

(2003) 08 MP CK 0002
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3785 of 2002

Devwrath Dwivedi and Others	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Sarvajanic Upakramon Ke Karmcharyon Ka Lok Seva Me Samviliyan
Pratishedh Adhiniyam, 2000 — Section 2(a)

Citation : (2003) 08 MP CK 0002

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : M.L. Jaiswal, with Ku. Neelam Goel and Ku. Mamta Billore, for the Appellant; A.S. Raizada, Government Advocate for respondent Nos. 1, 2 and 3 and K.C. Ghildiyal for respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.—This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 10-7-2002 (Annexure P-5) by which the services of the petitioners have been terminated and for a direction to the respondents to run the school and pay their salary.

2. It is not in dispute that Nagar Panchayat, Barhi is a small Municipality, an area in transition from a rural area to an urban area. It was earlier known as Municipal Council. It opened a primary school in the year 1983 to impart free education to the children. In course of time it became a middle school and students from Class I to Class VIII were studying in it. The authorities of the State Government while granting recognition to this School for opening the classes made it clear that no separate financial grant would be provided by the State Government for this purpose. The petitioners were appointed as Assistant Teachers in this School. They are seven in number. Except the petitioner No. 3 the others were appointed on a fixed salary of Rs. 300/- per month. It was a modest beginning to provide

education in the municipal area of Barhi, a small town. The petitioners filed W.P. No. 2263 of 1989 before this Court claiming "equal pay for equal work". In other words they claimed the pay scale of the Assistant Teachers in the Government schools which was at that time Rs. 970-1600. The Municipal Council expressed its inability to pay the salary of regular pay-scale as it was beyond its financial capacity. This Court by the order dated 25-7-1994 (Annexure P-1) directed the Municipal Council to treat the petitioners as regular employees and pay their salary including the arrears. The Director and the Deputy Director of the Urban Administration were respondents No. 2 and 3 in that petition and they were directed to make available the necessary financial grant, "if that is due to the Municipal Council under the rules" so as to enable the Municipal Council to discharge its financial liabilities. The pay-scales of the Government teachers have been further revised and the salary of each of the petitioners who were working on fixed salary of Rs. 300/- per month jumped to Rs. 7340/- per month. This must have been a source of happiness to the petitioners but in its train brought "financial disaster" for the Municipal Council. The arrears bill ran into more than Rupees ten lacs. As the Municipal Council was bound to obey the mandamus of this Court it passed an order dated 29-10-1994 revising the salary of the petitioners in terms of the order of this Court.

3. Contempt proceedings were initiated against the respondents in the aforesaid writ petition for their failure to pay the salary and the arrears as per order mentioned above. The Nagar Panchayat (earlier Municipal Council) has paid salary of the petitioners upto March, 2000. By the order dated 30-11-2001 (Annexure P-3) it has been granted further time to make the payment of the arrears. The Nagar Panchayat by its resolution dated 5-7-2002 took a decision to close the School due to its precarious financial condition. The services of the petitioners have been terminated by order dated 10-7-2002 (Annexure P-5). In the order the reasons for closure of the school have been stated in detail. The petitioners have been paid salary of three months with this order. It has been further stated in this order that the arrears of salary would be paid to the petitioners by sale of the School buildings and furniture etc. The students of the School have been given transfer certificates. They have taken admission in other schools. The School of the Nagar Panchayat has been closed.

4. The petitioners' case is that the Nagar Panchayat did not take the permission of the State Government for closing the School. Promotion of education is the Constitutional obligation of the Nagar Panchayat as per 12th Schedule of the Constitution of India. The petitioners worked as teachers for about 15 years in the school and they have been deprived of their livelihood by the closure of the school. The action of the respondents is said to be arbitrary and mala fide.

