

(8) The word 'hereinafter' in sub-section (2) indicates the steps which are to be taken subsequent to the publication of the declaration under section 6(1) of the Act. Section 11 mandates the Collector to make the award under Section 11 within the period of two years from the date of publication of the declaration and in case no award is made within that period, the entire acquisition proceedings of land shall lapse. Sub-section (2) of section 6 stipulates that the last of the dates of such publication and the giving of such public notice would be the date of publication of the declaration. Taking the date of last of the publication in the locality as the date of publication of the declaration, the award made by the Collector under section 11-A was within two years.

(9) For the reasons recorded above, we find no merit in this petition and dismiss the same with no order as to costs.

J.S.T.

Before Ashok Bhan & N.K. Agrawal, JJ

THE MANAGING COMMITTEE OF THE PREM CHAND
MARKANDA S.D. COLLEGE FOR WOMEN,
JALANDHAR CITY,—*Petitioner*

versus

AMARJIT SINGH & ANOTHER,—*Respondents*

CWP No. 6715 of 1996

1st August, 1997

Constitution of India, 1950—Arts. 226/227—Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974—Punjab Affiliated Colleges (Security of Service) Rules, 1978—Penalty of dismissal or removal from service cannot be imposed unless approved of by D.P.I.—Against orders of D.P.I. aggrieved party to approach Tribunal—Petitioner filed appeal before District Judge under ordinance issued by Guru Nanak Dev University governing services of non-leading employees against Tabla teacher—Appeal before District Judge not maintainable.

Held, that Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 was enacted by the Legislature of State of Punjab for governing the service regarding dismissal, removal or reduction in rank of employees of affiliated colleges. As per Section

3 of this Act, no employees shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The penalty of dismissal or removal from service cannot be imposed unless the same is approved by the D.P.I. Against the order passed by the D.P.I. aggrieved party can approach the Tribunal constituted under the Act/Rules. Under this Act, petitioner could approach the Tribunal but instead of doing that, he filed an appeal before the District Judge as provided in the ordinance issued by the Guru Nanak Dev University. Appeal before the District Judge in view of the enactment of the Act by the State Legislative was not competent.

(Para 8)

P.S. Patwalia, Advocate, *for the Petitioner*

G.K. Chatrath, Sr. Advocate with Alka Chatrath,
Advocate, *for Respondent No. 1*

Charu Tuli, D.A.G. Punjab.

JUDGMENT

Ashok Bhan, J.

(1) Managing Committee of Prem Chand Markanda S.D. College for Women, Jalandhar, through its authorised representative has filed this petition for issuance of a writ in the nature of certiorari quashing the order dated 8th February, 1994. Annexure P 9 passed by Director of Public Instructions (Colleges) Punjab, Chandigarh (respondent No. 2) and the order passed by the Additional District Judge, Jalandhar, dated 6th April, 1995 Annexure P 11 dismissing the appeal as not maintainable.

(2) As per the averments made in the petition.

(3) Petitioner-college is located at Jalandhar and is imparting education to nearly 2600 students. It has a teaching staff of 80 including *ad hoc* employees and 20 non-teaching staff. Amarjit Singh respondent No. 1 joined the petitioner college as Tabla Player on 17th August, 1990. He was confirmed in service on 12th August, 1992. Tabla Players are non-teaching staff. Respondent No. 1 met with an accident while going from Jalandhar to Kapurthala on 30th January, 1993. He had hurt his thumb and, therefore, could not play Tabla. He submitted

a leave application from 1st February, 1993 to 22nd February, 1993 which was duly sanctioned. On the expiry of his leave on 22nd February, 1993 he told Mrs. Sidhwani, Head of the Department that on account of his disability to play Tabla, it was not possible for him to continue with the job and expressed his desire to resign. As he could not write the resignation letter himself due to the injury on his right thumb, on his request one Smt. Kamlesh Saini, Lecturer in Music, wrote the application for resignation for him. Respondent No. 1 signed this application with his left hand as his right hand did not work. The same was forwarded to the Principal of the College on 25th February, 1993. His resignation was accepted on 26th February, 1993. Acceptance was conveyed to respondent No. 1 by letter dated 11th March, 1993.

(4) After the submission of his resignation, respondent No. 1 changed his mind and sent an unsigned application which was received in the college on 26th February, 1993 wherein he requested for extension of his leave from 23rd February, 1993 to 8th March, 1993. Since respondent No. 1 had already resigned from service and the resignation had also been accepted, no further action was required on this application for extension of leave. Accordingly, respondent No. 1 was informed by letter dated 12th March, 1993 to this effect. Respondent No. 1 thereafter, submitted a representation to the D.P.I. (Colleges)—respondent No. 2 against his so called illegal termination of service from the petitioner's college. In this representation, he refuted his resignation and stated that he had not submitted his resignation but his signatures had been misused. Respondent No. 2 issued a notice to the petitioner. Petitioner appeared and filed a reply denying the allegations therein and stated that resignation had been submitted by respondent No. 1 himself. Resignation had been written by Smt. Kamlesh Saini, Lecturer, in the presence of the Head of the Department and thereafter had been sent to the Principal for acceptance. In the absence of any malice, *mala fide* and ill will, there was no basis or reason why the resignation should have been manipulated by the petitioner.

