

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.1180 of 2016 (O&M)

Date of Decision: 05.09.2016

Dr. Jaspinder Kaur

... Appellant

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. Whether speaking / reasoned?

Yes / No

2. Whether reportable?

Yes / No

3. Whether Reporters of local papers may be allowed to see the judgment?

Yes / No

4. To be referred to the Reporters or not?

Yes / No

5. Whether the judgment should be reported in the Digest?

Yes / No

Present: Mr. Kapil Kakkar, Advocate for the appellant

SURYA KANT, J. (Oral)

CM-3438-LPA-2016

Allowed as prayed for.

Documents (A2 to A6) taken on record subject to just exceptions.

CM stands disposed of.

LPA-1180-2016 (O&M)

(1) The appellant was a Lecturer in Sri Guru Ram Das Institute of Dental Science & Research at Amritsar. The institution has been set up and is run by Shiromani Gurdwara Prabandhak Committee (SGPC) through a Trust, funded by it.

(2) At the time of appellant's appointment, the minimum age of retirement was 60 years under the Rules. Those rules were formulated by the Executive Committee of the Trust by way of a Resolution. That very Executive Committee vide resolution No.20 dated 23.11.2009 reconsidered the age of retirement and resolved as follows:-

“The teacher who are working under Sri Guru Ram Das Charitable Hospital Trust and now passed only BDS/MBBS or non teaching staff possessing the degree of BDS/MBBS shall retire at the age of 58 years as per Sri Guru Ram Das Charitable Hospital Trust Rules, further such staff shall not be granted any extension after they attain age of 58 years. Moreover such staff shall not be appointed on any post after the age of 58 years. The Teachers who are holding the degree of Post Graduation shall retire at the age of 65 years as per DCI/MCI rules. Further as per DCI rules given in letter No.DE-22-2006/13727 dated 29.11.2006 if such post graduate teachers are medical fit, then they can continue upto the age of 70 years, but the conditions for serving upto 70 years is that there should be need for such teachers. Moreover if there is no shortage of post graduate dental teachers, then such teachers shall retire at the age of 65 years.”

(3) The appellant admittedly does not possess the post-graduate qualification. She was thus retired at the age of 58 years. She challenged the order of retirement and sought continuation in service as per the Regulations of Dental Council of India (DCI), namely, till 65 years of age.

(4) Learned Single Judge vide order under appeal has dismissed her writ petition on the ground that conditions of her service are governed under the Trust Rules which are duly mentioned in the appointment letter also and since the Trust Rules have been amended whereunder she could be retired at the age of 58 years, there was no illegality in the action of the Trust.

(5) We have heard learned counsel for the appellant at a considerable length and gone through the record.

(6) So long as Resolution No.20 dated 23.11.2009 operates, no legal infirmity can be said to have been committed by learned Single Judge in rejecting the appellant's claim.

(7) The plea of discrimination, namely, that the Principal of the College is continuing in service cannot sustain as he admittedly possesses the post-graduate qualification.

(8) We are not sure that the Institute receives any Grant-in-Aid from the State Government, and if so, whether the State Government has prescribed any conditions regarding the age of retirement etc. Similarly, whether the regulations prescribing the age of retirement laid down by DCI are applicable or not was neither raised nor has been dealt with by learned Single Judge in the absence of any challenge to the above-stated resolution.

(9) We thus decline to interfere with the order under appeal but in the peculiar facts and circumstances grant liberty to the appellant to initiate fresh proceedings, if so advised, to challenge Resolution No.20 dated 23.11.2009 in accordance with law.

(10) With liberty afore-mentioned, the appeal stands dismissed.

(Surya Kant)
Judge

05.09.2016
vishal shonkar

(Sudip Ahluwalia)
Judge