

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.923 of 2016 (O&M)

Date of Decision: 02.03.2017

Maharishi Dayanand University, Rohtak

... Appellant

VS.

Dr. Naresh Kumar Vashistha & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. Amit Rao, Advocate for the appellant

Mr. Nitin Jain, Advocate for respondent No.1

Mr. Deepak Balyan, Addl. AG Haryana

Mr. Jaivir Yadav, Advocate for respondent No.3

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal is directed against the order dated 05.04.2016 vide which the writ petition filed by Governing Body, Siksha Samiti, Kanina of PKSD College, Kanina was allowed and the appellant-University has been directed to reimburse the entire payment of arrears of salary payable to respondent No.1.

(2) The facts may be briefly noticed.

(3) Respondent No.3 is the Governing Body of PKSD Degree College at Kanina, District Mahendergarh. The said College was a Self-Financing Institute and it did not receive any Grant-in-Aid from the State Government at the relevant time. The Governing Body of the College appointed the first respondent on the post of Lecturer in Commerce initially on temporary basis on 01.07.2006. Respondent No.1 possessed the qualification of M.Com., Ph.D. and was having teaching and research experience to his credit. The said post was later on advertised along with other posts for appointment on regular basis. Respondent No.1 also

competed and was selected for regular appointment. He was appointed as such on 30.04.2007. The Governing Body sent the case of appointment of 1st respondent for the approval of appellant-University but such approval was declined on the premise that respondent No.1 was overage. The University drew analogy from the maximum age limit prescribed for appointment of a Lecturer in Government-aided Colleges, overlooking the fact that there were no statutory rules or regulations formulated by the State Government or the University, prescribing age limit or other conditions for the appointment of Lecturers in Self-Financing Institutions. Respondent No.1 was consequently relieved from the post on 24.04.2008. He filed a civil suit challenging the action of the University in not approving his appointment. During the pendency of the civil suit, respondent No.1, having realized the fact that the service dispute relating to non-approval of his appointment and consequential termination of services was to be adjudicated by the Educational Tribunal-cum-Additional District Judge, Narnaul (in short, 'the Tribunal') (as set up by the State Government), withdrew the suit and approached the Tribunal on 05.08.2013.

(4) Learned Additional District Judge vide judgment dated 23.08.2014 accepted the claim of respondent No.1 and gave a declaration that the order of his relieving from service was illegal, null and void. Mandatory injunction was issued to reinstate respondent No.1 in service on regular basis. All consequential benefits including arrears of pay were also granted.

(5) The Governing Body felt aggrieved and approached this Court by way of CWP No.24845 of 2014. When the writ petition came up for hearing, a statement was made on behalf of the Governing Body-cum-

Management that “*the petitioner-management is not averse to the joining of respondent No.1 in compliance of the impugned order dated 23.08.2014 (Annexure P-9) passed by the Education Tribunal*”. However, it was pointed out that since the management had never been at fault, it may not be burdened with the financial liability on account of arrears of salary of first respondent. Learned Single Judge issued notice of motion only to the extent of financial liability on the management.

(6) In the light of the above-stated stand taken by the Governing Body before the learned Single Judge, the short issue which fell for consideration was whether respondent No.1 was entitled to be paid arrears of pay by the Governing Body or the appellant-University for the period he was forced to remain out of service? Learned Single Judge has vide order under appeal viewed that since the Management was always keen to appoint respondent No.1 on regular basis and it was the University who withheld its approval and forced to relieve respondent No.1 from the post, hence the appellant-University is liable to reimburse the entire payment of arrears of salary to respondent No.1.

(7) The aggrieved University has filed this Intra Court Appeal.

(8) It is an admitted that that in compliance to the judgement dated 23.08.2014 of the Tribunal, the Director General, Higher Education, Government of Haryana vide memo dated 06.02.2015 directed the Principal of the College to allow respondent No.1 to join the duties and consequently, he has been reinstated w.e.f. 07.02.2015. Such a direction was issued by the State Government for the reason that meanwhile PKSD College, Kanina has been taken over by the State Government w.e.f. 01.05.2014.

(9) The point in issue pending before the learned Single Judge was thus further shortened, only to decide as to who should pay the arrears of salary to respondent No.1 for the period from 24.04.2008 to 07.02.2015?

(10) Learned Single Judge has observed and rightly so that when the dispute with regard to eligibility of respondent No.1 in the context of upper age limit arose, a reference was made to University Grants Commission who is the apex body in the matter of regulating the affairs of higher education throughout the country. The UGC vide letter dated 30.10.2009 (R1/15) clearly mentioned that it has not prescribed any upper age limit for appointment of Lecturers/Assistant Professor. Prior thereto, the Higher Education Commissioner, Haryana also informed the appellant-University vide letter dated 26.11.2007 that the State Government had not formulated any rules regarding Self-Financing Colleges and they were following the conditions of UGC and NCTE hence the University should take appropriate decision keeping in view the UGC/NCTE guidelines.

(11) The University unfortunately took its own time in approving the appointment of respondent No.1 despite receiving a categorical clarification from UGC on 30.04.2009. Consequently learned Single Judge has viewed that it is the appellant-University who is liable to pay arrears of salary to respondent No.1.

(12) We have heard learned counsel for the parties and gone through the record.

(13) The short question revolves around the claim of respondent No.1 towards arrears of salary for the period he remained out of service from 24.04.2008 to 07.02.2015. It is true that the appellant-University unjustifiably withheld its approval to the appointment of respondent No.1

despite the fact that he was selected by a validly constituted Selection Committee. It is also true that the University withheld such approval even after receiving clarification from UGC whereafter no room was left to doubt the eligibility of first respondent. Nevertheless it cannot be overlooked that the duration of the period during which respondent No.1 has remained out of service is partly attributable to him for the reason that he chose to approach a wrong forum and filed civil suit instead of approaching the Tribunal at the earliest. It has come on record that the first respondent approached the Tribunal, on 05.08.2014 only. Taking into consideration the totality of the circumstances, we are of the view that it would be in the interest of justice and equity to grant arrears of salary to the first respondent from the date he approached the Tribunal. We consequently, hold respondent No.1 entitled to all consequential benefits including seniority and notional pay fixation w.e.f. 28.04.2007 when he was selected and appointed on regular basis but he shall be entitled to arrears of pay w.e.f. 01.08.2013 only. As the appellant-University is solely responsible for causing break in the service of respondent No.1 without any justification, it is directed that the arrears of pay w.e.f. 01.08.2013 till 07.02.2015 shall be paid by the appellant-University within two months from the date of receipt of certified copy of this order.

(14) Ordered accordingly

(Surya Kant)
Judge

02.03.2017
vishal shonkar

(Sudip Ahluwalia)
Judge