

(2007) 03 GAU CK 0049
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 5208 0/2001

Deba Kanta Saikia

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 21-03-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 12

Citation : (2007) 3 GLT 543

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : A.K.Goswami, P.Gogoi, S.Banik, S.K.Goswami, Advocates appearing for Parties

Judgement

1. By means of this writ petition, the petitioner has prayed for a direction to the respondents to allow him to join the post being held by him and also to pay arrear salary.
2. The petitioner was appointed as Assistant Teacher of Khirdap High School in the district of Karbi Anglong. He was so appointed by the Managing Committee of the school and the petitioner, joined as such on 17.1.1991. As per the own statement of the petitioner, he was so appointed at the time of foundation of the school, meaning thereby that the school was at the venture stage.
3. The school was recognized by the Government of Assam with effect from 1.9.1994 and subsequently the appointment of the petitioner and others in the school was approved with effect from the date of reorganization of the school with effect from 1.1.1994. Such proposal for approval was accorded by the Inspector of Schools, Karbi Anglong District Circle, Diphu by his order dated 9.4.1994.
4. Certain allegations have been made against the Head Master and Secretary of the School, i.e., the respondent No. 4 in the matter and appointment of a particular teacher and disbursement of salary to him.

5. In paragraph 7 of the writ petition, the petitioner has stated that in 1999 certain baseless allegations were made against him relating to his relationship with a girl, who was residing in the same locality. To discuss about the issue, the Managing Committee of the school had called a meeting in which the petitioner was also present.

6. In paragraph 8 of the writ petition, the petitioner has stated that no show cause notice was issued to him nor any final decision was taken relating to his service by the Managing Committee of the school. However, he remained absent from the school due to his purported ailments. He had applied for leave by submitting application to the Head Master on 22.11.1999. In paragraph 10 of the writ petition, the petitioner has stated that he had applied for further leave. However, no particulars have been furnished.

7. According to the petitioner, after recovery from his illness, he had gone to the school on 25.2.2000 and reported for duty, but he was not allowed to join by the respondent No. 4. According to the petitioner, the respondent No. 4 has done so taking a vindictive attitude against him. The petitioner has alleged violation of articles 14, 16 and 311 of the Constitution of India. In paragraph 13 of the writ petition, the petitioner has stated that the school is controlled by the Managing Committee, which is under direct control of the Inspector of Schools. According to him, the school is also in receipt of grants-in-aid from Karbi Anglong District Council.

8. The petitioner has stated that he submitted further representation on 5.6.2001 to the Inspector of Schools, but the same also failed to evoke any response. Consequently, the petitioner having not been allowed to join the school, he filed the writ petition on 26.7.2001 praying for the aforesaid directions.

9. The respondent No. 4 has filed two affidavits, one dated 4.1.2007 and the other dated 7.3.2007. The respondent Nos. 2 and 3 have filed a joint affidavit.

10. In the affidavit filed by the respondent No. 4, it has been stated that the school is at the venture stage and is being managed by its Managing Committee. It has been stated that on the basis of the complaint lodged by one Smt. Hira Moni Boro alleging commission of rape by the petitioner on her, the Managing Committee of the school being the appointing authority of the petitioner took a decision to hold an enquiry in respect of the allegation. In spite of issuance of notice to the petitioner, the petitioner did not appear in the enquiry. It has been categorically stated that the petitioner did not appear in the enquiry in spite of receipt of notice. This resulted in ex parte holding of the enquiry and as per the finding recorded in the enquiry holding the petitioner guilty of misconduct, the Managing Committee took the decision to terminate the service of the petitioner.

11. According to the respondent No. 4, the story of being sick during the relevant period in which the petitioner remained absent from the school is a concocted one. According to him, the petitioner on the face of the FIR lodged against him kept himself away from the place to avoid probable arrest.

12. In paragraph 11 of the affidavit, the respondent No. 4 has categorically stated that the petitioner was appointed by the respondent authority, i.e., the Managing Committee of the school and that affairs of the school are being managed by the Managing Committee. It took the resolution to terminate the service of the petitioner. Such resolution was adopted in the meeting of the Managing Committee held on 21.11.1999.

13. In the affidavit filed by the respondent Nos. 2 and 3, they have stated that all the teaching and nonteaching staff of the school are directly controlled by the Managing Committee of the School. They have denied that there is any violation of articles 14,16 and 311 of the Constitution of India in the matter of termination of the service of the petitioner.

14. I have heard Mr. S.K. Goswami, learned counsel for the petitioner as well as Mr. A.K. Goswami, learned senior counsel and Standing Counsel, KAAC assisted by Mr. S. Banik, learned counsel. I have also heard Ms. P. Gogoi, learned counsel for the respondent No. 4.

15. At the very outset, both Mr. A.K. Goswami, learned Standing Counsel, KAAC and Ms. P. Gogoi, learned counsel for the respondent No. 4 submitted that the writ petition is not maintainable as the impugned decision is of the Managing Committee of the school, which cannot be regarded as an authority under article 12 of the Constitution of India. They submitted that the school being a privately managed one with its appointed Managing Committee, dispensation of the service of the petitioner by the Managing Committee cannot be tested in the touchstone of parameter to be applied in case of any provincialised school. They further submitted that the Managing Committee having found the petitioner guilty of the charge in a regularly conducted enquiry had no option then to dispense with the service of the petitioner, more particularly, having regard to seriousness of the misconduct committed by the petitioner.

