WIDENING CRITERION OF "EMPLOYMENT" FOR LL.B. ADMISSIONS : A JUDICIAL GESTURE

THE RULE for admission to the evening classes of the three-year LL.B. course for the session 1988-89 conducted by the Law Department of Panjab University, Chandigarh, *inter alia*, stipulated that it was "open *only* to regular employees of Government/Semi-Government institutions/affiliated colleges/statutory corporations and Government Companies."[1] The constitutional validity of this rule was challenged by special leave to appeal before the Supreme Court in *Deepak Sibal* v. *Punjab University*.[2]

The purpose of this paper is to show how, by quirk of an argument, the Supreme Court has been able to circumvent the subterfuge of definational "employment." This opens the door of admission to evening classes even to those students who would not fall within the ambit of how-so-ever designed definition of 'employment'.

Seemingly, the impugned rule was designed to give effect to the hitherto more or less accepted objective of starting the evening classes, namely, "to provide education to bona fide employees who could not attend the morning classes on account of their employment."[3] However, the alleged deviation from this objective occurred the moment "employment" came to be confined only to "genuine and regular employees" of the government, semi-government or like institutions.[4] This restrictive scope was sought to be justified on behalf of the Panjab University before the Supreme Court mainly on three counts.[5] *First*, imparting legal education to employees of the government, semi-government or like institutions "would be in public interest." *Second*, by virtue of the protection of article 311 of the Constitution "assured tenure of employment" of all such employees for a period of at least three years avoided the possibility of wastage of a seat. *Third*, on grounds of administrative convenience it was a lot easier to ascertain whether a student seeking admission to the evening classes was a "genuine" and "regular" employee if he or she happened to be in the employment of government or semi-government institutions. All these arguments, however, were counteracted by the Supreme Court.

Reacting on the first count the court stated that it was difficult to understand the logic of the rule restricting admission in the evening classes to *all* the employees of the government or semi-government institutions, *etc.*, simply on the specious plea that they require legal education "in public

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1. See, *infra* note 2 at 905. (Emphasis added).
2. AIR 1989 SC 903, *per* M.M. Dutt and T.K. Thommen JJ.
3. *Id.* at 900, 907.
4. *Id.* at 907.
5. *Id.* at 906-907.

interest."[6] The plea of the university on the second count, namely, "greater security of service" of the government or semi-government employees as compared to those in private establishments, which found favour with the Punjab and Haryana High Court in upholding the constitutionality of the impugned rule, was turned down by the Supreme Court. The court found it extraneous to the very objective of starting the evening classes. The different "service conditions" or "greater security of service" hardly mattered for the purpose of admission.[7] Moreover, the assured tenure of employment for a period of three years, said the Supreme Court, "not only does not stand scrutiny but also is unfair and unjust" and could not form the basis of exclusion of persons in private establishment.[8] It was also least impressed with the contention that in order to avoid the possibility of production of bogus certificate of employment from private employers, the private employees were excluded for the purpose of admission to the evening classes. Such a plea on account of administrative inconvenience could hardly be justified especially since the exclusion itself, according to the court, "is unreasonable and unjust as it does not subserve any fair and logical objective."[9]

In the light of all this, the Supreme Court, reversing the judgment of the High Court, held the impugned rule discriminatory and violative of article 14 of the Constitution and as such invalid.[10] Consequently, the denial of admission by the university on grounds of either, appellants being in private employment or their employment being "purely temporary" was declared "illegal". For undoing injustice, the court disregarded the plea advanced on behalf of the university that all seats had already been filled up and there was none left for the appellants to be admitted.[11] It ordered the creation of additional seats for the accommodation of appellants. As if to make up for the precious time lost in prolonged litigation, the court directed the university to admit the aggrieved appellants straight away in the second semester.[12]

However, by reason of the undertaking given by the counsel on behalf of the university, for regulating future admissions it is obliged to "frame a fresh rule of admission in the evening classes in conformity with and in the light of the decision of this Court in the instant case."[13] For this purpose a close reading of the "decision" is desiderated.

The burden of the Supreme Court decision is that there is no rationale in restricting admissions to law classes in the evening shift only to the

6. See, *id.* at 909, 910.
7. *Id.* at 908.
8. *Id.* at 909.
9. *Id.* at 910.
10. *Id.* at 911.
11. *Id.* at 914.
12. *Ibid.*
13. *Id.* at 911-12.

employees of government, semi-government or other similar institutions. However, if the decision is read between the lines one may find that it goes much further. In this author's view it tends to lay down that the facility of joining the evening classes should be open to all those persons who by reason of their employment or otherwise wish to make use of it on the basis of their respective merit. This conclusion flows from the strategic approach which the Supreme Court adopted for exploding the myth of the restrictive rule. *First*, this was done by the court by widening the purport of "employment" so as to include within its ambit all employees whether engaged in public or private establishments.[14] *Second*, the expression "regular employees" in the impugned rule was construed to mean that for purposes of admission it is immaterial whether an employee was "permanent or temporary".[15] *Third*, and this is perhaps the most significant innovation, the court directed the university to keep *at least* 43 seats out of 86 open for the "general candidates" so that those persons who would not fall even within the expanded version of "employment" could seek admission in the evening classes sheerly on the strength of their merit.[16]

In fact, during 1985-86, all those persons who were unable to secure admission in the morning shift could get into the evening shift on the basis of their merit as long as they were in *bona fide* employment.[17] Since the "bona fide employment" included "self-employment", there was little difficulty in keeping up the facet of employment, because there was hardly anyone whose claim to self-employment for the purpose of seeking admission to LL.B. evening course could be disputed or denied! But now through the policy of keeping at least 43 seats out of 86 open for all category of persons on merit basis, the Supreme Court obviously obviated the necessity of even keeping up this facet. And herein lies the functional legitimacy of the widened criterion of "employment".

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14. See, *id.* at 908.

15. *Id.* at 909.

16. *Id.* at 913. The reservation of seats for "regular or bonafide" employees for admission to evening classes "shall not exceed 50 per cent after deducting the number of seats reserved for scheduled castes, scheduled tribes, backward classes, etc." This simply means, out of 150 seats, 64 seats are reserved for scheduled castes, scheduled tribes, etc., and out of the remaining 86 seats, "43 will be open to the general candidates on merit basis."

17. *Id.* at 907.

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