

---

answered in the affirmative, that is in favour of the department and against the assessee. It is held that additional tax imposed under the State law would partake the character of the original tax in the inter-State transactions and would enhance the rate of tax applicable to the goods. Section 8(2A) of the Central Sales Tax Act, 1956, would not exclude the applicability of the additional rate of tax. No costs.

---

**R.N.R.**

*Before V.K. Bali, J.*

ANIL BHATIA,—*Petitioner*

*versus*

THE STATE OF HARYANA AND OTHERS,—*Respondents*

*CWP 17306 of 1995*

4th July, 1997

*Constitution of India, 1950—Arts. 226/227—Haryana Affiliated Colleges (Security of Service) Act, 1979—Seniority list maintained of teaching staff in D.A.V. Colleges in Haryana—Prayer to quash the same—Held, that Ordinance XVI of Recognised Colleges clearly mentions that Governing Body having more than one college under it shall maintain one consolidated merit list—It is better to have common seniority list to avoid difficulties in management where jobs are transferable—Writ dismissed.*

*Held that*, while bringing about amendment in Section 2(e) in statement of objects and reasons it has clearly been mentioned that earlier definition was creating administrative and legal difficulties for bodies managing more than one college in the State and in order to enable such managing bodies to overcome these difficulties it was necessary to make suitable amendment in clause (e) of Section 2 of the Act. Further, the matter is clinched by Annexure R-6 dealing with preparation of seniority lists of teachers in non-government recognised colleges. Annexure R-6 came into being in terms of Clause 6 of Appendix IX to Ordinance XVI of the Recognised Colleges. clause 3 whereof clearly talks that a governing body having more than one college shall have one consolidated list of seniority. This Court is even otherwise of the view that where a society, corporate body or any person or authority is having number of educational institutions and the employees working in the said

---

institutions have a transferable job, it is always better to prepare a common seniority list, otherwise it can create insurmountable difficulties, both for the employees as also the bodies managing educational institutions. It may be recalled that the petitioner lost his cause that he was pleading in the earlier writ with regard to transfer of some of the employees of the respondent institution. That necessarily follows that employees of the respondent institute have transferable job. For such employees, working in different institutions under the same management, it is always better for proper management and administration to have common seniority list.

(Para 8)

Anil Bhatia, *Petitioner in person.*

N.S. Bhinder Distt. Attorney, *for Respondent No. 2*

Nirmaljit Kaur, Advocate, *for Respondents No. 4 to 7.*

### JUDGMENT

*V.K. Bali, J.*

(1) Anil Bhatia, a Senior Lecturer in English in D.N. College, Hisar, through present petition filed by him under Article 226 of the Constitution of India, seeks issuance of writ in the nature of certiorari so as to quash order Annexure P-1 dated December 31, 1992, which is a joint seniority list of teaching staff (Lecturers) of DAV College in Haryana as on December, 1992. Before the grounds in support of the relief asked for are noticed, it will be necessary to give back drop of the facts that culminated into filing that present petition.

(2) It is so pleaded that in November, 1977 the State of Haryana appointed a Survey Committee to look into the affairs of private affiliated Government aided colleges in the State. The said Committee submitted a detailed report on the basis of which the respondent-State took a number of decisions and as a follow up action, a bill guaranteeing protection against the high-handedness of managing committees and security of service was introduced in the legislature of Haryana. As a result of the bill, the Act known as Haryana Affiliated Colleges (Security of Service) Act, 1979 came into being. Section 2(e) of the Act aforesaid provides that each affiliated college will have its managing committee. Section 2(e) of

---

the Act read thus:—

“Managing Committee’ means the Managing Committee of an affiliated college and includes a person or body of persons for the time being entrusted with the management of the affairs of such a college”.

