

in the same Sectors to which each has been held entitled for allotment, on the same terms and conditions as if the plot now to be allotted was originally allotted. Let the same be done within a period of one month from today and till that is done, we keep stayed allotment and auction of plots in these Sectors. In the circumstances we shall not burden the State with costs.

S. C. K.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

AMRIK SINGH AND ANOTHER,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Amended Civil Writ Petition No. 5058 of 1985

August 8, 1988.

Panjab University Calendar Volume I, Part I, 1969—Regl. 56—University employees—Retirement age 58 years—Such employees allocated to School Education Board—Subsequent change in retirement age of university employees—Such change before confirmation of allocation—Effect of such change on Board employees.

Held, that under Regulation 56(1) of the Punjab University Calendar Volume I, Part I, 1969, all whole time paid members of the administrative staff except class IV employees was to retire on attaining the age of 58 years. The regulation will determine the age of retirement of the petitioners and as per this regulation, the petitioners were to retire on attaining the age of 58 years. The decision of the Syndicate, dated November 17, 1979, only affirms the decision which was taken at the time of allocating services of some of the University employees to the service of the Board. It did not create any right in favour of the petitioners nor it can be interpreted to mean that till the final confirmation the petitioners would be deemed to be in the service of the University. The petitioners' terms and conditions of service were the one which were expressly intimated to them by the University at the time of their allocation in the Board. (Para 15).

Petition Under Articles 226/227 of the Constitution of India praying that a writ of Certiorari Mandamus or any other suitable writ direction or order be issued, directing the respondents :—

(i) *To produce the complete records of the case,*

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- (ii) *The order at annexure P. 5 be quashed.*
- (iii) *The decision of the syndicate, dated November 17, 1979 to the extent it gives retrospective effect be quashed.*
- (iv) *It be declared that the petitioners are entitled to continue in the service of the Board till they attain the age of 60 years.*
- (v) *It be declared that respondent No. 1 is not entitled to interfere in the day-to-day working of the Board.*
- (vi) *A writ of Mandamus be issued directing the respondents to treat the petitioners in service till they attain the age of 60 years, with all consequential benefits in the nature of arrears of salary, promotion, seniority etc. etc.*
- (vii) *It be further declared that the Syndicate is not entitled to implement its action retrospectively with regard to the change in service conditions.*
- (viii) *This Hon'ble Court may also pass any other order, which it may deem just and fit in the peculiar circumstances of the case and grant all such other benefits to which the petitioners may be found entitled to.*
- (ix) *It is further prayed that the petitioners be allowed an interest at the rate of 16 per cent on the arrears to be found due to them.*
- (x) *The petitioners be exempted from filing the originals of Annexures P. 1 to P. 16.*
- (xi) *The petitioners be exempted from filing the copies of the writ petition for service on the respondents at this stage.*
- (xii) *The petitioners be exempted from serving the five days notice as required under the High Court Rules and Orders Volume V.*
- (xiii) *It be further declared that the petitioners are governed by the University Regulations till (they are finally allocated to the Board) November 17, 1979; and are entitled to all the benefits thereunder.*
- (xiv) *The costs of this writ petition may also be awarded to the petitioners.*

R. S. Mongia, Senior Advocate, Ravi Sodhi, Advocate and J. S. Sethi, Advocate with him, *for the Petitioner.*

J. L. Gupta, Senior Advocate, (Subash Ahuja, Advocate with him), *for respondent Nos. 2 and 3.*

D. N. Rampal, Advocate, *for the State.*

JUDGMENT

G. R. Majithia, J.

(1) This judgment will dispose of civil writ petitions Nos. 5058 of 1985, 1761 of 1987 and 1580 of 1987.

