

MUKESH KUMAR BADONI

v.

STATE OF PUNJAB AND ORS.  
(Civil Appeal No. 1731 of 2008)

MARCH 4, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

*Service Law:*

*Termination – Appellant appointed on probation of one year – He did not have requisite qualification – Appointment not approved by competent authority as required – Termination of Appellant within period of probation – Writ petition filed by him – Dismissed by High Court – Justification of – Held: Justified – No case for interference u/art.136 – Constitution of India, 1950 – arts.226 and 136.*

**Appellant was appointed as a Chowkidar in Respondent No.3-college on probation of one year. The appointment was subject to approval of the Director of Public Instructions, Punjab, Chandigarh. The said authority purportedly declined to accord approval of the appointment of Appellant on the ground that he did not have the requisite qualification of having cleared Punjabi as a subject in Class VIII. Appellant was relieved from his duties within the period of probation. He filed writ petition before High Court which was dismissed.**

**The Appellants contended before this Court that the stand taken by Respondents that the Director of Public Instructions had refused to accord his approval was factually incorrect and in that view of the matter, the impugned judgment of the High Court should be set aside.**

**Dismissing the appeal, the Court**

**HELD: 1.1. It is now conceded before this Court that**

A the Director of Public Instructions expressly had not refused to accord its approval to the appointment of the appellant in the College. Such a stand, therefore, ought not to have been taken. It is expected of an educational institutional to take a fair stand before a Court of Law.

B [Para 9] [1021-C, D]

1.2. It, however, appears from the records of the case that the sanction for the said appointment was not received by the Institute. The salary of the appellant was being paid by the College itself from its funds and not from the grant received from the State. It may be that the Respondents had taken different stands at different stages but the fact remains that the services of Appellant have not been approved by the Director of Public Instructions. He does not possess the requisite qualification. Unless an express approval of the competent authority is granted, he cannot be permitted to continue in services with the College. [Paras 10, 13] [1021-D, E; 1022-A, B]

2.1. Appellant passed his Matriculation examination from Uttar Pradesh. He, in view of the reply of the College to the Advocate for the appellant, must have knowledge that one of the requisite qualifications required for his appointment was that he must had Punjabi as a subject in VIII class. [Para 11] [1021-E, F]

2.2. In his writ petition, however, the appellant did not state that he possessed the said qualification. Even in the special leave petition he did not make any statement that he holds the requisite qualification. If he does not possess the requisite qualification, this Court and also for that matter the High Court, could not issue a writ, which would be futile in nature. [Para 12] [1021-G; 1022-A]

3. The present case is not a fit case where this Court could exercise its jurisdiction under Article 136 of the Constitution. [Para 14] [1022-B, C]

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CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1731 A  
of 2008.

From the final order dated 2/9/2003 of the High Court of  
Punjab and Haryana at Chandigarh in C.W.P. No. 13836/2003.

V. Shekhar, S. Ganesh and V. Sivasubramanian for the B  
Appellant.

Ajay Pal and Vinay Kumar Garg for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** Leave granted. C

1. Appellant was employed as a Chowkidar by the  
respondent No.3. He applied for his appointment to the said  
post of Chowkidar upon having come to learn that the same  
was lying vacant. Respondent No.3 had issued an offer of D  
appointment in his favour on or about 3<sup>rd</sup> August, 2002. His  
appointment was to be on probation for one year and subject to  
approval of Director of Public Instructions Pnnjab, Chandigarh.  
He was, however, relieved from his duties with effect from 28<sup>th</sup>  
July, 2003 on the premise that his services were no longer E  
required by the College.

