

(2008) 07 GAU CK 0003
In the Gauhati High Court

Binoy Kumar Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 4 GLT 74

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amitava Roy, J.—In challenge is the notification No. B(2) H. 429/94/245 dated 6.6.2007 of the Additional Secretary to the Government of Assam, Education (H) Department, transferring the respondent No. 6, a Lecturer in Sanskrit, Nyaya Darshan of K.K. Handique Government Sanskrit College, Jalukbari (hereafter referred to as the College) to the Cotton College, Guwahati, the judgment and order dated 5.9.2007 passed by the learned Assam Administrative Tribunal in Appeal Case No. 36 ATA/2007 as well as the communication dated 7.7.2007 of the Secretary to the Government of Assam, Education (H) Department requiring the respondent No. 4 to release the respondent No. 6 pursuant to the aforementioned notification dated 6.6.2007.

2. I have heard Mr. K.K. Mahanta, Sr. Advocate for the petitioner, Mr. M.R. Pathak, learned Standing Counsel, Education Department for the State respondents, Ms. B. Choudhury, Advocate for the respondent No. 4 and Mr. P.C. Deka, Sr. Advocate assisted by Mr. N. Deka, Advocate for the respondent No. 6.

3. The pleaded versions of the parties in short are unavoidable. The petitioner has introduced himself to be the General Secretary of the Students Union of the College having been elected to the said office for the academic year 2006-07 and has thus contended that being the representative of the said Student Body has the locus standi to file the writ petition. By an additional affidavit, the petitioner

has brought on record a resolution taken by the aforementioned Body authorizing him to pursue this proceeding in the capacity of the Advisor thereof. Admittedly the petitioner meanwhile has demitted the office of the General Secretary of the Students Union on the expiry of his term. The petitioner has averred that the College imparts education exclusively in Sanskrit offering four major subjects in Kavya, Nyaya, Veda and Vedanta besides other related faculties. It has been averred that for the academic year 2006-07, four students opted for Nyaya major out of whom one student having failed in the first year, the remaining three are prosecuting their studies in the said discipline. The petitioner has stated that the respondent No. 6, a Lecturer who is entrusted to take classes in Nyaya major in the College being irregular, the students suffered seriously. As all the departments of the College including Nyaya-Darshana is manned by a solitary Lecturer, absence or non-attendance of the teacher implies practical break down of the faculty.

4. The students of Nyaya having approached the Principal of the College, they were intimated that by the order dated 6.6.2007 of the Director of Higher Education, Assam, the respondent No. 6 has been transferred to the Cotton College and that she (Principal) had in the meantime submitted a representation before the Commissioner and Secretary to the Government of Assam, Education (H) Department requesting him to make alternative arrangements before insisting on the release of the said respondent pursuant to her transfer. According to the petitioner, the students waited in expectation but in vain.

5. In the meantime the respondent No. 6 approached the Assam Administrative Tribunal (hereafter referred to as the Tribunal) assailing the letter dated 8.6.2007 of the Principal to the Commissioner and Secretary to the Government of Assam referred to hereinabove. The learned Tribunal by its judgment and order dated 6.9.2007 allowed the appeal of the respondent No. 6 with the observation that the respondent No. 4 had no alternative but to abide by the direction contained in the letter dated 7.7.2007 for release of the respondent No. 6. The aggrieved students thereafter, according to the petitioner, submitted a written representation before the Commissioner and Secretary of the Education (Higher) Department, Government of Assam for his intervention for ameliorating of their distress. In view of the prevailing stalemate, the writ jurisdiction of this Court has been invoked. The impugned order of transfer and the decision of the learned Tribunal has been impeached to be unfair, unjust and discriminatory. The petitioner by an additional affidavit filed on 20.2.2008 has also questioned the impugned order of transfer to be violative of the transfer guidelines pertaining to Government officials.

