

Before Mehtab S. Gill and Augustine George Masih, JJ.

TAJVIR AND OTHERS,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 1477 of 2007

25th September, 2008

Constitution of India, 1950—Art. 226—Counting of previous service in private unaided institution for grant of senior scale/selection grade—Rejection of—Whether previous service rendered by a Lecturer in an unaided private college is liable to be counted for grant of senior scale/selection grade—Held, yes—No dispute that petitioners had actually worked and performed duties of Lecturers in private unaided College—Merely because they have not been paid salary for said period they cannot be penalized for same by holding that period as break period—Petitioners held entitled to counting of previous service rendered by them in private unaided college for purpose of grant of senior scale/selection grade—Respondent College also directed to release salary of petitioners for said period.

Held, that as far as the claim of the petitioners that they are entitled to counting of their previous service in the private unaided institution is concerned, we are of the view that this point has already attained finality up to the Hon'ble Supreme Court and the matter is covered in favour of the petitioners to the extent that service rendered by them in private unaided institution is to be counted for the purpose of granting the benefit of senior scale/selection grade.

(Para 16)

Further held, that it is not disputed by any of the parties that the petitioners have actually worked and performed the duties of Lecturers in the College for the said period. There can be no dispute that since the petitioners have worked for the said period, they are entitled to the salary. Merely because they have not been paid the salary

for the said period, for no fault of theirs, they cannot be penalized for the same by holding this period as break period. The petitioners are entitled to grant of salary for the period 1st August, 2004 to 16th May, 2005 from the Management of the College. In the light of the above, the objection raised by the Government that there could be a break in service merely because the petitioners have not been paid the salary for the period mentioned above, also does not stand now.

(Paras 18 & 20)

R.K. Malik, Sr. Advocate with Parveen Kumar Rohilla, Advocate,
for the petitioners.

Harish Rathee, Sr. DAG, Haryana, *for respondents No. 1
and 2.*

Ram Chander, Advocate *for respondent No. 3.*

AUGUSTINE GEORGE MASIH, J.

(1) The petitioners, in the present writ petition, are claiming the quashing of impugned order dated 26th October, 2006 (Annexure P-15),—*vide* which the Higher Education Commissioner, Haryana-respondent No. 2 has refused to count the previous service rendered by them for the purpose of grant of senior scale/selection grade. They have also prayed for a writ of Mandamus directing the respondents to release their salary for the period from 1st August, 2004 to 16th May, 2005 along with interest.

(2) The brief facts of the case are that the petitioners were working as Lecturers in the Erstwhile Shaheed Udham Singh National College, Matakmajri (Indri), Karnal, a privately managed unaided College affiliated to the Kurukshetra University. The petitioners, who were appointed after due advertisement of the posts by the Management by a duly constituted Selection Committee as per the University guidelines, were approved by the Kurukshetra University and they continued to serve the said college till the date their services and the College were taken over by the Government of Haryana,—*vide* letter dated 17th May, 2005 (Annexure P-6) with effect from that date itself. It is the contention of the petitioners that on 30th July, 2004, the

Chief Minister, Haryana, took a decision to take over Shaheed Udham Singh National College Matak Majri (Indri), Karnal. In view of the said decision, respondent No. 2,—*vide* letter dated 13th August, 2004 directed the management not to recruit any teaching/non-teaching staff after duly mentioning therein the order of the Chief Minister. Later, the Management got a gift deed registered on 4th August, 2004 (Annexure P-2) in favour of the Government,—*vide* which all movable and immovable properties of the College were lifted. According to the petitioners, for all intents and purposes the control of the College was handed over by the Management to the Government in view of the above-mentioned gift deed dated 4th August, 2004 from that date. Thereafter, the Principal and the Management sought sanction for permission to incur expenditure for the smooth running of the College. Since no salary was paid to the staff with effect from July, 2004 to January 2005, the Principal of the College,—*vide* letter dated 12th February, 2005 (Annexure P-5) requested the Higher Education Commissioner—respondent No. 2 to release the same. Even after taking over of the College by the Government on 17th May, 2005, the salary for the period from 1st August, 2004 to 16th May, 2005 has not been released to the petitioners till date. On 15th June, 2005, formal letters of appointment on temporary/*ad hoc* basis were issued to the petitioners and thereafter on examining/judging their suitability, they were offered regular appointment letter on 15th February, 2006 with effect from 17th May, 2005 i.e. the date of taking over of the College.

