

(1998) 05 AHC CK 0009
In the Allahabad High Court
Case No : Writ Petition No. 3035 of 1979

Daddan Singh and Others

APPELLANT

Vs

Sri Dev Narain Singh Junior High School (Now High School)
and Others

RESPONDENT

Date of Decision : 20-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Basic Education Staff Rules, 1973 — Rule 2
Uttar Pradesh Recognized Basic School (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 — Rule 11, 9, 9
Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 10, 20, 7, 8, 9

Citation : (1999) 1 UPLBEC 610

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : U.K. Dhaon, S.P. Shukla, N.C. Mehrotra, A. Mannan, C.B. Chaubey and V.L. Verma, for the Appellant; Umesh Chandra, A.K. Chandra, A. Banerjee and Umesh Kumar Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—The petitioners who were working as Assistant Teachers in Shri Dev Narain Singh Junior High School, Pakarpur, District Sultanpur have assailed the order dated 27-9-79 passed by the Manager of the said school terminating their services from the date of the order. They were directed to deposit the tuition fee which they had collected and thereafter one month's salary would be paid to them.

2. The writ petition was admitted on 19-3-80. On 16th August, 1994 a Division Bench of this Court dismissed the writ petition. Thereafter the petitioners filed a Special Leave Petition, which was disposed of with certain observations. Thereafter a review petition was also filed before the Hon'ble Supreme Court. On 3rd September, 1996, Hon'ble Supreme Court passed the following order :-

"We are of the view that this is a fit case in which the order dated 27-1-86 should be reviewed because not only the High Court but also this Court proceeded on the basis that the Act applicable was the U.P. Junior High School (Payment of Salaries to Teachers and other Employees) Act, 1978. In fact this Act was not applicable and the application for permission to discharge the respondents was made to the Basic Education Officer under Rule 15 of the U.P. Recognised Basic Schools (Junior High School Recruitment and Conditions of Service of Teachers) Rules, 1978 framed under the Basic Education Act, 1972. We, therefore, set-aside our order as also the order of the High Court on the ground that it was not the U.P. Junior High School-(Payment of Salary to Teachers and other Employees) Act, 1978 which applied, but the U.P. Recognised Basic Schools & Junior High Schools (Recruitment and Condition of Service of Teachers) Rules, 1978 framed under the Basic Education Act, 1972. The High Court will consider the matter in this light and decide whether the termination of service of the respondents was valid or not. It will be open to the respondents to raise any contentions which are available to them. Parties will be at liberty to produce any further documents having a bearing on the issues arising in the writ petition. Since the respondents have been out of service for a long time, we would request the High Court to dispose of the writ petition before it as far as possible within three months from today. The Review petition is disposed of accordingly."

3. A perusal of Annexure-11 to the affidavit for amending the writ petition will indicate that Daddan Singh, petitioner No. 1 was informed by the Manager of Sri Dev Narain Singh (Junior School) which subsequently was raised to the status of High School that he was appointed on 1st July, 1977 as Assistant Teacher on temporary basis for the session 1977-78. At the end of the session his services were terminated and accordingly Sri Daddan Singh was informed about it on 16-5- 1978, but considering the interest of the students, the matter was again reconsidered regarding the appointment of Sri daddan Singh and with effect from 1-7-1978 he was appointed for one year, the order mentioned that after the end of the academic session the case of Daddan Singh for permanent appointment shall be considered again. Similar orders were issued in favour of other teachers. The services of the petitioners were terminated by means of order dated 22-9-1979 by the Manager of the Institution after obtaining approval of the District Basic Education Officer, Sultanpur.

4. It appears that the Manager of Sri Dev Narain Singh Junior High School addressed a letter to the District Basic Education Officer on 23-8-1979, which has been annexed as Annexure C-3 to the counter-affidavit dated 28-7-1987 sworn by Sri Shiy Shanker Singh, Head Clerk of that Institution. It was pointed out that as the institution had not received any grant-in-aid and entire financial burden had to be shared by the management and the strength of the students had been reduced, as a result of which five Asstt. Teachers were informed about the termination of their services. It was also pointed out in the said letter that parallel institution had started imparting education to the students of the

institution in question. It was further stated that as a result of his anti-institution, conspiratorial activities the approval for termination of the services of Bajrangi Ojha and on that post the management had proposed to appoint Sri Udai Bhan Singh whose name figured at Serial No. 6. It was also indicated in that letter that the aforesaid Asstt. Teachers have unauthorisedly withheld the tuition fee which they have collected from the students. Neither they submitted the details regarding the fee nor deposited the same in the office. Their appointments were purely temporary. According to the Rules they are only entitled for one month's salary from the date of termination of their services. As soon as they would submit the details regarding the fee or deposit the fee which they have collected they would be paid one month's salary.