(2) To appreciate the point arising for determination, we shall refer to the facts of the case as given in Civil Writ Petition No. 5058 of 1985. Punjab School Education Board (hereinafter referred to as the 'Board') was constituted under the Punjab School Education Board Act, 1969. Prior thereto the matriculation and the Higher Secondary examinations were conducted by the Panjab University (hereinafter referred to as the 'University') and after 1969 the work of conducting these examinations was entrusted to the Education Boards of Punjab and Haryana. The staff dealing with these examinations in the University were allocated to the Education Boards of Punjab and Haryana. The petitioners along with other staff members were allocated to the Punjab School Education Board. When the petitioners were allocated to the Board the Registrar of the University informed them that their services have been provisionally allocated to the Board and as per Memo No. SEB-PB-69/135, dated 12th September, 1969, issued by the Secretary of the Board, the terms and conditions of services of the staff allocated to the Board will be the same as are applicable to them in the Panjab University at the time of their joining in the Board and their services will be continuous.

(3) The provisional allocation of the petitioners to the Board was confirmed by the Syndicate of the University in its meeting held on November 17, 1979. The Syndicate made the confirmation retrospectively with effect from the date of the provisional allocation. It is alleged that at the time of the provisional allocation as per Regulation 56 at page 106 of the University Calendar Volume-I, 1969, all whole time paid members of the administrative staff except class IV were to retire on reaching the age of 58 years

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provided that extension could be allowed upto the age of sixty years if the incumbent continued to be efficient and fit both physically and mentally. Regulation 17.1 was incorporated in the University Calendar, Part I, 1979, and the regulation was to the following effect :-

“All whole time members of the non-teaching staff except class ‘C’ employees shall retire on attaining the age of 60 years”.

(4) The petitioners alleged that when the provisional allocation was confirmed on November 17, 1979, the rule of superannuation in the University had been amended and the petitioners had inviolable right to continue in services uptill the age of 60 years. The petitioners will be deemed to be employees of the University till their final allocation on November 17, 1979 and they will be governed by the amended Regulations relating to superannuation. The petitioners further alleged that the Board in its draft regulation suggested that the age of retirement should be fixed at 60 years. The draft regulation has not so far been approved by the State Government. The petitioners made a grouse that two officers namely, Sarv Shri Tara Singh Hundal and B. S. Mundra were allowed to continue their services after the age of superannuation although their work and conduct did not justify their continuing in office after the age of superannuation.

(5) The petitioners sought declaration that they have got right to continue their services uptill the age of 60 years and their retirement by the Board at the age of 58 years is wholly illegal.

(6) Written statement was filed on behalf of the State of Punjab and the Board. The State of Punjab in the written statement alleged that the cases of the petitioners were never recommended to the Government for grant of extension in service on their attaining the age of superannuation. The State Government is fully competent to decide about the superannuation of the Board employees. The extension granted to Sarvshri Tara Singh Hundal and B. S. Mundra was allowed since there was specific request by the then Chairman of the Board to the State Government and they were retained in service by the Board. Respondent No. 2 Board in its written statement took a firm stand that the petitioners came to the Board's service in 1969 as Assistant. Petitioner No. 1 was promoted as Superintendent,—*vide* order dated August 14, 1973. He was confirmed against this post,—*vide* order, dated February 8, 1976. He was promoted as Assistant Secretary,—*vide*

order dated April 4, 1979 and confirmed as such,—*vide* order dated May 2, 1980. He was promoted as Deputy Secretary,—*vide* order dated May 22, 1984 and was confirmed against this post,—*vide* order, dated July 3, 1986. Similarly, petitioner No. 2 was promoted as Superintendent and thereafter confirmed against this post by order dated February 8, 1976. He was promoted as Assistant Secretary,—*vide* order, dated May 20, 1981 and was confirmed with effect from May 21, 1981. Thus, both the petitioners have enjoyed all the benefits which were applicable to the employees of the Board. They accepted promotion and confirmation without any reservation. After their retirement they accepted all the benefits calculated on the basis of joining the Board's service on September 17, 1969. The Board categorically pleaded that the petitioners were confirmed in the Board's service in 1974 and according to the provisions of the Punjab School Education Board Act, 1969, they were to retire on attaining the age of 58 years and the extension beyond 58 years cannot be claimed as a matter of right. The amendment in the University Calendar in 1978 cannot be made applicable to the petitioners.

