

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 1084 of 2012 (O&M)
Date of Decision: **09.01.2015**

Ambala College of Engineering and Applies Research and another

..Appellants

Versus

Ramesh Kumar and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Dinesh Kumar, Advocate, for the appellants.
Mr. R.K.Malik, Senior Advocate with
Mr. Tejpal Dhull, Advocate, for private respondents No. 1 to 9.
Mr. Amar Vivek, Addl. Advocate General, Haryana,
for respondents No.10 and 11.
Mr. A.S.Virk, Advocate, for respondent No.12.

S.J.VAZIFDAR A.C.J. (Oral)

This appeal was disposed of by the order and judgment of another Division Bench dated 06.12.2013. The respondents, however, filed Review Application No. 15/13, which was allowed by an order dated 07.03.2014. The Division Bench opined that the documents referred to by the parties ought to be taken into consideration and, therefore, recalled the said order and judgment dated 06.12.2013 and listed the matter as per roster. This is how this appeal comes before us.

2. The original order and judgment dated 06.12.2013 disposed of this appeal by setting-aside the impugned order of the learned Single Judge and the order of the Educational Tribunal impugned in the writ petition and remanded the matter to the Educational Tribunal for a decision on the respondents' claim on-merits.

We see no reason whatsoever to take a different view. We have come to the same conclusion as the one arrived at in the order and judgment dated 06.12.2013. It is sufficient, therefore, to deal with the matter only briefly.

3. The writ petition was filed by the respondents, who are the non-teaching staff of the appellant-college which is run by the second appellant Tribunal, namely, Shri Ram Swarup Memorial Tribunal (Regd.). The respondents claim to have been appointed on contract basis at fixed salaries. The respondents contended that they are entitled under the provisions of the Haryana Affiliated Colleges (Security of Services) Act, 1979 to salaries as per the relevant rules framed under the Act, namely, Haryana Affiliated Colleges Services Rules, 1993. Rule 10 according to them provides that the scales and pay allowances of the employees shall be specified by the Government from time to time. The respondents contended that the salaries paid to them are far less than the scales admissible to the employees of the affiliated colleges.

4. The respondents had earlier filed a Civil Writ Petition No.4148 of 2008 which pursuant to an order dated 20.05.2009 was allowed to be withdrawn with liberty to file an appeal before the Educational Tribunal against the action of respondents No.1 and 2 in failing to pay the scales as per their demand. The Tribunal, however, disposed of the respondents' appeal on the ground that it is not maintainable as there was no order against which it could pass a final order. It is against that order that the above writ petition was filed.

5. The learned Single Judge held that the matter could be decided only on a question of law and therefore, did not remand the matter to the Educational Tribunal. The learned Single Judge relying upon the judgment of the Division Bench of this Court dated 31.10.2002 in Civil Writ Petition No. 15339 of 2001 Sunita Gupta v. State of Haryana and others

held that all the employees in service of the colleges affiliated under the University shall be paid the salaries as specified under the State Act and the Rules framed thereunder.

6. It is important to note that the learned Single Judge rejected the contention that the respondents' appointment was not regular and was illegal. The learned Single Judge held that an appointment by a college affiliated to a University cannot be challenged and the college ought not to be permitted to take advantage of its own wrong. As we mentioned earlier, the earlier Division Bench by the order and judgment dated 06.12.2013 *inter-alia* remitted the matter to the Educational Tribunal to decide the respondents' claim on-merits. The Division Bench upheld the appellant(s) contention that even if the Writ Court took a view that the appeal filed by the respondents before the Educational Tribunal against the action of the appellant's cannot be dismissed as pre-mature, the appropriate course of action was to remit the case to the Tribunal to decide the same on-merits. The Division Bench noted that the judgment in Sunita Gupta's case (supra) had been reviewed albeit to a limited extent. The Division Bench also noted that the appellants' contention that the persons employed on contractual basis were not the employees within the meaning of the Kurukshetra University Calendar, 2009 Vol.1, needed consideration.

7. We are of the same opinion. The issues need consideration. Had it only been a question of law, we may have decided the matter ourselves. There are, however disputed questions of fact as well which persuade us to adopt the same course, namely, remanding the matter to the Educational Tribunal to decide the respondents' claim on-merits. On behalf of the respondents, it was contended that the respondents were appointed on regular basis by the subsequent appointment letters. The validity of these letters has been disputed by the appellants which itself constitutes a seriously disputed question of fact. Further, as noted in the

impugned judgment itself, the appellants contended that the appointments were irregular and illegal. Firstly, the nature of the alleged irregularity or illegality must be determined. It would be necessary to determine whether the appointments were infact illegal or irregular. Secondly, it would be necessary to determine whether the appellants are estopped from or are disentitled to raise the illegality, if any, as a defence. This in turn would raise further disputed questions, such as whether the appellants had waived the illegality and if so whether they were entitled to waive the illegality.

8. For all these reasons, we are of the same view as the one taken in the original order and judgment dated 06.12.2013 disposing of the appeal. We, therefore, dispose of the appeal in the same terms, namely,

- i) that the impugned order of the learned Single Judge is set-aside.
- ii) the order of the Educational Tribunal impugned in the writ petition is also set-aside.
- iii) the matter is remitted to the Educational Tribunal who shall decide the respondents’ claim on-merits.

There shall, however, be no order as to costs.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

09.01.2015
'ravinder'

Whether to be referred to the Reporters or not?	Yes	No ☒
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