Based upon the language employed in Section 2(e) of the Act aforesaid, the basic case of the petitioner, as pleaded and so argued by him, is that the Managing Committee (also called Governing Body) respondent No. 4 herein is to manage the affairs of D.N. College, Hisar and respondent No. 6 i.e. DAV College Managing Committee has no jurisdiction to maintain the affairs of the College. For his afore stated contention, he relies upon a judgment of the Supreme Court in *Katra Education Society, Allahabad v. State of Uttar Pradesh and Others* (1). The facts of the case aforesaid were that Sections 16-A to 16-I were added to the UP Act 2 of 1921 by the amending Act 35 of 1958. The Executive Body of the Katra Education Society, prior to the amending Act, had been managing the affairs of the Institution. When the educational authorities ordered the constitution of Committee of Management, the Society filed a writ petition in the Allahabad High Court for issuance of writ quashing the orders passed by the educational authorities of the State Government. That writ was, however, dismissed. Aggrieved, the Society filed an appeal before the Supreme Court which was dismissed by a constitutional bench and it was held that after adding of Sections 16-A to 16-I, it was the Committee of Management which was vested with the authority to manage and conduct the affairs of the institution and not the executive body of the Katra Education Society. Relying upon the ratio of the judgment aforesaid, petitioner further contends that after introduction of Act of 1979 as also The Haryana Affiliated Colleges (Security of Service) Rules, 1993 as also Kurukshetra University Calendar Vol. I, 1989, the Managing Committee known as Governing Body is to manage the affairs of the educational institutions in the State of Haryana and, therefore, respondent No. 6 has no authority to prepare the seniority list Annexure P-1. With a view to buttress his contention, as noticed above, it is further the case of petitioner that in 1979 the Kurukshetra University had addressed a letter to all the Principals of non-Government affiliated colleges regarding the constitution of Governing Bodies of such colleges. In view of the contents of this letter, the Governing Body of each college had to consist of not more

---

(1) AIR 1966 S.C. 1307

---

than 21 members and not less than 11 members. This pattern of Managing Committee called Governing Body was incorporated in the University Calendar, clause 6 of which runs thus:—

“Every non-Government recognised college shall have a Governing Body consisting of not more than 21 members and not less than 11 members, as under:—

- (i) President, Vice-President, Treasurer and General Secretary to be elected by the members of the parent Society/Trust which is running the college.
- (ii) The principal of the College shall be the ex-officio member-Secretary of the Governing Body.
- (iii) One nominee of the University.
- (iv) One nominee of the State Government.
- (v) Two teacher representatives elected from among themselves by the wholetime approved teachers of the college and one representative of the non-teaching staff to be elected also on the Governing Body.
- (vi) Remaining members (upto a maximum of 11) to be nominated by the President.”

Section 2(c) defines an employee to mean any person who is in the wholetime employment of an affiliated college. It is the case of the petitioner that he had joined the respondent college as Lecturer in English in 1973 and as such is an employee of the affiliated college and not of respondent No. 6 or 7. In view of this, seniority list can be prepared in the case of the employees of the respondent-College only by the Managing Committee i.e. respondent No. 4 and, therefore, respondent No. 6 had no jurisdiction to prepare the seniority list.

(3) Petitioner had earlier filed Civil Writ Petition No. 12480 of 1992 challenging an advertisement issued by respondent No. 6 inviting applications for the post of Principal, DAV College, Neneola, District Ambala. The case of petitioner was that respondent No. 6 was not competent to advertise the post of Principal for any DAV College affiliated to the respondent-University because under the Act, Rules and the University Calendar, only Governing Body of the college which was the appointing authority, was competent to advertise the post. This Court, however, vide orders dated November 2, 1992 directed the State Government to decide the representations submitted by the petitioner. Respondent-State held as follows:—

---

“It is the Governing Body of the affiliated College which is competent to manage the affairs of the College including the advertisement of post of Principal and selection of suitable candidate. DAV College Managing Committee, New Delhi is not competent to issue such an advertisement and to hold such interview for the selection of a candidate for a post of Principal. In these circumstances, DAV College Managing Committee, Naneola (Ambala) is directed to ignore the advertisement given by the DAV College Managing Committee Chitragupta Road, New Delhi and issue its own advertisement inviting applications for filing up the vacant post of Principal. Further, DAV College Managing Committee, Naneola will hold interview itself according to the existing rules of government/University in this behalf and select/appoint the suitable candidates as Principal of the College.”

