

(1997) 05 AHC CK 0124

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15617 of 189

Digamber Jain Kanya Shiksha Committee, Etah and Ors

APPELLANT

Vs

Distt. Basic Shiksha Adhikari, Etah & ors.

RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Recruitment and Condition Service and other Conditions of Employees and Group GH
Employees Rules, 1984 — Rule 21

Citation : (1997) 05 AHC CK 0124

Hon'ble Judges : D.S. Sinha, J and R.K. Singh, J

Final Decision : Allowed

Judgement

R. K. Singh, J.—Petitioner Sri Digamber Jain Kanya Shiksha Committee, "Etah" has prayed for a writ of certiorari, or direction in the nature of certiorari quashing the order dated 10th July, 1989 passed by respondent No. 1 (Annexure 9) and for a writ of mandamus directing the respondent No. 1 not to give effect to the said order dated 10th of July, 1989.

2. Heard Sri Sanjay Sharma appearing on behalf of the petitioners as well as Sri Pradeep Kumar Saxena on behalf of the respondent No. 2 and Sri Vinay Malviya, learned Standing Counsel appearing for the respondent No. 1 the District Basic Shiksha Adhikari, Etah.

3. Respondent No. 2 Gaya Prasad was a Chaukidar in the Institution known as Sri Digamber Jain Kanya Madhyamik (Junior) Vidyalaya, Etah. On several allegations departmental proceeding was initiated against Gaya Prasad and a chargesheet was served on him vide Annexure V. Gaya Prasad submitted his showcause (Annexure VI). After due enquiry the Managing Committee of Sri Digamber Jain Kanya Madhyamik (Junior) Vidyalaya Etah in its decision through the resolution dated 5th May, 1989 (Annexure VII) decided to remove Gaya Prasad from the services of the Vidyalaya. The removal order dated 10th May, 1989 was served on Gaya Prasad (Annexure VIII). A copy of the order was sent to District Baste

Shiksha Adhikari, Etah for information and necessary action.

4. The District Basic Shiksha Adhikari, Etah quashed the order of the Managing Committee (AnnexureVIII) by his letter/order, dated 10th of July, 1989 (AnnexureIX).

5. The petitioner claims that the Institution is a minority institution in terms of Article 30 (1) of the Constitution of India. According to the petitioners the Institution has been recognised as a minority institution by the respondent No. 1, the District Basic Shiksha Adhikari, Etah (AnnexureIII) and a certificate to that effect was granted to the Institution on April 24, 1986 by the Additional District Magistrate, Etah (AnnexureIV). The petitioners have stated that Rule 21 of the U.P. Recognised Basic (Junior High School) (Recruitment and Condition of Services and other Conditions of Clerks Employees and Group "Gh" Employees) Rules, 1984 does not apply to them and so the order of the respondent No. 1 contained in AnnexureIV is illegal and without jurisdiction. So it should be quashed.

6. Undisputedly Digamber Jains are a minority sect in the State of Uttar Pradesh. The Institution Sri Digamber Jain Kanya Madhyamik (Junior) Vidyalaya, Etah has been established by the people of Digamber Jain Sect as per byelaws of the Society (AnnexureI). The respondent No. 1 Zila Basic Shiksha Adhikari, Etah in his letter dated 17th April, 1986 (AnnexureIII) has recognised the Vidyalaya as established and managed by the people of Jain sect and a minority institution as per Article 30(1) of the Constitution and on the recommendation of the Zila Basic Shiksha Adhikari, Etah contained in his letter dated 17th of April, 1986 (AnnexureIII), the Additional District Magistrate, Etah issued certificate dated 24th April, 1986 to the effect that his school is recognised under rule 15(Ga) to be a minority Institution with in the meaning of Article 30(1) of the Constitution of India.

7. Mr. Saxena and Mr. Malviya both have straneously argued to convince the Court that AnnexureIII and AnnexureIV have not been issued by the competent authority, they are not competent to issue a certificate recognising this Institution as a minority Institution. Inspite of repeated query they could not state if there is any other competent authority for the purpose. There is no basis to challenge the authority of the respondent No. 1 who is the superintending authority having full control over the Basic Madhyamik (Junior) Vidyalaya of the district. The order AnnexureIV has been issued on the recommendation of the respondent No. 1 . Thus we reject the argument of Mr. Saxena and Mr. Malviya.

8. Rule 21 of the U.P. Recognised Basic (Junior High School) (Recruitment and Condition of Service and other Conditions of Clerks Employees and Group "Gh" Employees) Rules, 1984 is being reproduced below:

9. The rule is very clear on this point. There is full force in the petitioners' contentions that the impugned order AnnexureIX is against rule 21 (above reproduced) because the petitioner is not required to obtain prior approval of the

respondent No. 1 for removal of the respondent No. 2 Gaya Prasad from the Vidyalaya simply information of removal order is required to be given to respondent No. 1 which has already been given.

10. We are satisfied that the order (AnnexureIX) is bad in the eyes of the specific mandate under Rule 21 of the U.P. Recognised Basic (Junior High School) (Recruitment and Condition of Service and other Conditions of Clerk Employees and Group "Gh" (Employees) Rules, 1984 and so it is fit to be quashed.

11. Accordingly the writ petition succeeds. Order AnnexureIX is hereby quashed and the respondent No. 1 is hereby directed not to give any effect to the said order (AnnexureIX to the writ petition). Petition allowed.