(3) As per the case of the petitioners, they are entitled to the grant of senior scale/selection grade by counting the service rendered by them in different colleges, whether government or private. They have based their claim on the strength of letter dated 8th December, 2000 (Annexure P-12) issued by the Financial Commissioner and Secretary to Government of Haryana, Education Department to the Director of Higher Education, Haryana—respondent No. 2,—*vide* which revision of pay-scales of the teachers of Universities and Colleges of Haryana was ordered. According to the petitioners, as per Annexure IV of the letter dated 8th December, 2000, the Scheme applies to all Universities and Colleges (excluding Agricultural Universities, Medical and Veterinary Science Colleges) admitted to the privileges of the Universities. Clause

9 of the said annexure states that previous service, without any break as a Lecturer or equivalent, in a University, College, National Laboratory or other Scientific Organization etc. should be counted for placement of Lecturers in the senior scale/selection grade. It has been further contended that Higher Education Commissioner-respondent No. 2 had,— *vide* his letter dated 28th August, 2001 (Annexure P-13) clarified that the service rendered in non-aided institutions shall also be counted for the purpose of senior scale/selection grade. On the basis of these two letters dated 8th December, 2000 (Annexure P-12) and letter dated 28th August, 2001 (Annexure P-13), the petitioners contend that they are entitled to the grant of senior scale/selection grade by considering the previous service rendered by them in the private non-aided institutions. It has further been contended that the Government has taken over 22 other Colleges in the State of Haryana. The previous service of all the employees, whose services have been taken over by the Government in these 22 colleges, has been counted for the purpose of grant of senior scale/selection grade, which according to the petitioners, is a clear case of discrimination between similarly placed employees where the petitioners have been left out of the benefit to which they are entitled to, as per their statutory right and have been singled out for the non-grant of benefit of counting of previous service.

(4) According to the petitioners, the Principal of the College-respondent No. 3,— *vide* his letter dated 12th June, 2006 (Annexure P-14) had requested the Higher Education Commissioner-respondent no. 2 that the service rendered by the petitioners in the private unaided college, which was taken over by the Government, be counted for the purpose of grant of senior scale/selection grade. However, the said request was rejected by respondent No. 2,— *vide* letter dated 26th October, 2006 (Annexure P-15) on the ground that the petitioners were appointed in the initial grade after their services were taken over by the Government,— *vide* letter dated 17th May, 2005 with effect from that date itself. A specific condition was stipulated in this letter that the Government will not be liable for any liability before taking over of the college and these Lecturers will be considered in the Government service from the date the College was taken over and their seniority shall also be considered from the date. It is this letter

dated 26th October, 2006 (Annexure P-15) which has been assailed by the petitioners in the present writ petition.

(5) Upon notice having been issued, respondent Nos. 1 and 2 have filed written statement wherein the grounds stated for rejection of the claim of the petitioners,—*vide* letter dated 26th October, 2006 (Annexure P-15) have been reiterated. It has been stated that the petitioners were appointed on initial grade of Rs. 8,000-13,500 prescribed for the Lecturers on the condition that the Government will not be responsible for any liability before taking over of the College and that the petitioners will be considered in Government service from the date the College was taken over, this was also subject to the condition that they will furnish affidavits to the effect that they will not claim any benefit of previous service rendered by them in the non-aided private College. Accordingly, the petitioners furnished affidavits that they will not claim any benefit of previous service through any Court case after their appointment by the State Government besides giving an undertaking that in case of their appointment in Government service, they will abide by all the terms and conditions in respect of appointment, pay fixation and seniority as prescribed by the Government. It has been stated by the respondents that in view of letter dated 17th May, 2005 and the affidavits submitted by the petitioners, they have been granted seniority from the date of taking over of the college and accordingly, their pay has been fixed at the initial stage of the pay scale prescribed for the Lecturers.