It is further the case of the petitioner that the order aforesaid was never challenged by the respondent either in this Court or before the Hon'ble Supreme Court of India. With a view to further strengthen his case, petitioner relies upon the written statement filed by respondent-State in CWP No. 7388 of 1990 (DAV College Trust and Management Society & Anr. v. State of Haryana and Ors.), relevant portion whereof runs thus:—

“It is submitted that DAV College Managing Committee, New Delhi, is not the Governing Body of DAV Colleges in Haryana. DAV Colleges in Haryana have their own independent and separate Governing Bodies. These Governing Bodies are constituted as per Clause 6 of Ordinance XVI of the Kurukshetra University Calendar, Vol. I, 1989 pp 122-123” (WS Para 4). “The four office bearers must be elected by this electoral college. In this connection the attention of this Hon'ble High Court is invited to the decision in CWP No. 1795/1983” (WS Para 4 at P.6). “It is the constitutional duty of the answering respondents to see that rules and regulations framed by the department and University are followed by the institutions in the interest of academic excellence and healthy atmosphere” (WS para 10). “In reply to para 12 of the writ petition, it is submitted that as per instructions dated 28th March, 1979, each DAV College is to be managed by the Governing Body of that college. The petitioners have no right to interfere in the affairs of DAV Colleges in the State of Haryana” (WS Para 12). “In reply to para 19 of the writ petition, it is submitted that posts have to be advertised by

---

the employer-institution i.e. DAV Colleges which are juristic persons having their own independent and separate governing bodies which are the appointing authorities of teachers and other employees of DAV Colleges. The petitioners can not advertise posts for DAV College because it is not the employer of employees working in DAV Colleges.....The employees of DAV Colleges are not on the payroll of petitioner No. 1. The employees are on the pay roll of DAV Colleges and it is the Haryana Govt. which pays their salary including provident fund and gratuity.....*Vide* Section 2(e) of the Security of Service Act, the Management of the College is entrusted to the Governing body of a College. Therefore, the posts have to be advertised by the colleges/Governing body. Under the Security of Service Act and University Calendar, petitioner No. 1 does not enjoy the status of a public service commission-like body. The stand of the petitioners runs contrary to the Security of Service Act/ University Calendar. Against the interference of petitioner No. 1 in the affairs of a DAV College, this Hon'ble Court was pleased to admit CWP No. 38/1989 on 17th May, 1989" (WS, Para 19). "It is vehemently urged that appointment letters can be issued to the selected persons only by the Governing body of the College, which is the appointing authority" (WS Para 22). "Haryana Govt. does not recognise petitioner No. 1. Haryana Government recognises only the Governing body of a college" (WS Para 23). "It is submitted that Governing bodies of various DAV Colleges are not in the nature of local committees. Under the Security of Service Act, Governing Body of a college is entrusted with the management of the affairs of an affiliated college. Governing body is the Government of the college. President of the Governing body has to be elected by the members of the Society/Trust. The very fact that Prof. Veda Vyasa was nominated and not elected as required shows that his election was void *ab initio*. A college is maladministered if its Governing body is not properly constituted" (WS Para 29). "It is further submitted that petitioners are not competent to transfer the employees working in one DAV College to another DAV college" (WS Para 40). "It is submitted that the petitioner is not the appointing authority of the employees working in DAV Institutions in the State of Haryana. It is submitted that the Managing Committee of the respective college is the appointing/punishing authority in respect of the employees

---

working under them.....It is submitted that the Act itself provides that the Managing Committee means the managing committee of an affiliated college" (WS Para 55 sub para ix)".

