

Rajinder Gill (Ms.), Principal v. Dev Samaj Council Society and others (I. S. Tiwana, J.)

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have that order set aside by the Court. (See in this connection *Amrik Singh Constable vs. State of Punjab*, 1980 (2) SLR 616). A just claim of a citizen cannot be denied technical grounds. The State cannot defeat the claim of a citizen by taking the technical plea that the suit was beyond limitation. The decision under issue No. 3 is reversed. The appeal succeeds. The suit of the plaintiff is decreed. The judgments and decrees of the courts below are set aside and the order dated February 24, 1969 of Sub-Divisional Officer (C), Hissar as conveyed to the plaintiff,—*vide* endorsement No. 1957-58/SDHR Ex. P-1 is quashed. The plaintiff is entitled to the declaration sought for. The respondent is directed to release the arrears of pension upto date under the rules with interest at the rate of 12 per cent per annum from the date when the right to receive pension accrued till payment within three months from the date of receipt of this order.

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P.C.G.

Before : I. S. Tiwana & G. R. Majithia, JJ.

RAJINDER GILL (MS.), PRINCIPAL,—*Petitioner.*

*versus*

DEV SAMAJ COUNCIL SOCIETY AND OTHERS,—*Respondents.*

*Amended Civil Writ Petition No. 99 of 1985.*

13th September, 1990.

*Limitation Act 1963—S. 14—Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974—Ss. 3 & 4—Resignation of Principal challenged by her under Ss. 3 & 4—Jurisdiction—Director has no jurisdiction—Limitation—Time spent in litigation excluded.*

*Held*, that the proceedings before the Director and before the Additional District Judge were wholly outside the ambit of the Act and he should have dismissed the case on that ground or directed the petitioner to seek her relief through a Court of competent jurisdiction. See 1980(3) SLR 527 (*D.A.V. College Managing Committee v. Addl. District Judge, Hoshiarpur and others*). Even Mr. V. K. Bali, learned senior counsel for the respondent has nothing to say to the contrary so far as this aspect of the matter is concerned. We are, therefore, of the firm opinion that the proceedings before the Director and the Additional District Judge were totally without jurisdiction, as the provisions of the Act were not at all attracted to the facts of this case.

(Para 5)

*Held*, that keeping in view the facts and circumstances of this case and the policy underlying under S. 14 of the Limitation Act which is to afford protection against the bar of limitation to a person who has been honestly doing his best to get his case tried on merits, but somehow the Court is unable to give him a trial or the relief claimed, we feel it is eminently desirable to grant this discretionary relief to the petitioner. It is, thus, directed that in case the petitioner, choses to go to the Civil Court to impugne the action of the respondents, the time she spent in litigating before District/Additional District Judge and this Court would be excluded while determining the question of limitation in that suit.

(Para 6)

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:—*

- (i) complete records of the case be summoned;
- (ii) a writ in the nature of Certiorari quashing the order dated 12th December, 1984 Annexure P/12 of respondent No. 3, be issued;
- (iii) it is further prayed that during the pendency of the writ petition, the operation of the impugned order, annexure P/12, be stayed;
- (iv) costs of the petition be also awarded;
- (v) condition regarding filing of certified copies of the annexures be dispensed with;
- (vi) condition regarding service of advance notice of the writ petition be dispensed with.

Anand Swroop, Sr. Advocate with Rajiv Vij. Advocate, for the Petitioner.

V. K. Bali, Sr. Advocate with Ravi Kapoor, Advocate, for Respondents No. 1 & 2.

#### JUDGMENT

*I. S. Tiwana, J.*

(1) The petitioner, who initially was appointed as a Lecturer in Dev Samaj College of Education, Ferozepur, run by the respondent-society was later selected and appointed as Principal of Dev Samaj College of Education, Chandigarh in the year 1981,—vide Annexure