(6) It has been further submitted that in the letter dated 28th August, 2001 (Annexure P-13), it has been clearly mentioned that the State Government agreed to count the service rendered by a Lecturer in a College for the period it remained a non-aided institution in the similar manner as in the case of aided institution for the purpose of grant of senior scale/selection grade subject to the condition that the Lecturer was selected in accordance with the prescribed procedure and fulfilled the qualifications and conditions prescribed by the University Grants Commission. The selection of the petitioners was not in accordance with the guidelines of the University Grants Commission. Further, their case for grant of senior scale/selection grade was not forwarded by the Management of the College in view of the notification

dated 8th December, 2000. The Management of the College was duty bound to submit the same before taking over of the College by the State Government on 17th May, 2005 and therefore, now the petitioners cannot claim the benefit of previous service rendered by them in the private unaided institution. As regards the claim of the petitioners that the State Government had already granted similar benefit to the other 22 colleges which were taken over by the Government, the answering respondents No. 1 and 2 have submitted that out of these 22 colleges, 21 colleges were being provided grant-in-aid by the State Government. However, it is admitted that one of the colleges, namely, Rashtriya Mahavidyalaya College, Taraou, was being run under Self-Financing Scheme before being taken over by the State Government, meaning thereby that the said institution was an unaided institution.

(7) It is the contention of the respondents No. 1 and 2 that the condition prescribed in the letter dated 18th December, 2000 which provides for counting the previous service without any break as Lecturer or equivalent in the University, College etc. has not been fulfilled as the petitioners have not received the salary from 1st August, 2004 to 16th May, 2005 before taking over of the college, which amounts to break period in service. As regards the salary for the period 1st August, 2004 to 16th May, 2005 is concerned, the stand of respondents No. 1 and 2 is that as per letter dated 17th May, 2005 i.e. the date when the college was taken over by the Government, there was a specific condition No. 6 that the "Government will not accept any liability prior to take over of the college. The Management of the Shaheed Udham Singh National College, Mataak Majri (Indri), Karnal will be responsible for this" and since this liability is for the period prior to the taking over of the college, the then Management of the College is responsible for making all such payments as were required to be made to the staff, or for smooth running of the college such as electricity bills, telephone bills, water bills or University dues or any other dues. The fact with regard to the petitioners having worked in the College for the said period has been specifically admitted by the respondents in their written statement. The only objection, therefore, is that they are not liable to pay the salary for the said period of service rendered by the petitioners as Lecturers in the College.

(8) Respondent No. 3 has filed a separate written statement wherein it has been submitted that after the registration of the gift deed dated 4th August, 2004 all the administrative and financial control of the college vested in the Government as assets of respondent No. 3 stood transferred to respondent No. 1 who became the owner of all the properties of respondent-Management Committee. In the light of this, respondent No. 1 had become liable to discharge all the liabilities accruing after the registration of gift deed i.e. 4th August, 2004. Respondent No. 3, had nothing to do with the College once the same had been taken over by respondent No. 1. It has been stated that once the Chief Minister had taken a decision to take over the College, all the liabilities of the College are to be discharged by the Government of Haryana as the decision of the Chief Minister is the decision of the Government in view of the Haryana Government Business Rules, 1977 and the former Managing Committee of the College had nothing to do with the assets and liabilities, more so when all the assets of the college had been transferred to the Government in pursuance to the decision of the Chief Minister dated 30th July, 2004 which was given effect to,—*vide* the gift deed dated 4th August, 2004. The said decision of the Chief Minister having been accepted and a formal order also having been conveyed,—*vide* letter dated 13th August, 2004 that too after the gift deed had been executed on 4th August, 2004, the stand of the Government that the college was actually taken over on 17th May, 2005 cannot be accepted as all the liabilities after the decision of the Chief Minister would be of the Government.

