

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23815 of 2013
Date of Decision: 27.05.2016

Dr. Jaspinder Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Kapil Kakkar, Advocate,
for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

Mr. Kanwaljit Singh, Sr. Advocate,
with Mr. Ajaivir Singh, Advocate,
for respondent Nos.2 & 4.

Mr. M.S. Longia, Advocate,
for respondent No.3.

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

RAJIV NARAIN RAINA, J.

1. Resolution (Annex R-2/1) fixing age of retirement of non-Post Graduate dental teachers is not under challenge in this petition. The resolution No 20 alters the previous position and fixes age of superannuation at 58 years for graduate teachers by Resolution No.20 passed by the Trust on November 23, 2009. The petitioner retired in 2013. The Trust is a private institution receiving no grant-in-aid from the State of Punjab but is run under the umbrella of Sikh Gurdwara Prabandhak Committee which contributes funds to the Trust.

2. Therefore, no ground is made out to unsettle the resolution which has been passed within the jurisdiction of the Trust. Besides, it is debatable

issue whether the Trust is amenable to writ jurisdiction in view of Executive Committee of Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58 the relationship being in the nature of personal service in a society. The position of a trust would be *in pari materia* with a society registered under the Societies Registration Act.

3. Besides, as said at the outset no challenge has been laid to the vires of resolution (R-2/1) and, therefore, it is not possible to consider any directions as sought in this petition to continue the petitioners till they reach the age of 60 or beyond.

4. It is argued that the conditions of service of the petitioner have been changed without notice. As counsel for the petitioner makes this submission he fails to see that in the letter of appointment (P-2) does not mention what the age of superannuation/retirement from service would be. What was referred to was "GNDU/Pb. Govt./Trust rules". The UGC rules do not apply to non Post-Graduate teachers as explained by the respondent Trust in the written statement in the Trust's relationship with the GNDU as the University to which the Dental College & Hospital is affiliated to. When the letter of appointment speaks of "Trust rules" governing service of petitioner it is implied that it means rules as may be lawfully amended by the Trust from time to time exercising its powers drawn from the Trust deed/rules/constitution as was done by the resolution of 2009 reducing the age of retirement for certain class of persons. The Punjab Government prescribes the age of 58 for its employees. The policy of extension beyond the age of 58 years for two years, one each at a time is inapplicable to a private Trust and its employees, if that was an argument raised.

5. The contention that the petitioner was not put to notice at the time the amendment was carried in 2009 is neither here nor there because there is no such legal requirement. None has been shown from the Trust rules that amendatory power is hedged by the principles of audi alter partem and an amendment can not take without hearing person\ s likely to be effected. That is purely policy matter and management function over which Court has no dominion or say as to what the ideal age of retirement should be.

6. The private Trust may have a public face or public duty with respect to its admissions process and seats interfacing with the regulatory body Dental Council of India/ Medical Council of India etc. but towards its employees it has no public face or duty. Toward whom the relationship being either permanent, ad hoc, contractual or in the nature of contract of personal service not specifically enforceable. The petitioner is not protected by Article 311 of the Constitution, or statutory rules of service such as in Boards and Corporations and the like. Neither is the petitioner protected by the Industrial law.

7. Counsel for the petitioner places strong and vehement reliance on Anandi Mukta Sadguru Shree Mukta v. V.R.Rudani, AIR 1989 SC 1607 that Court can exercise writ jurisdiction in an employer-employee dispute in a service law issue relating to a private trust but as he suggests this he fails to cull out its ratio which rested on the award dated June 12, 1970 made by the Chancellor of the Gujarat University to which the the Science college run by the Trust was affiliated and the award revised pay scales and arrears and directed they be given to the teachers to quell their agitating association representing them to improve their emoluments. The award was

duly accepted by the State Government and thus it was held enforceable through writs, orders and directions. The Supreme Court found a legally enforceable right in the teachers and a corresponding obligation on the Trust to obey the award of the Chancellor of the University even though the duty was not statutory. The law of writ jurisdiction was expanded but still the case rested on the duty of the Trust to implement the award as the Trust was tied in relationship with the affiliating University. It follows that if the Trust did not relent it might have faced disaffiliation. In the present case there is no award of GNDU for the Trust to implement nor has the State of Punjab any role to play on age of retirement, nor could it since it exercised no control or supervision over the private management. The ruling in *V.R.Rudani* therefore has no application to the present case and is distinguishable on facts. The law cannot be expanded to the extent suggested by the petitioner anymore than it can accommodate. Rules of natural justice have no place in the exercise of amendatory power of the Trust speaking through resolutions duly passed. There is no public law element involved in a private unaided Trust managing the college and hospital from its own funds and donations from SGPC with respect to the age of retirement. It is also not an argument of substance to accept as legal and valid that the petitioner was not informed of the resolution passed in 2009 and was caught unawares when she was retired from service in 2013. The resolution was not aimed at the petitioner alone it was a decision taken from a class of employment and in the eyes of the management its decision possessed sufficient nexus with the object sought to be achieved in differentiating graduate and post graduate teachers and treating them

differently by introducing reasonable classification, which is an important facet of Article 14 of the Constitution.

8. No merit. The petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

27.05.2016
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