

(2003) 07 AP CK 0107
In the Andhra Pradesh High Court
Case No : WA No. 1475 of 1996

Dr. Ken R. Gnanakan and Others

APPELLANT

Vs

Anita Aidinyants and Others

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2(18), 2(35), 22(1), 79
Constitution of India, 1950 — Article 226

Citation : (2003) 6 ALD 34 : (2003) 5 ALT 469

Hon'ble Judges : P.S. Narayana, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : D.V. Sindhu Kumar, for the Appellant; S. Satyanarayana Prasad, Counsel for Respondent No. 1 and Government Pleader for Educational Counsel for Respondent Nos. 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The present writ appeal is directed against the order made by a learned Single Judge in W.P. No. 11694/93 dated 21-11-1996. The respondents 1, 2, 4, 8, 9 and 10 in the said writ petition are the appellants in the present writ appeal. The writ petitioner is the 1st respondent and respondents 2 to 5 in the writ appeal are respondents 3, 5, 6 and 7 in the writ petition.

2. The 1st respondent/writ petitioner-Mrs. Anita Aidinyants filed the writ petition praying for issuance of an appropriate writ, order or direction more in the nature of mandamus directing the respondents 1 and 2 in the writ petition to continue the petitioner as Principal of Timpany School, Visakhapatnam till her superannuation by declaring the action of the 1st respondent in terminating the services of the petitioner as Principal of Timpany School by the order dated 10-8-1993, as illegal, arbitrary and unenforceable and for other appropriate orders.

3. The 1st respondent in the writ appeal, the writ petitioner, is a trained Postgraduate with teaching experience of 23 years and she was appointed as

Principal of Timpany School on 5-2-1987 and her probation was declared and she was confirmed on 26-9-1987. On 11-8-1993, publication dated 10-8-1993 was made in the local newspaper to the effect that she is no longer the Principal of Timpany School, Visakhapatnam. The appellants had sent three months salary in lieu of three months notice which was not accepted by the 1st respondent. The stand taken by the appellants is that Timpany School is not a recognized school under A.P. Education Act, 1982 and hence Section 79 of the said Act is not applicable in case of termination of an employee of the said school and hence the writ petition itself is not maintainable. The writ petition was allowed on 21-9-1996 by the learned Single Judge holding that Timpany School is deemed to be recognised institution under the provisions of A.P. Education Act, 1982 and hence Section 79 of the Act is applicable and it is an institution imparting education as a public duty and even if it is a private institution without any aid from the Government, it is amenable to writ jurisdiction under Article 226 of the Constitution of India. The appellants, aggrieved by the aforesaid order, preferred the present writ appeal.

4. Sri D.V. Sitharam Murthy, learned Counsel for the appellants had raised a core and sole question in the writ appeal about the very maintainability of the writ petition on the ground that Timpany School is not a recognized institution and hence Section 79 of the A.P. Education Act is not attracted and consequently the writ petition under Article 226 of the Constitution of India itself is not maintainable. The learned Counsel pointed out to the Certificate issued by the District Educational Officer, Visakhapatnam to this effect in this regard. The learned Counsel also had drawn our attention to different provisions of the Delhi School Education Act, 1973 and had submitted that by virtue of Section 1(2) of the said Act, the Act is applicable to the whole of Union Territory of Delhi. The learned Counsel also had taken us through the findings recorded by the learned Single Judge and commented that the said findings cannot be sustained. An attempt also was made to show that inasmuch as Timpany School was established by a private society and it was affiliated to C.B.S.E., it does not satisfy the definition of private institution under the A.P. Education Act, 1982. The learned Counsel also had placed strong reliance on a decision of this Court in Bharat Heavy Electricals Limited Higher Secondary School Staff Association, BHEL, Ramachandrapuram, Medak District and others Vs. Bharat Heavy Electricals Limited, New Delhi and others, .

5. Per contra, Sri Satyanarayana Prasad, the learned Senior Counsel representing the 1st respondent - writ petitioner, submitted that the Timpany School is an authority within the meaning of Article 12 and imparting education is a public function and the members of the Management are governed by the A.P. Education Act, 1982. The learned Counsel also had drawn our attention to the recognition of the school as European Protestant School in 1934, Midday School in 1939 and change of name into Timpany School on 28-11-1961. The learned Counsel also had drawn our attention to Sections 2, 4, 8 and 19 of the Delhi School Education Act, 1973 and also to Sections 21, 22 and 79 of the A.P.