6. The State respondents in their affidavit while endorsing the transfer of the respondent No. 6 to be valid has challenged the maintainability of the petition on the ground of want of locus standi of the petitioner. They have disclosed in their affidavit the steps taken by the Government in filling up the vacancies amongst others in the post of Lecturers in Sanskrit in different Government Colleges and

that the Assam Public Service Commission (hereafter referred to as the Commission) has in the meantime published an advertisement on 24.1.2008 and that its recommendation for appointments is awaited. The answering respondents further maintained that the Education Department in order to ensure that the students of the College did not suffer required the respondent No. 6 on 15.9.2007 to submit an undertaking to take two classes in a week in response where to she made a declaration agreeing to the arrangement after she was released from the College. The Principal of the Cotton College to which the respondent No. 6 has been transferred also in writing conveyed that there was no objection to the proposed arrangement. The respondents pleaded the Government's prerogative in transferring its employees and insisted that the order of transfer was valid.

7. The respondent No. 4, the Principal of the College in her affidavit has in essence contended that the respondent No. 6 was not interested in taking up classes therein and because of her indifference and non-cooperation, the students are suffering. She has, however, expressed her reservation against the unilateral transfer of the respondent No. 6, the sole Lecturer in Nyaya Darshafla in the midst of an academic session without providing for a substitute in her place. The respondent, however, has admitted that till date, the respondent No. 6 has not been released from the College. The answering respondent, however, clarified that there has not been any resistance from her side to prevent the respondent No. 6 from attending her duties in the Cotton College. She has further indicated about some agitation by the students in the College demanding filling up of vacant posts of teachers and against the transfer of the respondent No. 6 for which she is under heavy pressure.

8. The respondent No. 6 while assailing the maintainability of the writ petition has contended that her transfer was legally valid being an incidence of service. According to her, the College is equipped with 7 teachers in Sanskrit compared to three teachers in Cotton College. She has insisted that the order of transfer is in public interest bearing in mind the relatively greater exigencies in the Cotton College where the number of students is much higher than those in the K.K. Handique Government Sanskrit College. She also affirmed her undertaking dated 17.9.2007 to the Government expressing her consent to take two classes in the College after being released to join the Cotton College. She has reiterated that she has not yet been released from the College in spite of the above arrangement and the instructions issued by the concerned authorities of the Department.

9. This Court by order dated 12.10.2007 while issuing notice and having been apprised of the aforementioned undertaking of the respondent No. 6 observed that pending return of the notice and submissions of the affidavits by the respondents, the proposed arrangement without prejudice to the rights and contentions of the parties be acted upon till the returnable date. This Court thereby desired to strike a balance between competing interests of the students of both the institutions pending final adjudication of the issues. The respondent

No. 6 was left at liberty to take more classes if permitted by the authorities of the Cotton College during the interregnum.

10. The rival pleaded contentions of the parties bearing on the release of the respondent No. 6 and the non-implementation of the arrangement as above have to be viewed in this background. The respondent No. 4 incidentally has also taken a stand that the arrangement approved by this Court was effective till 14.11.2007 only and it was not extended thereafter. Logically this assertion is by way of a defence to the asseveration of deliberate non-compliance of the directions contained in the order dated 12.10.2007.

11. The learned Standing Counsel, Education Department, and the respondent No. 6 having raised a preliminary objection with regard to the locus standi of the petitioner, this Court has considered it expedient to examine the same before the embarking upon the other issues on merit.

12. Mr. Mahanta has urged that the petitioner is before this Court both in his individual capacity as well as the General Secretary of the Students Union (hereafter referred to as the Union). As he represents the interest of the student community of the College as a whole, his locus standi to maintain this petition is unquestionable. Further no objection in this regard having been taken by the respondent No. 6 in her affidavits in the proceedings, she is estopped from raising a plea to that effect at this stage. The learned Sr. Counsel urged that the issue of locus standi is to be decided in the facts of each case and the test of aggrieved party is not absolute. According to Mr. Mahanta, a person having substantial interest in the subject matter may also invoke the writ jurisdiction of this Court even if no specific right of his is either involved or infringed. The learned Sr. Counsel contended that having regard to the petitioner's office he is in the capacity of the trustee representing the interest of the students at large. He maintained that though the petitioner presently is not the General Secretary of the Union, he having been authorized to continue with the proceeding on its behalf, the challenge to his locus standi is per se unsustainable. Mr. Mahanta to buttress his arguments placed reliance on the decision of the Apex Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . An extract from the *Administrative Law* by H.W.R. Wade - 5th Edition was also relied upon.

