

(1999) 07 MP CK 0066
In the Madhya Pradesh High Court
Case No : Writ Petition No. 808/99

Dilip Kumar Khandalkar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 15-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Shaskiya Shikshan Sanstha (Adhyapak On Tatha Anya Karamchari Ki Bharti) Niyam, 1979 — Rule 4

Citation : (2000) 2 MPHT 228 : (2000) 1 MPJR 389 : (2000) 1 MPLJ 438

Hon'ble Judges : S.P. Shrivastava, J; N.G. Karamdelkar, J

Bench : Division Bench

Advocate : Ashok Vailankar, for the Appellant; J.D. Suryavanshi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the petitioner and the learned Govt. Advocate who has appeared on advance notice.

Perused the record.

The petitioner who had been employed as an Upper Division Teacher (Mathematics) in Shree Maharudra Bahu Uddeshya Uchcharat Madhyamik Vidyalaya, Lashkar, Gwalior on 30-11-1977, after resigning from the said post with effect from 1-9-1979, was appointed in the J.C. Mills Higher Secondary School as an Upper Division Teacher on 28-8-1979 and was confirmed on the said post vide the order dated 4-9-1980 issued by the Secretary, J.C. Mills Educational Institutions Managing Society which was running and managing the said school. It is claimed that Smt. Mradula Shukla who has been impleaded as the respondent No. 9 in the writ petition had also been appointed as an Upper Division Teacher in the year 1977 in Shree Maharudra Bahu Uddeshya Uchcharat

Madhyamik Vidyalaya. From the materials on record it appears that he had raised a dispute in regard to his seniority and entitlement of the service benefits claiming continuity of service from the date of his appointment in the year 1977 and had made various allegations against the management of the Maharudra Bahu Uddeshya Uchchar Madhyamik Vidyalaya, and also against Smt. Mradula Shukla.

It may be noticed that although the petitioner had been appointed as an Upper Division Teacher, subsequently on account of several irregularities going to the root of the matter, his appointment was treated to be an appointment on the post of Lower Division Teacher and a fresh order had been issued in this connection, and the financial approval for the same only had been granted by the Education Department. The petitioner had raised a dispute in regard to his entitlement to the payment of salary etc., in that connection.

On the facts and circumstances brought on record, it is apparent that the petitioner had through out been treated as a Lower Division Teacher and the appointment order and the confirmation etc., sought to be relied upon had been found not to be in accordance with law.

The petitioner has prayed for a direction requiring the Joint Director of Education, Gwalior Division, Gwalior, the respondent No. 2 in his capacity as an ex-officio member of the managing body of the J.C. Mills Educational Institutions Managing Society to treat the appointment of the petitioner as an Upper Division Teacher employed in the J.C. Mills Higher Secondary School declaring the same as an appointment by absorption under Rule 4 (a) of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ki Bharti) Niyam, 1979 or in the alternative for his being treated as an Upper Division Teacher in Shree Maharudra Bahu Uddeshya Uchchar Madhyamik Vidyalaya, the respondent No. 4 run by Shree Maharudra Mandal, Lashkar, Gwalior, the respondent No. 3 and to give him the time bound promotions.

The petitioner has further prayed for a direction requiring the J.C. Mills Educational Institutions Managing Society and the J.C. Mills Higher Secondary School, the respondents No. 5 and 6 respectively to refund the fee collected in excess of that in the Government Schools for the similar courses with a further direction to fix the ceiling in respect of the fee for those schools which do not take the grant-in-aid from the State.

Apart from the aforesaid reliefs, the petitioner has also prayed for an order for dismissing Smt. Mradula Shukla, the respondent No. 9, from service.

The learned counsel for the petitioner has urged that this petition has been filed as a public interest litigation. In Paragraph 3 of the writ petition it has been clearly indicated that the petition is not against any particular order but is against the fraudulent actions of the respondents.

