

(13) Mr. Salil Sagar referred to the decision of the Supreme Court in *M/s Oil and Natural Gas Company v. Collector of Central Excise* (1), to contend that the proceedings should have been initiated before the Committee as may be constituted by the Government in pursuance to the order of the Court. A perusal of the Judgment would show that their Lordships were pleased to direct the Government of India to set up a Committee and to submit a report to the Registry of the Court. There is nothing on record to indicate that such a Committee is actually functioning. As such, I am unable to accept the plea raised on behalf of the petitioners.

(14) Accordingly, I find no merit in this petition, which is dismissed with costs. Counsel's fee assessed at Rs. 2,000.

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J.S.T.

Before : Hon'ble Mr. Justice J. L. Gupta, J.

Ms. ANNUMEET KHAIRA,—Petitioner.

versus

PRINCIPAL, LYALLPUR KHALSA COLLEGE AND ANOTHER,  
-Respondents.

Civil Writ Petition No. 5107 of 1991

March 18, 1992.

*Constitution of India, 1950—Article 226—Termination of services—Petitioner appointed in October, 1987 against leave vacancy—More vacancies occurred—Petitioner appointed as lecturer on one years' probation—Probation extended—Thereafter services terminated in April 1991—No show cause notice issued—Termination notice not valid—Civil rights of petitioner affected.*

Held, that keeping in view the fact that the petitioner has been serving the College continuously since the year 1987, it appears to me to be reasonable that the University should have given some opportunity to the petitioner to show cause before it decided to disapprove the appointment. If such an opportunity had been given, the petitioner may have succeeded in persuading the University that her continuance in service was not contrary to any of the regulations of the University and that she was entitled to be allowed to continue against one of the regular vacancies which had become available soon after the finalisation of the proceedings of the Selection Committee. May be that the University while considering the case for grant of approval does not exercise a quasi-judicial function. Still its actions

have vital consequences for the teachers. Teacher's continuance in service is at stake. At the lowest, the civil rights are affected. It is, therefore, just and fair that some opportunity, is afforded to the teacher. Failure to grant an opportunity, in the circumstances of this case is, in my opinion, fatal to the final outcome.

(Para 8)

*Petition under Article 226 of the Constitution of India praying that :—*

*A writ of certiorari be issued and impugned order Annexure P-7 be quashed.*

*It is also prayed that the petitioner be declared to have become confirmed/permanent employee of the college as she has successfully completed three years period of probation against the permanent post.*

*During the pendency of the Writ petition, operation of impugned order (Annexures P-7) be stayed.*

*It is further prayed that filing of certified copies of Annexures and advance service of the respondents with the notice be dispensed with.*

*Any other order, writ petition or direction which this Hon'ble Court may deem fit under the circumstances of the case be issued and the Writ be allowed with costs.*

G. S. Grewal, Sr. Advocate with T. P. S. Mann, Advocate, for the petitioner.

Gur Rattan Pal Singh, Advocate, for Respondent No. 2.

Puneet Jindal, Advocate, for Respondent No. 1.

#### JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) The petitioner, who has been working as Lecturer in English at the Lyallpur Khalsa College, Jalandhar, is aggrieved by the termination of her services in pursuance to the order dated March 25, 1991. A few facts relevant for the decision of the controversy may be noticed.

(2) The petitioner was appointed as a part-time Lecturer in English at the Lyallpur Khalsa College, Jalandhar. (hereinafter

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referred to as 'the College') on July 6, 1987. She maintains that this appointment was made after selection by a regularly constituted Selection Committee. This appointment was made,—*vide* order dated July 4, 1987. It appears that the College conducted the interview on October 11, 1987. In pursuance to the recommendation of the Selection Committee, the petitioner was appointed as a Lecturer against a leave vacancy with effect from October 12, 1987. A copy of this order is at Annexure P. 2 with the writ petition. This appointment appears to have been extended by order dated September 24, 1988. *Vide* letter dated March 7, 1988, the Guru Nanak Dev University, Amritsar (hereinafter referred to as 'the University') conveyed the approval to the appointment of the petitioner as Lecturer in English with effect from October 12, 1987 to September 23, 1988 against a leave vacancy.

(3) On August 10, 1989, the College advertised two posts of Lecturer in English. One of these posts was permanent while the other was a leave vacancy. It appears that the selection committee met on September 16, 1989. This Committee after interviewing various candidates prepared a merit list in the following order :—

- (1) Smt. Ravil Kamal
- (2) Ms. Sarita Tewari
- (3) Ms. Annumeet Khaira (Petitioner).

