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15(1) of 1994 Rules would not apply after his appointment to the post. Besides, the petitioner himself has made sincere efforts to qualify matriculation examination but under the changed circumstances he could not pass matriculation examination in IInd Division. Respondent No. 3 Improvement Trust,—vide resolution dated 16th October, 2001 Annexure R-3/1 recommended his case for appointment on account of demise of Roshan Lal who was a Tractor Driver in the Improvement Trust. The post of clerk was sanctioned for the Improvement Trust by the Government for appointing the petitioner as Clerk on compassionate grounds. We are thus of the view that reversion of the petitioner in pursuance of the impugned order dated 24th May, 2002 (Annexure P-13) is not sustainable.

(10) Consequently, the writ petition is allowed and the order dated 24th May, 2002 (Annexure P-13) is quashed. The petitioner shall continue to work on the post of Clerk in accordance with the appointment letter dated 7th March, 2001 (Annexure P-3). No costs.

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**R.N.R.**

*Before Swatanter Kumar & S.S. Saron, JJ*

SANPREET SINGH—*Petitioner*

*versus*

THE AKAL DEGREE COLLEGE & OTHERS—*Respondents*

C.W.P. No. 9770 OF 2002

14th November, 2002

*Constitution of India, 1950—Art. 226—Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974—Ss. 2, 3 & 4—Calendar of Punjabi University Patiala, Volume III, Part II, 1994—Reg. 4 Chapter 20—Temporary appointment of the petitioner as Lecturer till the finalization of a civil suit pending regarding the said post—Termination of services on the ground that appointment was not made by a duly constituted selection committee—No requirement in the advertisement to send applications for an ad hoc post to the Dean of the University—Respondents bound by the terms & conditions of the advertisement—Justification of the respondents in terminating*

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*the services of the petitioner only a tuse to otherwise dispense with his services—Petitioner entitled to continue in service in accordance with the terms of the appointment letter.*

Held, that the appointment letter in respect of the petitioner dated 28th July, 1998 shows that the petitioner was appointed in the subject of Religion till the finalisation of the court case of Gurbir Singh. It was indicated that his appointment was purely on temporary basis and that if his work and conduct is not found satisfactory and if he opposed any policy and working of the college authorities, then his services could be terminated by giving 24 hours notice. In the circumstances, it is evident that the petitioner had only been appointed on adhoc basis as Lecturer in Religion till the finalization of the Court case of Gurbir Singh and his appointment was purely temporary. The fact that the application for the post of Lecturer in Religion was not asked to be sent to the Dean, Punjabi University, Patiala, would go to show that the same was not required for an ad hoc appointment. Therefore, the contention that the services of the petitioner had been dispensed with on the ground that he had not been appointed by a duly constituted selection committee is without any basis. The representation set out in the advertisement that applications for the ad hoc post of Religion were not required to be sent to the Dean, Punjabi University, Patiala, was not without significance. The appointment was to be only on ad hoc one which is also clear from the appointment letter dated 28th July, 1998. The representation set out in the advertisement by the respondent-College does not offend any provision of law nor was it otherwise opposed to public policy. Therefore, the respondents are bound by the terms and conditions of the advertisement when it was made within their legally permissible powers and the petitioner has relied and acted upon the same.

(Para 20)

P.S. Patwalia, Advocate *for the Petitioner*

V.K. Jindal, Advocate, *for respondents No. 1 and 2.*

A.S. Grewal, Sr. DAG, Punjab, *for respondent No. 4*

None *for respondent No. 3.*

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**JUDGMENT**

*S.S. SARON, J*

(1) Petitioner has filed the present writ petition for quashing the order dated 29th June, 2002 (Annexure P-) vide which his services as Lecturer in Religion have been terminated by the Akal Degree College respondent No. 1. He has further sought a direction for his reinstatement in service in terms of his original letter of appointment with all consequential benefits.