(9) We have heard counsel for the parties and with their able assistance have gone through the records of the case.

(10) It has been submitted by the counsel for the petitioners that as regards counting of the service rendered by the petitioners in the previous unaided institution is concerned, the same stands settled by a judgment of this Court in C.W.P. No. 11125 of 1999, **Dr. Romila Jain versus State of Haryana and another**, decided on 27th January, 1995 (Annexure P-9) wherein this Court has held that the previous service rendered by a Lecturer in an unaided private college is liable to be counted for grant of senior scale/selection grade to such Lecturers who had joined service in the Government College after resigning from

service from private colleges. Letters Patent Appeal, i.e. LPA No. 686 of 1995 preferred against this judgment was dismissed by this Court on 12th January, 1996 and thereafter, SLP No. 12441 of 1996 before the Hon'ble Supreme Court preferred by the State of Haryana, was also dismissed on 12th November, 1996. Even a review petition filed by the State of Haryana in the Hon'ble Supreme Court was dismissed on 28th April, 1999. The only objection, therefore, which remains is that as per the stand of the respondents, there is a break in service because the petitioners have not been paid the salary for the period from 1st August, 2004 to 16th May, 2005 although they admit that the petitioners have worked in the College for the said period before taking over of the services of the petitioners,—*vide* letter dated 17th May, 2005.

(11) Counsel for the petitioners contends that since the petitioners have worked on the said posts, they are entitled to claim salary for the said period. They cannot be penalized for non-payment of their salary which liability falls either on the State or on the private Management. The petitioners were required to perform their duties and they have rendered services therefore, their services are to be treated as continuous without any break. As regards the stand of respondents No. 1 and 2 with regard to the affidavits submitted by the petitioners regarding non-claim of benefits of the previous service rendered by the petitioners in the private unaided institution which was taken over by the Government, the counsel submits that the petitioners are not claiming seniority and other benefits for the service rendered by them. What they are claiming is a statutory right which cannot be denied to them as there can be no estoppel against the Statute. He further contends that the other 22 private colleges and their employees which were taken over by the Government have been granted the benefit of counting of their service for senior scale/selection grade but the petitioners have been singled out although it has been admitted that one of the colleges i.e. Rashtriya Mahavidyalaya College, Taraou, was an unaided College as was the Shaheed Udham Singh National College, Matak Majri (Indri) Karnal.

(12) Counsel for respondents No. 1 and 2 submits that the services of the petitioners are governed by the letters of their appointment which were issued on the basis of the letter dated 17th may, 2005,—*vide* which the College was taken over. The appointment letters were issued to the petitioners initially on 15th June, 2005 wherein it was

specifically mentioned that the petitioners shall furnish an affidavit to the effect that they will abide by all terms and conditions in respect of appointment, pay fixation and seniority as prescribed by the Government and they will not claim past service benefits through any Court of law. The petitioners accordingly had submitted their affidavits and therefore, now cannot back-track from them. Further, as per the letter dated 17th May, 2005,—*vide* which the college was taken over, it was specifically mentioned that the staff of the college will be considered in Government service from the date of taking over and their seniority will be fixed in accordance with the Government Rules only. All appointments shall be fresh appointments and the pay of the said staff will be fixed at the initial scale of the pay-scale prescribed for the lecturers of the Government and regularized according to the Government Rules/instructions.

(13) In the light of these submissions, Mr. Rathee, learned Sr. DAG, Haryana, contends that the petitioners are not entitled to the claim which they are making in the present writ petition. As regards the salary for the period 1st August, 2004 to 16th May, 2005, he submits that although the petitioners have rendered service for the said period but it was within the domain of the Management of the college as the college was taken over only on 17th May, 2005, when in letter dated 17th May, 2005 itself, it had been specifically mentioned in Condition-6 that the Government will not accept any liability prior to taking over of the Shaheed Udham Singh National College, Matak Majri (Indri), Karnal and Condition-II states that the entire movable and immovable properties of the college will come under the control of the Government after taking over of the college by the Government.

