

the merits of this part of the controversial point raised by Mr. P. C. Jain. In my view, there is substance in the contention raised by him and I would accordingly allow this petition only to the extent that the petitioner's nomination would be deemed to be valid so far as the election to the general seat from Ward No. 4 of the Gohana Constituency is concerned. I want to make it clear that the rejection of the nomination paper of the petitioner so far as the reserved seat is concerned was perfectly valid and has not been seriously challenged in the course of arguments by his learned counsel. As there has been divided success in this petition, I would leave the parties to bear their own costs.

(4) As the election is to take place on the 10th instant a telegraphic intimation may be sent to the Deputy Commissioner, Rohtak, as also to the Returning Officer of the Constituency in question.

K. S.

CIVIL MISCELLANEOUS

Before P. D. Sharma, J.

MANMOHAN KAUR,—*Petitioner*

versus

THE PANJAB UNIVERSITY AND ANOTHER,—*Respondents*

Civil Writ No. 2273 of 1967

March 18, 1968.

Panjab University Calendar (1964)—Vol. II—Regulation 2(e)(i)—The term "teacher/lecturer"—Whether includes honorary teacher/lecturer.

Held, that wherever the University wanted to exclude teachers and lecturers working in honorary capacity, they provided that the teachers who were working as paid members of the whole-time teaching staff could appear in certain examinations as private candidates. From the phraseology of the Regulation 2(e)(i) of Panjab University Calendar (1964) Volume II, it cannot be said with any show of reason that the term "teacher/lecturer" did not include teacher/lecturer working in an honorary capacity. The term does not relate to paid teacher/lecturer only.

[Para 5]

Manmohan Kaur v. The Panjab University and another (Sharma, J.)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ, order or direction be issued quashing the Notification No. B.T./64-B/11, dated 10th August, 1965.

NAGINDER SINGH, ADVOCATE, for the Petitioner.

H. R. SODHI, ADVOCATE, for the Respondents.

SHARMA, J.—The Panjab University, respondent, had declared the petitioner as successful in the Bachelor of Teaching Examination held in the month of September, 1964, by their notification No. B.T./64-B/1, dated the 10th December, 1964. This notification was subsequently superseded by another notification, dated 10th August, 1965, by which the petitioner's result was quashed, copy annexure 'C'. The petitioner in her writ petition has prayed for setting aside of the subsequent notification. She passed her B.A. Examination from the Panjab University, Chandigarh, in the month of June, 1963, annexure 'A'. Thereafter she began to work as a teacher in Shri Matra Ganga Girls High School, Baba Bakala, district Amritsar, from July, 1963 and continued to do so till the beginning of the month of September, 1964. She took her Bachelor of Teaching Examination under Roll No. 12, in the month of September, 1964 as a private candidate since she had worked as a teacher for 12 months from the date of the commencement of the examination under Regulation No. 2(e)(i) of the Degree of Bachelor of Teaching, Faculty of Education. She was declared successful in the beginning but her result was subsequently quashed by the impugned notification which she alleged was illegal, unjust, unconstitutional, void and without jurisdiction *inter alia* on the following grounds:—

“(1) That the petitioner was neither given any notice nor afforded an opportunity of being heard before the quashing of her B.T. Examination result;

X X X X X X

(6) That according to the Regulation 2(e)(i) of Degree of Bachelor of Teaching, Faculty of Education, the petitioner was quite eligible to appear in the B.T. Examination as a private candidate;

(7) That the reason given in annexure 'D' by the respondent University that the petitioner as an honorary teacher was

not eligible to appear in the B.T. Examination as a private candidate is nowhere mentioned in the relevant Regulations.

The other grounds mentioned in the petition were not pressed.

(2) The Registrar of the Panjab University in his written statement pleaded that the writ petition was considerably belated and that the petitioner worked as an honorary teacher and as such was not qualified under the statutory Regulations to appear as a private candidate. She suppressed this fact in the admission form and so under a mistake was allowed to take the examination. Subsequent to the declaration of the petitioner's result, a complaint was received in the office purported to be signed by one Kailash Nanda of Amritsar that the petitioner had got her eligibility by fraud as she had never been a teacher in any school. This complaint was referred to the Head Mistress, S.M.G. Girls High School, Baba Bakala, who had attested the admission form of the petitioner, annexure R-1, to report the facts. The Head Mistress by her letter, copy annexure R-2 informed that the petitioner was appointed as an honorary teacher by the Managing Committee of the School on 9th May, 1963 and she continued to function as such up to 19th September, 1964. The Registrar maintained that according to Regulations, the petitioner could not have taken the B.T. Examination as a private candidate and that when true facts were known, the result already announced was quashed.

(3) The admitted facts are that the petitioner passed her B.A. Examination of the Panjab University in the year 1963 and that she worked as an honorary teacher in the S.M.G. Girls High School, Baba Bakala, from the month of July, 1963 to the beginning of September, 1964. It is also patent from the admission form, annexure R-1 that the petitioner did not mention therein about her having worked as a teacher in honorary capacity. She was allowed to take the examination of the Bachelor of Teaching held in September, 1964, and was declared successful in the same year. Subsequently the University having come to know that the petitioner had worked as teacher in honorary capacity, the result already announced was quashed.