3. He served a legal notice upon the authorities of the  
College as also the Director of Public Instructions. Respondent  
No.3 in reply to the said notice on the Advocate of the appellant  
dated 20<sup>th</sup> October, 2003, inter alia stated :- F

"3. Ref. to para No.3 your client was appointed as  
chowkidar on 3.8.2002 after retirement of Shri Ram  
Bahadur on 31.3.2002 with the pay scale of 2620 + DA &  
other allowances as per Govt. rate. Ref. to your points G  
under para No.3, it is stated that his case was sent to the  
DPI (C) Punjab, Chandigarh for approval but the same  
was rejected by the DPI (C) Punjab, Chandigarh due to  
non-clearance of Punjabi as a subject in 8<sup>th</sup> Std. vide letter  
No.2314 grant II, dated 28.3.2003. H

A 4. Ref. to para No.4 as stated earlier that his approval for  
the post of chowkidar was rejected by the DPI (C), Punjab,  
Chandigarh vide above said letter no. due to non-clearance  
of Punjabi as a subject in 8<sup>th</sup> Std. & no grant was received  
for his post till date from the DPI (C), Punjab, Chandigarh  
B and the college has made the payment of his salary by  
Managing Committee account. Thus there is no question  
of his extension of probation at this stage.”

4. An advertisement was also issued in regard to the filling  
up of the said post.

C 5. Appellant thereafter filed a writ petition before the Punjab  
and Haryana High Court. The said writ petition has been  
dismissed by reason of the impugned judgment dated 2nd  
September, 2003.

D 6. Mr. Shekhar, learned senior Counsel appearing on behalf  
of the appellant would submit that the respondents having  
preruncated its stand from stage to stage, the impugned  
judgment is wholly unsustainable. He drew our attention to the  
fact that the stand taken before this Court that the Director of  
E Public Instructions had refused to accord his approval is factually  
incorrect and in that view of the matter the impugned judgment  
should be set aside.

F 7. This Court noticing the specific stand taken that the  
Director of Public Instructions had refused to accord approval  
of the appointment of the appellant, directed to file an affidavit  
in regard thereof; pursuant whereto Maninder Dhillon, Deputy  
Director (C&P) has affirmed an affidavit stating:-

G “3. That this is the actual letter which was received in the  
office and was returned in original to the D.A.N. College  
of Education for Women, Nawa Shahar Doaba with  
objections to produce the following documents.

- H i) Signed copy of the joining report.  
ii) Certificate of Punjabi Pass

4. That the fact of refusing the letter in original and receipt thereof by the college representative is evident from the noting portion of the file No.8/14-07-Grant-II(3) page 22 & 23." A

8. By reason of the said purported letter dated 28<sup>th</sup> March, 2003, thus, the application of the appellant together with other documents were sent back to the College so as to enable it to send the same back together with the certificate that the appellant holds the requisite qualification as also the signed copy of his joining report. B

9. It is now conceded before us that the Director of Public Instructions expressly had not refused to accord its approval to the appointment of the appellant in the College. Such a stand, therefore, ought not to have been taken. It is expected of an educational institutional to take a fair stand before a Court of Law. C D

10. It, however, appears from the records of the case that the sanction for the said appointment was not received by the Institute. The salary of the appellant was being paid by the College itself from its funds and not from the grant received from the State. It is not in dispute that the institution in question being a Girls Institution, a Chowkidar is required to possess a certificate of knowledge of the Punjabi language. E

11. Appellant has passed his Matriculation examination from Uttar Pradesh. As noticed hereinbefore, the Appellant in view of the reply of the College to the learned Advocate for the appellant must have knowledge that one of the requisite qualifications required for his appointment was that he must had Pnnjabi as a subject in VIII class. F

12. In his writ petition, however, the appellant did not state that he possessed the said qualification. Even in the special leave petition he did not make any statement that he holds the requisite qualification. If he does not possess the requisite qualification, this Court and also for that matter the High Court, G H

A could not issue a writ, which would be futile in nature.

13. It may be that the respondents had taken different stands at different stages but the fact remains that his services have not been approved by the Director of Public Instructions. He does not possess the requisite qualification. Unless an express approval of the competent authority is granted, he cannot be permitted to continue in services with the College.

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14. For the reasons aforementioned, we are of the opinion that it is not a fit case where this Court could exercise its jurisdiction under Article 136 of the Constitution of India. The appeals fails and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

C

B.B.B.

Appeal dismissed.

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