5. The letter further indicates that in the institution there were six sections, the total strength of the teaching staff including the petitioners was ten in accordance with Rules. In class VI there were only 59 students. In class VII there were 51 students. In class VIII the strength of the students was 48. Thus according to the norms only three sections have remained, according to the norms only five teachers are required. The letter further indicates that leaving aside those five teachers approval for the appointment of rest of the teachers be accorded. One month's salary shall be paid to those five teachers whose services have been terminated as soon as they deposit the fee collected by them. The letter mentions the names of the petitioners whose services were terminated by the management and approval was sought for the termination of their services from the District Basic Education Officer, Sultanpur.

6. In the supplementary counter-affidavit dated 28-11-88 sworn by Shiv Shanker Singh Head Clerk of the institution, it has been averred that in the matter of retrenchment of services of Asstt. teachers due to overstaffing, it was not necessary to terminate the services strictly according to the seniority. The employer is always competent to retrench the services of such persons whose services are found to be bad and unsatisfactory and as such the services of Bajrangi Ojha being unsatisfactory and against the interest of the institution were rightly terminated by way of retrenchment due to overstaffing of Asstt. Teachers in the institution even though he was senior to Udai Bhan Singh, another Asstt. Teacher.

7. It is further stated that the criteria regarding strength of Asstt. teachers in a recognised Junior High School as provided under para 168 of the Education Code is no more applicable on account of subsequent criteria laid down by the State Govt. by means of G.O. dated 20th November, 1976, which provides that for classes VI to VIII of a recognised Junior High School there shall be one section upto 52 students and for 52 to 87 students there will be another section and thereafter for every additional 35 students there will be an additional section.

8. It was further averred that according to the report of the Manager of the School contained in his letter dated 23-8-79 as well as local inspection made by the Basic Shiksha Adhikari it was found that there were 59 students in Class VI,

51 students in class VII and 48 students in class VIII. As such only three sections were required and as per prescribed criteria a strength of only five Asstt. Teachers was required for those three sections according to the number of the students. It was also submitted that so far as Class VI was concerned a second section could not have been opened for only 7 students. In these circumstances the Manager of the school rightly reported for retrenchment of the services of five Asstt. Teachers. These teachers were purely temporary. These Asstt. Teachers are junior most except Bajrangi Ojha whose work, conduct and performance was found to be totally unsatisfactory and against the interest of the institution, as such Udai Bhan Singh was preferred in place of Bajrangi Ojha whose services were retrenched. It was further averred that initially the petitioners were appointed for the academic session 1977-78 and their services were terminated with effect from 30th June, "1978 and they were duly informed about such termination. The notice of termination of the services dated 20-5-78 was annexed with the supplementary counter-affidavit. But the petitioners were appointed afresh for the academic session 1978-79 with effect from 1-7-78 and their services were again terminated after the close of the aforesaid academic session with effect from 30-6-79. The termination notice dated 20-5-79 was annexed as Annexure-6 to the supplementary counter-affidavit.

9. In view of the aforesaid submissions it was asserted that the petitioners cannot be deemed to have been confirmed under Rule 12(2) of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. They continued to remain temporary and their services were terminated before completion of the period of one year.

10. It is pertinent to mention here that after termination of the services of the petitioners the institution in question was raised to the status of High School. The writ petition was filed on 30th October, 1979. Much water has flown since last about 20 years. The post upon which the petitioners were working might have been filled up by fresh appointments. Such teachers who might have not been appointed in place of the petitioners, have not been arrayed as opposite parties. If the writ petition succeeds, those teachers appointed in place of the petitioners will have to go. After the status of the school was raised upto the level of High School the appointments must have been made in accordance with the provisions contained in the Intermediate Education Act and they would be adversely affected if order for reinstatement of the petitioners is passed by this Court, but as they have not been arrayed as parties no writ can be issued in favour of the petitioners.

11. Further more, at the time when the petitioners were appointed by the management, the institution which was upto the level of class VIII, was not put on the grant-in-aid list of the Government. The relations between the management and the petitioners was in the nature of Master and servant. They were appointed for a particular session. After the end of the session their services were terminated. They were again appointed in the next session and at

the end of the next session their services were again terminated. Actually there was no need for the management to seek approval of the District Basic Education Officer because the institution was an unaided institution and their services could straightway be terminated.

12. The contention of the petitioners that their services were confirmed is belied by the orders of their appointment and orders of termination. They were employees of a private institution maintained by private fund with no financial assistance from the Government. They had accepted the terms and conditions of the appointment and they cannot stake the claim for their continuance.

