
(2013) 07 PAT CK 0124

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.13466 of 2013

Babban Pd. Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2013) 4 BLJud 49

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Mr. Jitendra Kumar Roy, with Ms. Usha Kumari Singh, Advocates, for the Petitioner; Ms. Namrta Mishra, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mihir Kumar Jha, J. (Oral)—Heard learned counsel for the petitioner and respondents no. 1 to 5.

2. The prayer of the petitioner in this writ application reads as follows:-

"(i) For quashing the letter no. S-23 dated 16.3.2013 issued by the University Representative cum Secretary, Ram Lakhan Singh Yadav College Jehanabad (respondent no.7) by which the petitioner has been suspended from the post of Principal, Ram Lakhan Singh Yadav College, Jehanabad without approval from the Magadh University and by the Ad-hoc Committee which is illegal because ex-officio member of the committee has not been appointed legally."

3. Learned counsel for the petitioner has submitted that the order of suspension of the petitioner, a permanent Member of Ram Lakhan Singh Yadav College, Jehanabad (hereinafter referred to as "the College") is bad both on fact and in law. He has submitted that the order of suspension on allegation has been passed without affording opportunity of hearing to the petitioner.

4. Learned counsel for Magadh University, on the other hand, has raised a preliminary objection that the writ petition is not maintainable, inasmuch as the

order of suspension has been passed by an Ad-hoc Committee of an affiliated College which is not amenable to the writ jurisdiction. He has further submitted that in terms of the statutes the petitioner has a remedy of filing an appeal against the order of suspension before the Syndicate of the University.

5. In the considered opinion of this Court such preliminary objection raised by the learned counsel for the Magadh University has to be upheld. The petitioner is an employee of an affiliated college. He has been placed under suspension under the orders of the appointing authority, namely the Governing Body/Adhoc Committee of the College. The issue that a writ petition will not lie against a Governing Body/Adhoc Committee of an affiliated college has been well settled in the Full Bench judgment of this Court in the case of Smt. Manju Devi v. The District Superintendent of Education, Bhagalpur & Ors, reported in 1987 PLJR 962 and in the two Division Bench judgments of this Court in the case of Srimati Radha Kumari Singh @ Radha Kumari v. The Governing Body of Mahanth Mahadevanand Mahila Mahavidyalay & Ors 1977 PLJR 110 and Chandra Nath Thakur v. Bihar Sanskrit Shiksha Board & Anr. 1999 (1) PLJR 529. In fact all these judgments were considered in a recent Division Bench judgment dated 05.10.2012 in the case of Santosh Kumar v. The State of Bihar & Ors (C.W.J.C No. 10530 of 2009), wherein, it was held as follows:-

"In view of discussions made above and after noticing the various authorities cited by both the parties, we are of the considered view that earlier view of this court as reflected by Division Bench judgements in the case of Smt. Radha Kumari Singh (supra) and Chandra Nath Thakur (supra) as well as a Full Bench judgement in the case of Smt. Manju Devi (supra) does not require any reconsideration. We would, however, like to point out that earlier judgements indicated above, particularly in the case of Smt. Radha Kumari Singh (supra), it was clearly indicated that writ petition against a non statutory body such as Governing Body of a private college was not maintainable as there was no allegation of infraction of any statutory provision. In a given case where in exercise of statutory powers the University granting affiliation to a private college imposes reasonable conditions governing teachers or employees of an affiliated college, then in case of violation of Statues or Rules of the University by an affiliated college a person having corresponding right may be entitled to seek mandamus. It cannot be said in absolute terms that a writ petition is not maintainable against a private aided college even if it is a minority institution but the duty sought to be imposed upon a private body through mandamus must be of a public nature otherwise the affected employee will be denied relief in writ jurisdiction. The law laid down by the Apex Court in the case Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smark Trust and Others (supra) is based upon distinction between private rights and duties on the one side and rights and duties of public nature on the other side. It has been established by a long line of precedents that writ jurisdiction provides remedy in matters relating to public domain and for enforcement of rights flowing from Constitution or Statutes. In our view the term- "writ petition is not

maintainable" is not fully apt rather proper expression should be- "writ shall not lie" when a writ petition is filed for seeking enforcement of duties other than public duties against a person or authority which is not "State" within Article 12 of Constitution.

In the facts of the case, we are of the considered view that no writ can be issued to grant any relief to the writ petitioner who is seeking a personal right of restoration of contract of service against Managing Committee of a private minority college. The writ petition is, therefore, dismissed on the ground that no writ would lie against private respondents in absence of any right in the petitioner with corresponding duty of a public nature upon the respondents."