(2) Respondent No. 1 Akal Degree College, Mastuana Sahib, District Sangrur is an aided Institution and receiving 95% grant-in-aid from the State Government. It is stated that the conditions of service of the employees of the Institution are not only governed by the service and conduct of teachers in Non-Government Colleges as per the Calendar of Punjabi University, Patiala, Volume III, Part II, 1994 but also governed by provisions of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (hereinafter referred to as the Act). Respondent No. 1 published an advertisement dated 7th August, 1988 (Annexure P-1) inviting applications for various posts. The interview for the post of Lecturer in Religion (ad hoc) was to be held on 27th July, 1998. Ad hoc post of Lecturer in Religion was advertised as the services of one Shri Gurbir Singh, who had been appointed against the said post on regular basis had been terminated by the respondent No. 1 Institution. He had filed a Court case against the order of his termination which was pending. The petitioner participated in the selection process for the aforesaid post of Lecturer in Religion. He appeared for the interview before a committee comprising of the President of the Managing Committee, Secretary of the Managing Committee and Principal of the College. Ultimately the petitioner was selected and appointed vide appointment letter dated 28th July, 1998 (Annexure P-2). It was mentioned that the appointment was to continue till the Court case filed by Gurbir Singh was decided. Besides, the petitioner's services could be terminated after giving him notice of 24 hours. The petitioner states that ever since joining of the College he had been discharging his duties and had been giving complete workload. He also worked as an Invigilator for the University examination and also as examiner of papers. Documents in this regard are attached Annexure P3 and

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P4. He has also been given an experience certificate dated 29th May, 2000 (Annexure P-5), certifying that he is working as Lecturer in the subject of Religion in the respondent No. 1 College since 3rd August, 1998 and that his work and conduct during all these sessions is satisfactory. Besides, certificates dated 20th June, 2001 (Annexure P-6) and dated 1st July, 2002 (Annexure P-7) have been given to similar effect. Despite this position, his services have been dispensed with in pursuance of the impugned order, which is stated to be illegal and arbitrary.

(3) Notice to show cause why the petition be not admitted was issued by this Court on 3rd July, 2002 and in the meantime it was directed that the vacant vacancy shall not be filled up.

(4) The respondent No. 1, 2 and 4 have filed their respective written statements. No written statement has been filed by respondent No. 3 Punjabi University, Patiala.

(5) The respondents No. 1 and 2 in their written statement have stated that the post of Lecturer in Religion though sanctioned by the University but till date no grant has been given by the State Government against this post and the incumbent of this post was paid his monthly salary by the College authorities from their own funds. For getting Grant-in-Aid for the post, it is necessary that the same is filled by way of procedure prescribed in University Calendar i.e. Regulation 4, Chapter 20 of Punjabi University Calendar 1994. The appointment of the petitioner against the post of Lecturer in Religion was made by a Committee constituted at the college level. Now for obtaining Grant-in-Aid the management has decided to fill the post by way of prescribed procedure in University Calendar and thus the services of the petitioner have been dispensed with. The petitioner was at liberty to apply for the said post against advertisement to be published and that his case will be duly considered by the selection committee. Primarily case of the respondents No. 1 and 2 is that the appointment of the petitioner was not made as per the afore - referred University Regulation and thus the action of the management in dispensing with the services of the petitioner which in any case was of only temporary appointment is in accordance with law. Besides, it is submitted that the services of the petitioner are governed by the

Act under which the College Tribunal has been constituted and against the removal or dismissal etc. remedy lies before the College Tribunal. In these circumstances it has been prayed that the petition merits dismissal.

(6) Respondent No. 4 in its short reply has stated that Section 4 of the Act specifically provides that no employee shall be removed from the service without the approval of the Director and that the services of the petitioner had been terminated without seeking prior approval of the Director.

(7) The petitioner has filed replication stating that the stand of the respondent Institution was totally mis-leading and has been taken just as an eye wash. Petitioner was in fact thrown out of the service as the Secretary of the College wanted to accommodate his relative. Besides, it is stated that in case the post was to be filled on regular basis for grant-in-aid, then it is not that the services of the employee working on temporary posts are required to be terminated and only then the Government, would approve the posts for grant-in-aid. Besides, if for some reasons the Government does not provide the grant-in-aid then College would be saddled with that individual. The proper procedure is that the grant in aid is sanctioned and thereafter the post is filled up. It is also stated that as per the procedure for appointment of Lecturer in a College, the College is required to give a certificate to the Director Public Instructions (Colleges), Punjab to the effect that no Court case was pending with respect to that post. It is only then the Director sends his nominee for the selection. The present post which has arisen on account of the fact that the services of one Gurbir Singh had been terminated against which a Court case is pending. The appeal of the College against Civil Court decree is pending before the Court of Learned Additional District Judge, Sangrur.