13. In *Km. Anita Verma v. D.A.V. College Management Committee, Unchahar, Rae Bareli* (1992) 1 UPLBEC 30, it was held that the institution in which the teacher was employed, was not an instrumentality of the State. But it was a private organisation working on its own money without any role of the Government, and in such a case the teacher terminated by the private organisation could not maintain writ petition under Article 226 of the Constitution. It was further held that in no case the petitioner could be said to be a public servant or civil servant of the state and, therefore, Article 311 of the Constitution will have no application in this case. It was also held that in absence of any statutory provision governing the employment of the petitioner, her services cannot be enforced specifically.

14. In *Harbans Kaur v. Committee of Management Guru Tegh Bahadur Public School, Meerut and Anr.* 1992 AWC 1239, it was held that the services being purely contractual not governed by the statutory provisions were liable to be terminated and the contract of personal service cannot be specifically enforced.

15. In *Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors.* AIR 1976 ST 888, as per majority the Hon"ble Supreme Court observed :

"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. Thus 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."

16. The aforesaid observations were made by the Hon"ble Supreme Court in the matter relating to the termination of the services of a Principal of Degree College run by a registered society. It is well settled that the committee of management of a recognised Intermediate College may be amenable to writ jurisdiction of the Court where such committee is entrusted with the performance of the statutory duties or conferred with such statutory powers.

17. Now it has to be examined as to whether the petitioners were appointed in accordance with the provisions of U.P. Recognised Basic Schools and Junior High Schools (Recruitment and Conditions of Service of Teachers) Rules, 1978, framed under the Basic Education act, 1975.

18. The institution in question is other than minority institution. When the petitioners were appointed the U.P. Recognized Basic Schools and Junior High School (Recruitment and Conditions of Service of Teachers) Rules, 1978 had not come into force. The aforesaid Rules provided an elaborate mechanism for appointment of teachers. Rule 7 provides for advertisement of vacancies. Rule 8 provides for age limit. Rule 9 provides for constitution of selection Committee. Rule 10 provides for the procedure for selection. Rule 20 of the aforesaid Rules authorises the management to appoint any person as Head Master or Assistant Teacher for a period not exceeding six months with previous approval of the District Basic Education Officer.

19. Under the U.P. Basic Education Staff Rules, 1973 the appointing authority of the Assistant Teachers etc. is the District Basic Education Officer. Under Rule 9 of the Uttar Pradesh Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975, it is provided that no person shall be appointed as teacher or other employee in any recognised school unless he possesses such qualification as are specified in this behalf by the Board and for appointment the previous approval of the Basic Shiksha Adhikari has been obtained in writing. In case of vacancy the applications for appointment shall be invited by the concerned management through advertisement in atleast two news papers (one of them will be daily news paper) giving atleast thirty days time for submitting application, the date of interview may be given in the advertisement or the candidates be informed of the date fixed for interview by registered post giving them atleast 15 days time from the date of issue of the letter. The management shall not select any untrained teacher and if selected candidate is untrained one he will be approved by the Basic Shiksha Adhikari.

20. The relevant Rule 11 further provides that no order dismissing, removing or terminating the services of a teacher or other employee of a recognised school shall be passed save with the prior approval in writing of the Basic Shiksha Adhikari.

21. It is thus evident that the school in question, being a Junior High School, service conditions of the petitioners were governed under the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 but when the petitioners were appointed the Rules were not in force. The school itself was not on grant-in-aid list. The appointments were not made in accordance with the Rules. They were made for a particular session and thereafter it was extended for another academic session and later on the service of the respondent Nos. 1 to 4 terminated because of the over staffing. As far as the services of respondent No. 5 were concerned it were terminated for the reasons stated earlier. The relationship between the petitioners and the

management were of master and servant and their services were purely contractual not governed by statutory provisions, could be terminated as the contract of personal service cannot be specifically enforced.

22. The petitioners have levelled charges of mala fide against the Committee of Management in terminating the service of the petitioner and in this regard the inspection report by an officer of the District Basic Shiksha has been relied upon. On the other side there is sufficient evidence on record to show that the petitioners have not been depositing the fee which they have been collecting from the students and some of them were running parallel schools. Without entering into the factual field. I have confined myself to the determination as to whether the services of the petitioner could be terminated by the management or not. I am of the view that the appointment of the petitioners were based on the terms and conditions of personal contract of service, hence, it could be terminated by the management. No approval of the Basic Shiksha Adhikari was required but in the present case approval was taken. I am of the view that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot intervene with the matter because the Institution was a private institution not receiving any aid or grant from the Government. The writ petition is not sustainable under Article 226 of the Constitution of India for the reason that the appointments were contractual in nature and not made in accordance with the relevant law/rules and therefore their services can be terminated in accordance with the contract of service.

23. The writ petition is devoid of merits and it is accordingly dismissed.