

(2015) 03 GAU CK 0085
In the Gauhati High Court
Case No : WA 235 of 2008

Anamika Acharyya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Citation : (2015) 03 GAU CK 0085

Hon'ble Judges : K. Sreedhar Rao, C.J;Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : S.K. Medhi, for the Appellant; J. Deka, A.M. Buzarbaruah and J. Chutia, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. The appellant was appointed as lecturer in the college of the fourth respondent. She went on maternity leave on 14.7.2007. The management of the fourth respondent immediately after expiry of ninety days issued a show-cause notice on 30.11.2010 informing the appellant that her period of maternity leave expired and that she has overstayed and remained in unauthorised absent. The appellant replied to the said notice stating that her available maternity leave are 135 days and also stating that she has delivered two premature babies, therefore expressed her readiness to join duty. The management terminated the services of appellant by order dated 26th December, 2007. Aggrieved by the said order the writ petition[WP(C) 284/2008] was filed by the appellant.

2. The learned single Judge dismissed the writ petition on the ground that the fourth respondent is a non-government college not receiving the deficit grants-in-aid and ad hoc grants-in-aid and the college being purely a private non-governmental institution the writ petition would not lie. The appellant aggrieved by the said order filed this appeal.

3. When the impugned order of termination was passed the Assam Non-Government College Management Rules, 2001 was in force.

4. The provisions of Rule 1(3), 3 and 18 of the Assam Non-Government College Management Rules, 2001 is extracted herein below for convenient reference.

"1(3) They shall be applicable to Non-Government Colleges in Assam affiliated by any Central or State University of Assam and in receipt of deficit Grants-in-Aid or ad hoc Grants-in-Aid, from the state government.

3. Constitution of the Governing Body - Every Non-Government College affiliated to any Central or State University of Assam and duly concurred by the State Government, shall be governed by a Governing Body to be constituted by the Director.

18. Governing Body to obtain prior approval of the Director in certain matters - The minutes of the proceeding of the Governing Body meeting shall be sent to the Director and the concerned affiliating University. No final decision regarding appointment, promotion, suspension, termination, removal or dismissal of teaching or non-teaching staff including that of the Principal or any construction works involving [Rs. 1,00,000/- (One lakh)] or more shall be undertaken by the Governing Body without the prior approval of the Director:

Provided that so far as Non-Government Colleges are concerned, [who are not brought under deficit system of grants-in-aid] the Governing Bodies are not required to send the proceedings of the meeting to the Director but it will be open for the Director to call for the proceedings, if any complaint is received against the Governing Body and any direction given by the Director on it shall be final and binding on the Governing Body of the College".

5. Section 1(3) of the Rules 2001 declares that the provisions will apply only to non-governmental colleges affiliated to any Central or State university in Assam and which are in receipt of the deficit grants-in-aid or ad hoc grants-in-aid from the state government. In this regard the learned single Judge found that the college in question is not receiving any deficit grants-in-aid or ad hoc grants-in-aid.

6. Per contra, the counsel for the appellant relies on the order of the Additional Director of Education, Karbi Anglong Autonomous Council(KAAC) dated 17th October, 2007, which discloses that from 1.4.2007 to 30.9.2007 the college of the fourth respondent has received an ad hoc recurring grant of Rs. 3.50 lakh.

7. The counsel for the appellant also refers to para 5(e) of the affidavit of the respondent 4, which discloses that the college has been receiving ad hoc grants and been using the same for overall development of the college and providing infrastructure facilities to the students in the college. It is also stated that ad hoc grants are not sanctioned to manage the affairs of the college and the college authority has been observing laws in force and administering all the affairs of the college within the framework of the established and administrative principles.

8. In view of the averments in the affidavit of the 4th respondent and the order of the Additional Director of Education, KAAC the counsel for the appellant

submits that the contra finding of the learned single Judge that the college is not receiving deficit grants-in-aid and ad hoc grants-in-aid is incorrect and contrary to the material on record.

