

STATE OF PUNJAB AND ORS.

v.

DEV RAJ AND ORS.

SEPTEMBER 21, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Service Law—Absorption—Claim of—Policy decision by State Government to take over a School in financial difficulties with its existing staff—Teachers who joined for certain period after policy decision taken by State Government claiming absorption—Stay order by High Court—Subsequently, court holding that claimants to be absorbed—Division Bench dismissing the State's appeal on the ground that claimants working on basis of stay order—Sustainability of—Held: Not sustainable since High Court did not consider the agreement between School management and State Government that staff with prescribed qualification who were members of staff when policy decision was taken to be considered—Thus, matter remitted back.

State Government entered into an agreement with School Management to take over the School facing financial difficulties with its existing staff on 28.3.1983. Respondents-teachers or laboratory assistants between 29.6.1983 to 21.1.1984, filed writ petition claiming absorption in Government services. Appellant contended that the names of the respondents did not exist in staff statement prepared by staff management at the time principle decision was taken. High Court granted stay and the stay order continued. The Single Judge of High Court held that though they were employed between 28.6.1983 and 26.1.1987, there was need for teachers and thus, they should be absorbed. Aggrieved, appellants filed LPA which was dismissed on the ground that the respondents were continuing since 1987. Hence the present appeal.

Allowing the appeal and remitting the matter, the Court

- A HELD: There was a corrigendum issued that those staff with prescribed qualification who were members of the staff when the policy decision was taken were to be considered. The Single Judge of the High Court did not consider this aspect. Surprisingly, the Division Bench did not consider the merits and on the basis that the**
- B respondents were working since 1987, dismissed the LPA. The approach is clearly unsustainable. The High Court ought to have examined terms of the arrangement between the school management and the Government. While deciding the dispute finally the Court ought not to be influenced by the fact that some interim arrangements**
- C had been made. Such interim arrangements are always subject to the outcome of the main dispute. Since the Division Bench has not decided the appeal on merits, it is appropriate to remit the matter to the High Court for fresh decision. [Paras 5 and 6] [188-C-E; E-F]**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4408 of 2007.

From the Judgment and Order dated 10.3.2005 of the High Court of Punjab and Haryana at Chandigarh in L.P.A. No. 294 of 2003.

E Krishnan Venugopal and Ajay Pal for the Appellants.

R.K. Kapoor, M.K. Verma and Anis Ahmed Khan for the Respondents.

The Judgment of the Court was delivered by

F DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Punjab and Haryana High Court dismissing the Letters Patent Appeal filed by the appellants.

G 3. The background facts, in a nutshell, are as follows:

On 7.9.1980 a resolution was passed by the Janta High School, Rattewal, requesting the State Government to take over the institution as it was under financial stress. On 28.6.1983 the Government, on principle, decided to take over the institution subject to the conditions that a gift

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deed along with certificate of qualification of the staff working in the school was to be supplied. Names of the respondent did not appear in the list of the staff members. Respondents were appointed on different dates as teachers or laboratory Assistants against unaided posts between the period 29.6.1983 to 21.1.1984. State Government passed an order on 22.1.1987 taking over the institution subject to the condition that only those staff members who were working at the time of taking over were to be continued. On 22.1.1987 school was taken over and the stipulations regarding the norms to be adopted were worked out. As per clause (3) of the agreement, the Government was not required to take under the control all the members of the staff and the Government was authorized to take those employæes who fulfill the prescribed qualification for the posts. On 22.5.1987 a corrigendum was issued, essential portion of which reads as under:

“In the order No.6/5-83-SE(I) dated 22.01.1987, the following corrigendum is hereby made in the 6th and 7th lines of condition No.1 below para 1:-

Original entry ‘at the time of taking over’	entry to be substituted “at the time it was decided by the Govt. to take over this school in principle viz. 26.8.83”
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Writ petition was filed by the respondents with a prayer to absorb them in Government service w.e.f. 22.1.1987. A reply was filed clearly taking the stand that the names of the respondents did not exist in the staff statement which was prepared by the erstwhile management of the school at the time principle decision was taken. Subsequently, their names were included. As per the Government order, the school was taken over with staff existing on 28.6.1983. Therefore, the Government was not bound to absorb the respondents. The learned Single Judge of the High Court granted the stay and the stay order was continued. Subsequently, by order dated 29.1.2003, the learned Single Judge it was held that though the respondents were employed between 28.6.1983 to 26.1.1987, there was need for teachers and laboratory Assistants and, therefore, they

A should be absorbed. The appellants filed Letters Patent Appeal which, as noted above, was dismissed on the ground that the respondents were continuing since 1987.

B 4. Learned counsel for the appellants submitted that merely because the respondents were working on the basis of the stay order passed, that cannot be a ground for granting relief, more particularly, in view of the agreement which stipulated that the staff members working at the time of formal decision were to be continued.

C 5. Learned counsel for the respondents submitted that gift deed was executed on 5.7.1984 and the decision was taken on 6.5.1984 which clearly stipulated that the staff members working at the time of taking over were to be absorbed. There is no dispute that there was a corrigendum issued that those staff with prescribed qualification who were members of the staff when the policy decision was taken were to be considered.

D Learned Single Judge of the High Court did not consider this aspect. Surprisingly, the Division Bench of the High Court did not consider the merits and on the basis that the respondents were working since 1987 dismissed the Letters Patent Appeal. The approach is clearly unsustainable.

E 6. The High Court ought to have examined terms of the arrangement between the school management and the Government. If the stipulation was that the position as stood on the date when the policy decision was taken was the determinative factor, High Court ought to have examined that aspect in detail. It is a settled position in law that while deciding the dispute finally the Court ought not to be influenced by the fact that some interim arrangements had been made. Such interim arrangements are always subject to the outcome of the main dispute. Since the Division Bench has not decided the appeal on merits, we think it appropriate to remit the matter to the High Court for fresh decision in law.

G 7. The appeal is allowed to the aforesaid extent. No costs.

N.J.

Appeal allowed.