

**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.

Held, that such a prayer cannot be made to the Executing Court under O. 41 rl. 6(2) of the Code. However, such an order can be passed by the Appellate Court where appeal is pending under O. 41 rl. 5(1) of the Code. (Para 1)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri Birinder Singh Sub Judge 1st Class, Chandigarh dated 27th April, 1989 declining the application for staying the execution proceedings and further ordering the attachment of J. D. Property and issuing warrant of attachment for 14th June, 1989.

Claim : Prayer for direction the respondent Decree Holder to accept the bank guarantee instead of the decretal amount in cash during the pendency of RFA No. 2784 of 1987.

Claim in Revision: For reversal of the order of lower court.

Nemo, for the petitioner.

Nemo, for the respondent.

ORDER

Gokal Chand Mital, J. (oral)

(1) The revision is wholly mis-conceived. An application under Order 41 Rule 6(2) of the Code of Civil Procedure (for short 'the Code'), is maintainable only after Court orders sale of the property in execution of the decree. In this case the Executing Court has not been able to make attachment of the property of the Judgment-debtor what to talk of sale.

In the grounds of revision No. 8, the following prayer of the judgment-debtor is contained :

"The present prayer is not for stay of the execution of the decree but for the acceptance of an adequate bank guarantee for the decretal amount till the final disposal of the RSA on merits."

Such a prayer cannot be made to the Executing Court under Order 41 Rule 6(2) of the Code, However, such an order can be passed by the Appellate Court where appeal is pending under Order 41 Rule 5(1) of the Code.

(2) For the reasons recorded above, the revision is dismissed with costs.

P.C.G.