(5) Guru Nanak Dev University, Amritsar, has issued Ordinance to govern service and conduct of non teaching staff in non-Government Colleges. Copy of this ordinance has been attached as Annexure P. 2. As per regulation (3), no employee

can be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charge/s against him and given a reasonable opportunity of being heard in respect of those charges. Penalty of dismissal or removal from service under Regulation (3) cannot be imposed unless the same is approved by the D.P.I. (Colleges). Where after the enquiry referred to in Regulation (3), it is proposed to impose the penalty of dismissal or removal from service, the proposal shall be referred to the D.P.I. (Colleges) along with the relevant record with a copy of the proposal to the employee concerned simultaneously. Employee has a right to make a representation against the proposed penalty. An employee can be dismissed or removed from service only after the proposal has been approved by the D.P.I. Under Regulation 4.(iv) any party aggrieved by an order of the DPI can file an appeal to the District Judge who, may after giving an opportunity of being heard, pass such order as he may deem fit. Under this regulation, petitioner filed an appeal before the District Judge, Jalandhar, who assigned the same to the Additional District Judge, for disposal. Appellate Authority agreed with the contention raised by the petitioner that D.P.I. did not have any jurisdiction to entertain the representation filed by respondent No. 1 because it was not a case of dismissal or removal from service or reduction in rank of an employee. It was a case of acceptance of a disputed resignation for which the remedy available to the respondent was to knock the door of the civil Court. After recording this finding, Appellate Authority proceeded to examine the maintainability of the appeal. Appeal was dismissed by observing:—

“But, at the same time, as the appeal is maintainable before this Court only against the order passed under Ordinance 30(4)IV by the Director and as no such order has been passed by the said Director, no appeal is maintainable before this Court”.

Thereafter, petitioner has filed the present writ petition.

(6) Separate written statements have been filed by respondents No. 1 and 2. Respondent No. 1 has taken a preliminary objection that his service was governed by the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (hereinafter referred to as the Act) and Punjab Affiliated Colleges (Security of Service) Rules 1978 (hereinafter

referred to as the Rules) Ordinance issued by the Guru Nanak Dev University governing the services of non teaching employees was not applicable. Under the Act and the Rules, against the order of D.P.I. (Colleges, appeal was maintainable before the Tribunal constituted under the Act. Appeal filed by the petitioner before the District Judge, Jalandhar, was not maintainable. On merits, it has been stated that a fraud was committed by the petitioner in connivance with its employees and it was not a case of resignation but removal from service. D.P.I. while deciding the representation of respondent No. 1 lifted the veil to find out the truth in the matter; that the competent authority had the right to lift the veil to find out the truth behind the acceptance of resignation keeping in view the circumstances of the case.

(7) Counsel for the parties have been heard.

(8) Petitioner was pursuing his remedy before a wrong forum. Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 was enacted by the Legislature of State of Punjab for governing the service regarding dismissal, removal or reduction in rank of employees of affiliated colleges. As per section 3 of this Act, no employee shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The penalty of dismissal or removal from service cannot be imposed unless the same is approved by the D.P.I. Against the order passed by the D.P.I. aggrieved party can approach the Tribunal constituted under the Act/Rules. Under this Act, petitioner could approach the Tribunal but instead of doing that, he filed an appeal before the District Judge as provided in the Ordinance issued by the Guru Nanak Dev University, Appeal before the District Judge in view of the enactment of the Act by the State Legislature was not competent.

(9) Petitioner has challenged the order of D.P.I. (Colleges) Annexure P 9 as well. It is submitted by Mr. Patwalia, counsel for the petitioner, that this petition be taken against the order of D.P.I. Annexure P 9 ignoring the order Annexure P 11 passed by Additional District Judge in case the appeal was not maintainable before him. He argued that under the Act, D.P.I. could interfere only if there was dismissal or removal from

service or reduction in rank of an employee and not otherwise. Present was a case of acceptance of a disputed resignation and the only remedy available to respondent No. 1 was to approach the civil Court for redressal of his grievance. Mr. Chatrath, Senior Advocate, appearing for respondent No. 1 on the contrary argued that petitioner cannot be permitted to by pass the alternate remedy of approaching the Tribunal constituted under the Act, to hear appeals against the orders passed by the D.P.I.

(10) As disputed questions of fact are involved in this case which need determination, in our opinion, it would be appropriate to relegate the petitioner to his alternate remedy of filing appeal before the Tribunal. We set aside order Annexure P 11 and direct the petitioner to file an appeal before the Tribunal constituted under the Act against the order of D.P.I. (colleges) Annexure P 9. As the petitioner had been pursuing his remedy in a wrong forum under a *bona fide* belief, we would condone the delay in filing the appeal before the Tribunal. Petitioner is granted time upto 22nd August, 1997 to file an appeal. If the appeal is filed before the Tribunal on or before 22nd August, 1997, the same be treated as having been filed within limitation. Objection of limitation shall not be available to the respondents. As an interim measure, we grant the stay of the order of the D.P.I. (colleges) Annexure P 9 upto 31st August, 1997. Petitioner shall be at liberty to file an application before the Tribunal for stay of the order of D.P.I. Tribunal shall decide the stay application on merits without influencing itself of the fact that this Court had granted an interim stay. Stay granted by this Court should not be taken as an expression of opinion on the question of stay. Tribunal should try to decide the stay application filed by the petitioner by 31st August 1997. In case the application for stay is not decided by the Tribunal by 31st August, 1997 then the stay shall stand extended till the interim application for stay is decided by the Tribunal. We would request the Tribunal to decide the appeal expeditiously preferable within six months as the matter has already been delayed much. With these observations, this writ petition stands disposed of.

(11) A copy of this order be given Dasti under the seal and signatures of the Reader to this Court.