
(1991) 07 AHC CK 0047
In the Allahabad High Court
Case No : Writ Petition No. 4319 of 1999

Anita Verma

APPELLANT

Vs

D.A.V.College Management Committee and others

RESPONDENT

Date of Decision : 22-07-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1991) 07 AHC CK 0047

Hon'ble Judges : J.K.Mathur, J

Final Decision : Dismissed

Judgement

J. K. Mathur, J.—This petition has been filed for a writ of certiorari to quash an order of termination passed against the petitioner on 1041990.

2. The D.A.V. College Management Committee, New Delhi, respondent no. 1 runs a secondary school at Unchahar, Rae Bareli. This school is affiliated to the Central Board of Secondary Education and the conditions of service in the said school are governed by the Central Board of Secondary Education Affiliation Byelaws. The petitioner was selected as a Music teacher in the said school and letter of appointment was issued on 121289 She was kept on probation for one year. According to the petitioner, she is working to the entire satisfaction of the staff and students while respondent No. 2, Principal, was not happy with her as he wanted to appoint some person from Rajasthan. Some incidents took place during this period and the petitioner was required to explain certain acts of Conduct though no enquiry was conducted. Ultimately on 10490 the petitioner's services were terminated. This order has been challenged firstly, on the ground that it is based upon the alleged misconduct of the petitioner and amounts to punishment, without her having been afforded any opportunity of hearing, It also casts an aspersion on the working of the petitioner and is a stigma and has been passed in contravention to the provisions of Article 311 of the Constitution. It was also urged that it has not been passed by the appointing authority.

3. The opposite parties contested the petition. The order of termination was

defended mainly on the ground that the petitioner was on probation under the relevant rules and her services could be terminated. Her conduct was not found to be satisfactory and, therefore, her services were terminated. The opposite parties also challenged the maintainability of this petition.

4. I have heard the learned counsel for the parties.

5. On behalf of the petitioner it was urged that the opposite party no. 1 is an instrumentality of the State and amenable to the writ jurisdiction of this court.

6. The opposite party no. 1 is D. A. V. College Management Committee, Chitragupta Road, New Delhi, which is admittedly a private organization. There is no material at all to suggest that either in its working or in providing it with money there is any role of the government. In fact none has been suggested.

7. Reliance has been placed only on a document, annexure R1 filed with an affidavit by the petitioner. This purports to be an extract of an agreement between the respondent and the U.P. Rajya Vidyut Utpadan Nigam and by which the respondents agreed to establish a school at Unchahar on certain conditions. Some of the conditions relied upon are that certain personnel of the Nigam are to be members of the committee which will manage this school and that the finances for running this school would be provided by the Nigam.

8. If one activity of the respondents is to work with the help of a public sector organisation in person and finances, that would not render the contracting party itself an instrumentality of the State.

9. Reliance was placed on the case of Shri Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & others vs. V. R. Rudani and others (reported in (1989) 2 UPLBEC 117).

10. In this case certain amounts were claimed by the teachers working in a college at Ahmedabad which was affiliated to Gujarat University. In that case the teachers claimed terminal benefits consequent to the closure of the colleges in which they were working, in a writ petition filed before the High Court. The claim having been allowed by the High Court, it was again challenged in the Supreme Court.

11. The Supreme Court found that public money was to be paid to the affiliated college and such aid played a major role in the control, maintenance and working of educational institutions and their activities were closely supervised by the University authorities and thus they are not devoid of any public character. It is for & that for giving salary etc. To the college teachers, those rights can be looked into by court under Article 226 of the Constitution. The earlier decision of the Supreme Court in the case of Vaish Degree College, Shamli and others Vs. Lakshmi Narain and others (1976) 2 SCR 1006 and Deepak Kumar Biswas Vs. Director of Public Instructions (1987 (2) SCC 252) were distinguished on the ground that those related to the case of dismissal and there was a preponderance of judicial opinion that a service contract cannot be specifically

enforced.

12. Thus, this case is no authority to hold that this court can! in exercise of jurisdiction under Article 226 of the Constitution interfere with an order of termination, In this case there is nothing to show that! the respondent institution gets any aid from the government.

13. As pointed out above, there is nothing to show that the government has any say in the running of the respondent committee &, therefore, this respondent committee cannot be an instrumentality of the State.

14. Reliance was placed on the case of Francis John Vs Director of Education and others reported in (1990 SCC (L & S) 105. In that case it was held that a writ against a private educational institution be maintainable. In that case it was found that the order of termination was based upon the orders of Director of Education and Dispute Settlement Committee. The orders of Director of Education and the Dispute Settlement Committee were amenable to the jurisdiction of the High Court under Article 226 of the Constitution.

15. In the present case no order of any public authority have been passed or challenged and, therefore, this case cannot help the petitioner.

16. This writ petition therefore, cannot be maintained.

17. In no case the petitioner could be said to be a public servant or civil servant of the State and, therefore, Article 311 of the Constitution will have no application in this case.

18. The petitioner was admittedly appointed on probation for a period of one year as the terms of the appointment letter itself disclose. During the period of probation her services could be terminated if they would be found to be unsatisfactory.

19. The petitioner has herself admitted that she was required to show cause and she has filed the notice and her reply. In these circumstances, her services were not found to be satisfactory and could be validly terminated.

20. The letter of appointment has been issued by the Principal of the D.A.V., Public School as evidenced by Annexure 1 and that very authority has issued the letter of termination, It cannot, therefore, be argued that the Principal did not have the authority to terminate the service.

21. In absence of any statutory provision governing the employment of the petitioner her services were purely contractual. A contract of personal service cannot be enforced specifically.

22. Because of these reasons, I do not find any force in the present writ petition. It is hereby dismissed. The parties shall bear their own cost.

(Petition dismissed.)