(8) We have heard the learned counsel for the parties and have perused the records.

(9) It is the case of the parties that the services of the employees of affiliated colleges are governed by the provisions of the Act and that respondent No. 1 Institution is an affiliated college. The term affiliated

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College, Director and employee have been defined in Section 3(a), (b) and (e) of the Act as follows :—

- “(a) affiliated college” means a college associated with and admitted to the privileges of University constituted or established under any law for the time being in force but does not include a Government college or a college established or maintained by such a University.”
- (b) “Director” means the Director of Public Instruction, Punjab and includes any other officer authorised by the State Government to perform the functions of the Director under this Act :
- (e) “employee” means a person in the employment of an affiliated college but, does not include a work charged employee.”

(10) Section 3 of the Act relates to dismissal, removal or reduction in rank. The same reads as follow :—

“Dismissal, removal or reduction in rank not to be ordered except after inquiry. No employee shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.”

(11) The perusal of the above section 5 of the Act shows that no employee i.e. an employee in the employment of an affiliated College shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges. Section 4 of the Act provides the procedure to be observed before dismissal or removal. The same reads as under :

- 4” Procedure to be observed before dismissal and removal
- (1) The penalty of dismissal or removal from service shall not be imposed unless the same is approved by the Director.
  - (2) Where after the inquiry referred to in section 3, it is proposed to impose the penalty of dismissal or removal from service the proposal shall be referred to the Director along with the relevant record and intimation about

the proposal having been so referred shall be sent to the employee concerned also simultaneously.

- (3) The employee may, within a period of thirty days of the receipt of the intimation referred to in sub-section (2), make a representation against the proposed penalty to the Director who may, after examining the record and giving to the parties an opportunity of being heard, by an order in writing give his approval to the imposition of the proposed penalty of dismissal or removal from service, as the case may be, or refuse to give approval if the proposal is found to be *mala fide* or by way of victimisation or not warranted by the facts and circumstances of the case.
- (4) Any party aggrieved by an order of Director under sub-section (3) may file an appeal to the College Tribunal, which may after giving to the parties an opportunity of being heard pass such order as he may deem fit.

(12) First of all, we may consider the preliminary objection raised by Shri V.K Jindal, learned counsel for the respondents No. 1 and 2 i.e. the petitioner has alternative remedy before the College Tribunal under the Act.

(13) It is not in dispute that the Akal Degree College, Mastuana Sahib, is an affiliated College and the provisions of the Act apply which have been framed to provide for the security of service to employees of affiliated colleges. However, the impugned order dated 29th June, 2002 (Annexure P-9) is an order of termination and is not one of dismissal or removal as contemplated by Section 3 and 4 of the Act referred to above. In service matters, dismissal and removal from services are by way of punishment after an enquiry. Dismissal from service normally dis-entitles the employee from future employment whereas removal may not. An order of termination depending on the circumstances of each case may or may not be stigmatic. Therefore, this being not a case of dismissal or removal, the provisions of Section 3 of the Act or the procedure to be observed before dismissal or removal as provided under Section 4 of the Act are in our view inapplicable.