However, in spite of declaring in Paragraph 3 of the writ petition that the writ

petition is not against any particular order and is only against the fraudulent actions of the respondents, the petitioner has prayed for the reliefs in the matter relating to the withholding of service benefits to which he claims to be entitled and the release whereof has been wrongly withheld. He has prayed for the directions in regard to the matters relating to the fixation of his seniority, entitlement relating to the continuity of service, etc., the claim in respect whereof on the own showing of the petitioner had been negated by clear orders on the point which have not been challenged. Further the petitioner has prayed for an order for the dismissal of Smt. Mradula Shukla from service who according to him was being continued in service as an Upper Division Teacher in the institution from which the petitioner had resigned in the year 1979.

It may also be noticed that the petitioner has prayed for a direction for the refund of the fee collected by the two institutions including the institution wherein he had served and resigned therefrom in the year 1979.

As pointed out by the Apex Court in its decision in the case of *Ramsharan Autyanuprasi v. Union of India*, reported in 1989 Supp. (I) SCC 251, it is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. It was further pointed out by the Apex Court that the public interest litigation is an instrument for the administration of justice to be used properly in proper cases and a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice which is the signature tune of our Constitution.

In the present case what is apparent is that the petitioner had a personal grievance and taking into consideration the nature of the relief claimed against the management of the educational institutions to which a reference has already been made above, the dominant purpose, of the writ petition, specially taking into account the relief claimed against the educational institutions as well as the relief claimed against Smt. Mradula Shukla, the respondent No. 9, was the personal vengeance and self-satisfaction and actual public interest was not the motive behind the filing of the writ petition. The facts brought on record indicate that it is not a bona fide but a motivated and mischievous litigation filed to harass the concerned respondents.

It may further be noticed that so far as the relief in regard to the direction to the respondents No. 5 and 6 to refund the fee collected in excess than that as collected in the Government schools for similar courses and fix a ceiling in respect of the fee for those schools which do not take any grant-in-aid from the State, the allegations made in the writ petition in that connection are absolutely

vague. No details have been furnished indicating in any manner as to what fee was being collected by the respondents No. 5 and 6 and on what basis it was sought to be claimed that it was in excess of the fee collected in the Government schools for similar courses. No comparative chart or reliable statistical data has been given. In fact, the relevant facts on which the said relief is claimed to be based have not been pleaded.

Generally, relief under Article 226 of the Constitution of India should not be refused purely on technical grounds. While, it is true that no limit can be placed upon the exercise of the discretionary jurisdiction envisaged under Article 226 of the Constitution, yet none-the-less it must be exercised along recognised lines on sound judicial principles and not arbitrarily. Even taking into account the Rules framed by this Court regulating the proceedings under Article 226 of the Constitution of India read with the Form prescribed thereunder, it is apparent that all questions of facts arising for determination are to be decided ordinarily upon affidavits providing that the Court may direct that such other evidence be taken as it may deem fit. It is, therefore, abundantly clear that the petitioner is required to set out all the material facts clearly on the basis whereof the relief is sought and that the Court is required to decide the question which arises for determination in the case. Obviously, the emphasis is on the questions which arise in the case for determination taking into account the pleadings of the parties in regard to the material facts.

This Court in its decision rendered by a Full Bench in the case of *Sudha Gupta Vs. State of M.P. and Others*, had clearly indicated that a distinction must be made between omission to state material facts and omission to give full particulars. If material facts are omitted, a party should not be allowed to raise a contention on a particular point even if, some materials are available in the evidence. If on the other hand material facts have been pleaded but full particulars have not been given the Court may permit the points to be raised on the basis of the evidence unless the opposite party is thereby materially prejudiced. The first obviously relates to a question of jurisdiction and the second to one of procedure.

In the present case, the relevant material facts so far as the relief in regard to the refund of the excess fee charged or for a direction to fix the ceiling in respect of the fee for those schools which do not take any grant-in-aid have not been pleaded.

Taking into consideration the facts and circumstances as brought on record and the pleadings contained in the writ petition we are not inclined to entertain this petition as a public interest litigation as sought for.

No justifiable ground has been made out for any interference by this Court while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

This writ petition deserves to be and is hereby dismissed in limine.