Petitioner also relies upon the written statement filed by the University in the aforesaid writ petition wherein it was pleaded that the entire management of an affiliated college is vested in the governing body of the college which has to be constituted in accordance with instructions issued by the respondent-University and the provisions given in the University calendar.

(4) It has further been pleaded and so argued by the petitioner that Rules concerning preparation of seniority list have been made under the Act, Rules and University calendar. From the provisions contained in Rule 9(1) of the Rules and Appendix 'A' which came into being by virtue of Rule 3 and Appendix 'C' which came into being by virtue of Rule 9(2), it is further the case of petitioner that respondent No. 4 has to prepare the seniority list of each cadre in the college as per Rule 9(2) of the Rules in the form prescribed in Appendix 'C'. From this statutory rule, it is clear that seniority list has to be college-wise and there is no provision for a joint seniority list of all the lecturers working in all the DAV Colleges in Haryana. For this reason as well, petitioner contends that seniority list, Annexure P-1 is liable to be quashed. Petitioner also relies upon Rule 15 of the University Calendar, reproduced below, for his contention that each affiliated/recognised non-government college has to prepare seniority list of its teachers and other employees:

"15 : Every recognised non-government college shall prepare in accordance with the Rules laid down in Appendix XIV of this Ordinance the seniority list of its teachers and other employees on the basis of persons in position as on 1st November, 1966 and supply the same to the University. Such lists shall be brought up-to-date every year as on November 1".

It is further the case of the petitioner that each DAV College has its college-wise seniority list approved by the respondent University and Government and there is no provision for a joint seniority list. Petitioner has endeavoured to support his aforesaid contention from the contents of the written statement filed by the respondent—State in CWP No. 5851 of 1992 as also from Annexure P-6, dated April 20, 1990, although no arguments as such have been addressed on the said pleadings contained in paragraph 28 of the petition.

(5) The cause of petitioner has been opposed and in the written

---

statement filed on behalf of the contesting respondents it has been pleaded by way of preliminary objections that petitioner earlier filed CWP No. 3573 of 1994 in this Court which was dismissed on August 23, 1994. In that writ, petitioner had challenged transfer of Shri G.D. Jindal and Shri R.K. Chauhan from DAV College, Ambala and DAV College, Pundri to Dayanand Post Graduate College, Hisar and DAV College, Ambala respectively on the ground that the State had held that each DAV institution has a separate governing body and no transfer could be validly effected between two DAV institutions. He further pleaded that appointment of Principal was to be done by the governing body of the college and it could not be done by way of transfer as every DAV College is a separate institution and that the Managing Committee of the College was the local governing body and that DAV College Managing Committee, New Delhi was not proper authority for appointment. A copy of the order dismissing the writ petition has been annexed as Annexure R-1. Aggrieved, petitioner challenged the order of High Court in Supreme Court of India. During the course of arguments, the Supreme Court directed the answering respondent to file an affidavit and also to submit the common seniority list as the respondent had taken a stand that DAV College managing Committee, New Delhi was the parent body and all other colleges were being governed by this Managing Committee which was the actual Managing Committee of all the DAV institutions in India. Respondents placed on records a copy of the seniority list as directed by the Supreme Court. Petitioner thereafter withdrew his petition. While withdrawing the petition, petitioner had neither sought permission to file another petition on the same cause of action nor such a permission was ever granted to him. Petitioner having not succeeded in CWP 3573 of 1994 has filed the present petition seeking somewhat same directions by challenging the seniority list on the same ground i.e., that DAV College Managing Committee is not the proper authority to make the list. It is further pleaded that the only ground on which the petitioner has challenged seniority list is that the Managing Committee of DAV College under Section 2(e) is the only Managing Committee of an affiliated College which is competent to prepare the seniority list of the employees of an affiliated college and hence the DAV College Managing Committee has no jurisdiction to prepare the seniority list of the staff. Indirectly, the petitioner is claiming that there can be no seniority list as each college is to make its own seniority list and there can be no common seniority list between all the colleges. The stand of petitioner is stated to be wrong. The question as to whether