(7) The decision of the Syndicate confirming the allocation of the petitioners on November 17, 1969 relate back to the year 1969 when the petitioners were actually allocated to the service of the Board, but it will not confer a right on the petitioner to continue in service beyond the age of 58 years. Under Section 24 of the Punjab School Education Board Act, the government has to fix the age of superannuation of the employees of the Board. The Board resolved in its meeting that the age of the superannuation should be fixed at 60 but the government did not agree to it.

(8) Mr. Mongia, learned counsel for the petitioners, submitted that the petitioners were finally allocated in the service of the Board as per the decision of the Syndicate taken on November 17, 1979. Since the entire case of the petitioners is based on the decision of the syndicate dated November 17, 1979, it will be useful to reproduce the decision :—

“The Vice-Chancellor stated that on the Constitution of the Board of School Education in the Punjab and Haryana, services of some of the University employees from the office were allocated to the Boards provisionally. The Boards came into existence some 10 years ago and the employees allocated to the Boards had been serving in those institutions since then. The allocations made earlier be confirmed with effect from the dates allocations were made. This was agreed to.”

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(9) Mr. Mongia submitted that the final decision regarding the allocation was taken only on November 17, 1979 and prior thereto their allocation was provisional and the petitioners could seek their reversion to their parent department—University. Resultantly, the petitioners are entitled to the benefit of the amendment effected in the University Calendar, Part-I, 1979, in which regulation 17-1 was inserted. The amendment was effected on July 29, 1978 and the amended regulation reads as under :—

“All wholetime members of the non-teaching staff except class ‘C’ employees shall retire on attaining the age of 60 years.”

(10) The crux of the argument of Mr. Mongia is that by virtue of the amendment made in the regulation the age of superannuation of all non-teaching staff except class ‘C’ employees was fixed at 60 years and the petitioners were finally allocated as per decision of the Syndicate on November 17, 1979 and prior thereto the rule of superannuation had been amended. Consequently, the petitioners are automatically entitled to continue their services upto the age of 60 years.

(11) On the other hand, the firm stand of the Board is that the petitioners were firmly told while joining their services in the Board that their terms and conditions of services will be the same as are applicable to them in the University at the time of their joining services in the Board. It will be useful to reproduce the relevant extract of the latter dated September 12, 1969 from the Registrar, Panjab University to petitioner No. 1.

“As per Memo No. SEB-PB-69/135, dated 12th September, 1969 from the Secretary, School Board of Education, Punjab, Chandigarh, the terms and conditions of services of the staff allocated to the Boards will be the same as are applicable to them in the Panjab University at the time of their joining in the School Board of Education and their services will be continuous.”

(12) It was further submitted that the petitioners were provisionally allocated in the service of the Board in 1969. Since the University had not passed a final order in this connection and the

Syndicate only straightened the record by observing that the provisional allocation will be deemed to have been confirmed from the dates of allocations, order dated November 17, 1979 cannot be construed to mean that till that date the petitioner will be deemed to be an employee of the University. The submission made by Mr. Gupta deserves to be accepted.

(13) The decision of the Syndicate dated November 17, 1979, only affirms the decision which was taken at the time of allocating services of some of the University employees to the service of the Board. It did not create any right in favour of the petitioners nor it can be interpreted to mean that till the final confirmation the petitioners would be deemed to be in the service of the University. Petitioners' terms and conditions of service were the one which were expressly intimated to them on September 12, 1969 by the University in which it was expressly stated that the Board has accepted them in their service on the same terms and conditions as were applicable to them in the University at the time of their joining in the service of the Board. The terms and conditions of the service of the petitioners will be the one as are regulated by the regulations as in force on September 12, 1969 and the relevant regulation 56(1) of the University Calendar Volume-I, 1969 reads as under:—

“All whole time paid members of the administrative staff except class IV employees shall retire on reaching the age of 58 years provided that extension may be allowed upto the age of sixty years if the incumbent continue to be efficient and fit both physically and mentally. Provided further that in exceptional cases, where the services of an individual are required on technical grounds or on account of non-availability of suitable substitute for a particular post, the Syndicate may grant further extension not exceeding two years if the incumbent continues to be efficient and fit both physically and mentally.”

