

APPELLATE CIVIL

Before Harbans Singh, C. J. and Gurdev Singh, J.

THE PANJAB UNIVERSITY,—Appellant.

versus

THE KHALSA COLLEGE AMRITSAR ETC.,—Respondents.

L.P.A. No. 285 of 1968

January 13, 1971.

Punjab University Act (VII of 1947)—Section 31—Panjab University Calendar Volume I, Part E, Chapter III(A)—Regulation 17—Whether ultra vires section 31 of Punjab University Act—Regulations 9, 10 and 15—Whether Intra vires.

Held that Regulation 17 of Punjab University Calendar Volume I Part E, Chapter III (A) is outside the powers conferred on the Panjab University by section 31 of Punjab University Act. Regulation 17 enjoins upon the management of a non-Government affiliated College to grant at the time of retirement of a teacher, or on his death, to his nominee or nominees, for efficient and faithful service a gratuity calculated in the manner stated therein, in addition to the benefits given under the Provident Fund Rules. This Regulation cannot be made by the University either under its general power to frame regulations under sub-section (1) of section 31 of the Act nor under clauses (t) and (u) of sub-section 2 of section 31. However desirable it be that teachers employed in non-Government colleges should have pensionable jobs or be entitled to gratuity after having been in service for a number of years, the fact remains that there is nothing in sub-section (2) of section 31 of the Act that empowers the Senate of the University to make regulations compelling non-Government colleges to pay pension or gratuity to the teachers employed by them. Hence Regulation 17 is *ultra vires* section 31 of the Act. (Paras 3 and 5).

Held, that Regulations s. 10 and 15 of Punjab University Calendar, Volume I, Part E, Chapter III(A) are valid and *intra vires* section 31 of the Act.

Letters Patent Appeal Under Clause 10 of the Letters Patent of the Punjab and Haryana High Court, Chandigarh, against the judgment passed by Hon'ble Mr. Justice D. K. Mahajan on 29th March, 1968 in Civil Writ No. 1829 of 1964, with a prayer that the Judgment of the Learned Single Judge in so far as it partly allows Civil Writ No. 1829 of 1964 and declares Regulation 17 Ultra vires of the Act be set aside.

N. K. SODHI, ADVOCATE, for the appellant.

M. R. AGNIHOTRI, ADVOCATE, S. S. KANG, DEPUTY ADVOCATE-GENERAL, PUNJAB, FOR THE STATE, for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

GURDEV SINGH, J.—(1) The Khalsa College, Amritsar, in a petition under Article 226 of the Constitution of India challenged the validity of rules 9, 10, 15 and 17 of the Regulations governing the service and conduct of teachers in non-Government affiliated Colleges framed by the Punjab University. A learned Single Judge of this Court has struck down rule 17 holding it to be beyond the competence of the Punjab University, but upheld the validity of the other three impugned rules. Feeling aggrieved by this judgment, dated 29th March, 1968, both the Punjab University and the Khasla College, Amritsar, have preferred cross-appeals (L.P.A. Nos. 285 and 359 of 1968) under clause (x) of the Letters Patent.

(2) The relevant rules are found in Chapter III(A) of Part E of the Punjab University, Calendar Volume 1. They are among the rules that govern conditions of service and conduct of teachers in non-Government Colleges affiliated to the University. The provision for making such rules, which are also called Regulations, is to be found in section 31 of the Punjab University Act, 1947 (hereinafter referred to as the Act). Sub-section (1) thereof provides:—

“The Senate, with the sanction of the Government, may, from time to time, make regulations consistent with this Act to provide for all matters relating to the University.”

Sub-section (2) thereafter specifies the matters for which such regulations may provide “in particular and without prejudice to the generality of the foregoing power”. It is under clauses (t) and (u) of this sub-section (2) of section 31 that the service rules referred to above are claimed to have been made.

(3) Rule 17, which has been struck down by the learned Single Judge, enjoins upon the management of a non-Government affiliated College to grant at the time of retirement of a teacher, or on his death, to his nominee or nominees, for efficient and faithful service a gratuity calculated in the manner stated therein, in addition to the benefits given under the Provident Fund Rules. The learned Single Judge has found that rule for payment of gratuity cannot be made

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by the University either under its general power to frame regulations under sub-section (1) of section 31 of the Act that has been reproduced above, or under clauses (t) and (u) of sub-section (2) of section 31, on which reliance was placed on behalf of the University. Clause (u) provides for "adequate arrangement for proper administration of the colleges other than Government Colleges affiliated to the University." By no stretch of imagination can this clause be considered to provide for making a rule for payment of gratuity to the teachers employed by a College.

(4) Clause (t) on which the appellant's learned counsel, Mr. N. K. Sodhi, has attempted to defend rule 17, relates to "adequate arrangement to ensure security of service for teachers of the colleges affiliated to the University." Provision with regard to payment of gratuity cannot in any way be considered to be a measure intended to "ensure security of service for teachers."

(5) The absence of a provision for payment of gratuity in the terms of service cannot affect the security of service. Security of service can be ensured by providing against arbitrary or whimsical removal or termination of services or by prescribing the age of retirement or the minimum of length of service on which services can be terminated. The contention of Mr. Sodhi that without a provision for gratuity best talent would not come forward to join the staff of non-Government institutions and those who are already serving there would not like to stay on and may be tempted to leave the colleges in which they are employed for Government service, is irrelevant. However desirable it be that teachers employed in non-Government colleges should have pensionable jobs or be entitled to gratuity after having been in service for a number of years, the fact remains that there is nothing in sub-section (2) of section 31 of the Act that empowers the Senate of the University to make regulations compelling non-Government colleges to pay pension or gratuity to the teachers employed by them.

