
(1999) 01 PAT CK 0025

In the Patna High Court

Case No : L.P.A. No's. 123, 124, and 127 of 1988 and C.W.J.C. No. 4540 of 1984

Chandra Nath Thakur and Others

APPELLANT

Vs

The Bihar Sanskrit Shiksha Board and Others

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Constitution of India, 1950 — Article 213, 226

Citation : (1999) 1 BLJR 456 : (1999) 1 PLJR 529

Hon'ble Judges : Shiva Kirti Singh, J; Narbadeshwar Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narbadeshwar Pandey, J.—In these three appeals, the judgment of a learned Single Judge In CWJC Nos. 5340 of 1987 and 5829 of 1987 is under challenge. L.P.A. Nos. 123 and 124 of 1988 have been preferred by the Writ Petitioner Chandra Nath Thakur whereas L.P.A. No. 127 of 1988 is on behalf of the Bihar Sanskrit Shiksha Board (in short "the Board").

In CWJC No. 4540 of 1984, which was directed to be heard along with these appeals, the Managing Committee of Shri Bhagirath Madhyamik Sanskrit Vidyalaya has sought for quashing of the order of the Chairman of the Board, contained in letter dated 8.9.1984, where by, while dissolving the Managing Committee, an ad hoc Managing Committee was constituted.

2. But having regard to the controversy involved, it is not necessary to state the facts in detail. Suffice it to say that appellant Chandra Nath Thakur was appointed as a teacher by the Managing Committee of the School. This is not in dispute that on or about 22.8.1981, the said school was recognized by the State of Bihar as Private Sanskrit High School. In the year, 1983, appellant Thakur was involved in a criminal case and non-bailable warrant of arrest was issued. The Managing Committee, therefore, having regard to involvement of Shri Thakur in the criminal cases and some other cases, in its meeting on 19.4.1984, adopted a

resolution to suspend him and to initiate a departmental proceeding.

3. Meanwhile, the Governor of Bihar in exercise of his powers conferred upon him under Article 213(1) of the Constitution of India, promulgated an Ordinance known as Bihar Sanskrit Shiksha Education Board Ordinance, 1980, which was ultimately enacted as Bihar Sanskrit Shiksha Education Board Act, 1981 and came into force with effect from 24.1.1982 (hereinafter referred to as "the Act"). The Chairman of the Board by his order dated 8.9.1984, as stated above, dissolved the Managing Committee and constituted an ad hoc Managing Committee in relation thereto, and also took a decision to set aside the order of suspension of Shri Thakur.

4. The Managing Committee questioning the validity of the said order, filed CWJC No. 4540 of 1984 wherein the Court by order dated 9.11.1984 stayed the operation of the order of the Chairman. Thus, the old Managing Committee continued to function and ultimately on 26.9.1985, terminated the services of appellant Thakur by the order, contained in Annexure-4 to CWJC No. 5829 of 1987 and the order of termination was communicated through registered post. But despite the knowledge of the order of termination, Shri Thakur filed an application before the Chairman of the Board on 2.11.1985 for payment of his salary and ultimately by an ex-parte order dated 16.4.1987, the Chairman directed the Managing Committee to pay salary of Shri Thakur, which was challenged by the Managing Committee in CWJC No. 5829 of 1987, whereas CWJC No. 5340 of 1987 was filed on behalf of Shri Thakur for a writ of mandamus directing the Board to enforce the order of Chairman.

5. It appears, after considering the claim and counter claim of the parties and having regard to the various provisions of the Act, three basic questions were raised before the learned Single Judge for consideration--(i) Whether the provisions of the Bihar Sanskrit Siksha Education Board Act, 1981 confer any power upon the Board to approve or disapprove disciplinary action taken by the Managing Committee against a teacher, (ii) Whether the Managing Committee of the School in question subsists in view of the order of dissolution by the Board and lastly (iii) Whether a writ can be issued by this Court against the Managing Committee?

6. Answering the first and second questions, in the opinion of the learned Judge, having regard to the facts and circumstances of the case and In absence of any statutory Rule framed by the State Government, as required u/s 22 of the Act, it would not be proper to hold that Section 6 of the Act does envisage an exclusive and overall control of the Board. In other words, the Board can exercise only such control over the institution, which is necessary for the purpose of giving direction and to exercise its supervisory power and control over Sanskrit Education so that standard of education is not impaired. The Managing Committee of such a school shall have the immediate control over its staff except in the matter of payment of salary to teachers where for a fund has been created in terms of Section 13 of the Act. Similar was the views expressed with regard to

the existence of the Managing Committee. Because, in absence of any Rule framed by the State Government the Board had no authority to dissolve the erstwhile committee and/or to constitute an ad hoc Managing Committee.