(4) It further appears from a perusal of the University's file which has been produced by Mr. Gur Rattan Pal Singh that three Lecturers viz Smt. Gita Khasker, Mrs. Harinder Kaur and Ms. Mina Surjit submitted resignations, as a result of which three permanent posts had become available. Presumably, on account of the availability of three permanent posts, the College issued an order dated December 1, 1989 by which the petitioner was appointed as a Lecturer with effect from December 1, 1989 (F.N.) on probation for a period of one year....." By a subsequent letter the period of probation was extended for another year with effect from December 1, 1990. On March 25, 1991, the College in pursuance to a letter dated May 24, 1990 issued by the University ordered the termination of petitioner's services with effect from April 12, 1991.

(5) The Motion Bench by its interim order dated April 11, 1991 having stayed the operation of this order, the petitioner has continued in the service of the College till now.

(6) In the written statement filed on behalf of the University, the factual position has not been disputed. It has been *inter alia* averred that two posts were advertised and that the petitioner was at Sr. No. 2 of the waiting list prepared by the Selection Committee. On this premises, it is claimed that the petitioner's case was not covered by the advertisement.

(7) I have heard Mr. G. S. Grewal, for the petitioner and M/s Gur Rattan Pal Singh and Puneet Jindal for the respondents. Mr. Grewal has raised a two fold contention. Firstly, it is submitted that under the rules governing the appointment of the teachers in affiliated Colleges, the petitioner had completed the maximum period of probation and as such had a right to continue on the post. In any case, the learned counsel submits that the petitioner's services could not have been terminated without giving her a due and a reasonable opportunity. Learned counsel submits that if an opportunity had been granted, the petitioner could have shown that her services were not liable to be terminated.

On the other hand, Mr. Gur Rattan Pal Singh, learned counsel for the University submits that the action of the College in regularising the services of the petitioner against a post which had not been advertised was illegal and, therefore, the University was justified in refusing to approve the appointment.

(8) Having heard the learned counsel for the parties and keeping in view the fact that the petitioner has been serving the College continuously since the year 1987, it appears to me to be reasonable that the University should have given some opportunity to the petitioner to show cause before it decided to disapprove the appointment. If such an opportunity had been given, the petitioner may have succeeded in persuading the University that her continuance in service was not contrary to any of the regulations of the University and that she was entitled to be allowed to continue against one of the regular vacancies which had become available soon after the finalisation of the proceedings of the Selection Committee. May be that the University while considering the case for grant of approval does not exercise a quasi-judicial function. Still its actions have vital consequences for the teachers. Teacher's continuance in service is at stake. At the lowest, the civil rights are affected. It is, therefore, just and fair that some opportunity is afforded to the teacher. Failure to grant an opportunity, in the circumstances of this case, is, in my opinion, fatal to the final outcome). As a result, the order of termination passed by the College and the action of the University,

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in not according the approval, to the appointment of the petitioner,—*vide* its letter dated May 24, 1990 cannot be sustained. The petitioner has been continuing in service. In case the University feels that her continuance in service is not legal, it would serve a notice on the petitioner giving all the reasons so that the petitioner has an

effective opportunity to put-forth her view point.

(9) Accordingly, the order dated May 24, 1990 passed by the University and the order dated March 25, 1991 passed by the College are set aside. In the circumstances of the case, the parties are left to bear their own costs.

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J.S.T.

Before : Hon'ble S. S. Sodhi & Ashok Bhan, JJ.

M/S MOLU MAL BARU JAIN AND OTHERS.—Petitioners.

*versus*

THE EXCISE & TAXATION COMMISSIONER AND OTHERS,  
Respondents.

Civil Writ Petition No. 2054 of 1990

September 12, 1991.

*Constitution of India, 1950—Art. 226—S. 14 & 19(1) (f) & (g)—Haryana General Sales Tax Act 1973 Section 36(3) & (4)—Search and seizure—Power of the Income Tax Officer under this section violative of Article 14 & 19(1) & (f) & (g) of the Constitution—No applicability of provisions of 165 Cr.P.C. for seizure—Validity of section 36(3) & (4) of the 'Act' challenged—Held that section 36(3) & (4) of the Act intra vires & valid.*

*Held*, that a complete answer to the contentions raised is, however, provided by the judgement of the Full Bench of the High Court of Allahabad in *Aggarwal Engineering Stores and others v. The State of Uttar Pradesh and others*, 28 S.T.C. 507 where the constitutional validity of precisely similar provisions in the U.P. Sales Tax Act, 1948 namely Section 13(3), came up for consideration and the challenge thereto was on the same ground as here.

(Para 4)

*Held*, further that it will be seen that specific conditions and circumstances have been prescribed before powers under sub-sections (3) and (4) to Section 36 of the Act can be exercised and these clearly provide adequate safeguards to denude this power of arbitrariness. What is more, it is obvious that the occasion to exercise such power