

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.24845 of 2014

Date of decision: 05.04.2016

**Governing Body, Siksha Samiti, Kanina of P.K.S.D. College, Kanina,
Tehsil and District Mahendergarh**

...Petitioner

versus

Dr. Naresh Kumar Vashistha and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Jai Vir Yadav, Advocate,
for the petitioner.**

**Mr. Nitin Jain, Advocate,
for respondent No.1.**

Mr. Hitesh Pandit, Addl. A.G., Haryana.

**Mr. Lalit Rishi, Advocate,
for Mr. Anurag Goyal, Advocate,
for respondent No.3.**

RITU BAHRI, J.

The petitioner is seeking to quash the judgment and decree dated 23.08.2014 (Annexure P-9) passed by the Additional District Judge, Narnaul exercising the powers of Appellate Authority, whereby appeal filed by respondent No.1 was accepted.

Dr. Naresh Kumar Vashistha-respondent No.1 was appointed as Lecturer in Commerce on temporary basis on 01.07.2006 in P.K.S.D. College, Kanina. Thereafter, he was regularly appointed on 30.04.2007.

Since, Maharshi Dayanand University, Rohtak-respondent No.3 did not

approve the appointment of teachers, respondent No.1 was relieved vide order dated 24.04.2008. Aggrieved by the said order, he filed a civil suit, which was subsequently withdrawn by him. Thereafter, he filed an appeal, which was allowed by the Additional District Judge, Narnaul vide judgment dated 23.08.2014 (Annexure P-9). While allowing the appeal, the appellate Authority took into consideration the memo dated 06.04.2007 circulated by the Financial Commissioner and Principal Secretary to Government of Haryana, Education Department, in which guidelines for giving relaxation in age at the time of recruitment to aided post of Lecturers in privately managed Government aided colleges were laid down. As per this memo, a decision was taken by the Government that the Lecturers, who were working on adhoc basis in various private Government aided colleges against sanctioned aided posts without any gap or break in service, would be granted relaxation in upper age limit for applying for the posts in their respective categories. When respondent No.1 (appellant therein) was appointed in self-financing college, he was under the age of 45 years and as per letter dated 06.04.2007, relaxation granted by the Government would be equal to the number of years of service put in by him against aided post on adhoc basis. He was having 4 years experience on the date of appointment on temporary basis in July, 2006 and he joined as regular Lecturer on 30.04.2007. Ultimately, the order dated 24.04.2008 was set aside and a direction was given to the respondents to consider the case in view of the fact that he (respondent No.1) had four years' experience on the date of appointment. Hence, this petition.

While issuing notice of motion on 18.12.2014, learned counsel for the petitioner had made a statement that the petitioner-Management was not averse to the joining of respondent No.1 in compliance of the order dated

23.08.2014 (Annexure P-9) passed by the Addition District Judge, Narnaul (Education Tribunal). Financial burden on account of arrears of salary of respondent No.1 may not be put on the petitioner-Management because it had never been at fault at any point of time. Respondent Nos.2 and 3 never made it clear whether selection of respondent No.1 had their approval or not. On this ground, notice of motion was issued.

In a short written statement filed on behalf of M.D. University, Rohtak-respondent No.3, it has been clarified that after appointment of respondent No.1 by the petitioner-Management, it (respondent No.3) had sought clarification, vide letter dated 06.10.2007, from Higher Education Commissioner, Haryana-respondent No.2 about upper age limit in case of Lecturer in Self Financing Colleges. In response to the above said letter, respondent No.2 informed vide letter dated 26.11.2007 (Annexure R-3/1) that the Government had not framed any service rules for Self Financing Colleges and that the condition regarding Self Financing Colleges framed by the University Grants Commission (UGC) and NCTE may be adopted. Thereafter, the M.D. University, Rohtak, requested the UGC and NCTE to intimate, whether any rules have been framed regarding giving relaxation in upper age limit in case of appointment of Lecturers, vide letter dated 03.04.2008. Despite repeated reminders, the UGC did not give any reply. Vide letter dated 24.02.2010, the NCTE had informed that as per the NCTE regulation, the faculty shall be appointed on the recommendation of the selection committee duly constituted as per the policy of the State Government/Central Government/University/UGC or the concerned affiliating body as the case may be. The petitioner-Management relieved respondent No.1 from services on 24.04.2008 (Annexure P-4). It has been

further stated that in compliance with the judgment and decree dated 23.08.2014 passed by the Additional District Judge (Education Tribunal), the selection of respondent No.1 has been approved by the M.D. University.

