason that there was no contract required to be signed in

terms of the aforesaid provisions of the Punjab University Act. Secondly, the provisions under which the statutes and regulations were framed, were not *pari materia*.

17. Further reliance of Section 9(b) of the 1974 Act is totally misconceived for the reason that it provides that the State Government may grant to the employees appointed against the aided posts pensionary benefits on terms and conditions, as may be prescribed. The language of this provision itself suggests that the scheme was to be prepared for payment by the State Government and not by the management. It was submitted that in exercise of powers conferred, the scheme was prepared only in the year 1996, which was to have effect from 1.4.1992. The same cannot be relied upon for two reasons, firstly, the aforesaid scheme was never enforced and secondly, the submission of learned counsel for the petitioner was that Section 9(b) of 1974 Act which enables the State to frame a scheme, itself came into force in the year 1999 vide Punjab Act 8 of 1999. In view of my aforesaid discussions, the petitioner cannot be denied the payment of gratuity on retirement. The plea sought to be raised by learned counsel for the management is not tenable. Accordingly, the present writ petition is disposed of in terms of judgment of this court in Arya College Rishi Dayanand Marg's case (*supra*), vide which bunch of other similar cases were disposed of.