16. Mr. S.K. Goswami, learned counsel for the petitioner on the other hand submitted that the appointment of the petitioner having been approved by the Inspector of Schools, his service could not have been dispensed with by the Managing Committee of the school without the approval of the Inspector of Schools. Referring to the financial aid received by the school, he submitted that the school is no longer a privately managed one and that being the position, the petitioner is entitled to invoke the writ jurisdiction of this court. He has placed reliance on the decision of this court dated 5.7.1993 passed Civil Rule No, 2299/1992 (Sri Kamlesh Kumar v. State of Assam & Ors.).

17. There is no dispute that the Managing Committee of the school appointed the petitioner and his service has also been dispensed with by the Managing Committee of the school, Mr. Goswami, learned counsel for the petitioner placing reliance on the rules relating to employees of Government aided schools, submitted that the services of the petitioner could not have been dispensed with by the Managing Committee of the school.

18. The decision on which, Mr. Goswami, learned counsel for the petitioner has placed reliance is in respect of a Government aided school. In the instant case, the school, in which, the petitioner had been working is not a Government aided school nor a provincialised one. It is another thing that certain financial assistance has been provided to the school for its enlistment. By order dated 9.12.2005 issued by the Inspector of School, copy of which has been annexed to the affidavit filed by the respondent No. 4 on 7.3.2007, certain ad hoc grants for the period from 1.9.2005 to 30.11.2005 were granted to 77 secondary schools, one of which is the school in which the petitioner had been working. Such occasional ad hoc grants does not make the school a Government aided school. Moreover, such ad hoc grants was sanctioned by order dated 9.12.2005, which was much after the decision to dispense with the service of the petitioner in 1999.

19. The petitioner was charged with serious allegation of committing rape. An enquiry was conducted in which the petitioner remained absent in spite of receipt of notice. The Enquiry Officer submitted his report holding the petitioner guilty of the charge. It was only thereafter, the Managing Committee of the school took the decision to terminate the service of the petitioner. The Managing Committee had to take the decision as the atmosphere of the school was polluted and continuation of the petitioner in the school would have been detrimental to the interest of the school.

20. In the writ petition, the petitioner has not disclosed the relevant fact regarding his involvement with the girl and the enquiry conducted against him. A very vague statement has been made in paragraph 7 of the writ petition that a baseless allegation was made against him relating to his relationship with a girl. Nothing has been stated in the writ petition as to lodging of the FIR and registration of the criminal case against the petitioner and conducting of enquiry against him by the school authority. There is, thus, suppression of material fact on the part of the petitioner. Throughout the writ petition, he has simply mentioned that he had to remain absent from the school due to his illness from 1999 and that thereafter he was not allowed to resume his duty by the respondent No. 4.

21. The disclosures made in the counter affidavit filed by the respondents have not been denied by the petitioner by filing any affidavit in reply. The writ petition was filed after 2 years of dispensation of the service of the petitioner and even otherwise also, it will not be in the interest of justice to allow the petitioner to join the school after 8 years of dispensation of his service by the Managing Committee of the school.

22. In the decision reported in AIR 2003 SC 4351 (General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad and Ors.), the Apex Court referring to various earlier judgments held the writ petition to be not maintainable. That was a case relating to termination of service of the workmen of the mill in question which is a Cooperative Society registered as such under Uttar Pradesh Cooperative Societies Act, 1965. It was argued that even if the mill is not an

authority within the meaning of article 12 of the Constitution, writ application can be entertained as mandamus can be issued under article 226 of the Constitution against any person or authority which would include a private person or body. After noticing that the mill is engaged only in manufacturing and sale of sugar, which would not involve any public function, the Apex Court held that the jurisdiction of the High Court under article 226 of the Constitution could not have been invoked. In the said the Apex Court has summarized the expression "other authorities" after expressing a note of caution that it must be realized that it should not be stretched so far to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. The Apex Court has cautioned that wide enlargement of the meaning must be tempered by wise limitation.

23. In the present case, the admitted position is that the school in question is a private school run by the Managing Committee formed by the local residents. The school is not a creation of any statute. There is also no Government control over the school and the same is being run on the basis of tuition fees collected from the students. The appointment of the petitioner was in private capacity. Merely because same kind of approval was accorded to the same by the Inspector of Schools, that by itself will not make the school or the service of a provincialised one.

24. The Managing Committee, a nonstatutory body exercising no statutory power "is not a State" the school being a private body having no statutory power not being supported by any State act and not being an agency of the Government, in my considered opinion a writ petition against the school is not maintainable. The school, which is being run by the Managing Committee, is a private institution against which no writ, of mandamus can be issued on the issue in question. Having regard to the nature of appointment made and the obligation of the school over the teachers, the rights are purely of a private character.