13. Mr. Pathak as against this has urged that as no legal or constitutional right of the petitioner has been violated, he as an unconcerned third Party has no standing to assail the transfer of respondent No. 6 and the determination made by the learned Tribunal. He contended that as transfer qua the respondent No. 6 is a condition of service which the department as her employer has the power and prerogative to effect, the same cannot be stultified or annulled at the instance of someone whose legal right or interest has not been affected thereby.

14. Mr. Deka while endorsing the above has contended that absence of any categorical objection to the locus standi of the petitioner by the respondent No. 6

in her pleadings in the face of a specific contention to the said effect in the Government's counter is wholly inconsequential. Emphatically maintaining that the petitioner lacks the locus standi to maintain the instant petition, the learned Sr. Counsel insisted that the Respondent No. 6's order of transfer is valid and passed in public interest and the learned tribunal having sustained the same after evaluating the comparative inconvenience and hardship of the students of the two Colleges, even on merits, the petition does not deserve to be entertained. To reinforce his arguments the learned Sr. Counsel has placed reliance on the decision of the Apex Court in Vinoy Kumar Vs. State of U.P. and Others, .

15. The rival pleadings more particularly on the aspect of the Us under scrutiny as well as the arguments advanced have received the due attention of this Court. To start with, the K. K. Handique Government Sanskrit College is a Government Institution Lecturers whereof are in the State service. As such they are governed by the extant rules, executive instructions and administrative guidelines regulating their transfer, which is an essential condition of service. Noticeably there is no allegation of mala fide or violation of any statutory rules vis-a-vis the impugned order of transfer dated 6.6.2007.

16. The respondent No. 6 apparently is inclined to comply therewith and had approached the learned Tribunal for the enforcement thereof. The learned Tribunal determined the transfer to be within the dominion of the Government. It, however, required the respondent State to ensure that the students of the College do not suffer for want of adequate number of Lecturers after the transfer of the respondent No. 6. The learned Tribunal also granted liberty to the State respondents to require the respondent No. 6, if the circumstances so demand, to take classes atleast two days in a week in the College in addition to her duties in the Cotton College. As the orders of the learned Tribunal reveals, it also took note of the students lecturers ratio in both the College in arriving at its final decision. The facts demonstrate that the respondent No. 6 being asked had responded positively to the arrangement proposed which too had the approval of the Cotton College. The arrangement, however, has not worked, as she has not been released from the College.

16A. In the writ petition the petitioner though has referred to himself as the General Secretary of the Union has not in categorical terms stated that the proceeding has been initiated in the said capacity and on behalf of the Student's Body. In the cause title as well the petitioner has neither mentioned his office nor has indicated that it was in his official capacity as the General Secretary of the Union that he seeks to invoke the writ jurisdiction of this Court. The description provided by him obviously demonstrates that the petition had been filed by him in his individual capacity. It is not clear either from the writ petition as to whether the Union is a registered Body. His statement in his additional affidavit claiming to have initiated the instant proceeding in a representative capacity as well as the resolution of the Union authorizing him to continue the same as its

Advisor in the opinion of this Court do not per se endow him with the standing as required in law bearing in mind the challenge made and the issues involved. It has been admitted in course of the arguments that the petitioner is not a student of Sanskrit in the College and, therefore, in his individual capacity neither any legal or constitutional right of his has been infringed nor affected by the transfer of respondent No. 6. The averments made in paragraph 15 of the writ petition and paragraph 1 of the additional affidavit filed by him on 24.6.2008 have also not been appropriately affirmed to unequivocally demonstrate that he has filed the writ petition as an authorized representative of the Students Body of the College. Significantly none of the students actually affected, if at all, by the transfer of the respondent No. 6 has individually or collectively approached this Court ventilating their grievances. Mr. Mahanta had in course of the arguments referred to an excerpt from the Administrative Law by H. W. R Wade, 5th Edition; page 579, the portion highlighted by him being extracted hereinbelow.

ut there are many situations where a person has a special interest without any specific legal right and there has been a tendency for the Courts to grant injunction on the strength of the special interest.