---

the managing Committee, New Delhi is the parent body or not is already before this Court in CWP No. 7388 of 1990 in which the DAV College Trust and Management Society had challenged the action of the University in putting hurdles with regard to their right to administer all the DAV colleges of the country. That writ was, however, filed by the DAV College Trust and management Society and stay was granted in favour of the DAV College Institution directing the Vice-Chancellor to withhold the name and approval of the selection on the ground that the DAV College Managing Committee, New Delhi was not the appropriate authority. Not only that stay is operating in favour of the answering respondent but the Act on which the petitioner relies, stands amended and clarified. Section 2(e), as amended, reads thus :—

“Managing Committee means the Managing Committee of an affiliated college or colleges and includes a person or body of persons for the time being entrusted with the management of the affairs of such college or colleges.”

The aforesaid amendment came into being by notification issued by the Government on 5th January, 1996. In the statement of object and reasons in amending Section 2(e) of the Act of 1979 it is clearly mentioned that it was observed that earlier definition was creating administrative and legal difficulties for bodies managing more than one college in the State. In order to enable such managing bodies to overcome these difficulties, it is necessary to make suitable amendments in clause (e) of Section 2 of the Act. It is further the case of the respondents that correct facts have not been brought to the notice of the Court as it has not been disclosed that the seniority list is prepared in accordance with the rules of the Kurukshetra University which clearly stipulate that “subject to rule no. 4, governing body having more than one college shall have one consolidated list of seniority”. It has further been pleaded that DAV College Trust and Managing Society is registered under the Societies Registration Act, 1960. Hence it is a body corporate. One of the objects of the Society is to establish in Punjab and elsewhere institutions such as colleges, schools, boarding houses, ashrams etc. and also to affiliate and manage institutions. Under Rule 6 of the Society, the Management of the Society is vested in the Managing Committee whose headquarters are at Delhi. It is also clear from the Regulation that the Managing Committee is all in all and the

---

final authority even as regards to passing of regulations by the Society and also the Institutions under its control. Regulation 6 reads thus :—

“Subject to the Control of the Dayanand Anglo Vedic College Trust and Management Society and to such Regulation as have been passed by or may from time to time be passed by the said society, the affairs of Society shall be conducted, its objects carried out and the institutions under its control, managed by a Managing Committee”.

The Managing Committee has power to constitute local Committee which is under the immediate control of the Managing Committee, New Delhi. This is clear from Regulations 106 and 127 of the Society which read thus :—

“106 : The Managing Committee shall have the power to constitute Committees, Sub-Committees or Local Committees for the conduct and Management of the various departments and the institutions of the Society or for any other purpose and shall form rules of their constitution and working. Provided that, if in the opinion of the Managing Committee and Sub-Committee or Committee has failed to manage properly the Institution or department entrusted to it, or to discharge its duties and functions, as directed or if there are circumstances in which such Managing Committee owing to party factions or any other cause is not likely to be carried on satisfactorily, the Managing Committee shall be entitled to dissolve, suspend, or reconstitute such Committee, Sub-Committee or local Committee or take the management in its own hands, or make such other provisions in regard to it as it thinks proper.

127 : The resolutions of the local committee will require approval of the Managing Committee provided that on receipt of the proceedings, the President, may himself confirm all or any of the resolutions if within the budget or refer any of to the CBSC for consideration and disposal or place any of them before the Managing Committee for orders”.

As per Rule 123 of the Society the control of all the institutions has to vest in DAV College Managing Committee, New Delhi. The cause of petitioner based upon various written statements and other allied matters, as have been mentioned while giving narration of facts, has also been denied.

(6) Petitioner has filed replication by and large reiterating

---

the facts as have been mentioned in the writ petition.