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(14) This Court in the case of *The Patel Memorial Management Society (Registered) Rajpura vs. The Director of Public Instructions and another (1)* where the services of a temporary Lecturer in Sanskrit were terminated by giving him one month salary in lieu of notice held that the termination of service was in accordance with terms of his appointment and before termination approval of the Director under the Act was not required. It was held that there was no provisions under the Act which empowered the Director to assume jurisdiction at the instance of the teacher. The order of the Director holding that the College authorities could not remove the teacher without obtaining his prior approval was set aside. In the case of *Kartar Singh vs. Director Public Instructions Punjab, Chandigarh (2)* a Division Bench of this Court observed that it was not disputed before it that the provisions of the Act were not applicable in the case of probationer. It was thus held that the termination of the services of the appellant in the said case who was Lecturer in English in a private institution did not require approval of the Director Public Instructions. In the case of *D.A.V. College Managing Committee, Hoshiarpur vs. Additional District Judge, Hoshiarpur, and others (3)* this Court considered the question whether the case of a Lecturer in English in D.A.V. College, Hoshiarpur, who had invoked the jurisdiction of the Director under the Act, was covered by the provisions of the Act and whether he could approach the Director and also invoke the Appellate jurisdiction of the District Judge. It was held that the Act was applicable only in cases where the employee is dismissed, removed or reduced in rank and would not be applicable where any of the aforesaid three conditions is not involved. Consequently, it was held that the Lecturer therein could neither approach the Director nor the District Judge (Appellate Authority) as his case or the purpose he wants to achieve was not covered by the provisions of the Act.

(15) Therefore, in the afore-noted circumstances, in our view, the remedy of appeal before College Tribunal as contended by the learned counsel appearing for respondents No. 1 and 2 is not available. Therefore, we hold that this writ petition is maintainable.

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(1) 1980 (2) SLR 569

(2) 1980(2) SLR 843

(3) 1980(3) SLR 527



(16) The next question that arises for consideration is whether the services of the petitioner could be terminated vide order dated 29th June, 2002 Annexure P-9. The said order reads as follows :—

“In the meeting of College Managing Committee held on 29th June, 2002 your case for appointment to the post of Lecturer in Religion was considered. Due to the reason that your selection had not been done by the constituted selection committee, as per the order of the Management, your services are hereby terminated today on dated 29th June, 2002 (afternoon).”

(17) Shri P.S. Patwalia, learned counsel for the petitioner contends that the ground taken for terminating the services of the petitioner that the selection had not been done by a duly constituted selection committee is wholly baseless. It is further contended that in fact the petitioner was being thrown out of service as the Secretary of the College wanted to accommodate his relative.

(18) On the other hand Shri V.K. Jindal, learned counsel appearing for the respondent Nos 1 and 2 has contended that the action of the respondent management is bona fide and that the appointment of the petitioner was not made as per University Regulations. Therefore, the appointment in the eyes of law is not proper unless made by Selection Committee constituted under Chapter 4 of the Punjabi University Calendar 1994.

(19) In order to appreciate the respective stand of the parties, the provisions of Regulation 4 Chapter 20 of the Punjabi University Calendar may be noticed. The same reads as under :—

“4. The appointment will be valid only if the selection had been made through a duly constituted selection committee as below and is approved by the University :—

(i) For Principal of the College., the selection committee shall consist of

xx xx xx xx xx xx xx xx xx xx.

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- (ii) For Teacher of a College, the selection committee shall consist of :—
- (a) Chairman, Governing Body of the College or his nominee.
  - (b) Two nominees of the University one should be an expert in the subject.
  - (c) Principal of the College.
  - (d) A representative of the DPI(C), Punjab and
  - (e) A subject expert to be nominated by the DPI (Colleges), Punjab.”

(20) The perusal of the above Regulation 4 of the Punjabi University Calendar 1994 envisages that appointment would be valid only if the selection had been made through duly constituted selection committee and is approved by the University. Regulation 4(ii) provides for the constitution of selection committee for teacher of a college. It is to consist of Chairman Governing Body of the college or his nominee, two nominees of the University one should be an expert in the subject, Principal of the College, a representative of the DPI (Colleges) Punjab and a subject expert to be nominated by the DPI (Colleges), Punjab. No doubt, the selection for the purposes of teacher is to be made in accordance with the procedure prescribed thereunder. However, it may be noted that the respondent college issued an advertisement in the Tribune dated 8th July, 1998 Annexure P-1, inviting applications for various posts including one post of Lecturer in Religion, which was indicated as adhoc post. It was indicated in the advertisement that the applications along with attested photocopies of certificates and testimonials should reach the Principal. In the said advertisement one Lecturer in English (Regular) and one Lecturer in Maths (on leave vacancy) were also advertised at Sr. No. 1 and 2 respectively. In the advertisement it is indicated that the applicants for the said post of Lecturer in English (Regular) and Lecturer in Maths (on Leave vacancy) should also send all the copies of the applications to the Dean, Punjabi University, Patiala. The post of Lecturer in Religion (Adhoc) is at Sr. No. 3 of the said advertisement and there was no requirement of sending the application for the said post to the Dean of the Punjabi University, Patiala. Rather, it was stated that the interview for the post at Sr. Nos. 3 to 5 which included the post of Lecturer in Religion on ad-hoc basis would be held on 23rd July, 1998 and that no separate