(14) State counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of Punjab versus Dev Dutt Kaushal (1)**, to submit that the parties are bound by the terms and conditions as enumerated in the gift deed and the document of taking over of the college. Since the said terms and conditions have been accepted by all i.e. the Government, the Management of the private unaided College and the petitioners, none of the parties can now turn around and state that they are not bound by the same.

(1) AIR 1996 S.C. 85

(15) Counsel for respondent No. 3 has argued on the same lines as their stand in the written statement by submitting that since the gift deed was executed on 4th August, 2004, the Management had no control over the college and therefore, they are not liable to pay the salary for the period claimed by the petitioner and it is the liability of the Government to make good the claim of salary of the petitioners for the said period.

(16) We have given our thoughtful consideration to the rival contentions raised by the parties. As far as the claim of the petitioners that they are entitled to counting of their previous service in the private unaided institution is concerned, we are of the view that this point has already attained finality up to the Hon'ble Supreme Court and the matter is covered in favour of the petitioners to the extent that service rendered by them in private unaided institution is to be counted for the purpose of granting the benefit of senior scale/selection grade in the light of the judgment passed in C.W.P. No. 11125 of 1995 **Dr. Romilla Jain versus State of Haryana and another** decided on 27th January, 1995 (Annexure P-9) which has been upheld up to the Hon'ble Supreme Court. This fact finds reflection in the letter dated 28th August, 2001 (Annexure P-13) issued by the Higher Education Commissioner, Haryana-respondent No. 2, wherein it has been stated that the State Government had agreed to count the service rendered by a Lecturer in a college for the period it remained an unaided institution in the similar manner as in the case of aided institution for the purpose of grant of senior scale/selection grade with a condition that the lecturer was selected in accordance with the prescribed selection procedure and fulfilled the qualifications and conditions prescribed by the University Grants Commission,—*vide* their letter No. F.I.6/890 (P.S. Cell) dated 27th November, 1990 notified by the Haryana Government,—*vide* letter No. 1199 edu-I (1) dated 18th December, 2000.

(17) The question therefore, which requires decision by this Court is whether the period of service rendered by the petitioners from 1st August, 2004 to 16th May, 2005 for which they have not been paid the salary would amount to break period and, therefore, dis-entitle them to the grant of senior scale/selection grade as it would violate the

condition of continuous service as required in letter dated 18th December, 2000 ?

(18) It is not disputed by any of the parties that the petitioners have actually worked and performed the duties of lecturers in the College for the said period. There can be no dispute that since the petitioners have worked for the said period, they are entitled to the salary. Merely because they have not been paid the salary for the said period, for no fault of theirs, they cannot be penalized for the same by holding this period as break period. The next question is whether it has to be paid by the Government or the Management. A perusal of letter, dated 7th May, 2005 (Annexure P-6),—*vide* which the College was taken over stipulates the terms and conditions for take over. Condition No. 1 states that Shaheed Udham Singh National College, Matak Majri (Indri), Karnal, shall transfer the movable and immovable and endowment funds at present pledged to the Kurukshetra University, Kurukshetra, to the Government in the name of Higher Education Commissioner, Haryana Chandigarh. Condition-6 the Government will not accept any liability prior to taking over of the College and the Management of Shaheed Udham Singh National College, Matak Majri (Indri) Karnal will be responsible for this. Condition-11 states that entire immovable and immovable properties of the College will come under the control of the Government after taking over of the college by the Government.

