
the petitioner would be entitled to the benefit of the defence under Section 19(2) (a) (ii) and (b) of the Act.

(25) It was for the manufacturer to correctly depict one label with regard to its manufacture and year of package in accordance with Rule 32 of the Rules. As held by the Hon'ble Supreme Court in **P. Unnikrishnan's** case (*supra*), that the proof that the manufacturer from whom the accused purchased the article has been duly licenced, depends on the facts of each case. In every case, the accused cannot be expected to verify further whether the contents of the label on the tin and those in the bill containing the warranty are correct or not. The State has not set up a case that the Tea Leaf which were analysed by the Public Analyst were not of the manufacturer. The case is that the month and year of manufacturer had not been given. Even the contents of the various ingredients which were analysed do not show that the commodity was in any manner adulterated.

(26) Therefore, in the above facts and circumstances, the petition is allowed and the complaint dated 12th March, 1998 Annexure P-2 and consequential proceedings in pursuance thereof are quashed.

R.N.R.

Before Jawahar Lal Gupta & S. S. Grewal, JJ

MANJIT WALIA—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.W.P. No. 16080 of 1999

31st July, 2002

Constitution of India, 1950—Art. 226—Extension in service to a teacher as an incentive for getting 'State Award' as well as 'National Award' as a teacher of outstanding merit—Before considering case for extension Govt. requiring petitioner to deposit an amount of award given by Central Govt.—Neither any rule, instruction nor any order

issued by the Govt. which requires deposit of amount of award, a condition for grant of extension in service—Action of respondents wholly arbitrary, illegal & without jurisdiction—Expressions 're-employment' & 'extension in service'—Distinction between—Extension in service means continuity in the tenure of service whereas there is no element of continuity in re-employment—Petitioner entitled to increments as she was granted extension in continuation of her service—Petition allowed with Rs. 10,000.00 costs.

Held, that :—

- (i) Every action of an officer must be supported by some sanction. Every officer must act within the power vested in him. And then, he must remember that he has been given the authority and power to encourage others to do good. Not to discourage and destroy those who are doing their duty diligently. He must help. Not harass or harm any one. Today, it is necessary to protect the good from the bungling of the incompetent and machinations of the wicked. The society must realise that praise is the wage for virtue. It is the legitimate due of the virtuous. It must be paid. We must commend the good and condemn the bad. Only then the rot can be checked.
- (ii) The action of the respondents in compelling the petitioner to make the deposit of Rs. 10,000.00 before granting her extension in service was wholly illegal. The communication sent to her was not referable to any rule or instruction. Thus, she is entitled to the refund of this amount.
- (iii) The petitioner was granted extension in service. She was not re-employed. Her service was continuous. She was even promoted during the extended period of service. If promotion could be given, there is no reason for denying the increments. Resultantly, even increments for the extended period of service had to be given.

(Para 18)

P.S. Goraya and S.S. Goraya, Advocates, *for the petitioner.*

D.V. Sharma, Addl. A.G. Punjab, *for the respondents.*

JUDGEMENT

Jawahar Lal Gupta, J (O)

(1) Has the petitioner been harassed by the department despite the fact that she was honoured by the nation? First, the relevant facts.

(2) The petitioner was working as a Head Teacher in the Government Primary School, Gurdaspur. On 5th September, 1994, she was given a State Award for valuable services to the community as a teacher of outstanding merit. Three years later, on 5th September, 1997, she was given the National Award for being a “teacher of outstanding merit”. On 31st August, 1998, the petitioner attained the age of superannuation. It appears that the Government has issued instructions,—*vide* letter dated 28th February, 1985 to provide incentives to teachers who win awards. Thus, the petitioner was given extension in service from 1st September, 1998 to 31st August, 2000. A copy of this order has been produced as Annexure P/10. However, before issuing the order of extension, the petitioner was asked to deposit the amount of Rs. 10,000.00 which had been given to her by the Central Government while conferring the National Award. She had made the deposit in pursuance to the directions given to her by the departmental authority. Still further she was not granted any increment during the period from 1st September, 1998 to 31st August, 2000.

(3) The petitioner complains that the action of the respondent authorities in forcing her to deposit Rs. 10,000.00 was illegal. She further claims that she was entitled to the grant of two increments for the period of extended service from 1st September, 1998 to 31st August, 2000 from the due date. She prays that the order by which she was directed to make the deposit of Rs. 10,000.00 be quashed. The amount deposited by her be ordered to be refunded. She further prays that the respondents be directed to release the increments with all consequential benefits. She also claims interest.