7. Mr. Jha contended that having regard to various provisions, as enumerated under Sections 6 & 14 of the Act, it would be evident that the Board had wide power to control and supervise the Sanskrit Schools and, as such, for all practical purpose, it can also exercise the disciplinary power in respect of teaching. and non-teaching staff employed in the school. It was contended that in view of the facts that appointment of a teacher is required to be approved by the Board, by all necessary implications, the Board must be held to have the power to grant approval in relation to an order of the Managing Committee, terminating the services of teaching and non-teaching staff and, therefore, also the power to set aside an order of termination passed by the Managing Committee. Therefore, the Chairman of the Board having appreciated the grievance of the petitioner against the disciplinary action, taken by the Managing Committee, issued direction for payment of salary, a logical corollary of which would mean that the order of termination was disapproved.

8. In my view, there appears no substance in the submission of the learned Counsel. Because it has been rightly held by the impugned judgment that in absence of any statutory Rule framed by the State Government, as required u/s 22(2) of the Act, it has to be held that the Board or the Chairman can not exercise any disciplinary power to accord approval of the order of dismissal passed by the Managing Committee against a teacher of such school. But such views of course should not be interpreted to narrow down the ambit and scope of the administrative control of the Board and Chairman, as required from time to time to implement the scheme and object of the Act. To elucidate the proposition, from a bare reference to the provisions of Section 14 read with Section 21 of the Act, it would appear that the Board will have the full authority either to approve or disapprove the appointment of a teacher of a recognized Sanskrit School. Because undisputedly, payment of salary to the employees of the School has to be made out of the fund created by the state Government u/s 13 of the Act, known as Sanskrit Shiksha Nidhi, which in terms of Section 14(Ka) thereto, has to be utilized for payment of salaries and allowances to teaching and non-teaching staff of Sanskrit Schools and tolls in the manner prescribed by the State Government. Likewise in terms of Clause (anga) of Section 14 of the Act, payment of contribution towards pension, gratuity and provident fund of the teachers and other employees of recognized schools shall also be made from the said fund.

9. It would appear from the impugned judgment that in opinion of the learned Judge also, from a perusal of different provisions of the Act, it is evident that the Managing Committee of each school shall have the immediate control over its staff except in the matter of payment of salary and other allowances.

10. From what has been discussed above, it is evident that a teacher and non-

teaching employee of a recognized school, duly appointed by a Managing Committee, shall be entitled for payment of salary and other allowances out of the fund created u/s 13 of the Act. Undisputedly the word "appointment" is to mean that an appointment validly made by a competent authority of the candidates, who are duly qualified to fulfil the aims and object of the scheme of the Act. Therefore, for all practical purposes, it has to be held that the Board will have the administrative control over the affairs of the schools, except the power of dismissal and termination of the teaching and non-teaching employees of such schools until a Rule is framed as required under Sub-section (2) of Section 22 of the Act.

11. Apparently faced with the uphill task as noticed above, Mr. Jha also made an attempt to place reliance upon Rule 28 of the Bihar State Non-Government Sanskrit High School (Condition of Service) Rules, 1976 which requires approval of the Board of Chairman with regard to the decision of the Managing Committee in relation to disciplinary action, including termination etc. against a teacher. At this Juncture at the outset it may be mentioned that this question was also analyzed and rejected by the Hon"ble Judge since such a Rule did not have any statutory force nor it can be said to have been framed under this Act. The views expressed above, is exactly in the line of a decision of a Division Bench of this Court dated 10th August, 1987 Kashi Prasad Shanria and Ors. v. The State of Bihar and Ors. CWJC No. 2084 of 1982.

12. Dr. Jha learned Counsel for the Managing Committee on the other hand, while referring to the provisions of Sub-section (2) of Section 22 of the Act contended that after commencement of the present Act only the legal proceedings or remedies instituted or enforceable by or against the former Bihar Sanskrit Education Board or its servants may be continued or enforced, as the case may be. A reference was also made to Section 28 of the Act, which provides repeal and saving of the actions taken in exercise of the powers conferred by or under the Bihar Sanskrit Education Board, 2nd Ordinance, 1980 (Bihar Ordinance No. 84 of 1980). In other words, only actions taken under the said Ordinance shall be deemed to have been done under this Act. In my view, having regard to the specific provisions noticed above, it would not be open either to the Board or the Chairman to take any aid from the provisions prescribed under the Bihar State Non-Government Sanskrit High School (Condition of Service) Rules, 1976.