(14) Under regulation 56(a) of the Regulations all whole time paid members of the administrative staff except class IV employees was to retire on attaining the age of 58 years. The regulation will determine the age of retirement of the petitioners and as per this regulation, the petitioners were to retire on attaining the age of 58 years. The Board or University have not altered the terms and conditions of service of the petitioners to their detriment. The matter is not *res integra*. A similar question of law arose for

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determination in (*Ram Sukh Sharma v. State of Punjab etc.*) (1) by a Division Bench of this Court.

(15) In *Ram Sukh Sharma's* case (*supra*) writ-petitioner was a permanent Superintendent of the University. He was provisionally allocated to the Board on September 29, 1969 and his service conditions were ensured by the Board in its communication dated September 12, 1969 in which the language is almost identical as the one in the present case when the writ-petitioner was allocated to the Board. *Ram Sukh Sharma* came to the High Court for a direction that he was entitled to continue in service till the age of 60 years. The Bench while dealing with this aspect of the case observed as under:—

“*Shri Agnihotri*, further, tried to take benefit from some rule of the University which has amended rule 56(a) aforesaid, giving a right to the University employees to continue upto the age of 60 years. *Shri Agnihotri* cannot derive any support from this amendment which was subsequent to the allocation of the petitioner's services to the Board, because the matter was not left open for the application of any amendment in Annexure P1 and P2.”

(16) The Bench reiterated the same proposition while disposing of Civil Writ Petition No. 738 of 1982 and 844 of 1982 decided on May 5, 1982. The Bench observed as under:—

“Both the petitioners have challenged their retirement on two grounds (1) that after their absorption in the respondent Board, the Panjab University amended the rules by which the age of retirement of its employees is raised to 60 years. They claim to be now governed by these rules. This argument no longer subsists in view of the decision of this Court in C.W.P. No. 1288 of 1982 *Ram Sukh Das v. State of Punjab.*”

(17) Thus we find that the petitioners had no right to continue in service after the age of 58 years and they were validly retired on their attaining the age of superannuation.

(18) In fairness to Mr. Verma, we now deal with the authorities referred to by him at the Bar to the effect that the conditions

(1) C.W.P. 1288 of 1982 decided on March 31, 1982.

of service cannot be altered to disadvantage of the petitioners and he relied upon the following authorities. *State of Rajasthan and another v. Shri Rajinder Singh*, (2), *V. K. Balakrishnan Nair v. The State of Madras*, (3), *Shankar Ganesh Joshi and others v. State of Mysore and another*, (4), *N. C. Ramakrishniah v. The Chief Secretary to Government of Mysore, Bangalore and others*, (5) and *Tarlok Nath Sharma and others v. Union of India and others*, (6). In *State of Rajasthan and another's case* (supra), the respondent was appointed as a Constable in State of Ajmer. In due course of time, he was promoted as Sub-Inspector in the Ajmer Armed Constabulary Force. On reorganisation in 1956 Ajmer, which was a part 'C' State, was integrated into the State of Rajasthan. After reorganization, the respondent was reverted from his officiating post of Inspector of Police to the post of Sub-Inspector and thereafter he was served with a notice directing his compulsory retirement. The order of compulsory retirement was quashed by the Rajasthan High Court. The State of Rajasthan challenged the order of the High Court before the Supreme Court and the Supreme Court upheld the order of the High Court holding that the respondent could not be retired under the provisions of Rajasthan Civil Service Rules, 1951, since it will amount to varying his conditions of service to his disadvantage and there was no previous approval of the Central Government, we find that the ratio of this case is not even remotely applicable to the facts of this case. The other judgments referred to by him relate to Section 115 of the State Reorganization Act. The ratio of these cases are not even remotely applicable to the facts of this case and there is no quarrel with the proposition of law stated therein. The question is of its applicability. As held above, the terms and conditions of service of the petitioners have not been altered to their detriment.