(4) The respondents contest the petitioner’s claim. In the reply filed on behalf of the respondents, it has been averred by way of a

preliminary objection that the petitioner was promoted from the post of Head Teacher to that of Centre Head Teacher,—*vide* order 28th December, 1999. On merits, it has been averred that the Punjab Government,—*vide* its memorandum dated 23rd December, 1998 had directed that “in case the petitioner desires to get the National Award (sic.)-(should read-extension in service) she should deposit the award amount of Rs. 10,000.00 into the Govt. Treasury. Thereafter the petitioner in compliance of above instructions deposited the award money of Rs. 10,000.00 in Govt. Treasury,—*vide* challan dated 13th January, 1999”. With regard to the petitioner’s claim to the increments, it has been stated in paragraph II that the petitioner is not entitled “to the benefit of annual increment as per letter dated 16th September, 1999 Annexure P-12 issued by the respondent No. 2.” On these premises, the respondents pray that the writ petition be dismissed.

(5) Learned counsel for the parties have been heard. On behalf of the petitioner, it has been contended that there is no rule or instruction, under which the petitioner could have been compelled to deposit the amount of Rs. 10,000.00 so as to be entitled to avail of the benefit of extension in service for a period of two years. Still further, it has also been submitted that the petitioner’s services being continuous, she was entitled to the release of increments. The claim made on behalf of the petitioner has been controverted by the counsel for the respondents.

(6) The petitioner has produced two pictures as Annexures P/1 and P/2. The first of these pictures shows that she was given the State award by the then Chief Minister, Punjab. The second picture shows the petitioner receiving the National from the President of India. It is the admitted position that the State Award was given to the petitioner “in public recognition of valuable services to the community as a teacher of outstanding merit”. A copy of the citation is at Annexure P/5 with the writ petition. Similarly, the Ministry of Human Resource Development had given the National award to the petitioner “in public recognition of valuable services to the community as a teacher of outstanding merit”. It is also the admitted position that while giving the State award, a cheque of Rs. 5,100.00 was given to the petitioner. Similarly the National award included the payment of Rs. 10,000.00 to her. It is thus, clear that the petitioner was a good

teacher. Her merit had been duly acknowledged by the State as well as Central Governments.

(7) Any individual could have taken pardonable pride in these achievements. Yet, what followed these awards was harassment and humiliation at the hands of the officers of the department. Under the instructions issued by the government, the teacher who gets an award is entitled to certain incentives. One of these is re-employment or extension in service. The petitioner was legitimately entitled to expect an extension for two years. However, on 7th January, 1999 the Block Primary Education Officer, Gurdaspur sent a communication telling her that "in case you wish extension then you should deposit Rs. 10,000.00 amount....in the Treasury. Thereafter complete proposal for approval of your extension in service shall be sent. "A copy of this communication has been produced as Annexure P/9 with the writ petition. In pursuance to the departmental directive, the petitioner was left with no choice. She had to either make the deposit or forego the extension. For obvious reasons, she had chosen to surrender the sum of Rs. 10,000.00. However, the question is - Could the department have compelled the petitioner to make the deposit ?

(8) The counsel for the respondents has been repeatedly asked to point out if there is any rule or instruction under which a teacher could be asked to deposit the amount given to her with the Award by the Central or State Government. The Counsel has enquired from the departmental representative, who is present in Court. He has not been able to refer to any rule, instruction or order issued by the Government which may have entitled the Block Primary Education Officer to compel the petitioner to make the deposit. In fact, neither in the communication nor in the written statement any reference has been made to any provision under which the petitioner was forced to deposit the amount of Rs. 10,000.00 in the Government treasury.

(9) In this context, it deserves notice that the petitioner had been given Rs. 5100.00 with the 'State Award' in the year 1994. While considering her case for grant of extension in service, she was only asked to deposit the amount of Rs. 10,000/- given to her with the 'National Award'. Not Rs. 5100/-. Why was it so done ? There is no explanation.

(10) In view of the above, it is clear that the action of the respondents in compelling the petitioner to deposit Rs. 10,000.00 before considering her case for extension in service was wholly arbitrary, illegal and without jurisdiction.