13. Coming to the next question-whether a writ can be issued against the Managing Committee, it would be relevant to notice that neither In the Writ Petition nor before the Board or the Chairman, any attempt was made by Sri Thakur to challenge the order of termination. But as would appear from the Impugned judgment, while questioning the validity of the order of the Chairman, an issue was certainly raised for consideration regarding the validity of such an order on the ground that the Managing Committee having been dissolved by the order of the Chairman, had no jurisdiction to pass an order of termination and that in compliance of the principles of natural justice, since no notice and proper

opportunity was ever given to the petitioner, the order of termination has to be declared illegal. Therefore, in these backgrounds, the learned Judge after examining different authoritative pronouncements of the Apex Court as well as this Court, rendered the question in the negative that a teacher of privately managed school, even aided financially by the State Government can not maintain a Writ Petition against an order of termination, passed by the Managing Committee.

14. Mr. Jha of course placed reliance on a judgment of the Apex Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , as also recent decision in the case of *K. Krishnamacharyulu and Ors. v. Sri Venkateshwara Hindu College of Engineering and Anr.* AIR 1998 SC 295, in support of his submission that although the Managing Committee of the School is purely a private body, writs under Article 226 can be issued, if there are infringement of a right of an employee guaranteed under the Constitution. Since the Managing Committee was dissolved by the Chairman, the order passed by such a committee was illegal. He further contended that even if these aspects are Ignored, yet the order of termination was bad for want of compliance of principles of natural justice. Therefore, the petitioner, in absence of any alternative remedy would certainly be entitled to a relief under Article 226 of the Constitution.

15. In my view, the decisions of the Apex Court as noticed above, have to be construed and applied in the background of the facts and circumstances of those cases. Because undisputedly no law has been laid down so as to construe that even an order of termination passed by the private Managing Committee can be challenged in a writ jurisdiction. True it is an institution which gets aid from the State or the Board, has the obligation to provide facilities and opportunities to the teaching and non-teaching employees of such institution at par to the employees of similar institutions. Such employees should not be denied the same benefits which are available to others. Therefore, in a case where unequal treatment is found amongst the teachers of similar category, certainly a remedy under Article 226 of the Constitution would be available as was also held in the case of *K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Anr.* (supra).

16. But the facts of the case in hand being quite different, the analogy of the aforementioned cases, in my view, would not be applicable. In view of different authoritative and unbroken precedents by a long line decisions of the Apex Court including the cases of *Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others*, ; *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, and a decision of the Full Bench of this Court in the case of *Manju Devi v. The District Superintendent of Education Bhagalpur and ors.* 1987 BLJR 1987 : PLJR 962, a teacher of a privately managed school, even though financially aided by the State Government or the Board, can not maintain a Writ Petition against an order of termination from service passed by the

Managing Committee, Therefore, in my view, this question has rightly been rendered in the negative.

17. The last question that remains for consideration is about the validity of the order of the Board, contained in letter dated 8.9.1984 in Annexure-1 to CWJC No. 4540 of 1984, whereby, while constituting an ad hoc Managing Committee, the Managing Committee was dissolved. As would appear from the facts on record, the Managing Committee in question can not be said to be a committee constituted u/s 2 (dha) of the Act, which means, a committee constituted under the provisions of this Act for the management of the tolls and Non-Government Sanskrit Schools up to "Madhyama" standard. Clause (ga) of Sub-section (2) of Section 22 of the Act confers power upon the Government to frame Rules for constitution of the Managing Committee and its powers and functions. Admittedly no such Rule has yet been framed. Therefore, in absence of such a Rule dissolution of a Managing Committee can only be done by the Board in exceptional circumstances and public interest, but not in a routine manner.

18. Apart from what has been noticed above, undisputedly the impugned order either for dissolution of the Managing Committee or Constitution of the ad hoc committee was passed by the Chairman of the Board. Therefore, even assuming that the Board has power to dissolve a Managing Committee, such power can only be exercised by the Board and not by the Chairman. Because in terms of the provisions of the Act. the Chairman of the Board is purely a Chief Executive Officer of the Board. No provision under the Act has been brought to my notice that such a power of the Board can be delegated upon the Chairman or any other authority. The power to grant approval of the appointment of the teachers or dissolution or constitution of the Managing Committee only vests with the Board. In these backgrounds, therefore, the order passed by the Chairman, regarding dissolution of the Managing Committee or constitution of the ad hoc Managing Committee has to be held illegal and without jurisdiction. Thus, having regard to the views expressed above, the impugned order of the Board dated 8.9.1984 contained in Annexure-1 to CWJC No. 4540 of 1984 can not sustain and thus, it is quashed.

19. In the result. CWJC No. 4540 of 1984 is allowed to the extent indicated above. But all the three appeals are dismissed, subject to a clarification about the ambit and scope of the functions and administrative powers of the Board or the Chairman. But in the facts and circumstances of the case, there shall be no order as to costs.

Shiva Kirti Singh, J.

20. I agree.