
(1978) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1563 of 1978

Balbir Kaur Virk

APPELLANT

Vs

Secretary Education Department and Others

RESPONDENT

Date of Decision : 09-10-1978

Acts Referred:

Charitable Endowments Act, 1890 — Section 5(1)
Constitution of India, 1950 — Article 226, 227, 29(2), 311
Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 — Section 10, 3, 4, 4(4)

Citation : (1979) 1 ILR (P&H) 313

Hon'ble Judges : C.S. Tiwana, J

Bench : Single Bench

Advocate : Hari Singh Mann, for the Appellant; Gurnam Singh Tir and Bachittar Singh, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Tiwana, J.—Mrs. Balbir Kaur Virk, who for some time remained posted as Lecturer in Political Science at Sant Darbara Singh College for Women, Lopon, Respondent No. 3, has filed the present writ petition under Articles 226 and 227 of the Constitution for the issue of a writ of mandamus so as to get herself reinstated in service which was terminated with effect from May 1, 1977. The Petitioner joined her duty on August 1, 1973, and was then confirmed by an order dated August 25, 1975, with effect from August 1, 1975, Both the orders of confirmation and termination of service purport to have been passed by the Managing Committee of the College. However, the order of confirmation, Annexure P2, was conveyed to the Petitioner by the Principal of the College and the order of termination, Annexure P3, was conveyed by the Secretary of the Managing Committee. Respondent No. 3 has been described as Sant Darbara Singh College for Women, Lopon, district Faridkot, through the Secretary of the Managing Committee.

2. The grievance of the Petitioner is that her removal from service did not take

place in accordance with Sections 3 and 4 of the Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974. u/s 3 of the said Act no employee can be dismissed or removed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. It is further provided by Section 4 of that Act that the penalty of dismissal or removal from service shall not be imposed unless the same is approved by the Director of Public Instruction, Punjab. There have admittedly been no regular inquiry and no approval of the Director before the termination of the services of the Petitioner.

3. Respondent No. 2 to this petition is the Director of Public Instruction (Colleges) Punjab and it was averred by the Petitioner that she made a representation on May 30, 1977, to Respondent No. 2. Both the Secretary and the Vice-President of the Managing Committee of Respondent No. 3 had made their appearance before the Director who passed an order dated November 16, 1977, Annexure P4, upholding this contention of the Petitioner that her removal from service was invalid as no charge was framed against her and there was no inquiry. It was also held by the Director that the removal was defective as his previous approval had not been obtained. On, the facts as were made to appear before him he refused to approve of the termination at that stage. He ultimately gave this finding that the Petitioner continued to be in the service of the College and was entitled to all the pay, allowances and other benefits of the post. Respondent No. 2 was impleaded in the present writ petition primarily for the issue of this writ against him that he should get his own orders enforced. It was, however, not mentioned as to what means were available to Respondent No. 2 to get the Petitioner reinstated when the College Authorities were adamant in not taking her back in service. It has, however, been argued that Respondent No. 2 should be directed to take action by way of withholding the grant which was paid by the Government to the College. Respondent No. 1 in the petition is the Secretary, Education Department, Punjab. It has been prayed in the petition that along with Respondent No. 2 he should also get the order of reinstatement enforced by whatever means available to him. Respondents Nos. 1 and 2 have not chosen file any written statement as, according to them, there was hardly any case for the issue of a writ of mandamus against them. The main objection raised by Respondent No. 3 in the written statement is that the management of the College is not a public authority and, therefore, no writ could be issued against it. On the merits of the case it was mentioned that the Petitioner was "indulging in acts of moral turpitude and gross in disciplined". There was then said to be some such understanding between the Petitioner and the management of the College by which the Petitioner was to join her duty for a day and was then to submit her resignation. It was pleaded that the Petitioner after having reached the above-said agreement never came to join the College.

