

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.4392 of 1995 (O&M)
Date of Decision: 14.03.2016**

Sukhnandan Jit Kaur Walia
and others

... Petitioners

Versus

The Secretary to Government,
Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Naresh Ghai, Advocate,
for the petitioners.

Mr. Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. There are three petitioners in this joint petition arising out of the same cause of action. At the stage of filing of the petition, they were working as Lecturers teaching different subjects since 1970 in the Jawahar Lal Nehru Govt. College for Women, Fatehgarh Sahib. The Government of Punjab took over the college on March 25, 1976. The petitioners became Government servants and were placed in regular pay scales. The petitioners claim selection grade after counting their regular service rendered in private college before takeover. The field was occupied by judgments of this Court delivered between 1987 (Annex P-5) to 1991 and 1993 on the point canvassed. These are placed at Annex P-4, P-6 and P-7 on the record of this case. The specific claim is for grant of selection grade of Rs.3700-5700 after

completion of 16 years service in terms of the Government instructions dated August 25, 1989 by counting their regular service rendered by the petitioners in the erstwhile college taken over by the Government. The takeover made the college a Semi-Government College. Reliance was placed on the decision in LPA No.1346 of 1991 titled *Dev Dutt Kaushal v. State of Punjab and others* decided on October 21, 1993 by the Division Bench.

2. The State filed its written statement contesting the case of the petitioners. It has been explained that when the college was taken over w.e.f. March 11, 1976 along with the entire staff, it was taken over on the terms and conditions as are mentioned in memo dated May 19, 1976 at Annex R-1. As per the conditions of the letter, the State Government did not accept any liability of the college prior to taking over the institution. The entire staff was treated as fresh entrants in service. As such the petitioners are not entitled to grant of senior/selection grade. Clause (g) to (i) of para.2 of the letter has been referred to by the Government to refute the claim in this petition and is reproduced as under:-

"(g) Such members of the staff of the College, as fulfil necessary qualifications and are considered suitable for absorption in Government service by the Punjab Police Service Commission/Subordinate Services Selection Board, shall be treated as new entrants. Only Government scales of pay of respective categories shall be permissible to them and there shall be no personal grade for and one, their pay, in the Government scales, will be fixed on the basis of length of service in equivalent/identical or higher time scale, there shall be no guarantee in regard to protecting their existing salaries.

(i) The members of the staffs will be treated as fresh entrants and they will be placed at the bottom of the old Government Employees, in their respective cadres."

3. The judgment delivered in LPA relied upon by the petitioners in Dev Dutt Kaushal case has been reversed by the Supreme Court in *State of Punjab v. Dev Dutt Kaushal*, AIR 1996 SC 85. The Supreme Court held that service rendered under a private management cannot be counted for the purpose of pension. If pension is not grantable towards qualifying service prior to takeover of the private college must bear the same interpretation so far as senior/selection grade is concerned. It has been pointed out that the JLN Government College for Girls, Mandi Gobindgarh earlier run under the control of the Municipal Committee was privately managed with no administrative control exercise by the Director Public Instructions (Colleges), Punjab. The college was not covered under grant-in-aid scheme. The State had refuted that the scales of pay of employees of the college taken over was to be fixed on the basis of length of service. At the end of day the matter stands concluded with the issuance of instructions vide memo dated June 03, 2013 (Annex R-2). It is clarified therein that private service rendered prior to Government service shall not be countable for any purposes since the selection has not been made in continuation of previous service and condition (c) of the letter dated December 25, 1998 of the UGC, New Delhi is not fulfilled. The previous service rendered in private college and service rendered thereafter is not related to Government. The officers had been advised to take decisions with reference to the terms and conditions of the appointment letter and the conditions in the notification by which the college was taken over with semi government status. The mass of pleadings and documents brought on record through CM No.14755 of 2014 and the judgments from Annex P-18 to P-24 are of no moment in the face of

the terms and conditions of the takeover of the college when the petitioners worked in the private college. The petitioners were brought into Government service by absorption as new entrants. They were brought to Government service in terms of condition (h) on ad hoc basis. The absorption on regular basis was made dependent on qualifying condition (g) which mandated suitability for absorption in Government service by Punjab Public Service Commission/SSSB but they would be treated as fresh entrants to service. There was no guarantee that their existing salaries would be protected. In view of this position and in view of the law laid down by the Supreme Court in *Dev Dutt Kaushal*, there is no merit in this petition which is ordered to stand dismissed and which ruling has set aside the decision of the Division Bench and restored the judgment of the learned Single Judge which denied the selection grade to similarly placed teachers.

4. Reliance placed by the learned counsel for the petitioners on the decision of the Division Bench in LPA No.637 of 2012 titled *State of Punjab and others v. Darshan Singh and another*, decided on November 06, 2012 is misplaced. The decision in *Darshan Singh* was called in question by the State of Punjab before the Supreme Court wherein the order dated May 07, 2013 (Annex R-3) was passed and the petition was withdrawn by the Government with liberty to file a review petition before the High Court from where it is argued that there are Government orders which were not brought to the notice of the High Court and which are not reflected in the judgment, though reference was made to them in the counter affidavit. It was in this background that the Supreme Court felt that the better remedy of the petitioning State was to approach the High Court for review. The order

of the Division Bench was passed on November 06, 2012. Resultantly, the position prevailing in the case of the petitioners will be governed by the law in *Dev Dutt Kaushal* and the terms and conditions of the takeover will predominate. The decision in *Darshan Singh's* case rested on the ground that the college concerned was under the control of the Director Public Instructions, Punjab which is not the factual position obtaining in the present case where there was no such control. Darshan Singh had rendered service in Government High School w.e.f. 1975 to 1982 followed by service rendered in Shaheed Bhagat Singh Municipal College, Kotkapura from 1982 to 1997. The claim was denied for the reason that the employee served on a temporary part-time basis for two hours a day. The learned Single Judge held that this period of service in Government High School was on regular basis. Subsequently, he was relieved on selection and appointment to the Shaheed Bhagat Singh Municipal College, Kotkapura which is under the control of the DPI (Colleges) Punjab. That is how the entire service became qualifying service and thus pensionable. That is how the case is distinguishable on facts.

5. No merit. Dismissed.

(RAJIV NARAIN RAINA)
JUDGE

14.03.2016
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