In the written statement filed by respondent No.1, it is stated that after passing of the judgment and decree dated 23.08.2014, the respondent-University vide its communication dated 30.10.2014 (Annexure R-1/2) approved the proceedings of the meeting of the Selection committee held on 28.04.2007 in respect of Dr. Naresh Kumar Vashishtha-respondent No.1. Thereafter, the Vice Chancellor of the University, vide order dated 24.04.2015 (Annexure R-1/3) approved the appointment of respondent No.1 as Lecturer from 30.04.2007. Subsequently, P.K.S.D. College, Kanina has been taken over by the Government w.e.f. 01.05.2014. During execution proceedings qua the judgment dated 23.08.2014 passed by the Educational Tribunal, the Government/Director General, Higher Education vide order dated 06.02.2015 (Annexure R-1/4), directed the Principal of the taken over college to allow respondent No.1 to join his services. Now he has joined his duties on 07.02.2015. The arrears of salary for the period from 24.04.2008 to 07.02.2015 have to be paid by the petitioner.

In a separate written statement filed by Joint Secretary to Government of Haryana, Higher Education on behalf of respondent No.2, it is stated that vide memo dated 16.10.2006 (Annexure R/4), the department had issued some instructions regarding relaxation in upper age limit for appointment of Lecturers in Government Aided Affiliated Colleges. It was decided to relax the provision of upper age limit under Rule 27 of 2006 Rules and to increase the upper age limit up to 40 years. Respondent No.1, at the time of appointment, was more than 43 years and 2 months. As per norms of

the Government of Haryana, the upper age limit for appointment as Lecturer in Government College and Government Aided College was up to 40 years for General category. It was further stated that the State Government decided to take over the college on 16.08.2014 (Annexure R/6) with the condition that the Government will not accept any financial liability prior to take over of the college and *Shiksha Samiti, Kanina* will be responsible for the same. At the time of taking over of the college, respondent No.1 was not working as Lecturer in Commerce.

Heard, counsel for the parties.

After going through the contents of this petition and the written statements, it is apparent that in compliance of the judgment dated 23.08.2014 (Annexure P-9), the petitioner has now joined his duties on 07.02.2015. The petitioner-college has now been taken over by the Government on 16.08.2014. For all intents and purposes, the Government has now accepted the judgment dated 23.08.2014 (Annexure P-9) passed by the Additional District Judge, Narnaul (Educational Tribunal) primarily on the ground that it had not framed any service rules for Self Financing Colleges and this information was given to the petitioner-Management vide letter dated 26.11.2007 (Annexure R-3/1). Further, Vide letter dated 24.02.2010, the NCTE had informed that as per its regulations, the faculty is to be appointed on the recommendation of the selection committee duly constituted as per the policy of the State Government/Central Government/University/UGC or the concerned affiliating body. The time taken between 26.11.2007 (Annexure R-3/1) to 24.02.2010 by the NCTE was no ground to relieve respondent No.1 from his services on 24.04.2008 (Annexure P-4). Even though, the college has now been taken over by the

Government, but as per letter dated 26.11.2007 (Annexure R-3/1), there were no rules made for Self Financing Colleges and in this background, finally, the M.D. University, Rohtak has complied with the judgment and decree dated 23.08.2014 passed by the District Judge, Narnaul and approved the selection proceedings of respondent No.1.

Keeping in view the letter dated 26.11.2007 (Annexure R-3/1) issued by respondent No.2 and the stand taken by M.D. University in its written statement that they had approved the selection proceedings of respondent No.1, petitioner-Governing Body, Siksha Samiti, Kanina cannot be held liable to make payment of salary after the college has been taken over by the Government.

At this stage, reference can be made to the letter dated 30.10.2009 (Annexure R-1/15) issued by the University Grants Commission (UGC), as per which, the UGC has not prescribed any upper age limit for appointment of Lecturers. Further, vide letter dated 01.11.2013 (Annexure R-1/16), the UGC had intimated respondent No.1 that it had not prescribed any upper age limit for appointment of Lecturer/Assistant Professor. In this background, respondent No.3-university had approved the proceedings of selection committee held on 28.04.2007, which were communicated vide Annexure R-1/2.

Keeping in view the information given by the UGC vide letters dated 30.10.2009 and 01.11.2013 (Annexures R-1/15 and R-1/16) and letter dated 26.11.2007 (Annexure R-3/1) written by Higher Education Commissioner, Haryana, to the Assistant Registrar (Colleges), Maharishi Dayanand University, Rohtak that the Government had not formulated any rules regarding Self Financing Colleges and they were adopting the

conditions and service rules of UGC and NCTE, it is the M.D. University, who has not taken appropriate steps at the right time to inform the petitioner-Governing Body with regard to the service conditions of Self Financing Colleges.

In view of the above, a direction is given to the M.D. University, Rohtak-respondent No.3 to reimburse the entire payment of arrears of salary of respondent No.1 with immediate effect.

Allowed accordingly.

05.04.2016
ajp

(RITU BAHRI)
JUDGE