(4) The learned counsel for the petitioner pleaded that Regulation 2(e) of the Degree of Bachelor of Teaching at page 384 of the

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Calendar Vol. II-1964-65 applied to the petitioner's case which runs as under:—

“any woman graduate of the University of the Punjab at Lahore who passed the degree examination in 1947, or before or of this University, or (subject to sanction of the Syndicate) of any other recognised University who—

(i) has been working as teacher/lecturer within the Punjab and Himachal Pradesh, in a recognised school or in a school approved by the Syndicate or in a college affiliated to this University, for twelve months from the date of commencement of the examination for the degree of Bachelor in any Faculty prior to the date of application and is admitted under the regulations for private candidates;

or

(ii) has been working as an Assistant or District Inspectress of Schools of the Education Department of either Punjab or Himachal Pradesh for twelve months from the date of commencement of the examination for the degree of Bachelor in any Faculty prior to the date of application and is admitted under the regulations for private candidates.”

The Regulation as reproduced in the Calendar omitted mention of word 'or' in between the words 'before' and 'of' in line third which is a printing mistake as is evident from a letter from the Registrar, Panjab University, to the learned counsel for the petitioner, annexure 'F'. The learned counsel for the respondent on the other hand contended that Regulation 2(b) in Chapter VII under head 'Private Candidates' at page 165 of Panjab University Calendar Volume I, 1964-65 covered the petitioner's case. This regulation is in the following terms:—

“Subject to regulations I and 9, the Senate, on recommendation of the Syndicate, may grant permission to the following classes of candidates for admission to a University examination in the Faculties of Languages, and Arts without their having completed the prescribed course of instruction,

in a college affiliated to the University, or in a teaching department of the University, if they are otherwise eligible to appear under the regulations for the examination.

* * * * *

- (b) Teachers who are working as paid members of the whole-time teaching staff in the institutions specified below, and have been in such service either for a period of two years in the aggregate, or for a period of twelve months continuously, on the date of application, and are recommended by the Head of the Institutions concerned.”

In my opinion the Regulation relied upon by the learned counsel for the respondents has no bearing to the case because it relates to the private candidates appearing for degrees examinations in the Arts and Oriental Faculties. It is common ground that education does not fall under anyone of these Faculties and is an independent faculty. The learned counsel for the respondents further urged that regulation relating to private candidates in Chapter 11 at page 129 of the Panjab University Calendar for the year 1937-38 which was saved by section 2(i) A of the Panjab University Act governs the petitioner's case. It no doubt provides that only whole-time teaching staff of an educational institution under the direct control of a Department of the Punjab Government was eligible to appear as a private candidate in the degree examination of the Punjab University but I feel that with the promulgation of the regulation relied upon by the learned counsel for the petitioner this regulation of 1937-38 stood abrogated.

(5) The only point that remains to be determined is whether the term “has been working as a teacher/lecturer within the Punjab and Himachal Pradesh” includes honorary teachers/lecturers. A careful study of the two Regulations referred to by the learned counsel for the respondents show that wherever the University wanted to exclude teachers and lecturers working in honorary capacity, they provided that the teachers who were working as paid members of the whole-time teaching staff could appear in certain examinations as private candidates. Since the phraseology of the Regulation referred to by the learned counsel for the petitioner and those relied upon by the opposite side is different, hence it cannot be said with any show of reason that the term “teacher/lecturer” did not include teacher/lecturer working in an honorary capacity. The University, thus was not justified in interpreting the plain language of the Regulation within

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orbit of which the petitioner's case fell to mean that it related to only paid teacher/lecturer. Furthermore, the respondents conceded that the petitioner was not afforded any opportunity to state her case before quashing the result of the B.T. Examination taken up by her in September, 1964. This was also against the rules of natural justice. For this and the above the impugned notification can be said to be bad in law.

(6) The writ is allowed with costs and the impugned notification, annexure 'C' by which the petitioner's result which had been declared early was quashed, is set aside.

K. S.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and R. S. Narula, J.

SAT PAL SHARMA AND ANOTHER,—*Appellants*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 472 of 1966

March 22, 1968.

States Reorganisation Act (XXXVII of 1956)—S. 115(7) Proviso—Punjab Financial Commissioner's Office (State Service, Class III) Rules (1957)—Rules 6(f) and 7(1)(e)(i)—Whether ultra vires the Proviso—Expression "Conditions of service"—Meaning of—Such conditions—Whether changed by prescribing a qualifying test for promotion—Approval of the Central Government to the Rules—Whether could be accorded, retrospectively.

Held, that rules 6(f) and 7(1)(e) of the Punjab Financial Commissioner's Office (State Service, Class III) Rules, 1957, are void and ineffective, as these have been framed and made effective in contravention of the statutory protection afforded by the body of the proviso to sub-section (7) of section 115 of States Reorganisation Act, 1956.

[Para 15]