

Managing Committee, Dayanand Mahila Mahavidyala, Kurukshetra  
and another v. Smt. Sharda Rani and others  
(S. S. Sodhi, J.)

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(6) The other matter of material significance that impels notice is that there was no reduction in the posts of teachers or the abolition of even the post held by Shri Ram Kumar Sharma. If indeed, shortfall of students rendered it imperative to reduce the number of teachers, abolition of posts would be the obvious and natural consequence. Counsel for the appellant had no explanation to offer for there being no abolition of any post.

(7) Further, counsel for the appellant School was unable to point to any material on record to show how Shri Ram Kumar Sharma was in fact the junior most teacher or how even with the reduction of Sections from 29 to 27, as mentioned in the petition, it was upon him, that the axe had inevitably to fall.

(8) Such being the circumstances, no occasion is provided here to grant any relief to the School as claimed. This appeal is consequently hereby dismissed with Rs. 1,000 as costs.

(9) A further direction is hereby issued to the School Management to pay to Shri Ram Kumar Sharma all his arrears of pay and allowances by on or before October 7, 1991.

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R.N.R.

Before : S. S. Sodhi & G. C. Garg, JJ.

MANAGING COMMITTEE, DAYANAND MAHILA MAHA-  
VIDYALA, KURUKSHETRA AND ANOTHER,—Appellants.

versus

SMT. SHARDA RANI AND OTHERS,—Respondents.

Letters Patent Appeal No. 921 of 1991.

30th October, 1991.

Constitution of India, 1950—Art. 226—Appointment—Resignation—Offering of post—D.M.M. Kurukshetra advertising post of lecturer in Psychology—After holding interviews, respondent selected and placed at No. 2 in the select list—Candidate placed at No. 1, although working as lecturer in A.M.M., Bhirwani, taking up her new assignment only for three days and thereafter submitting resignation—Appointment to such post—D. R. (Colleges) issuing directions

*to Principal of D.M.M., to offer the post to person placed next in the select list—College authorities, however, making ad hoc appointments of other teachers barring the respondent—Such action is unfair—Appointment to post has to be offered to respondent.*

*Held*, that the candidate who had been selected and put at No. 1 by the Selection Committee never gave up her post at the Adarsh Mahila Mahavidyala, Bhiwani. It was, while she was holding this post that she had complied with the formality of accepting this appointment for just three days, never to take it up thereafter. In the peculiar circumstances of this case, it was only fair and just that the appointment should then have been offered to the respondent who was next in the select list. Not only this, it also transpires that thereafter *ad hoc* appointments were made, but of persons other than the respondent. There is no manner of doubt that the College has indeed been unfair to the respondent and patently, considerations other than merit appear to have prevailed in refusing her appointment. When despite repeated communications, the first candidate did not join her post, the appropriate course for the College would obviously have been to call upon the next candidate to take up the appointment. At any rate, once the first candidate left after holding the post for only three days, coupled with the direction to the Principal of the College as contained in the letter that the candidate placed at No. 2 i.e. the respondent be appointed in the leave vacancy, it became incumbent upon the College to have offered her this appointment. As such, we find no reason of justification for interfering with the judgment of the learned Single Judge which we hereby uphold and affirm.

(Paras 6, 10 & 12)

*Letters Patent Appeal under Clause X of the Letters Patent Act against the order of the learned Single Judge dated 22nd February, 1991 passed by Hon'ble Mr. Justice M. R. Agnihotri in Civil Writ Petition No. 10101 of 1989.*

Mr. P. S. Patwalia, Advocate with Mr. G. S. Gill & Mr. Anuj Raura, Advocates, for the appellants.

Mr. Surya Kant, Advocate, for the respondents.

#### JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns appointment to the post of Lecturer in Psychology at the Dayanand Mahila Mahavidyala, Kurukshetra.

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(2) In pursuance of an advertisement issued by the Dayanand Mahila Mahavidyala, Kurukshetra (hereinafter referred to as 'the College'), interviews for the post of Lecturer in Psychology were held on July 28, 1987. The Selection Committee prepared a select list where the name of Smt. Kiran Gupta was placed at No. 1, followed by respondent Sharda Rani at No. 2. Last on the selection list was Smt. Saroj Sharma.

(3) The candidate selected namely Smt. Kiran Gupta was working as Lecturer at the Adarsh Mahila Mahavidyala Bhiwani. It was apparently on this account that she did not take up her post of Lecturer at the College as she was required to do by October 1987. It was only after repeated extensions granted for the purpose that she eventually took up her post as Lecturer in the College on November 30, 1987, but that too for only three days, as on December 3, 1987, she applied for and was granted extraordinary leave. She never thereafter came back to the College and instead submitted her resignation from the post on January 19, 1989.