4. Respondent No. 3 has been improperly impleaded. The College itself can never be said to be such a person which can be sued in its own name. It has been urged that the order of termination was passed by the Secretary and that he

had, therefore, been correctly impleaded. The Secretary only conveyed the decision of the Managing Committee and from the order of termination it is clear that it was the Managing Committee which had terminated the services of the Petitioner. Thus, to my mind, the Managing Committee of the College was a necessary party against which the relief, if any, could be granted. Of course, the name of the Managing Committee appears in the description of Respondent No. 3 but it cannot be inferred that the Managing Committee is a party to these proceedings. Supposing for a while the description of the Respondent is "A through its secretary B employed by C Only A could be said to be a party, and not that both B and C had become parties to the litigation. Anyway, the College itself is an inanimate object and is incapable of obeying any order issued by this Court. This matter is itself not free from doubt whether the managing committee of a private college is such a body against which a writ of mandamus can be issued. Writ can only be issued to any person or authority as mentioned in Article 226 of the Constitution. As held in *National Seeds Corporation Employee's Union and Another Vs. National Seeds Corporation, New Delhi*, it is only against bodies having legal authority to determine questions affecting the rights of the subjects that the jurisdiction of the High Court under Article 226 can be invoked. The expression "any person was being interpreted when this view was expressed. In *Sardar Jaswant Singh v. Board of Secondary Education, West Bengal and Ors.* AIR 1962 Calcutta, it was laid down that the managing committee or the members thereof of a private school in West Bengal cannot be held to be a "public body" carrying out public duties. Therefore, a writ in the nature of mandamus could not be issued against the said managing committee or members thereof for infringement of Rule 33 of the Revised School Code. It was mentioned in the body of this authority that although the school was aided by the Government the managing committee of the school was a private body and was not a "person" or "authority" within the meaning of the expressions as used in Article 226. This authority may not be made fully applicable to the present case, as it was found; that the Revised School Code was not a statutory provision of law. In the present case, termination of service which has been challenged is governed by a statute. Still this argument is available that the Managing Committee itself is not a body under the Statute. In *Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.* AIR 1976 S.C. 888 a similar matter came up for consideration. The following quotation from the head note is required to be given:

Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not sufficient to clothe the institution with a statutory, character. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution

has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

5. From some of the authorities this kind of view is discernible that it would depend upon this aspect for determination of a body to be private or public whether there was any aid being received by a private institution by way of grant. The receiving of grant has been taken in some cases to be a factor to be taken into consideration in giving this finding that the institution is a public authority. This view was expressed in Jaswant Singh's case (supra) that the principal source of subsistence of the school involved in that case appeared to be private donation. It was however, remarked, that even if it was aided it would not make much difference. A similar view was taken in Smt. Ila Devi N. Shroff v. The Management of Desai Valchand, Vashram, Gujarathi School, Bangalore AIR 1963 Mys 18. According to it, the mere fact that a private institution receives grant from the State does not make it a public body nor do the conditions subject to which grant is made constitute public duties to be performed by those who are the recipients of the grant, A contrary view was taken in Harijander Singh v. Selection Committee, Kakatiya Medical College, Warrangal and Anr. AIR 1975 AP 35. According to this authority, a writ petition would be against a medical college which though privately run is affiliated to the Osmania University and receives grant from the State of Andhra Pradesh. An order cancelling the admission of a student to the first year M.B.B.S. course passed in breach of the rules of natural justice was quashed on the facts of the case. It was thus a case of the issue of the writ of certiorari. It was ordered to go against a private college although it was not a statutory body. Desh Bandhu College being a charitable endowment and its property being vested in the treasurer of the Charitable Endowment for India and which is administered in accordance with the scheme u/s 5(1) of the Charitable Endowments Act was not taken to be a private institution and was held to be a public college in Shri Chetanya Mohan Gupta v. The Principal Desh Bandhu College and Ors. 1971 (1) S.L.R. 85. The ratio of this authority can be applied to the present case and it can, therefore, be held that College Respondent No. 3 is a public institution. In Miss Achamma Thomas v. The Principal, St. Teresa's College 1971 KLJ 606 , this view was expressed that a private college affiliated to the university and receiving aid from the State funds has a public character. This was said to be indicated by the language of Article 29(2) of the Constitution whereby such institutions are enjoined not to deny admission to students merely on the ground of religion, caste, language, etc. In the reported case, as per regulations a teacher was required to be confirmed on the completion of probation. It was held that the teacher could compel this by a mandamus. Kumkum Khanna and Others Vs. The Mother Aquinas and Another, , further supports this view. The principal of a private college affiliated to the Delhi University was held to be a public authority. It has been remarked therein that though the office of a principal can exist outside a statute it becomes a statutory office when the college is admitted the privileges of the University. Even the