6. There would be yet another reason for holding that the writ petition against the order of suspension passed by the Governing Body/Adhoc Committee of affiliated private College would not lie, inasmuch as, in the condition of service there is a statute framed by the Chancellor with the heading "Number, Grades, Qualification, Pay scale and other condition of service of teachers of Admitted Colleges and their regulation by the University". In the said statute under clause-8, power of suspension has been vested in the Governing Body of the College. For the sake of clarity clause-8 of the aforesaid statute is quoted herein below:-

"8. (1) (i) The Governing Body of every admitted college, subject to the provisions in these statutes, may pass an order or orders on a teacher having one or more of the following effects:

(a) warning or censure;

(b) withholding of increment;

(c) recovery from pay, the whole or part of any pecuniary loss caused to the college by his negligence or insubordination; and

(d) discharge or dismissal.

(ii) where there is a prima facie case against a teacher or the Principal, the Governing Body may order by two thirds majority of the total membership that the teacher or the Principal be suspended pending the investigation of the charges.

(2) No order under Article 8(1) (b) (c) or (d) of this Chapter shall be passed unless (a) regular charges have been framed against the teacher and communicated to him with a statement of the grounds on which it is proposed to take action and (b) he has been given adequate opportunity (i) of submitting a written statement of his defence, (ii) of being heard in person if he so chooses, and (iii) of calling and examining such witnesses in his defence as he may wish; provided that the committee or officer authorised to conduct the enquiry may, for sufficient reasons to be recorded in writing, refuse to call any witness.

(3) Where an order of suspension has been passed against a teacher, the

charges against him shall be communicated to him within a fortnight of the date of suspension and the teacher will be required to submit an explanation within thirty days of the communication of the charges to him. On receipt of the explanation. The Governing Body will decide the matter within two months of the receipt of the explanation. The teacher shall be allowed a subsistence allowance to the extent of one-half of his salary during the period of suspension. In case he is exonerated from the charges, he will be reinstated and entitled to his full salary for the period of suspension."

(underlining for emphasis)

7. As would be evident from clause-8(1)(ii) the power of suspension has been vested in the Governing Body. Under clause-10 of the statute, an appeal lies to the syndicate of the University as against any punishment imposed on the teacher or Principal of the affiliated College. Clause-10 of the said statutes is also quoted herein below:-

"10. (1) When action or actions have been taken against any teacher under sub-clause 1 (b), (c), (d) of Article 8 of this Chapter, the teacher concerned shall have a right of appeal to the Syndicate against the order within thirty days of the receipt of the said order.

(2) The Syndicate shall appoint a Tribunal consisting of three persons to hear such appeal and report thereon to the Syndicate, whose decision in the matter shall be final and binding on the appointing authority as well as the teacher concerned."

8. Suspension is not a punishment either in clause-8 of the statute or even under service jurisprudence, inasmuch as, such suspension has to continue in pending inquiry, and thus not appealable in terms of the aforementioned clause-10 of the statute.

9. Under clause-19 of the Statute however a right has been vested in the teachers of the admitted College to make a representation regarding condition of service which has to be considered by the Syndicate, inasmuch as, the Syndicate has been vested with power to cancel any order or to quash any proceeding of the Governing Body of the College or pass any order affecting the condition of service of any such teacher. Clause-19 of the statute being relevant is also quoted herein below:-

"19. (1) Every teacher of an admitted college shall have the right to make representation, regarding his conditions of service, covered by the laws of the University, to the Governing Body through the Principal of the college concerned and to send a copy of the representation direct to the Syndicate.

(2) The Syndicate may, whether the said representation is taken into consideration by the Governing Body of the college concerned or not, cancel any order or quash any proceedings of the governing Body of the college or pass any order affecting the conditions of service of any such teacher, provided that before

taking action under this clause, the Syndicate shall call upon the Governing Body concerned to state why the order or proceedings should not be set aside or quashed and if any statement is received within a reasonable time allowed for the purpose, the Syndicate shall consider the same and pass necessary orders, which shall be final.

(3) The Syndicate shall from time to time satisfy itself, by enquiry of otherwise, that the conditions of service of teachers of admitted colleges are being properly enforced and adhered to in the admitted colleges; and may from time to time if necessary, make statutes for better regulating the condition of service."

10. Thus it can be safely held that under Clause-19 of the Statutes an order of suspension of a teacher of an affiliated college being condition of his service he has a remedy of filing a representation which has to be disposed of by the Syndicate of the University.

11. In that view of the matter while the writ application will not lie at the instance of the petitioner as against the order of his suspension passed by the Governing Body/Adhoc Committee of an affiliated College, he will definitely have statutory remedy of filing the representation in terms of clause-19. The petitioner having not done so and straightway moving this Court without exhausting the statutory alternative remedy cannot maintain this writ application.

12. Thus for the reasons indicated above, this writ application is dismissed but it is made clear that the dismissal of this writ application shall not prejudice the right of the petitioner of filing representation against his order of suspension in the manner prescribed under clause-19 of the aforementioned statute. In the event such representation is filed by the petitioner, the Syndicate of the Magadh University shall dispose it of in accordance with law without being influenced in any manner by the dismissal of this writ application.