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P/1. As per her stand, before her selection, Sh. Nirmal Singh Dhillon, Chairman of the Managing Committee (Respondent No. 2) asked her to deposit two signed blank papers with the Management. The petitioner complied with the said request and handed over the two blank signed papers to him. This obviously was done to keep her under the thumb of the Management and to cut short her tenure as Principal of the College at the sweet will of the Management. She further maintains that soon after her joining as Principal, Shri Nirmal Singh Dhillon and his father-in-law Shri Iqbal Singh, who too was a member of the Managing Committee tried to persuade her to convert to the Dev Samaj Religious order. She, however, expressed her inability to accede to their request. Ultimately, Sh. Nirmal Singh Dhillon extended the threat that he would use the said blank signed papers "to malign, humiliate and harm" her in case she insisted to continue or stick on to the post of Principal. Since the petitioner could not bear this threat, she succumbed to the pressure and tendered her resignation from that job in April, 1983. Copy of this letter of resignation is Annexure P/3. The same was accepted by the Chairman of the Managing Committee on April 23, 1983 and copy of this letter of acceptance is Annexure P/4. *Vide* her letter dated April 25, 1983 the petitioner requested the Chairman to return the two blank signed papers, which the latter had obtained from her immediately before her appointment. Copy of this letter is Annexure P/5. However, before returning the said two papers, the Management asked her to write another letter to show that the resignation submitted by her was voluntary. The copy of this letter is Annexure P/6. Ultimately, the two papers were returned to her with the covering note of Shri Nirmal Singh Dhillon and the copy of the same is Annexure P/7. The material part of it reads "two blank signed papers submitted by you before the undersigned are being returned herewith".

(2) On May 31, 1983, the petitioner approached the Director of Public Instructions (Colleges), Union Territory, Chandigarh as per her stand under Section 4(3) of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (hereinafter referred to as the Act) as extended to the Union Territory of Chandigarh,— *vide* notification dated July 21, 1978 with the request that the resignation in question was not her voluntary act and the same tantamounts to her removal, from service which apparently was brought about without complying with the provisions of the Act, i.e. Section 3 of the Act. She also requested the Director for her reinstatement.

Copy of that application is Annexure P/8 to the petition. The Director, after due notice to the Management, of the College, accepted the plea of the petitioner,—*vide* his order dated February 14, 1984 and while holding that termination of her services was illegal directed that she will be deemed to be holding the post of the Principal of Dev Samaj College of Education, Chandigarh for all intents and purposes. Copy of his order is Annexure P/11 to the petition. On an appeal preferred by the Dev Samaj Council Society (Respondent No. 1) and the Managing Committee of the College (Respondent No. 2), the Additional District Judge, Chandigarh up-set that order of the Director and concluded (i) the representation of the petitioner before the Director was barred by time; (ii) since it was not a case of dismissal or removal from service and was rather a pure and simple case of resigning from the job, the provisions of the Act could not be invoked and (iii) the order of the Director was totally without jurisdiction. He also negated the stand of the petitioner that she had submitted the resignation under threat or duress. It is this order of the Additional District Judge, which is now impugned before us.

(3) At an early stage, a controversy was raised on behalf of the petitioner that the Additional District Judge was not competent to decide the appeal under sub-section (4) of Section 4 of the Act, but the same stands firmly settled by a Full Bench of this Court,—*vide* its judgment dated February 28, 1989. Now, the challenge of Shri Anand Swaroop, learned senior counsel for the petitioner is two-fold, (i) there was no justification with the learned Additional District Judge to up-set the conclusive finding recorded by the Director that the petitioner had been made to submit the resignation under duress or threat and the same was not voluntary; (ii) the resignation in question was not valid one in view of statute 11(1) of the Punjab University Calendar, Volume 1, 1981 governing the conditions of service and conduct of teachers in non-government affiliated Colleges which reads, "a permanent teacher may at any time terminate his engagement by giving the governing body three months notice in writing or three months salary in lieu thereof."