5. The case of the respondents No. 4 and 5 is that the school opened by the Municipal Council was self-sustaining institution without any grant from the State Government. It was able to manage to pay the fixed salary of Rs. 300/- per month to its teachers but it became impossible for them to continue to run the

school because it is beyond its financial resources to pay the salary of the teachers in regular scale and also the arrears. The Nagar Panchayat approached the State Government to take over the school or to provide grant or to absorb the teachers in some other schools but it has not done so in spite of the best efforts both at the administrative and political level. It is pointed out that the Nagar Panchayat is not having enough funds to fulfil its primary obligation of providing water, street light and sanitation. The expenditure is far in excess of the earning. It is stated that the yearly income of the Nagar Panchayat from all sources is Rs. 1,60,000/- and its expenditure on essential items including the salary of the staff is Rs. 2,74,317/-. It is having deficit of Rs. 1,14,000/- each year. It is stated that in the year 2000-01 nine months' salary of the teachers could be paid from 83% income of the Nagar Panchayat. Therefore, it was constrained to take the decision to close down the school. The salary of the staff other than teachers became in arrears. The arrears bill of the entire staff is Rs. 10,13,725/-. It is a situation of "helplessness".

6. A return has been filed on behalf of the State. It has been stated therein that the Municipal council was permitted to open the School on specific condition that no grant for that purpose would be given by the Government. It has been further said that it was not possible for the State Government to take over this School or to absorb its teachers in other schools. The petitioners can seek redressal of their grievances from the Nagar Panchayat. It is further pleaded that the State Government is already running three schools in Barhi and the teachers are working there.

7. The petitioners have filed the rejoinder and pointed out some other sources of the income of the Nagar Panchayat.

8. The learned counsel for both the sides have been heard. It is not pointed out that the closure of the school is in contravention of any statutory provision. It is conceded that the Industrial Disputes Act, 1947 is not attracted in this case. The argument on behalf of the petitioners is that the Nagar Panchayat is State within the meaning of Article 12 of the Constitution of India and it is obligatory for it to run the school so that the petitioners are not deprived of their livelihood. There should be fairness in action. On the other hand it is submitted that the Nagar Panchayat does not have the adequate resources to foot the heavy bill of the salary of the teachers and therefore it was constrained to take the unhappy and unpopular decision to close the school so that with its meagre resources it is able to provide sanitation, water and street light to its inhabitants which is its primary obligation. It must be said that the arguments of both the sides have some substance. This Court has gone through the resolution dated 5-7-2002 (Annexure R-13) of the Nagar Panchayat. The President and 15 other members of this Panchayat were present in the meeting. They considered the agenda item whether on account of the inability of the Panchayat to pay the enhanced salary of the teachers because of its precarious financial condition the school should be closed or continued. Then a brief history of the running of the school is given. It

is also stated that no grant is coming from the State Government in spite of its best efforts through the local MLAs, Ministers and even after meeting the chief Minister twice. Then the financial position has been considered and the figures of income and expenditure as given above were taken into account. It was found that even if the entire income is devoted to the payment of the salary of the teachers and staff members it would fall short. The amount of the arrears of the salary of the teachers alone has been reckoned at Rs. 8,66,700/-. The amount of arrears of salary payable to other staff members comes to Rs. 10,13,725=00. The resolution gives a vivid and graphic description of the whole of the state of affairs and it has recorded that it is impossible to run the school through the resources which are available. Then a decision has been taken unanimously to close the school and terminate the services of the teachers with three months' salary to each of them as compensation. It was also resolved to sell the building and other assets of the school for payment of the arrears of salary of the teachers.

