
(1971) 03 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 32 of 1968

Basudev Sarangi

APPELLANT

Vs

Inspector of Schools and Another

RESPONDENT

Date of Decision : 10-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1971) 37 CLT 330

Hon'ble Judges : G.K. Misra, C.J;B.K. Patra, J;A. Misra, J

Bench : Full Bench

Advocate : S.P. Mohapatra, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

A. Misra, J.—The facts, in brief, so far relevant on which this application under Articles 226 and 227 of the Constitution is founded, are as follows:

Uchashikshyasram High School of Village Kadaliban was started as a private institution in which the petitioner was appointed as an Asst. teacher by the Managing Committee in the year 1943 and he continued to serve there. In the year 1962, the State Government took over this institution along with other similar institutions situate at different places in the State declaring them as Government managed full deficit aided High Schools. The Managing Committee was abolished and a set of Rules as at Annexure" 1 were introduced for the management and administration of the institutions. Subsequent to the taking over of management of such institutions opposite parties effected transfers of teachers from one school to another, in the course of which, petitioner was transferred to Kolar-Joypur High School but later on ordered to rejoin his original post at Arua-Kadaliban after expiry of his leave. Op 2-9-1967, after expiry of his leave, petitioner joined his original post, but again proceeded on leave on 12-9-1967. While he was on leave, he was declared as surplus in the institution, transferred and temporarily adjusted as an Asst. teacher in the Dohali Model High School. His representations to the authorities in the Department that Tinder

the conditions of his service he was not liable to transfer from the institution where he was originally appointed by the Managing Committee having proved infructuous, he filed the present application for issue of a writ of mandamus directing the opposite parties not to enforce their order of his transfer from the Uchashikshysram High School of Kadaliban where he has been serving since 1943 and to treat him as a teacher of that institution. In short, his contention is that he having been appointed by the Managing Committee of a Private School is not liable to transfer from the said institution according to the conditions of his contract of service, and as such, the order of his transfer passed by opposite parties is without jurisdiction.

2. Opposite parties in their counter-affidavit resist the application firstly, on the ground that the Inspector of Schools being in charge of the administration and management of all the taken over full deficit aided High Schools is competent to transfer the petitioner from one such institution to another under the Rules at Annexure 1 introduced for the management of such institutions, and it is not open to the petitioner to challenge the same; and secondly, as the impugned order of transfer relates to the management of a private school which has been taken over by Government, the right, if any, claimed by the petitioner being contractual between him and the management, the appropriate remedy available to him will be by way of a civil suit and no writ is maintainable.

3. The respective averments of the parties lead to the following conclusions which are not seriously disputed: (1) The Uchashikshyasram High School of village Kadaliban was started as a private school and managed by a Managing Committee who appointed the petitioner as an asst. teacher in 1943; (2) the said High School was declared as a full deficit aided High School in the year 1962 and the management taken over by the State; (3) On taking over the management, the existing Managing Committee was abolished and the management and administration of the said institution were entrusted to the opposite parties for which purpose, a set of instructions as contained in Annexure 1 were introduced and (4) the State in its role as manager of such schools effected inter se transfers of teachers from one to another of such institutions, in the course of which, petitioner was also ordered to be transferred on more than one occasion and ultimately to the Dohali Model High School which order is now under challenge,

4. The contention of the petitioner is that Uchashikshyasram High School of Kadaliban was started and is still a private school and he having been appointed by the Managing Committee of that institution, under the terms of his contract of service, he is not liable to transfer from that institution to any other place, and as such, opp. parties have no jurisdiction to order his transfer even though they have taken over the management of this institution. His further contention is that he having not agreed or accepted the terms contained in Annexure 1 which are called Special Rules introduced for the management of such full deficit aided High Schools taken over by the State, any condition contained therein making him

amenable to transfer from the institution is not valid and binding on him. On the other hand, the contention advanced on behalf of opp. parties is that once the petitioner takes the stand that he is an employee of a private institution, and as such, not liable to transfer by them, the rights, if any, claimed by him are purely contractual and not enforceable by invoking the prerogative jurisdiction of the Court. Their further contention is that having taken over the management of these institutions, when a set of Rules for administering them have been introduced, all the employees of such institutions will be governed by such Rules.

5. The two points that arise for consideration are as follows: (1) Whether the petitioner, who was and is still a teacher of a private school, the management of which has been taken over by Government, is liable to be transferred from the institution where he was serving to any other institution by the opp. parties and (2) whether the petitioner is entitled to ask for issue of a writ of mandamus directing the opp. parties not to implement the order of transfer on the basis of the right which he claims. These two points require careful examination.

6. The petitioner in support of the first point relies on a Division Bench decision of this Court reported in 35 1969 CLT 14 : (1969 Lab IC 786) Baikunthanath Pratihari v. State of Orissa where, it was held that a person holding the post of a teacher in a private school who does not belong to, nor has been absorbed in the State service cannot be transferred from one school to another by the Inspector of Schools. In that case, however, the question of maintainability of an application under Article 226 of the Constitution was not urged, considered or decided. Therefore, the present case was referred to a larger Bench and that is how the Full Bench came to hear the present application. Hence we propose to deal with the second point first.

