

Mohan Lal Maitray v. State of Punjab and others (G. C. Mital, J.)

commodities and if there is no tax on the export of rice it cannot be said that paddy out of which rice was produced was not liable to purchase tax.

(7) For the reasons recorded above, Civil Writ Petition Nos. 2669, 3017 to 3019, 3111, 3112, 3371, 3372, 3760, 4283, 4409, 4479, 4480, 5207, 5553, 5680, 5766, 7577, 10027 to 10033, 12352, 12559, 16990 and 16991 of 1989, are dismissed with no order as to costs. While the Assessing Authority will proceed to make assessment in accordance with law, it will be open to the petitioners to raise all other points before the Assessing Authority and in appeals therefrom.

P.C.G.

Before : G. C. Mital & G. S. Chahal, JJ.

MOHAN LAL MAITRAY,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1267 of 1990.

12th September, 1990.

Constitution of India, 1950—Art. 14 & 226—Punjab Educational Service (College Cadre) (Class-II) Rules, 1976—Punjab Colleges (Security of Service) Act, 1974—Retirement age of Government lecturers at 58 years getting benefits of pension, gratuity and leave encashment—Private managed college teachers retiring at 60 years with no benefits—Recruitment under different service rules—Different service conditions—Whether discriminatory.

Held, that the method of recruitment into the two services is governed by the respective service Rules. The two services cannot be equated. Since they are governed by two different Rules, the petitioners cannot be allowed the retirement age of 60 years by avoiding the discrimination and if this was to be done, while enhancing the superannuation age to 60 years, we will have to avoid the discrimination for the teachers in the private colleges by allowing them pension, gratuity and leave encashment benefits. Such like matters are matter of Service Conditions and Rules, under which employment is taken and one cannot be said to be discriminatory to the other. This would mean that the Court would be re-writing the Service Rules, which is not permissible.

(Para 4)

Petition Under Article 226 of the Constitution of India praying that:—

1. *that the records of the case, including the correspondence of the State of Punjab with the U.G.C./Government of India, accepting the conditions in toto in respect of revised grades as given in Notification No. 10/14/87-5 FDI/542, dated 12th January, 1988, be summoned;*
2. *that a writ in the nature of mandamus be issued directing the respondents not to retire the petitioner on 31st January, 1990, on attaining the age of 58 years and allow him to continue in service upto the age of 60 years, like his counterparts in the private non-Government Colleges, be issued;*
3. *that any other appropriate writ, order of direction which this Hon'ble Court may deem fit and proper in the present circumstances of the case be issued;*
4. *that filing of certified copies of Annexure P-1 be dispensed with;*
5. *that the matter being urgent, service of advance notice upon the respondents be dispensed with;*
6. *that the petitioner, under the present circumstances, is to retire on 31st January, 1990. As such, it is prayed that interim stay in respect of continuation in service of the petitioner till the decision of writ petition, be granted;*
7. *that costs of the writ petition may kindly be awarded to the petitioner.*

Ajay Tewari, Advocate, for the Petitioner.

S. K. Sayal, D.A.G. Punjab, for the Respondents.

ORDER

G. C. Mital, J.

(1) In these bunch of writ petitions, the Government lecturers and the Principals employed in the Government colleges seek to resolve the discrimination in the retirement age between them and those employed in the private colleges.

(2) The Government lecturers, the Principals of the government colleges and such persons appointed on the executive posts in the Directorate of Instructions etc. which are included in the cadre of

**Punjab State Warehousing Corporation, Chandigarh v. Balbir
(G. C. Mital, J.)**

the government lecturers, are governed by the Punjab Educational Service (College Cadre) (Class-II) Rules, 1976 (for short the Rules). According to the service Rules applicable to such people, the age of retirement is 58 years and on retirement they get benefit like pension, gratuity and leave encashment.

(3) The grouse of the petitioner is that in the private managed colleges, the retirement age is 60 years and to avoid discrimination they should be made to retire at the age of 60 years. The private colleges teachers are governed by the Punjab Colleges (Security of Service) Act, 1974, and under their conditions of service, while they retire at the age of 60 years, they are not entitled to pension, gratuity and leave encashment.

(4) The method of recruitment into the two services is governed by the respective service Rules. The two services cannot be equated. Since they are governed by two different Rules, the petitioners cannot be allowed the retirement age of 60 years by avoiding the discrimination and if this was to be done, while enhancing the superannuation age to 60 years, we will have to avoid the discrimination for the teachers in the private colleges by allowing them pension, gratuity and leave encashment benefits. Such like matters are matter of Service Conditions and Rules, under which employment is taken and one cannot be said to be discriminatory to the other. This would mean that the Court would be re-writing the Service Rules, which is not permissible.

(5) For the reasons recorded above, we find no merit in Civil Writ Petition Nos. 1267, 1254, 3837, 3445, 3773, 4033, 4364, 4884 and 5639 of 1990 and dismiss the same with no order as to costs.

P.C.G.

Before Gokal Chand Mital, J.

**PUNJAB STATE WAREHOUSING CORPORATION,
CHANDIGARH,—Petitioner.**

versus

BALBIR SINGH,—Respondent.

Civil Revision No. 1402 of 1989

14th September, 1990.

Code of Civil Procedure, 1908 (Act V of 1908)—O. 41, rl. 6(2)—Property of Judgment debtor not attached by Executing Court—Application under rl. 6(2) maintainable only after Executing Court orders for sale of property.