(19) There can be no doubt that the college and the services of the employees of the college were taken over by the Government on 17th May, 2005. As per these terms and conditions which were accepted by both Management and the petitioners, the liability prior to that date is that of the Management of Shaheed Udham Singh National College, Matak Majri (Indri) Karnal as is clear from conditions 1, 6 and 11, referred to above. The stand of respondent No. 3 that the immovable and immovable properties of the College came under the control of the Government on decision of the Chief Minister to take over the College or the date of registration of the gift deed, cannot be sustained. It is further an admitted position that the Management of the College had been running the day to day affairs of the college till the take over by the Government. Merely because they had sought approval to spend the funds, does not mean that the Management of the College

was with the Government. At the most it can be said that the supervision was with the Government but the actual control was with the Management of the College. The control actually changed hands only after the taking over of the college by the Government on 17th May, 2005.

(20) In the light of the above, we have no hesitation in holding that the petitioners are entitled to grant of salary for the period 1st August, 2004 to 16th May, 2005 from the Management of the college. In the light of the above, the objection raised by the government that there could be a break in service merely because the petitioners have not been paid the salary for the period mentioned above, also does not stand now.

(21) The objection of the Government that the petitioners are bound by the terms of their appointment letters, according to which they cannot claim benefit of their previous service, in our view is also misconceived. The letter dated 17th May, 2005, *vide* which the college was taken over by the Government laid down certain terms and conditions. Conditions 2 to 5 and 12 relating to the employees which are reproduced here-in-below :—

- “2. Such staff as is in the service of the college on the date of taking over of the college by the Govt. and who fulfilled the qualifications on the date of their initial appointment in the college and whose appointments were approved by the concerned University may be appointed for a period of six months and their regularization in Govt. Service will be subject to the approval of Haryana Public Service Commission/ Haryana Staff Selection Commission as the case may be.
3. The staff of the college will be considered in Govt. service from the date of taken over only and their seniority will be fixed in accordance with the Govt. rules only. But there will be no change in their inter-

seniority in the college and all appointment should be fresh appointment.

4. The pay of the taken over employees will be fixed at the initial stage of the pay scale of the post in the Govt. and regularized according to Govt. rules/instructions.
5. All employees will give an undertaking that they will abide by all terms and conditions in respect of appointment, pay fixation and seniority by the Govt.
12. A written affidavit may also be taken from the eligible concerned employees that they will never claim any past service benefit through any Court.”

(22) A perusal of the above would show that the services of only such employees would be taken over who fulfill the qualifications on the date of their initial appointment in the College and whose appointment was approved by the concerned University. They would be considered in Government service from the date of taking over only and their seniority will be fixed in accordance with the Government Rules only. Their appointment would be a fresh appointment and the pay fixed at the initial stage of pay-scale of the post in the Government and regularized according to Government Rules/instructions.

(23) What the petitioners would not be entitled to, is the seniority as they would be considered in service from the date of taking over and their appointment would be a fresh appointment. As far as their pay is concerned, condition 4 states that they would be fixed at the initial stage of the pay-scale of the post in the Government. However, it says further that the pay would be regularized according to Government Rules/instructions meaning thereby that at the stage of regularization of their pay, they would be governed by the Government Rules/Instructions. The Government was conscious of the fact that there can be no estoppel against the Statute and despite the petitioners submitting an affidavit to the effect that they will never claim any past service benefit through any Court, they would be entitled to fixation of their pay whenever it is regularized according to the Government Rules/Instructions. What

was meant by not claiming the past service benefits would have to be read with the specific conditions as mentioned in condition 3 i.e. seniority and considering them to be in Government service from the date of taking over as their appointment was a fresh appointment.

(24) In the light of the above, the petitioners are entitled to fixation of their pay under the Rules/Instructions and thus, would be entitled to the benefit of the notification, dated 8th December, 2000 and resultantly, the senior scale/selection grade as admissible to them.

(25) The claim of the petitioners deserves to be allowed also on the ground that similarly placed employees of the 22 taken over colleges by the Government were granted the benefit of senior scale/selection grade by counting their previous service rendered by them under the private institutions out of which one was an unaided institution i.e. Rashtriya Mahavidyalaya College, Taraou so was the Shaheed Udham Singh National College, Matak Majri (Indri) Karnal where the petitioners were working.