17. The learned Sr. Counsel endeavoured to impress upon this Court that a petition of the present kind is maintainable by a person possessed of a special interest in the issue even in absence of any specific legal right in connection therewith.

18. The contextual facts do not project any special interest of the petitioner, to permit an application of the above test in his favour. As alluded hereinabove, the attending facts and circumstances also do not highlight any apparent default or abuse on the part of the State respondents in passing the impugned order of transfer so much so to defile a subsisting public policy to render it per se in effectual, null and void. Special interest, if any, can at best be determinable in the students in Kabya Darshana who, as observed hereinabove, are not before this Court. Having regard to the nature of the challenge made, the aspect of standing of the petitioner has to be necessarily strictly construed. Expectedly the respondent State must have made its own assessment in passing the order of transfer. That the student teacher ratio is much higher in Cotton College is not in dispute. The claim of the State respondents to have initiated a process for filling up amongst others post of Lectures of Sanskrit in the College is also unrefuted.

19. In Gadde Venkateswara Rao (supra) the appellant who at the relevant time was the President of the concerned village Panchayat from the territorial jurisdiction of which a primary health center was sought to be shifted had challenged the Government order to the said effect as the representative of the village Dharmajigudem under Article 226 of the Constitution of India. The facts reveal that the appellant in the aforementioned capacity had represented the village in all its dealings with the Government officials involved and that he was authorized to act on behalf of the Committee set up for that purpose. The Apex Court, therefore, construed the Committee to be the trustee of the amount

collected from the villagers for public purpose and returned a finding in favour of the appellants" standing as its representative. It was observed in that perspective that the petitioner who seeks to file an application under Article 226 of the Constitution ordinarily should be one who has a personal or individual right in the subject matter of the petition. Their Lordships elucidated that a personal right need not be in respect of a proprietary interest but can also relate to an interest of a trustee. It was propounded that in exceptional cases a person who has been prejudicially affected by an act or an omission of the authority can also file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. It was pro pounded that a writ petition can also be maintainable by a person who is prejudicially affected by a decision of an administrative authority even in absence of his proprietary or fiduciary interest in the subject matter involved. Their Lordships, therefore, clearly underscored the necessity of a detrimental bearing on one's interest to maintain a writ petition even if thereby no personal right was violated. 20. Their Lordships in Vinoy Kumar (supra), in clear terms ruled that a person would have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests violated ignoring the applicable rules. It was held that the relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction, the exception being in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. Their Lordships sounded a note of caution observing that the Court should confine the exercise of writ jurisdiction to cases where legal wrong or injuries are caused to a particular person or his, fundamental rights are violated and it ought not entertain cases of individual wrong or injury at the instance of third party. It was clarified that even in cases filed in public interest, the Court can exercise writ jurisdiction at the instance of the third party only when it is shown that the legal wrong or legal injury is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief.

21. The propositions adumbrated in the above two decisions are not in conflict and compliment each other. In the facts of the instant case, the interest of the petitioner is distantly remote to satisfy the tests noticed hereinabove. Even assuming that a public interest is sought to be guarded by the instant petition, no reason is forthcoming as to why the students actually prejudiced by the transfer of the respondent No. 6 are not in a position to approach this Court, they having at the earlier point of time represented before the Government in this regard. The instant petition evidently has not been presented as a public interest litigation. The interest of the Union representing itself to be the representative body of the students to espouse the cause of those actually affected in the opinion of this court is too distantly remote to confer the required standing in the petitioner to maintain this petition.

22. In the interest of administrative discipline and systemic orderliness as well such an endeavour does not find favour with the Court in the exercise of its extra ordinary jurisdiction.

23. In the above view of the matter, I am constrained to hold that the plea of want of locus standi of the petitioner has considerable substance and is hereby sustained.

24. In the result the petition is not maintainable in law and is dismissed.

25. No costs.