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STATE OF PUNJAB AND ORS.

v.

SWARAN KAUR AND ORS.

MARCH 7, 2007

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[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

C

Punjab State Class IV Service Rules, 1963—School taken over by State—Letter by Director Public Instructions directing District Education Officer to ensure that all members of staff fulfilled the requisite qualification relevant for the post—Authorities of view that respondents not fulfilled the requisite qualification—Writ petition by respondents allowed by High Court—On appeal, held, High Court did not consider the effect of 1963 Rules and the indication in the letter—Matter remitted to High Court for fresh consideration.

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The State of Punjab had taken over the School. The Director Public Instructions Wrote to the District Education Officer to ensure that all the members of staff fulfilled the requisite qualification for recruitment to the relevant post. The authorities held that the respondent did not possess the requisite qualification for appointment under the Punjab State Class IV Service Rules, 1963.

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The respondent filed writ petition challenging the view of Authorities. The Additional Advocate General conceded that the Rules were not applicable to the case of respondent. However, on the basis of concession by Additional Advocate General, High Court allowed the writ petition. The review petition was also dismissed on the ground that there was no presumption on the said letter which would indicate applicability of the Rules. Hence these appeals.

Partly allowing the appeal, the Court

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HELD: The effect of the Punjab State Class IV Service Rules, 1963 and the indication in the letter has not been considered by the High Court. In the circumstances, the orders of the High Court is set aside and the matter is remitted to it for fresh consideration. [Para 8] [643-B-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1185 of 2007.

From the Final Judgment and Order dated 27.4.2004 and 13.5.2005 of the High Court of Punjab and Haryana at Chandigarh in CWP.No. 2899/2003 and RA No. 62/2005 in CWP No. 2899/2003.

H.S. Munjral and Arun K. Sinha for the Appellants.

R.K. Kapoor, M.K. Verma, Govind Kaushik, S.S. Yadav and Anis Ahmed Khan for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in these appeals is to the orders passed by a Division Bench of the Punjab and Haryana High Court. One of them relates to the orders passed in the writ petition while other one relates to the order passed in a review application.

3. The basic question raised in the writ petition filed by the respondents was whether the authorities were justified in holding that they did not possess the requisite qualification for appointment under the Punjab State Class IV Service Rules, 1963 (in short the 'Rules'). The State of Punjab had taken over Chanan Devi Memorial Girl High School, Saleem Tabri, Ludhiana under certain conditions so far as the employment of the members of staff concerned. The Director Public Instructions, Punjab wrote to the District Education Officer, Chandigarh to ensure that all the members of the staff fulfil the requisite qualification for recruitment to the relevant post. Taking exception to the view expressed by the District Education officer that the writ petitioners who are the respondents in these appeals did not possess requisite qualification. Writ petition was filed stating that said view is not sustainable in law. Purportedly acting on a basis of a concession made by learned Additional Advocate General, who was appearing in the writ petition, the writ petition was allowed. The learned Additional Advocate General, Punjab purportedly conceded that the rules were not applicable to the case of the writ petitioner. Subsequently a review petition was filed stating that the concession was uncalled for because the letter of the Director, Public Instructions, Punjab dated 17.11.1995 addressed to the District Education officer, Chandigarh clearly stipulated the terms for continuance in service. The High Court dismissed the review application on the ground that there was no prescription in the said letter which would indicate applicability of the rules.

A 4. In support of the appeals, learned counsel for the appellants submitted that the view of the High Court is clearly untenable. The Director, Public Instructions had clearly stipulated in the said letter that it was the duty of the District Education Officer to ensure that all the members of the staff of the taken over educational institute fulfil the requisite qualification for recruitment to the relevant posts. With reference to the rules it is pointed out that certain educational qualifications have been prescribed which the respondents did not possess.

C 5. In response learned counsel for the respondents submitted that more than a decade has since elapsed and it would not be proper to interfere with the order of the High Court which was based initially on concession and subsequently on a finding recorded that there was no prescription in the letter dated 17.11.1995 relating to educational qualifications.

6. At this juncture it is necessary to take note of the relevant provisions in the Rules which read as follows:

D “Rule 5 : No person shall be recruited to the Service by direct appointment unless he -

- E (a) produces certificates of character from two responsible persons, not being his relatives, who are well acquainted with him in private life;
- (b) is not less than 16 years and not more than 35 years of age on the date of appointment;
- (c) has not more than one wife living and in the case of a woman, is not married to a person already having a living wife:

F Provided that the Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this clause; and

G (d) possesses the requisite knowledge of the regional languages and of English as may be prescribed by the Government from time to time:

H Provided that the appointing authority may, if it is of the opinion that the candidate is otherwise fit to discharge his duties satisfactorily, relax any of the qualification prescribed under this clause.”

7. Similarly in the letter of Director of Public Instructions it was clearly stated as follows: A

“.....it is the duty of the District Education Officer to see that all of them fulfil the requisite qualification for recruitment in the relevant posts.”

8. The effect of the afore-stated rule and the indication in the letter has not been considered by the High Court. In the circumstances, we set aside the orders of the High Court and remit the matter to it for fresh consideration. We make it clear that we have not expressed any opinion on the merits. The High Court is requested to dispose of the writ petition as early as practicable. B

9. The appeals are allowed to the aforesaid extent without any order as to costs. C

DG.

Appeals allowed.