
(2011) 09 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 7768 and 7769 of 1989 (O and M)

Sumittar Kaur and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 164 PLR 690

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—In both the writ petitions, the common point for consideration, is the tenability of the order of the Government terminating the services of Teachers, who were working in privately managed schools that were subsequently taken over by the Government under the respective gift deeds.

In CWP No.7768 of 1989, the gift deed stipulated a clause as follows:

3. The Govt. is not bound to take all the members of the school staff under their own control. Govt. will have the liberty to take only those employees who are trained and qualified and the right of administration.

In CWP No.7769 of 1989, a clause in the gift deed again provided expressions as follows, which were slightly different by substituting the words authorized to take instead of liberty to take:

3. The Govt. is not bound to take all the members of the School staff under their own Control. Govt. is authorized to take those employees who fulfill the prescribed qualifications for the post.

2. The clause such as what is extracted and applicable to CWP No.7769 of 1989 was the subject of consideration in the writ petition, heard and disposed of by a Division Bench of this Court in CWP No.4610 of 1996 adverting to the same

clause and the effect of the same and by referring to certain other documents, which were placed before this Court, the Bench answered that if the agreement entered into between management of the schools and the Government for take over of the private educational institutions and the terms and conditions of the take over were to be given full effect, the Government was bound to get the suitability of the staff of the erstwhile private school adjudged with a view to absorb them in Government service subject to their fulfilling the conditions of eligibility. The Bench said "the condition incorporated in the gift deed and the order of take over issued in this case show that absorption of Teachers and other members of staff was only subject to the fulfilling the conditions of eligibility and suitability. Therefore, the additional condition imposed by 2nd respondent while laying down norms for staff of the taken over school cannot be enforced by the respondents qua the petitioners and they cannot be deprived of the right to be considered for absorption in Government service." Elsewhere in the same judgment, the Bench had also noted "A careful reading of what has been extracted above shows that the Government's emphasis has been on the absorption of those teachers who possessed the prescribed qualifications and neither the gift deed nor any other document emanating from Government provided that those who were employed against the unsanctioned posts will not be absorbed. Therefore, we do not find any rational reason or justification to approve the stand taken by the respondents that the petitioners are not entitled to be absorbed in Government services."

3. The Division Bench ruling is, therefore, the law for two aspects; (i) if there is a condition in gift deed that the government shall have authority to take over the teachers if, they fulfill the requisite qualifications then, no additional condition be imposed; (ii) the fact that a teacher was working against an unsanctioned post will also required to be absorbed.

4. It is possible to give an interpretation to the clause of gift deed that provides that the Government shall not be bound to take over all the members of school staff under their control and to leave sufficient play in the joints of the Government's functioning to allow for a liberty not to be compelled to take over all teachers. The authority or a liberty which the subsequent clause talks about in the terms of the gift deed, which we have extracted, shall be to allow for such a decision of the State that might set the only requirement that the person shall be trained and possessed the requisite qualifications. The Government was not, therefore, absorbing the teachers and leaving some of them as by a strict construction of clause, it might become possible that the teachers were not absorbed.

5. However, a State action shall always be tested on the touchstone of Article 14 and a decision not to absorb must, therefore, be on a rational and non-discriminatory fashion. In this case when the Director Public Instructions in his letter to the Secretary on 20.02.1978 has requested that for creation of 17 posts, which incidentally were the number of posts that existed before the take

over. In the list issued by the District Education Officer and signed by the President and the Headmistress of the school, the names of the petitioners are mentioned at Sr. No.5, 11 and 13. Evidently, the 17 posts that were being recommended by the Director must relate to these persons as well. If the Government had ever taken a view that the posts were unnecessary and they not required on the basis of sanctioned posts of the school, it would have been a different matter. However, the basis for rejection of these petitioners in CWP No.7768 of 1989 was that the order of appointment of the petitioners had been made on 16.09.1986 when the proposals for take over were under consideration and, therefore, they cannot be absorbed. The gift deed itself came about subsequently on 05.11.1986 which means that the petitioners had been appointed earlier to the gift deed. A letter of the DPI was also subsequent to their appointment. Even the proceedings of the Government according sanction for the take over that were issued on 20.02.1987 came only after their appointments. The rejection of the petitioners' appointment was, therefore, arbitrary and violative of Article 14.

6. In CWP No.7769 of 1989, the reason why the petitioner had not been absorbed was on account of the fact that he was working against a non sanctioned post. The additional grounds which were available for the petitioners in CWP No.7768 of 1989 perhaps may not apply but the petitioner in CWP No.7769 of 1989 will have to secure favourable consideration in the light of law laid down by the Division Bench in the case referred to above in CWP No. 4610 of 1996.

7. The respective petitioners are, therefore, entitled to be issued with orders of appointment by a direction issued to the respondents to absorb them in the respective schools or re-deploy them in any other school under the control of the State where there are vacancies. They will be treated as appointed and fitted against the scales admissible for the respective posts as though they were appointed on the day when the other teachers had been absorbed in the respective schools. However, for all the period that they did not serve, they shall not be entitled to any pay. The scales shall, however, be worked out on notional basis and they shall be entitled to be paid the scales admissible by such reckoning from the date of appointment. The entire exercise shall be concluded within a period of 8 weeks from the date of receipt of certified copy of this order.

8. Both the writ petitions are allowed.