(4) Having given our thoughtful consideration to the entire matter, we are of the opinion that the above noted contentions of Shri Anand Swaroop do not merit acceptance. So far as the challenge to the findings of fact recorded by the Additional District Judge is concerned, we cannot possibly sit as a Court of appeal to reappraise the evidence and record our conclusion on merits. In

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somewhat similar situation, their Lordships of the Supreme Court expressed themselves in *P. Kasilingam v. P.S.G. College of Technology* (1), as follows :

“it is clear beyond doubt that the High Court had transgressed its jurisdiction under Art. 226 of the Constitution by entering upon the merits of the controversy by embarking upon an enquiry into the facts as to whether or not the letter of resignation submitted by the appellant was voluntary. The question at issue as to whether the resignation was voluntary was a matter of inference to be drawn from other facts. The question involved was essentially one of fact. It cannot be questioned that the Government undoubtedly had the jurisdiction to draw its own conclusions on the material before it.”

“Regrettably the High Court has in allowing the writ petition converted itself into a court of appeal and examined for itself the correctness of the conclusion reached by the Government and decided what was the proper view to be taken or the order to be made.”

We, therefore, cannot possibly go into the merits of the factual findings recorded by the Appellate Judge.

(5) As far as the second contention of Shri Anand Swaroop, as noticed above is concerned, we find that no such plea has been taken by the petitioner either in this petition or even at an earlier stage before the Director or the Additional District Judge. Therefore, we need not examine this aspect of the matter at this later stage. This is more so when it is the conceded case of the petitioner that the acceptance of her resignation (Annexure P/4) by Sh. Nirmal Singh Dhillon the Chairman of the Managing Committee was later placed before the Governing Body i.e. Dev Samaj Council Society (Respondent No. 1) and was approved by the said Body. Therefore, we need not say anything more on this point. However, we feel that the petitioner deserves to succeed on the ground that the impugned order of additional District Judge, Annexure P/12 is equally without jurisdiction for the same very reason for which he has held the order of the Director to be without jurisdiction. As has already been indicated the Act only governs the case where the services of an employee of a College are terminated by way of dismissal or removal from service and the same has been brought about without holding an enquiry and grant of reasonable opportunity of being heard after

(1) A.I.R. 1981 S.C. 789.

informing him of the charges against him. This is very clear from a combined reading of Sections 3 and 4 of the Act. Therefore, the moment the Additional District Judge came to the conclusion that the case before him was neither of dismissal nor removal from service and was rather a case of resigning from service, as held by him, he had nothing more to opine upon. In the light of that conclusion, the proceedings before the Director and before the Additional District Judge were wholly outside the ambit of the Act and he should have dismissed the case on that ground or directed the petitioner to seek her relief through a Court of competent jurisdiction. See (*D.A.V. College Managing Committee v. Addl. District Judge, Hoshiarpur and others* (2)). Even Mr. V. K. Ban, learned senior counsel for the respondent has nothing to say to the contrary so far as this aspect of the matter is concerned. We are, therefore of the firm opinion that the proceedings before the Director and the Additional District Judge were totally without jurisdiction, as the provisions of the Act were not at all attracted to the facts of this case. Therefore, the said two orders Annexure P/11 passed by the Director Public Instructions (College Union Territory, Chandigarh and the Additional District Judge, Chandigarh, Annexure P/12 are set aside.

(6) At this stage, an oral request is made by Sh. Anand Swaroop, learned counsel for the petitioner that the petitioner would like to seek her remedy against the action of the respondents through a Civil Court and the question of delay in challenging the said action deserves to be condoned, in the light of Section 14 of the Limitation Act. The submission does not appear to be devoid of merit. Therefore, keeping in view the facts and circumstances of this case and the policy underlying under Section 14 of the Limitation Act which is to afford protection against the bar of limitation to a person who has been honestly doing his best to get his case tried on merits, but somehow the Court is unable to give him a trial or the relief claimed, we feel it is eminently desirable to grant this discretionary relief to the petitioner. It is, thus, directed that in case the petitioner, chooses to go to the Civil Court to impugne the action of the respondents, the time she spent in litigating before District/Additional District Judge and this Court would be excluded while determining the question of limitation in that suit.

(7) For the foregoing reasons this petition is disposed of as indicated above, but with no order as to costs.

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P.C.G.

(2) 1980 (3) S.L.R. 527.