interview letters would be sent. The appointment letter in respect of the petitioner dated 28th July, 1998 Annexure P-2 shows that the petitioner was appointed in the subject of Religion till the finalisation of the court case of Gurbir Singh. It was indicated that his appointment was purely on temporary basis and that if his work and conduct is not found satisfactory and if he opposed any policy and working of the college authorities, then his services could be terminated by giving 24 hours notice. In the circumstances, it is evident that the petitioner had only been appointed on adhoc basis as Lecturer in Religion till the finalisation of the Court case of Gurbir Singh and his appointment was purely temporary. The fact that the application for the post of Lecturer in Religion was not asked to be sent to the Dean, Punjabi University, Patiala, would go to show that the same was not required for an ad-hoc appointment. Therefore, the contention that the services of the petitioner had been dispensed with on the ground that he had not been appointed by a duly constituted selection committee is without any basis. We are of the view that the representation set out in the advertisement Annexure P-1, that applications for the ad hoc post of Religion were not required to be sent to the Dean, Punjabi University, Patiala, was not without significance. The appointment was to be only an ad-hoc one which is also clear from the appointment letter dated 28th July, 1998 Annexure P-2. The representation set out in the advertisement by the respondent college does not offend any provision of law nor was it otherwise opposed to public policy. Therefore, the respondents are bound by the terms and conditions of the advertisement when it was made within their legally permissible powers and the petitioner has relied and acted upon the same. Not only this, even the appointment letter indicates that his appointment was to the post of subject of Religion till the finalisation of the Court case of Shri Gurbir Singh, It is not the case of the respondents that the Court case of Shri Gurbir Singh has been finalised. The contention of the respondents that they were to fill up the post on regular basis by taking the grant-in aid and that therefore the services of the petitioner have been terminated is not reflected in the impugned termination order. The reason given for terminating the services of the petitioner is that his appointment was not made by a duly constituted selection committee. This as already noticed above is without any substance.

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(21) In the circumstances, we agree with the contentions of the learned counsel for the petitioner that for making the recruitment against the post where grant-in-aid is sought from the State Government, the Government approves the post for grant-in-aid and it is not that the services of the employee working on temporary basis have to be terminated and only then the Government would approve the post. Further, the college is also to give a certificate to the Director Public Instructions (Colleges) to the effect that "no court case is pending against that post." It is only thereafter that the Director Public Instructions sends his nominees for the selection. Therefore, in the circumstances of the case, we are of the view that the justification given for terminating the services of the petitioner is only of a ruse to otherwise dispense with his services.

(22) In the circumstances, the writ petition is allowed and the order dated 29th June, 2002 Annexure P-9 is quashed and the petitioner shall be entitled to continue in service in accordance with the terms of his appointment letter dated 28th July, 1998 Annexure P-2. There shall however, be no order as to costs.

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*R.N.R.*

*Before R.L. Anand & S.S. Saron, JJ*

ECONOMICALLY WEAKER SECTION OF SOCIETY HOUSES  
WELFARE ASSOCIATION—*Petitioner*

*versus*

STATE OF PUNJAB & OTHERS—*Respondents*

CWP No. 13077 OF 2002

29th November, 2002

*Constitution of India, 1950—Arts. 21 & 226—PUDA carving out plots of the area which the members of the EWS Society were using as open space/park/green belt for more than 25 years—Challenge thereto—Area in dispute not shown as park/open/green belt in the master plan and earmarked for construction of residential houses—Neither any illegality, irrationality nor procedural impropriety in providing plots from the area in dispute—No violation of any statutory*