

# SUPREME COURT OF INDIA

State of Punjab

Vs.

Gursharan Sing

(K. Ramaswamy and G.T. Nanavati JJ.)

06.12.1996

## ORDER

Impleadment petition is dismissed.

Laave Granted. We have heard learned counsel for the parties.

These appeals by special leave arise from the judgment of the Division Bench of the Punjab and Haryana High Court, made on February 2, 1993 in CWP Nos, 1629 and 1976/1992. The Government Engineering College, Bhatinda with the existing staff was handed over to a society, an autonomous body, as a result of the Government decision dated January 26, 1992. The respondents who are the Governments who are the Government employees files writ petitions contending that they are not agreeable to further transfer with the institution and pleaded for their absorption in the Government Departments. The High Court in the impugned order has directed to absorb all of them is Government institutions on permanent basis. Feeling aggrieved, these appeals by special leave have been filed by the State Government. It is settled law that a Government servant on abolition of the post is required to be either dismissed from service due to non-availability of post or may be dealt with according to the policy. Similar would be the situation when the Government decodes to had over its institution to a private body. By order of this Court dated April 18, 1996 it was recorded that the 14 named respondents have opted to insist upon their absorption in the Government service and the rest of them have agreed to be absorbed in the institution taken over by the autonomous body. Consequently, we wanted to ascertain from the Government whether it would be possible for the Government to allow them to retain their status as Government servants in any vacancy in any Department and/or in any college under their control, Counsel had sought for and permission was given to consider the above suggestion given by the learned counsel for the respondents. Pursuant thereto, an affidavit has been filed by Ranjit Sing, Additional Director, Technical Education and Industrial Training, Punjab. In that affidavit, it is stated that the Government have decided to absorb the following seven respondents working in non-teaching staff in the college:

1. Shri Gurjant Singh
2. Shri Kulwant Singh
3. Shri Ved Prakash

4. Shri Gian Singh
5. Shri Lakshim Chand
6. Mrs. Kamaljit Kaur
7. Shri Surinder Mittal

They have decided to absorb them in the Government service immediately in any of the institutions under the Directorate of Technical Education and Industrial Training, Punjabi on the posts in the same scale of pay. The respondents have agreed for the same and therefore, the appellant is directed to absorb them in the same scale of pay in the same post in any of the institution under the control of the Directorate of Technical Education and Industrial Training, Punjab.

As regards the 5 Lecturers, namely, (1) Sh. Prabhjot Singh; (2) Sh. Manwinder Singh; (3) Sh. Pawan Kapoor; (4) Sh. Amarjit Singh and (5) Dr. Sarita Chopra it is stated in the affidavit that they were working at the time when the said college was taken over by the Society in the year 1992, as Lecturers. As a result they were carrying the scale of pay of Rs. 2200-4000/- as on the date. It is stated that the Government is prepared to absorb them as Lecturers in any of the Polytechnics of the State under the Directorate of technical Education and Industrial Training, Punjab with a special pay of Rs. 200/- per mensem. Shri P.H. Parekh, learned Counsel for the respondents, states that even as early as 1992-93 advertisement was made for recruitment of Lecturers either with the same scale if pay or lower scale of pay and such recruitment was regularly going in thereafter and as recently as on October 4, 1996 further advertisement came to be made inviting applications for recruitment. Therefore, there is no impediment for the Government to absorb them in any of the college, instead of polytechnics, where they can improve their qualifications and chances of service tenure. Even if vacancies are existing at present, they are prepared to wait till the vacancies arise. We are of the view that the suggestion made by Shri P.H. Parekh appears to be reasonable. Undoubtedly, they have been working as Lecturers in the Colleges which are Government colleges with status as Government servants. Under these circumstances, it would be appropriate to absorb them in any of the colleges instead of poly-technical Institutions. Therefore, the appellants are directed to absorb them in any of the colleges as Lecturers in the same scale of pay. If there are no vacancies as at present, they are directed to be absorbed as and when vacancies arise. Until then, the respondents are directed to work in the poly-technical Institutions as Lecturers, as suggested in the counter-affidavit.

