
(2016) 11 AHC CK 0086
In the Allahabad High Court
Case No : Special Appeal No. 507 of 2016

C/M Gramoday Pratisthan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-11-2016

Acts Referred:

Citation : (2017) 1 ADJ 694

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : C.S.C, Ajay Kumar and G.C. Verma, Advocates, for the Respondent;
Jitendra Kumar Pandey, Advocate, for the Appellant

Final Decision : Allowed

Judgement

1. Heard Sri Jitendra Kumar Pandey, learned Counsel for the appellant.
2. The appellant No.1 is the Committee of Management of a Junior High School and the terms and conditions of it's employees are governed by the U.P. Recognised Basic Schools (Junior High School) (Recruitment & Conditions of Service of Ministerial Staff & Group "D" Employees) Rules, 1984. The termination of the services of the employees is subject to fulfilment of the conditions as referred to in Rule - 21 that has been extracted in the judgment of the learned Single Judge. The learned Single Judge came to the conclusion that since the services of the respondent No.4 had been terminated without seeking prior approval of the District Basic Education Officer as per Rule - 21 aforesaid, the entire exercise of terminating the services undertaken by the Management was unlawful and withholding of the salary was unjustified.
3. Learned Counsel for the appellants has relied on the Division Bench judgment in the case of Dr. S.N. Tripathi v. State of U.P., Writ Petition No.1452 (SB) of 2010, decided on 4.10.2010 to urge that a writ petition against the action of the management of the Junior High School which is run under a Society registered under the Societies Registration Act would not be maintainable against any of

it's action and consequently, learned Single Judge has committed an error by entertaining the writ petition.

4. Sri G.C. Verma, learned Counsel for the respondent No.4 submits that the judgment in para - 14 as cited by the learned Counsel for the appellants does not lay down an absolute proposition that no writ petition would lie. He submits that the judgment only indicates that a Society simply registered under the Societies Registration Act will not be a "State" within the meaning of Article 12 of the Constitution of India.

5. There cannot be any dispute with the aforesaid proposition, but if the Society is carrying out certain functions, then the nature of the said functions would determine the course of action taken and the maintainability of the writ petition.

6. To our mind, such an educational society broadly discharges three functions. Firstly, the sovereign function of imparting education to children, secondly, non-sovereign function of maintaining a private society and thirdly, the discharge of a statutory function or obligation as prescribed under the Statutes that govern the institutions established by such a Society.

7. Consequently, with regard to the third nature of the function, the Management of the Society is cast with an obligation to discharge a statutory function which is amenable to law. The management in the present case was obliged to seek prior approval of the District Basic Education Officer which it has failed to do so. Any violation of the rule would therefore attract the jurisdiction of the High Court under Article 226 of the Constitution of India. The aforesaid distinctions have not been taken notice of by the Division Bench judgment in the case of Dr. S.N. Tripathi (supra), and therefore the same would not be a ratio for the proposition aforesaid. Consequently, the Division Bench judgment does not come to the aid of the appellants.

8. Secondly, it is admitted that the institution is on the grant-in-aid list of the State Government and the salary of the employees is being paid from the grant-in-aid received from the State Government. The relief claimed by the respondent No.4 in the writ petition apart from quashing the order of termination was also for release of such salary that had been withheld. Consequently, in our opinion, when the release of salary is clearly governed by the statutory provisions of Uttar Pradesh Junior High School (Payment of Salaries of teachers and other Employees) Act, 1978, then in that event, a writ petition would be maintainable for the said purpose as well.

9. In such circumstances, the ground taken by the learned Counsel for the appellants for opposing the maintainability of the writ petition is unsustainable. Apart from this, the finding recorded by the learned Single Judge is categorical to the effect that the termination of the respondent No.4 had been brought about without the statutory prior approval of the District Basic Education Officer. This position remains undisputed. Thus, there was a clear violation of Rule 21 of 1984 Rules. The learned Single Judge was therefore clearly well within his jurisdiction

to entertain the writ petition and allow the same. There is no merit in this appeal.

10. Rejected with the said observations.