9. The counsel for the appellant submits that Rule 3 has dealt with constitution of governing body. The Director of Education has authority to nominate the members of the governing body. Therefore the governing body as such is not purely a body that can be constituted at the will of the management. The Director in his official capacity has right to nominate the members of the governing body and the governing body so constituted has to function in accordance with provisions of the Assam Non-Government College Management Rules, 2001, and natural justice.

10. Section 18 of the Rules 2001 declares that any decision taken by governing body with regard to appointment, promotion, suspension, termination, etc has to be approved by the Director. In this case, before issuing termination order no approval from the Director was taken, therefore the order is illegal, the counsel for the appellant submits.

11. In view of the substantial government control over the management of the college and the fact that the college in question is receiving ad hoc grant-in-aid it cannot be said that the appellant cannot invoke the writ jurisdiction to challenge the termination, the counsel for the appellant submits.

12. On merits it is submitted that the appellant has not committed any misconduct; she has availed the maternity leave. The management due to misconception has found that the maternity leave available is only ninety days, whereas the maternity leave available is 135 days. Even before completion of the maternity leave the governing body has hastily terminated the services without application of mind and initiating an enquiry.

13. Sri AM Buzarbaruah, the counsel for the fourth respondent, with reference to the proviso to Rule 18 submitted that the prior approval of the Director for termination is needed when a college is receiving deficit grants-in-aid and when a college is not receiving deficit grants-in-aid prior approval of the Director for termination is not needed and since the college of the fourth respondent is not receiving the deficit grants-in-aid the question of prior approval does not arise. It is argued that even assuming while not conceding that ad hoc deficit grant-in-aid is received, the appellant would have to exhaust the remedy "of giving complaint" to the Director under the proviso to Rule 18 and thereafter to invoke the writ jurisdiction. In the instant case the appellant has not exhausted the remedy of giving complaint to the Director, therefore the writ petition is not maintainable.

14. Sri J Chutia, the counsel for the KAAC, submits that the amount given does not constitute a deficit grant-in-aid or ad hoc grant-in-aid, therefore the learned single Judge was correct in holding that the amount given by the government does not amount to any form of grant-in-aid, therefore provisions of the Assam

Non-Government College Management Rules, 2001 do not apply, therefore the writ petition is not maintainable.

15. Upon thorough consideration of the facts and submissions we find that the affidavit filed by the fourth respondent in the writ petition and the order for payment of ad hoc recurring grant by the Karbi Anglong Autonomous Council clearly disclose that the ad hoc grant-in-aid has been given to the college in question. Therefore, by virtue of Rule 1(3) the provisions of the Assam Non-Government College Management Rules, 2001 would apply to the facts of the case. The provisions of Rule 1(3), 3 and 18 disclose the nature of government control in constitution of governing body and control over the functioning and management of the college by the governing body.

16. The government has substantial control over the functioning of the college and has been giving ad hoc grants-in-aid. The appellant availed of the maternity leave. The view taken by the governing body that the maternity leave granted are ninety days and she has overstayed therefore she is removed is incorrect. When the maternity leave is 135 days the fourth respondent cannot curtail the benefit of maternity leave to ninety days and hastily terminate the services by perfunctorily issuing the show-cause notice. The contention that since the college is not getting deficit grants-in-aid prior permission of the Director is not necessary and the permission of the Director is necessary only in case of receiving grant-in-aid is not tenable. That the appellant has not exhausted the remedy available under the proviso to Rule 18 and therefore the writ petition is not maintainable is again on the technical ground. Merely because the appellant has not complained the matter to the Director to seek redressal of grievances is not a ground in itself to deny the relief in the writ jurisdiction, more so when appellant is entitled to 135 days" maternity leave. The governing body perfunctorily and hastily removed her services even before completion of the leave. In that view of the matter the view taken by the learned single Judge that the writ petition is not maintainable is set aside. The appeal is allowed. The appellant is to be reinstated in service with twenty-five per cent back wages.