Professor Inderjit Singh is working in the scale of pay of Rs. 4,500-7,300/-. It is stated in the affidavit that there is no equivalent post but the post of Executive Engineer in Public Health Department, Punjab in the grade of Rs.3000-4500/- is available. Therefore, if he is agreeable, Government have no objection to absorb him in the said post but subject to the result of enquiry pending against him. In the affidavit filed by Inderjit Singh, he has stated that according to his information, as many as five posts of principals in the Polytechnics are available in the scale of pay of Rs.4125-5600/-. He is prepared for his absorption in any one of those institutions or any institution in which the vacancy may be available. Therefore, instead of sending him as an Executive engineer, he may be absorbed as a principal of any polytechnical Institution, i.e., teaching institution in which he is working as a teaching staff. Subject to the Rules of recruitment of the Principal, the Government is directed to consider him for absorption as a principal in any of the five institutions named by him, viz., (i) Post of Principal, Government Polytechnical at Khooni Mazra,

District Ropar; (ii) Principal of Government Polytechnic Lehna Ganga, District Sangrur; (iii) Post of Principal Government Polytechnic Bhikhi-wind, District Amritsar; (iv) Post of Principal, Government Polytechnic for Women at Patiala; and (v) Post of Principal Government Polytechnic for Women at Amritsar or any of the institutions that may be available. It is made clear that this absorption will subject be to the following conditions: (i) In the event of pending enquiry results against him, then this absorption would not sand in the way of the appellants for taking such disciplinary action as is available according to the Rules; (ii) In the event of his exoneration from the charge in the departmental enquiry, he will be fitted into the scale of pay of Rs.4125-5600/- subject to he is drawing the present scale of pay as on the taking over in 1992 as special pay to him; (iii) His fitment as Principal will be in accordance with the Rules applicable to the Rules and his fulfilling the qualifications.

As regards Dr. G.S. Sekhon, he is at present working as Assistant professor in the scale of pay of Rs. 3700-5700/-. It is stated in the affidavit and also rejoinder affidavit had written to Education Department to make efforts to fine an equivalent grade for placement of Dr. Sekhon. Education Department has reported that lecturers appointed Pursuant to the selection by the Punjab Public Service Commission in the colleges, are recruited in the grade of Rs.2200-4000/-. Therefore, it is difficult to adjust him in the scale of rs.3700-5700/-. Government, therefore, has decided to absorb him as a Lecturer in the scale of Rs.2200-4000/- with a special pay of Rs. 200/-. If it is agreeable to the respondent, the Government have no objections for his absorption as a Lecturer. It is stated in the affidavit filed by Dr. Sekhon that he has no objection for being absorbed as a Lecturer in the scale of pay of Rs.2200-4000/- . Under these circumstances, the appellants are directed to absorb him as a Lecturer in Physics and Mathematics in any of the Governments Colleges in the scale of pay of Rs.2200- 4000/- protecting his last drawn scale of pay in 1992 in the scale of Rs.3700-4700/- with a special pay. Mr. Pawan Kapoor and Amarjit Singh are Presently working as a Lecturers in the College of Engineering taken over by the Society. Though in his affidavit Shri Ranjit Singh, Additional Director has not dealt with their claims for absorption in the Government service, in the affidavit filed by Dr. Sekhon in para 15, it is stated as under: "That the respondent No. 13 and 18 are teaching as lecturer in the subject of Mechancial Engineering in the College of Engineering and Technology, Bhatinda. They can be absorbed against the posts of S.D.E Irrigation department; Assistant Divisional Manager (Store/Purchase) State Transport Department; Assistant Director of factories Labour Department; S.D.E. Public Health Department and S.D.E. (B&R) Department of Punjab Government. To the best of knowledge two post of S.D.E. Irrigation Department are lying vacant with the Government of Punjab." In view of the above statement, we think that if there is no post available in any of the Engineering Colleges for absorption as Lecturer, it will be open to the Government to absorb them as Sub-Divisional Engineers in Irrigation Department, Assistant Division Manager (Store/Purchase) State Transport Department; Assistant Director of Factories Labour Department; S.D.E. (B&R) Department of Punjab Government. Therefore, it is open to the Government appellant to absorb the two persons in any of those post mentioned or any equivalent post to which the Rules of recruitment would permit.

The appeals are according disposed of. No costs.