9. The resolution runs into 15 pages. It is well reasoned and it is full of facts and figures. The decision to close the School has been taken after considering all the relevant aspects. The question is whether this Court, should interfere with such a decision of the Nagar Panchayat? The aforesaid decision cannot be said to be arbitrary, whimsical or unreasonable. No mandamus can be issued by the Court to the Nagar Panchayat to continue to run the school even if it has no resources to pay the enhanced salary of the teachers. The court cannot resort to adhocism and adopt a populist approach. It is legal rights which are enforceable through courts. As already stated there is no violation of any statutory provision in closing the school. The right to start a school also carries with it the right to close it if the circumstances are such in which it cannot be run. Even the right to carry on business conferred on a citizen by Article 19(1)(g) of the Constitution of India would include the right to close the business subject to reasonable restriction imposed by law. (*Excel Wear and Others Vs. Union of India (UOI) and Others*,). Therefore, if the Municipal Council has taken a decision to close the school after an objective appraisal of all the facts and circumstances of the case then this policy decision of the "local authority" coming within the definition of the "State" as per Article 12 cannot be tinkered with by the Courts. The Court cannot overstep its own limits.

10. Recently in *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, the Supreme Court has held that the extent of judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, if more than one choice is available to the administrative authorities; they have a certain amount of discretion available to them. The Court cannot substitute its judgment for the judgment of administrative authorities in such cases. Only when the action of the administrative authority is so unfair or

unreasonable that no reasonable person would have taken that action, can the Court intervene. The power of the Courts to review the administrative action is not that of an appellate court. Similar view has been taken in BALCO Employees Union (Regd.) Vs. Union of India and Others, . The Court should not interfere on policy matters.

11. In Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, also the Supreme Court observed: "It is well known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such".

12. In the present case the decision taken by the Nagar Panchayat through its resolution, referred above, cannot be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness. The Court cannot invalidate the decision because it hurts the interest of the petitioners.

13. It is further argued on behalf of the petitioners that if the Nagar Panchayat has no resources then the State Government should be directed either to take over the school, grant aid or absorb the petitioners in other schools. The Court cannot do so as the State has its own priorities and limitations. It is not only the petitioners but there are hundreds and thousands of the employees of various Institutions, Public Corporations and Government Companies who want through the medium of the Courts that the Government should absorb them elsewhere. No doubt the Government as a Welfare State and in pursuing its policy of democratic socialism should consider that aspect keeping in view its overall fiscal scenario. How can the Court all the time and in every case direct the Government to pump the tax-payers' money into such institutions and corporations which cannot stand on their own legs. If such directions are given in a routine manner a stage may come when it may be difficult for the Government to obey such directions. Again this is an area where the Government should be left to exercise its discretion keeping in view all the relevant aspects and the Court should act with "Judicial restraint" or "Judicial deference", to the judgment of the executive and its policy. In this respect it has been brought to the notice of this Court that the State Legislature has enacted the Madhya Pradesh Sarvajanic Upakramon Ke Karmcharyon Ka Lok Seva Me Samviliyan Pratishedh Adhiniyam, 2000 which has been amended in 2003. This Act has been passed to prohibit absorption of employees of Public Sector Undertakings into Public Service. Section 2(a) of this Act defines "Public Sector Undertaking". As per section 2(a) (ii) a "Public Sector Undertaking" means and includes any establishment of a body established under any law made by the Parliament or Legislature of the State, whether incorporated or not, including a University. The Nagar Panchayat would also be included within "body" used in section 2(a)(ii) of the Act. Section 3

of the Act provides; "Notwithstanding anything contained in any contract or agreement or any Judgment, decree or order of any court. Tribunal or any other Authority or any order or proceedings of the State Government, or any officer of the State Government, no employee of a Public Sector Undertaking shall be or be deemed to be entitled to absorption into public service from the date of commencement of this Act and accordingly:-

(a) no suit, or other proceeding shall be instituted maintained or continued in any Court, Tribunal or any other Authority against the State Government or any person or other Authority whatsoever for such appointment or absorption into public service; and

(b) no Court or Tribunal shall enforce any decree or other order directing such appointment or absorption.

In view of provisions of this Act, this Court cannot direct the State Government to absorb the petitioners in other schools.

14. The petition is dismissed.