(11) Mr. Goraya learned counsel for the petitioner has contended that she was entitled to the release of two increments during the period from 1st September, 1998 to 31st August, 2000. Mr. D.V. Sharma states that the State Government has issued instructions to the effect that no increment shall be given during the course of re-employment.

(12) A copy of the order dated 24th March, 1999 by which the petitioner was allowed to continue in service with effect from 1st September, 1998, is at Annexure P/10 with the writ petition. This order was issued by the Secretary, Department of Education. It reads as under :—

“Punjab Government
Education Department
(Education-7 Branch)

ORDER

The Governor of Punjab is pleased to accord approval to the extension of service of Miss Manjit Walia Head Teacher Government Primary Normal School Block No. 1, Gurdaspur being holding of National Award in accordance with the Government Instructions No. 19/29/79-3S4/2979 dated 28th February, 1985 beyond 30th August, 1998 (retirement date) w.e.f. 1st September, 1998 to 31st August, 2000.

Chandigarh

Dated :24th March, 1999

Sd/-

Surjit Kaur Sandhu
Secretary, Education Department,
Punjab, Chandigarh.

(13) A perusal of the above order shows that the petitioner was not 're-employed'. In fact, she was given extension in service. As such, the factual basis on which the petitioner's prayer for the release of

increment was declined, is non-existent. Thus, the plea as raised by the respondents cannot be sustained.

(14) Even legally, there is a definite distinction between 'extension' in service and 're-employment'. 'Extension' in the present context implies an increase in length of time : increased or continued duration'. There is grant of additional time'. A continuity of the individual's tenure of service for a longer time. As against this, 're-employ' means - to hire back'. An employee is re-employed after the lay off'. There is no element of continuity. Re-employment is like a fresh employment after a gap. Thus, extension is not always the same thing as re-employment. Consequently, even if the State government has issued instructions providing that no increment shall be allowed on re-employment (though the respondents have not produced a copy), it cannot mean that it shall also not be admissible when the employer gives 'extension' in service.

(15) There is another aspect of the matter. It is the admitted position that the petitioner was granted promotion from the post of Head Teacher to that of Centre Head Teacher *vide* order dated 28th December, 1999. Thus, the petitioner was promoted during the extended period of her service. If the benefit of promotion could be given, we see no legitimate reason for denying the grant of increments.

(16) Mr. Sharma had initially expressed an apprehension that the document at Annexure P/10 being a translation of the actual order issued by the Government there could be an inaccuracy. However, learned counsel has referred to the original order which is in Gurmukhi script. It is not disputed that the petitioner had been granted extension in service and not re-employment. Thus, the petitioner was entitled to the increments.

(17) No other point has been raised.

(18) In view of the above, it is held that :—

- (i) Every action of an officer must be supported by some sanction. Every officer must act within the power vested in him. And then, he must remember that he has been given the authority and power to encourage other to do good. Not to discourage and destroy those

who are doing their duty diligently. He must help. Not harass or harm any one. Today, it is necessary to protect the good from the bungling of the incompetent and machinations of the wicked. The society must realise that praise is the wage for virtue. It is the legitimate due of the virtuous. It must be paid. We must commend the good and condemn the bad. Only then the rot can be checked.

- (ii) In the present case, the action of the respondents in compelling the petitioner to make the deposit of Rs. 10,000 before granting her extension in service was wholly illegal. The communication sent to her was not referable to any rule or instruction. Thus, she is entitled to the refund of this amount.
- (iii) The petitioner was granted extension in service. She was not re-employed. Her service was continuous. She was even promoted during the extended period of service. If promotion could be given, there is no reason for denying the increment. Resultantly, even increments for the extended period of service had to be given. The respondents shall do so within four weeks from the receipt of a certified copy of this order. Whatever is found due shall be paid to the petitioner.
- (iv) The petitioner shall be paid her dues along with interest at the rate of 9% per annum.

(19) On a consideration of the matter, we are satisfied that the respondents had not acted fairly. Even after the petitioner had approached this Court, the Senior Officers, viz, the Secretary to Government and the Director of Public Instructions (Primary Schools), Punjab had failed to redress the petitioner's grievances. She would be thus, entitled to the costs of this petition, which are assessed at Rs. 10,000.

(20) The writ petition is allowed in the above terms.

R.N.R.