(6) It is true that the matters specified in the various clauses of sub-section (2) of section 31 do not exhaust the subjects on which the Senate of the University with the sanction of the Government is entitled to frame regulations as it is stated therein that this is "without prejudice to the generality of the foregoing power," yet it must not be forgotten that under sub-section (1) of section 31 the Senate is

not entitled to make any regulation as it likes but only such as are only "consistent with the Act to provide for all matters relating to the University." Section 27 of the Act deals with affiliation and sub-section (1) thereof specifies the matters on which a College applying for affiliation to the University has to satisfy the Syndicate. One of these matters, on which satisfaction is required relates to the teaching staff. It is found in clause (b) of sub-section (1) of section 27, reading as follows:—

"27(1) (b) that the qualifications of the teaching staff, their grades of pay and the conditions governing their tenure of office, are such as to make due provision for the courses of instruction to be undertaken by the College."

(7) It is significant that this clause does not make any mention of pension or gratuity for the teaching staff of the colleges seeking affiliation nor to the terms and conditions of their employment, but only to their qualifications, grades of pay and "the conditions governing their *tenure of office*", which expression cannot be equated with "terms and conditions of their service" or the payment of gratuity or pension on retirement. According to the Words and Phrases, (Permanent Edition) volume 41, page 356, "the word 'tenure' when used in connection with the expression 'tenure of office', means the term of office. *Territory v. Ashenfelter* (1). It is thus idle to contend that a provision with regard to gratuity or pension is one of the matters on which the Syndicate of the University has to be satisfied while dealing with the affiliation of a college under section 27 of the Act.

(8) Mr. Sodhi has referred to section 5 of the Act, which states "The Purposes of the University" and relying upon its, concluding words "to do all such acts as tend to promote study and research", argues that the making of a rule requiring affiliated colleges to pay pension or gratuity to teachers employed by them is intended to attract the best talent for promoting study and research, and thus regulation to that effect as contained in rule 17 can be framed under sub-section (1) of section 31. This contention, in our opinion, is untenable. The absence of a provision for pension or gratuity from the

(1) 12 P. 879, 897, 4 N.M. Johns 85.

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terms and conditions of the employment of teachers in non-affiliated colleges cannot hinder the promotion of study and research, and it is idle to contend that without the prospect of pension or gratuity no one would come forward to engage in study and research. Giving our earnest consideration to the matter, we do not find it possible to disagree with the finding of the learned Single Judge that rule 17 is outside the powers conferred by the Act on the University to frame the regulations. Letters Patent Appeal No. 285 of 1968 must, accordingly, fail.

(9) The learned Judge has, however, upheld the validity of rules 9.10 and 15, and it is against this finding that the cross-appeal has been preferred by the Khalsa College.

(10) Rule 9 lays down 60 years as the age of retirement of an employee of an affiliated college and further provides that it may be extended up to 65 years depending on the physical and mental fitness of a teacher. Mr. Agnihotri, appearing for the Khalsa College, has fairly conceded that a regulation laying down the age of retirement could be made by the University, but contends that no provision for extension of service of a teacher beyond the age of 60 years could be made. He argues that it cannot be in the interests of educational institutions to keep in service teachers beyond the age of 60 years, and there is no reason why the management of affiliated colleges should be compelled to retain persons after they had attained the age of superannuation. The argument is wholly misconceived. Rule 9 nowhere enjoins upon the management of an affiliated college to retain an employee beyond the age of 60 years, but leaves it entirely to its discretion to extend his service upto the age of 65 years depending upon physical and mental fitness of the employee concerned. The use of the expression "may be extended" in this rule makes it abundantly clear that the discretion to grant extension beyond the age of 60 years remains with the management of the college concerned.

(11) Rule 10 provides *inter alia* that besides the Principal, who shall be an *ex-officio* member of the Governing Body of a non-Government college, two representatives of teachers elected in the manner stated therein shall be included in the management. In attacking the validity of this rule, it is argued that the enforcement of this rule may result in introducing a non-Sikh into the managing body of the Khalsa College, an institution established by Sikhs, a religious minority, thus violating Article 30 of the Constitution, which

guarantees all minorities the right not only to establish but also to administer educational institutions of their choice. The contention raised is clearly untenable. The learned Single Judge has rejected it observing as follows:—

“It cannot be said that there is any certainty that a non-Sikh teacher can be elected to the Governing Body. Even if he can be elected to a Governing Body of 20 persons, the presence of two representatives will not in any manner alter the real and true composition of that Governing Body. The object of service rule 10 is merely to give representation to teachers to that Body. Moreover, it is open to the Governing Body not to appoint any person as a teacher, who is a non-Sikh, and if they appoint any person on the teaching staff, who is a non-Sikh, they cannot make a grievance that a non-Sikh has been elected to the Governing Body.”

We have no hesitation in agreeing with the learned Judge. If an educational institution established by a minority considers it necessary or in its interest to employ teachers not belonging to that minority and such teachers enjoy the confidence of their colleagues and are popular enough to be elected to the Governing Body, we fail to see how it can constitute interference with the minority's right guaranteed under Article 30 of the Constitution.

(12) This brings us to the consideration of rule 15, which provides for arbitration in a dispute arising in connection with the termination of the service of a Principal or teacher. Mr. Agnihotri has not been able to indicate what is wrong with this rule. In fact, as observed by the learned Single Judge, this provision far from being offensive is in the interests of the teaching institution as it saves them from unnecessary lengthy and expensive litigation and enables the management and the teachers to obtain speedy redress.

(13) We thus find no force in any of the two appeals and dismiss both of them, leaving the parties to bear their own costs.

K. S. K.