(26) The contention of respondents No. 1 and 2 that the selection of the petitioners was not in accordance with the guidelines of the University Grants Commission, only deserves to be noted and rejected in view of Clause 9 of Annexure IV of the letter, dated 8th December, 2000 (Annexure P-12) which relates to revision of pay scales of the teachers of the Universities and Colleges, issued by the Finance Commissioner and Secretary to Government of Haryana, Education Department and also relates to counting of past service. The same being relevant is reproduced here-in-below :—

“9. COUNTING OF PAST SERVICE :

- (I) Previous service, without any break as a Lecturer or equivalent, in a university, college, national laboratory, or other scientific organization, e.g. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist, should be counted for placement of lecturers in Senior Scale/ Selection Grade provided that :
 - (i) The post was in an equivalent grade/scale of pay as the post of Lecturer.

- (ii) The qualifications for the post were not lower than the qualifications prescribed by the UGC for the post of Lecturer.
- (iii) The candidates who apply for direct recruitment should apply through proper channel.
- (iv) The concerned lecturers possessed the minimum qualifications prescribed by the UGC for appointment as Lecturers.
- (v) The post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government/Central Government/Institution's regulations.
- (vi) The appointment was not *ad hoc* or in a leave vacancy of less than one year duration. *Ad hoc* service of more than one year duration can be counted provided :—
 - (a) the *ad hoc* service was of more than one year duration.
 - (b) the incumbent was appointed on the recommendation of duly constituted selection committee ; and
 - (c) the incumbent was selected to the permanent post in continuation to the *ad hoc* service without any break.”

(27) These are the conditions prescribed for placement of the Lecturers in senior scale/selection grade. Sub-clause (v) thereof, as reproduced above, requires the post to be filled in accordance with the prescribed selection procedure as laid down by the University/State Government/Central government/Institution's regulations. Letter dated 17th May, 2005 (Annexure P-6),—*vide* which the college was taken over while dealing with the staff states that only the services of those staff members would be taken over of the college by the government

who fulfill the qualifications on the date of their initial appointment in the college and whose appointments were approved by the concerned University. It is not in dispute that the petitioners fulfilled the qualifications on the date of their initial appointment in the college, neither it is disputed that their appointments were approved by the Kurukshetra University. That being so, the stand of the Government is totally unjustified and against the records. This contention of the respondents, thus, cannot be sustained.

(28) As regards the contention of the State with reference to the non-submission of the case by the Management of the College in view of the notifications dated 8th December, 2000 before the taking over of the college by the State Government on 17th May, 2005 is concerned, the same can, at the most, be termed as an irregularity or lapse on the part of the management of the College where the petitioners were employed. They cannot be held responsible for the said lapse. Since the Government had taken over the college on 17th May, 2005, it is now for them to consider the claim of the petitioners in the light of their now notification dated 8th December, 2000 (Annexure P-12) and letter dated 28th August, 2001 (Annexure P-13).

(29) In the light of the above discussion, this petition is allowed. Respondent No. 3- Management of Shaheed Udham Singh National College, Matak Majri (Indri) Karnal is directed to release the salary of the petitioners for the period from 1st August, 2004 to 16th May, 2005 within a period of one month from today. The impugned order dated 26th October, 2006 (Annexure P-15) passed by the Higher Education Commissioner, Haryana-respondent No. 2 is quashed. The petitioners are held entitled to the counting of previous service rendered by them in the private unaided college i.e. Shaheed Udham Singh National College, Matak Majri (Indri) Karnal for the purpose of grant of senior scale/selection grade. Consequently, Respondents No. 1 and 2 are directed to consider the case of the petitioners for the grant of the senior scale/selection grade, within a period of two months from the date of receipt of copy of this order and grant/release the consequential benefits within one month thereafter.

R.N.R.