25. In the Division Bench judgment of this Court as reported in (1994) 1 GLR 292 (Managing Committee, Silchar Medical College v. Debt Pada Bhattacharjee), it has been observed in paragraph 12 as follows :

"Although, a private education institution performs public duty in so far as imparting of education is concerned, it may not discharge public duty in other matters. The present case is purely of a private institution, and the management of the school is also a private body. Therefore, if the right of the employees in this school is purely of a private character, the management performs no public duty in this regard. The petitioner is an employee of a private body. He is not a civil servant nor a workman under the industrial law. That being the position, if the petitioner is directed to be reinstated in service it would be against the preponderant judicial pronouncement of the court that a service contract cannot be specifically enforced. Therefore, the alleged right of the petitioner in this case is of a private character and no mandamus can issue and no petition for mandamus will lie."

26. In the instant case also, the school in question is run by a Managing Committee (a private body) and is purely private educational institution. Imparting of education by the school and the right of a teacher in the school are two different concepts altogether. Imparting of education may have a public duty flavour, but not in the realm of affairs relating to employment. Thus, the concept of public duty or function cannot be pressed into service towards making a challenge in respect of violation of conditions of such service and consequently no mandamus will lie and for that matter writ jurisdiction of this court under article 226 of the Constitution of India cannot be invoked.

27. The Managing Committee had appointed the petitioner in the school. Since the school is a privately managed one, there was no question of obtaining any approval of any governmental authorities. The Managing Committee also terminated her service and on that occasion also there was no question of obtaining such approval. The challenge made in the writ petition is not in respect of any order passed by the authorities of the Education Department, Government of Assam. There is no dispute that the school at the relevant time was not a provincialised one nor it was in receipt of any regular grants in aid as is understood in the context of the relevant rules. Till the termination of service of the petitioner, there was no control over the appointment and termination of the services of the teachers by any authority of the Government. It was purely a private affair between the Managing Committee of the school and the petitioner. That being the position, the challenge made to the resolution of the Managing Committee of the school terminating the services of the petitioner is not amenable to writ jurisdiction.

28. The resolution of the Managing Committee of the school impugned in this proceeding is a decision of just a private management governed by private law. It cannot be said to have involved any public law. As discussed above, a private body, i.e., the Managing Committee of the school has terminated the services of the petitioner. The Managing Committee, who at the relevant point of time did not have any control of the Government, was a pure and simple private body. This is precisely the reason as to why no approval of the Government or any authorities of the Education Department was required to be obtained towards termination of the services of the petitioner. Obviously, no decision of any officer of the Government is under challenge.

29. It is in the above context, the Apex Court in the cases of *Francis John v. Director of Education & Ors.* (1989) Supp 2 SCC 598 and *Tikaram v. Mundikota Shikshan Prasarak Mandal & Ors.* (1984) 4 SCC 219 noticing that the Director of Education, who was a public authority and whose orders had been questioned before the High Court held the writ petitions to be maintainable. In both the cases, the Managing Committee of the school terminated services of the appellants as school teachers. However, their such termination of service had the approval of the Deputy Director and Director, who were officers of the Government. It was the approval of the Government officers, which were put to

challenge and not the decision of the Managing Committee of the school as such. It was in that context, the writ petitions were held to be maintainable keeping the options open in case of not following the order of the director by the Managing Committee. Both the cases were governed by statutory school code under which the Deputy Director/Director were the Government officers responsible for approval of the decision of the Managing Committee. Thus, in both the cases the principle that the decision of a private school is not amenable to writ jurisdiction was recognized.

30. In the instant case the school Managing Committee was not governed by any statutory rules nor the termination of services of the petitioner required any approval of any Government officer. Thus, the decision to terminate the service of the petitioner was purely a private affair between the school Managing Committee and the petitioner. Consequently, such a decision is not amenable to writ jurisdiction.

31. It cannot be said to be a case of having any control of the State Government or its authorities on the Managing Committee and its action, not to speak of in the realm of all pervasiveness. The Managing Committee being not an authority or even instrumentality of the State is amenable to writ jurisdiction under article 226 of the Constitution of India. Jurisdiction under article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In the instant case, neither the Managing Committee is a statutory body nor the employer-employee relationship involved any public duty. The School Managing Committee also did not have any control of any Government officers unlike the aforesaid two cases. This is precisely the reason as why the termination order by way of resolution of the Managing Committee did not involve any approval or disapproval of any authority of the Government.

32. In the case of *Supriyo Basu & Ors. v. WB Housing Board & Ors.* (2005) 6 SCC 289 the Apex Court noticing that the society in question being not a department of the State and also not being a creature of a statute, but merely governed by a statute, upheld the decision of the High Court by which it was held that the writ petition was not maintainable as no statutory action had been assailed. It was noted by the High Court that the dispute involved in that proceeding essentially related to claims in the realm of private bodies. Same is the case in hand.

33. Above being the position of law relating to amenability to writ jurisdiction of a private body, I am of the considered opinion that the writ petition is not maintainable.

34. In view of the above, the writ petition is dismissed. However, there shall be no order as to costs.