office of the principal is not regarded statutory in the sense that it is created by a statute it is a public office because the powers and duties of a principal relates to a large section of the public, namely, the students of the college. There was said to be no private or contractual relationship between the students and the Principal. It has, however, to be remarked that this authority is somewhat distinguishable in relation to the present case, as the relationship of the Petitioner with the College was to some extent contractual.

6. The fact that the receiving of a grant-in-aid is a material fact to be taken into consideration is also shown by the authority reported as Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra, . The Petitioner in that case was appointed a assistant teacher in the basic section of the college. She was suspended and ultimately her services were terminated. It was held that the writ Petitioner challenging suspension and termination order impleading the president of the managing committee of the college, the principal, the head mistress of the basic section and the committee of management was not maintainable as none of the opposite parties was a public authority and the impugned order was not made in the exercise of any statutory function. It was found from the provisions of the U.P. Intermediate Education Act which governed the college that the basic section of a college could not be a part of the recognised institution. The college was held to be running the basic section independently and was neither registered by the Government nor affiliated by any local body and neither any grant-in-aid and was being taken by the Department to run the section accordingly. The college had its own rules and regulations to conduct the basic section. It was held to be not correct to think that since the college has to have a committee of management as required by Section 16-A, a managing committee that looks after the affairs of the basic section of the college must also be functioning as a statutory body discharging duties under the U.P. Intermediate Education Act and governed by the regulations framed thereunder.

7. A mention of this fact was made in para 11 of the writ petition that the College, Respondent No. 3, was an affiliated college of the Panjab University and that the Government had been giving a grant and other assistance to the College. There was no specific denial on behalf of Respondent No. 3 of the allegation made in para 11 of the petition and thus it can be taken to be an admitted fact that the College has been receiving grants from the Punjab Government.

8. I take this overall view with the help of the authorities already referred to that the College, Respondent No. 3, was a public institution as it was affiliated to the Punjab University and was receiving grants-in-aid. The Managing Committee of the College was, however, a private body in relation to the performance of those functions which were outside the scope of the Punjab Affiliated Colleges (Security of Service of Employees) Act. However, in relation to those functions which were to be performed in pursuance of Sections 3 and 4 of the said Act it could be deemed to be acting in its public capacity. Thus if the circumstances so permitted

a writ could have been issued to the Managing Committee of the College so as to obtain compliance of the statutory provisions and any action taken by it in derogation of the provisions of the relevant Act to terminate the service of the Petitioners could have been set aside.

9. The holding in Executive Committee of Vaish Degree College, Shamir's case (3 supra) has created another hurdle in the way of the Petitioner for obtaining the relief prayed for. The service of the Petitioner with the Managing Committee being a contractual one it is difficult to get it specifically enforced by giving this kind of declaration that the Petitioner should be treated to be still in service. The holding of the above said authority may be given with the help of the following headnote:

A contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions-(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India, (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law, and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

Unless the Managing Committee could be held to be a statutory body no relief can possibly be given to the Petitioner. Furthermore, the conduct of the Petitioner in relation to her employer is relevant for showing that she should not be got reinstated. Hira Singh, Secretary of the College, Respondent No. 3, filed an affidavit dated September 27, 1977, before the Director during the course of the hearing of the representation made by the Petitioner. After admitting that no charges in writing were levelled against the Petitioner as only moral conduct was involved, it was pointed out that on March 3, 1977, the Principal of the College had directed the Petitioner along with some other teachers to attend a meeting on that day, at 11.30 a.m. in the College Office. The Principal recorded this note that the Petitioner had adopted an objectionable attitude as she refused to attend the meeting. She was said to have thrown the notice in contemptuous manner. The Secretary was directed to inform the Managing Committee about the misconduct of the Petitioner. The Petitioner was called upon to explain her misconduct by a communication dated March 4, 1977, by the Principal. The Petitioner conveyed it to the Principal that she would orally discuss the whole matter with her but she never turned up. The Secretary was again directed to inform the Managing Committee about the indifferent and objectionable role adopted by the Petitioner. By an order dated April 2, 1977, the Principal called upon the Petitioner to perform the duties of stage secretary at 10 a.m. that day. She sent back this intimation that she did not want to accept the order and that she would personally discuss the matter with the Principal. The Principal then prepared a note dated April 3, 1977, showing what happened subsequently. She