(19) There is another aspect of the case to which Mr. J. L. Gupta, learned counsel for the respondents, has adverted to in the course of arguments. He submits that the petitioners on their provisional allocation in the service of the Board were permanently absorbed there and they received couple of promotions during their continuous service in the Board and on their retirement received all the benefits which were available to them keeping their allocation as

(2) A.I.R. 1973 S.C. 2121.

(3) A.I.R. 1957 Mad. 769.

(4) A.I.R. 1962 Mysore 112.

(5) 1971 Lab. I. C. 1294.

(6) 1974 (1) S.L.R. 456.

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having been made in 1969 and they cannot be allowed to urge that the subsequent amendment made in the University Calendar under which the age of superannuation was raised to 60 years is applicable to them. We find substance in this argument. The petitioners cannot be allowed to blow hot and cold in the same breath. After they have been permanently absorbed in the service of the Board, they will be governed by the service regulations of the Board regarding superannuation which are *pari materia* with service regulations of the University applicable to the petitioners on their allocation to the Board in 1969.

(20) Writ Petitions are without any merit. We dismiss the same. However, in view of the peculiar circumstances of the case, we leave the parties to bear their own costs.

Present : As before.

This order may be read in continuation of our order dated August 8, 1988.

Mr. Mongia, learned counsel for the petitioners, brought to our notice that an alternate argument in the case has not been noticed in the judgment. In the course of arguments, he submitted that assuming regulation 56 (1) of the University Calendar Volume I, 1969 was applicable to the petitioners under which all whole-time paid members of the administrative staff except Class IV employees were to retire on attaining the age of 58 years but the University retained the power to grant extension up to the age of 60 years if the incumbent continues to be efficient and fit both physically and mentally, and the petitioners had a right to be considered for retention in service after attaining the age of superannuation. He urged that the cases of the petitioners ought to have been considered by the Board for retention in service beyond the age of superannuation.

In view of our observations in the preceding paragraph, the submission is meritless. However, we are of the view that under the said regulation, the employer had a discretion to grant extension up to the age of 60 years on the employee attaining the age of superannuation. The power is discretionary and it is for the employer to decide whether to retain an employee in service beyond the age of superannuation. No judicially enforceable right

has been violated in this case. The matter was purely within the discretion of the employer. In the circumstances of the present case, we are not inclined to issue any direction to the employer to consider the case of the petitioners in this behalf.

S.C.K.

Before V. Ramaswami, CJ and G. R. Majithia, J.

JOGINDER SINGH AND OTHERS,—*Petitioners.*

versus

DIRECTOR, CONSOLIDATION OF HOLDINGS, PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 564 of 1986 (O & M)

August 8, 1988.

East Punjab Holding (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Ss. 2(g) and 11—Right holders claiming partition of Banjar Qadim land according to Wajib-ul-Arz—Petition filed under Section 42 before Director, Consolidation—Director granting prayer for partition—Director of Holdings holding that the land is not the Shamlat Deh—Validity of such order—Rights under Village Common Lands Act—Determination of such rights.

Held, that a reading of definition of Shamlat Deh contained in section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961 clearly shows that the land in dispute does not come within the ambit of 'Shamlat Deh'. It is not described in the revenue record as Shamlat Deh. No material has been placed before us to hold that the finding arrived at by the Director, Consolidation of Holding, on a perusal of the revenue record is vitiated. We do not find any infirmity or illegality in the order of Director of Consolidation of Holdings holding that the land is not a Shamlat Deh. Resultantly, it did not vest in the Panchayat. Moreover, Banjar or Banjar Qadim land will be deemed to be in possession of the owners till contrary is proved. The land was in possession of the proprietors as per their shares in the Khewat. Apart from this, an error of law which is apparent on the face of the record can be corrected by a writ, but not error of fact, however, grave it may appear to be.

(Para 9).