(7) Petitioner, who appears in person, contends that respondents 4, 6 and 7 are different and distinct bodies. Respondent No. 4 has to be constituted as per Clause 6 of the Kurukshetra University Calendar, Vol. 1, 1989. Under Rule 2(e) of the Act of 1979 Managing Committee is entrusted with the management of the affairs of such a college and an employee, as provided under section 2(c), means any person who is in the wholtime employment of an affiliated college. For his stand that the Managing Committee called Governing Body relates only to a particular college, petitioner, as per his pleadings, also relies upon various written statements filed by the University and respondent-State in various writ petitions as also provisions of the Act of 1979 and rules framed thereunder as also Kurukshetra University Act and Calender Vol. I, 1989.

(8) After hearing the petitioner and learned counsel for the respondents, this Court is, however, of the view that after amendment of Rule 2(e) read with objects and reasons, necessitating amendment in the rule aforesaid, as also Annexure R-6, which deals with preparation of seniority list of teachers of non-government recognised colleges in terms of clause 6 of Appendix IX to Ordinance XVI, clearly stipulating that subject to Rule 4, a Governing Body having more than one college has to have one consolidated list of seniority, the case of petitioner has no prop to stand. The stand taken either by the State or Kurukshetra University prior to amendment brought about in Rule 2(e) can not be pressed into service by the petitioner for the amendment, in view of this Court, makes a vital difference in holding as to whether it is the Managing Committee of respective college or the principal Managing Committee which has jurisdiction to deal with service conditions or service matters, be it transfer or preparation of seniority list of the employees working in its institutions. It is no doubt true that the unamended definition of 'Managing Committee' incorporated in section 2(e) was to be a Managing Committee of an affiliated college but by virtue of Annexure R-4, which came into being on January 5, 1996, Managing Committee can be of an affiliated college or colleges entrusted with the management of the affairs of such college or colleges. As mentioned above, while bringing about amendment in section 2(e), in statement of objects and reasons it has clearly been mentioned that earlier definition was creating administrative and legal difficulties for bodies managing more than one college in the State and in order to enable such managing bodies to overcome

---

these difficulties it was necessary to make suitable amendment in clause(e) of Section 2 of the Act. Further, the matter is clinched by Annexure R-6 dealing with preparation of seniority lists of teachers in non-government recognised colleges. Annexure R-6 came into being in terms of Clause 6 of Appendix IX to Ordinance XVI of the Recognised Colleges, clause 3 whereof clearly talks that a governing body having more than one college shall have one consolidated list of seniority. This Court is even otherwise of the view that where a society, corporate body or any person or authority is having number of educational institutions and the employees working in the said institutions have a transferable job, it is always better to prepare a common seniority list, otherwise it can create insurmountable difficulties, both for the employees as also the bodies managing educational institutions. It may be recalled that the petitioner lost his cause that he was pleading in the earlier writ with regard to transfer of some of the employees of the respondent institution. That necessarily follows that employees of the respondent-institute have transferable job. As mentioned above, for such employees, working in different institutions under the same management, it is always better for proper management and administration to have common seniority list.

(9) Finding no merit in this petition, I dismiss the same leaving, however, the parties to bear their own costs.

---

**J.S.T.**

*Before Sat Pal, J,*

SAT PAL SINGH,—*Petitioner*

*versus*

HARJIT SINGH,—*Respondent*

C.R. No. 2277 of 1996

30th March, 1998

*Code of Civil Procedure, 1908—Order 37, Rls. 3(5) & 4 and S. 151—Summary suit—Leave to defend—Dismissal of application seeking leave to defend the suit for non-prosecution—Trial Court is required to examine the application to ascertain as to whether the presence of party or counsel is not necessary at the stage of consideration of defendant's application for leave of Court to defend suit—Order of dismissal in default set aside.*

*Held that, admittedly in the present case, the defendant had*