noted that the Petitioner did not come to her. She was then called. While replying to the questions put to her she walked out of the office while using "uncultured and unparliamentary language". This conduct was again brought to the notice of the Managing Committee through the Secretary. Thereafter Sant Darbara Singh, who is the President of the College himself wrote a letter dated April 5, 1977, to the Petitioner. The delivery of this letter was refused to be accepted by the Petitioner. It had then been alleged against the Petitioner that she used to indulge in loose talk with the students. She had obtained on rent a private residence and it had been reported to the Managing Committee that she was using her house for undesirable purposes which had annoyed the landlord of the house. Several persons then complained to the Managing Committee about the acts of the Petitioner involving moral turpitude. It was then explained that it was safeguarding the honour of the Petitioner herself that no detailed inquiry was held. The Petitioner remained silent to all the allegations which were made against her and their truthfulness is not being challenged in the present writ petition. A woman who behaved in the alleged manner towards the Principal and the President of the Managing Committee is not likely to render proper service in the performance of her duties. According to the learned Counsel for Respondent No. 3, there are two colleges for women being run in a village and it would not be possible for the President of the Managing Committee to face the rural public if a woman like the Petitioner was to be kept in service. Thus in the circumstances of the present case the Petitioner could have availed of the opportunity of filing a civil suit for obtaining damages for her dismissal which was not in accordance with law. Reinstatement is not the proper remedy to be made available to her.

10. Learned Counsel for the Petitioner urged that a writ can be issued against the Director, Respondent No. 2, for the taking of further steps to get the Petitioner reinstated. In a way, the Petitioner wants a writ of mandamus to be issued to Respondent No. 2 so as to urge upon the State Government to take some such punitive action against the College authorities as to enable the Petitioner to get into service over again. There is Section 10 of the Affiliated Colleges Act which gives power to remove difficulties. It says that if any difficulty arises in giving effect to the provisions of the Act, the State Government may by order do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty. It is argued that there being no penal clause in the Act itself some penalty should be imposed in the garb of acting for the removal of difficulties. I entirely disagree with this kind of approach. It would tantamount to the use of Section 10 of the Act in a manner not intended by the legislature. Furthermore, it is not known what are the terms for the grant of aid and it is not known in what circumstances the aid can be discontinued. There is no material on record for showing that any such contingency has arisen on account of which the aid can be stopped.

11. Another aspect of the matter is that the order passed by the Director with regard to the reinstatement of the Petitioner does not at all fall within the ambit

of the Punjab Affiliated Colleges Act. He was only required to act if somebody had made a move for obtaining his approval with regard to the dismissal or removal from service of any employee. The representation made by the Petitioner which was heard by the Director could not at all lie to him and any order subsequently passed by him could be said to be without jurisdiction. It is for the enforcement of such an order that the Director is being asked to take punitive action. It was also argued by the learned Counsel for the Petitioner that if the College was in any manner aggrieved by the order of the Director it could file an appeal to the District Judge as provided by Sub-section (4) of Section 4 of the Affiliated Colleges Act. When the order of the Director was not under the provisions of any Act it was not required to be set aside by the filing of any appeal.

12. This petition is thus held to be not at all maintainable against Respondents Nos. 1 and 2. It could be filed against the Managing Committee of the College by impleading all the members of that Committee and it could not at all be filed against a college which by itself could neither obey nor disobey any order. The writ petition as filed is also held to be non-maintainable against Respondent No. 3. The petition is consequently dismissed. There shall be no order as to costs.