Education Act, 1982. The learned Counsel also submitted that when once termination order is set aside and the relief of reinstatement is granted, the consequential benefits should have been granted and hence the direction given by the learned Single Judge for filing statement of salary cannot be sustained. The learned Counsel had placed reliance on *Uptron India Limited Vs. Shammi Bhan and Another*, *Verigamto Naveen Vs. Government of Andhra Pradesh and Others*, *Vasavi College of Engineering Vs. A. Suryanarayana and Others*, *Dr. Sr. Y. Philomena, Principal and Correspondent St. Ann's College Vs. The Prl. Secretary to Govt., Education Department and Others*, *C. Mariadamma v. Government of Tamil Naidu 1989 (1) LLJ 269* *Mrs. S. Sivanarul v. State of Tamil Nadu 1985 L I C 1825* and *Anwarul-Uloom Junior College Vs. The State of A.P. and Others*, .

6. Heard the Counsel and perused the material available on record.

7. The facts are very simple and plain. The 1st respondent was appointed as Principal by the order dated 13-1-1987 and her services were confirmed by the order dated 26-9-1987. The services of the 1st respondent are liable to be terminated, if they are found to be unsatisfactory by giving three months notice or by giving three months salary in lieu of such notice. There is no controversy that the procedure contemplated u/s 79 of the A.P. Education Act, 1982 was not followed at all and the termination was effected by publication of notice in a Telugu Daily Eenadu Newspaper. The subject institution Timpany School was established under the Delhi School Education Act, 1973. u/s 2(t) of the said Act, a recognized school is defined as a school recognised by the appropriate authority. Section 2(e)(iv) of the said Act defines "appropriate authority".

8. The material available on record shows that the subject institution was established in the year 1934 and is affiliated to Indian School Certificate Examination. The school was recognized by granting a No Objection Certificate. It is pertinent to note that the No Objection Certificate was issued by the Government of Madras and also by the Government of Andhra Pradesh for continuance of the school even prior to the passing of the A.P. Education Act, 1982. Subsequent thereto, the A.P. Education Act, 1982 came into force. It is no doubt true that the District Educational Officer, Visakhapatnam issued a certificate which reads as hereunder:

"This is to certify that Timpany School, Visakhapatnam is not recognized under the provisions of the State Government Rules, the A.P. Education Act, 1982".

It is pertinent to note that the subject Institution was recognized even in 1934 as a European Protestant School which was renamed as Midday School in 1939 and subsequent thereto as Timpany School on 28-11-1961. Section 2(18) of the A.P. Education Act, 1982 defines "Educational Institution" and Section 2(35) of the said Act defines "Private Institution". Section 20 of the said Act deals with Permission for establishment of Educational Institutions and Section 21 of the said Act deals with grant of Grant or withdrawal of recognition of institutions

imparting education. Section 22 of the said Act deals with Special provisions in respect of existing institutions and Subsection (1) reads as hereunder:

"All the institutions imparting education which were established and recognized in accordance with rules in force immediately before the commencement of this Act and in existence at such commencement shall be deemed to be Educational Institutions, established and recognized under this Act, provided they comply with the provisions of this Act and the rules made thereunder within such period and in accordance with such procedure as may be prescribed".

It is clear from the material available on record that the subject Institution was recognized even in the year 1934 which was renamed in 1939 and subsequently renamed in 1961. Hence, in view of Sub-section (1) of Section 22 of the A.P. Education Act, 1982, we have no hesitation in holding that the subject Institution shall be deemed to be an Educational Institution established and recognized under this Act. The consequence will be that automatically Section 79 of the said Act is attracted. Section 79 of the A.P. Education Act, 1982 deals with dismissal, removal or reduction in rank or suspension etc., of employees of Private Institutions and Sub-section (1) itself specifies that no teacher or member of non-teaching staff employed in any Private Institution shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The learned Single Judge in fact had recorded reasons in detail while giving a finding in this regard and we do not see any reason to disturb the said finding.

