

State of Punjab and Others

Vs

Harnam Singh and Others

Civil Appeal No. 444 of 1997

(K. Ramaswamy, S. Saghir Ahmed JJ)

17.01.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment of the Punjab and Haryana High Court, made on 13-9-1995 in Writ Petition No. 5590 of 1995.

3. The admitted position is that the respondents joined the service as drawing teachers in the District Boards and Zilla Parishads in Punjab during the year 1957-58. The schools were taken over by the Government of Punjab from District Boards and Zilla Parishads. At the time of take-over, two of the conditions enumerated in the deed of take-over were :

"3. The Government shall not be bound to take in government service the members of the staff of the school and shall have full discretion in taking over such of them in government service as may be considered suitable by it (Govt.).

4. The members of the staff who are taken in government service by the Government under the preceding clause shall be treated as fresh entrants in government service and no credit whatsoever of their previous service in the aforesaid school shall be allowed to them and their seniority vice versa. The old government servants shall be treated accordingly."

4. The question, therefore, is whether the view of the High Court that the previous service rendered by the respondents/erstwhile teachers in District Boards and Zilla Parishads would be counted for the purpose of seniority and other benefits, is correct in law. In view of the aforesaid clauses, it would be abundantly clear that the Government has been given the discretion to take any of the existing members into the service and if so taken, they shall be treated as fresh entrants into the government service vis-a-vis the existing government employees. It would be reasonable to conclude that the Government have taken over the schools run by the District Boards and Zilla Parishads as government schools with the aforesaid conditions to safeguard the service conditions of the existing employees of the Government vis-a-vis the new entrants. Under those circumstances, the staff working in the former Zilla Parishads or Boards taken over by the Government would be treated as fresh entrants into the government service from the date of taking over. Therefore, the previous service rendered by them would not be counted for seniority etc. It would also be clear that unless there was a condition at the time of take-over to treat the previous service of the employees as part of service under the government service, it would not be counted. In other words, it will be subject to the terms of take-over.

5. The controversy is no longer res integra. In similar circumstances, this Court in State of Punjab v. Dev Dutt Kaushal [1995 Supp (4) SCC 748 : 1996 SC (L&S) 237 : (1996) 32 ATC 185] in para 8 considered the question squarely and held that :

"... the respondent was not entitled to any pension according to the service conditions obtaining in the private college. Had the college not been taken over by the Government and had he retired in the normal course, he would not have been entitled to any pension. He was entitled only to contributory provident fund. It is only under government service that pension is provided for. But such pension is available only if any employee puts in ten years of service under the Government. Now the gift deed does not say that for the purpose of pension, the service rendered in the college while it was under the private management shall also be counted. On the contrary, it says that the Government shall not be responsible and shall not accept any liability for the period prior to the taking over of the college and that all such liabilities shall be cleared by the managing committee of the college - which means that on the date of taking over of the college, the respondent was entitled to be paid the contributory provident fund by the then management of the college."

6. In view of the above legal position, the parties are governed by the conditions specified in the deed of take-over. As mentioned earlier, the conditions specified are that they are to be treated as fresh entrants. In other words, the previous service has been wiped out and, therefore, they are not entitled to take into account the previous service for any of the benefits including pension.

7. The appeal is accordingly allowed. As a consequence, the writ petition stands dismissed. No costs.