(4) In the meanwhile, the College authorities instead of offering the appointment of the post of Lecturer in Psychology to the respondent—Sharda Rani, who was next in the selection list, chose instead to make *ad hoc* appointments to which other teachers were appointed, but not Sharda Rani. No wonder, Sharda Rani protested and approaches the higher authorities seeking their intervention for being appointed to the post for which she had been selected. It is pertinent to note, in this behalf, that on December 11, 1987, the Kurukshetra University, by its letter of December 11, 1987 directed the College to the effect that "so long as panel exists, the appointment is to be made from amongst the candidates in the Panel". There is also on record the letter of January 1, 1980 (annexure P/2) from D. R. (Colleges) to the Principal of the College saying, "You are again requested to strictly make appointment from the approved panel of Psychology as already requested you,—vide this office letter No. CBA-1/114-B/87/690 dated 11th December, 1987. In the event of granting long leave to the candidates at Sr. No. 1, you are requested to offer the post in the leave vacancy to the person at Sr. No. 2 in the panel. Please note that this must be adhered to."

(5) The fact that Sharda Rani had not been justly treated in the matter of appointment to the post of Lecturer, not being offered to

her, finds specific acknowledgement in the letter of the Director of Higher Education, Haryana to the Registrar, Kurukshetra University of April 25, 1989 (annexure P/6), where it is said, "On representation from Smt. Sharda Rani, the matter has been examined and it has been found that injustice has been done in her case as she was not given appointment, even though, she was legitimately entitled to be appointed against the regular post on account of her selection through the duly constituted Committee". The Registrar was consequently asked "whether she could be appointed now and given approval on the basis of old selection". What action, if any, was taken on this letter is, however, not clear from the material as has been placed before us.

(6) A matter of material significance to note here is that Smt. Kiran Gupta, who had been selected and put at No. 1 by the Selection Committee never gave up her post at the Adarsh Mahila Mahavidyala, Bhiwani. It was, while she was holding this post that she had complied with the formality of accepting this appointment for just three days, never to take it up thereafter. In the peculiar circumstances of this case, it was only fair and just that the appointment should then have been offered to respondent—Sharda Rani. Not only this, it also transpires that thereafter *ad hoc* appointments were made, but of persons other than Sharda Rani. No explanation to account for such appointments is forthcoming.

(7) Any way, what happened next was that on July 8, 1989, the post of Lecturer in Psychology was re-advertised. Respondent Sharda Rani was again amongst the persons who had applied for this post. She was, however, not selected, but instead one Smt. Monica Dhingra was selected and offered this appointment to the regular post. Later, in pursuance of the orders of the Supreme Court, this Smt. Monica Dhingra was ordered to be impleaded as a party and she too, thereafter filed her return to defend her appointment to the post.

(8) The action of the College in denying appointment to Sharda Rani was sought to be justified on the plea that with Kiran Gupta taking up her appointment, even though for only three days, the process of selection stood completed and therefore, no right survived to the candidate at No. 2 in the selection list to claim appointment to the post. In other words, on Smt. Kiran Gupta leaving the post, a fresh vacancy accrued for which fresh selection was required to be done.

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(9) Estoppel was also sought to be raised as a bar against Sharda Rani on the ground that she had again applied for the post of Lecturer in Psychology when fresh applications were invited and she had also appeared in the interview for this post in July 1989 when Smt. Monica Dhingra was selected in preference to her.

(10) In the overall context of the circumstances as narrated, neither of the contentions raised can be sustained. There is no manner of doubt that the College has indeed been unfair to Sharda Rani and patently, considerations other than merit appear to have prevailed in refusing her appointment. When despite repeated communications, Smt. Kiran Gupta did not join her post, the appropriate course for the College would obviously have been to call upon Sharda Rani to take up the appointment. At any rate, once Smt. Kiran Gupta left after holding the post for only three days, coupled with the direction to the Principal of the College as contained in the letter of January 1, 1988 (annexure P/2) that Sharda Rani be appointed in the leave vacancy, it became incumbent upon the College to have offered her this appointment. The College, however, as mentioned earlier, chose to appoint other teachers instead.

(11) Equally devoid of merit is the further plea of estoppel raised on behalf of the College to deny relief to Sharda Rani against the obvious injustice done to her merely on the ground that she had also applied for selection at a subsequent interview where some other candidate was preferred to her. It is not understandable how this can be construed as an estoppel against her.

(12) We thus find no reason of justification for interfering with the judgment of the learned Single Judge which we hereby uphold and affirm. This appeal is consequently dismissed with Rs. 1,000 as costs.

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J.S.T.

Before : G. C. Mital, A.C.J. & S. S. Grewal, J.

COMMISSIONER OF INCOME-TAX, PATIALA,—Applicant.  
versus

SMT. BHAVANI BAI AND OTHERS,—Respondents.

General Income-tax Reference Nos. 76 & 77 of 1978.

8th June, 1991.

*Income-tax Act (XLIII of 1961)—Assessment of share of income received in partial partition of larger HUF consisting of assessee*