9. Further, an Educational Institution, giving Certificates which are valid for public employment and recognized by the State for public employment and for further studies, cannot take a stand that it is an unrecognized, institution. The subject institution is conducting 10+2 course and the students of the subject institution are taking up public examinations which are conducted by the Council for Indian School Certificate Examinations. Section 2(s) of the Delhi School Education Act, 1973 defines "public examination" as one conducted by the Central Board of Secondary Education, Council for Indian School Certificate Examinations or any other Board which is recognized by the administration of the Union Territory of Delhi. Section 19 of the Delhi School Education Act, 1973 deals with "affiliations". Chapter IV of the Delhi School Education Act, 1973 deals with terms and conditions of services of employees of recognized private Schools and Section 8(2) of the said Act specifies that subject to any rule that may be made in this behalf, no employee of a recognized private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director. Hence, viewed from any angle, in the facts and circumstances of the case, it cannot be said that the termination made by the Management in the present case is in accordance with the provisions of the A.P. Education Act, 1982 or the Delhi School Education Act, 1973. Hence, the findings recorded by the learned Single Judge in this regard need no disturbance

in the present appeal.

10. In view of the fact that the subject institution is a recognized school governed by the statutory provisions and also in view of the fact that imparting education is a public function, we have no hesitation in holding that the writ petition is definitely maintainable and the action impugned is amenable to the writ jurisdiction under Article 226 of the Constitution of India. In *Bharat Heavy Electricals Limited Higher Secondary School Staff Association, BHEL, Ramachandrapuram, Medak District and others Vs. Bharat Heavy Electricals Limited, New Delhi and others*, , the Division Bench of this Court in a writ petition which was against a private school of a Company registered under Societies Registration Act, held that the teachers appointed in the said school cannot maintain a writ petition against the School. In the decision referred *Dr. Sr. Philomena v. Secretary to Government (supra)*, a Division Bench of this Court held:

"It is competent for the High Court to exercise jurisdiction under Article 226 of the Constitution of India and issue to any person or authority, directions, orders or writs. That is evident from the Article itself. If the petitioner who invokes jurisdiction complains of violation of statutory or public duties or obligations which are enforceable by issue of a writ of mandamus or whose determinations can be interdicted by issue of a writ of certiorari, the Court is entitled to intervene. In the present case, it is not disputed that the respondent has passed the impugned order under colour of authority as Manager of Private Educational Institutions which were established and are administered by virtue of permission granted under Sections 20 and 21 of the A.P. Education Act. It is not in dispute that statutory duties are cast upon the educational agency, the Management and Manager of such institutions under the A.P. Education Act and the rules framed thereunder."

In the decision referred in *Vasavi College of Engineering v. A. Suryanarayana*, (*supra*), it was held that a teacher of a recognized Private Educational Institution, aided or unaided, can seek appropriate remedy in a writ petition against the arbitrary termination of his service. Reliance also was placed on the decisions of the Apex Court referred in *Uptron India Limited v. Shammi Bhan and Anr. and Verigato Naveen v. Government of A.P. and Ors.*, (*supra*). Several of the decisions cited in this regard definitely support the view that when there is violation of a statutory provision and infraction thereof and when the discharge of duty is a public duty, a writ petition questioning the action in violation thereof can be maintained.

11. No doubt, an attempt was made by the learned Counsel representing the 1st respondent to assail the direction of filing the statement regarding salary of the 1st respondent. It is no doubt true that the termination of the 1st respondent was held to be illegal and in violation of the statutory provisions. That by itself does not mean that all consequential benefits necessarily should follow. The gainful employment during the relevant period is definitely a question of fact. No

doubt reliance was placed on the decisions referred in Vasavi College of Engineering, C. Mariadamma, Mrs. S. Sivanarul and Anwar-ul-Uloom College cases supra to convince the Court that consequential benefits can be granted while granting the relief of reinstatement. There cannot be any controversy about this aspect relating to the power of the Court in granting consequential benefits while ordering reinstatement. It is pertinent to note that granting or negating backwages may lie within the compass of the discretion to be exercised while deciding a matter in the facts and circumstances of a given case. No straight-jacket formula can be laid down in this regard. The learned Single Judge, in the facts and circumstances of the case, taking into consideration that the said aspect is a question of fact, had given such a direction and in our considered opinion, the said direction also needs no disturbance in the present writ appeal.

12. No other questions had been argued by the respective Counsel.

13. For the foregoing reasons, there is no merit in the writ appeal and the writ appeal accordingly shall stand dismissed, with costs.