7. The categorical stand of the petitioner is that he is not a Government servant, that is to say, holder of a civil post under the State. It is his case that he was appointed as an Asst. teacher by the Managing Committee of a private school and continues to hold it under a contract express or implied entered into by him with the Managing Committee, and under this contract, his employment is confined to the institution in question and not transferable to any other school or to the control of any other employer. It is also his case that after declaring the institution in question like many other similar institutions as a full deficit aided High School, the State took over the management of the said school from the Managing Committee, and as such, cannot claim to have acquired or possessed any right higher than that of the Managing Committee with whom he entered into his contract of service, In short, his case is that he still continues to be an employee in a private institution under certain contractual terms and not having acquired the status of the holder of a civil post under the State, opp. parties have no right to transfer him or exercise any power higher than that possessed by the Managing Committee. The State having taken over the Management as agent of the private employer the Managing Committee, cannot exercise a power which the principal itself did not possess. The question, therefore, arises whether

for enforcement of contractual rights, assuming for the present purpose that under the terms of the contract between the petitioner and his employer, the Managing Committee, his service was non-transferable, the prerogative jurisdiction of this Court under Article 220 of the Constitution can be invoked for issue of a writ of mandamus.

8. Mr. S.P. Mohapatra, learned Counsel for petitioner contended that though he could not have asked for a writ of mandamus to enforce his contractual rights against the private employer, the Managing Committee, if they had passed an order like the impugned one, such a prayer will be maintainable against the State when it purports to function as agent or delega-tee of the Managing Committee. He has not been able to place a single authority in support of this contention. On the other hand, the authoritative pronouncements of the Supreme Court and this Court clearly negative such a contention and lay down that a mandamus lies only to secure the performance of a public or statutory duty, in the performance of which, one who applies for it has a sufficient legal interest. Such an application cannot be maintained to secure performance of contractual obligations or resolve any private disputes.

In this connection, we need refer only to the following decisions. In *Lekhraj v. Deputy Custodian, Bombay* (AIR 1965 SC 334), the facts, in brief, were as follows: Two firms belonging to persons who migrated to Pakistan became vested in the custodian of the evacuee property in the State of Madras who appointed the petitioner therein as manager of the firms u/s 10(2)(b) of the Administration of Evacuee Property Act 1950. On 18-12-59 the Custodian-cum-Managing Officer terminated the service of the petitioner with immediate effect and directed him to make over possession of the premises, etc. The petitioner moved the Kerala High Court for issue of a writ of Certiorari for quashing the order of termination and for issue of a writ of mandamus directing the opp. party to make over possession of the firms and their estates to him. The petition having been dismissed by the High Court, an appeal was preferred to the Supreme Court. In dismissing the appeal, their Lordships of the Supreme Court observed:

"The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by Statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions. In the present case, the appointment of the appellant as a manager by the Custodian by virtue of his power u/s 10(2)(b) of the 1950 Act is contractual in its nature and there is no statutory obligation as between him and the appellant. In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution."

This view was re-affirmed by the Supreme Court in the decision reported in *The*

Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, where it was observed:--

"But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which one who applies for it has a sufficient legal interest. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty."

In a Division Bench decision of this Court reported in 35 1969 CLT 1140 (Bijoy Kumar v. Project Administrator, I. D. G. Orissa) it was held that an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character, nor can such an application be maintained to secure the performance of obligations owed by a company towards its workmen to resolve any private dispute. In another Division Bench decision of this Court reported in ILR (1970) Cut 952 (Sura Prasad Mohapatra v. State of Orissa) where teachers or some taken over High Schools like the present one challenged the order of the State Government in terminating their services by way of retirement on attainment of 58th year, it was held that the rights sought to be enforced being in nature contractual are not enforceable against the State by invoking the writ jurisdiction of the Court.

9. In the present case, the petitioner does not seek to enforce performance of any statutory obligation or public duty attached to any office. On his own averments what he seeks is enforcement of certain contractual rights which he claims to possess under the contract of service entered into by him with the private employer, the Managing Committee against the State who for the time being has taken over the management of the school as an agent or delegatee of the private employer. In view of the settled legal position discussed above when the petitioner could not have enforced his contractual obligation against his employer by seeking issue of a writ of mandamus under Article 226 of the Constitution, it follows that he cannot ask for such a writ to enforce his contractual rights, if any, against the State Government, or its officers who are in management of the institution as agents of the Managing Committee of the private institution. The remedy available to the petitioner to enforce his contractual rights, if any, is by filing a regular suit in a civil court and not by invoking the writ jurisdiction of the Court. On this ground, we hold that the present writ application is not maintainable.

10. On the aforesaid analysis, the decision reported in 35 1969 CLT 14 : (1960 Lab IC 786) cannot be accepted as laying down good law and is accordingly overruled.

11. In view of our decision against the maintainability of the present writ application, it is not necessary for us to consider whether under the terms of the contract of employment of the petitioner, his services were transferable from the

institution where he was appointed.

12. In the result, the writ application fails and is dismissed, but in the circumstances without costs.

G.K. Misra, C.J.

13. I agree.

B.K. Patra, J.

14. I agree.