
(2013) 05 AHC CK 0322

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25982 of 2013

Fatma Khatoon and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 5 ALJ 467 : (2013) 2 UPLBEC 1707

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : R.K. Ojha and Mohd. Ali Ausaf, for the Appellant; M.A. Quadir, W.A. Siddiqui and Manu Singh, for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri. Mohd. Ali Ausaf, learned counsel for the petitioners, learned standing counsel for respondent Nos. 1, 2 and 3, Sri. Manu Singh for respondent No. 4 and Sri. M.A. Quadeer, learned Senior counsel assisted by Sri. W.A. Siddiqui for respondent Nos. 5 and 6. Respondent No. 7, Idrish Khan, is the alleged Manager who is stated to have appointed the petitioners and infact has supported their cause, as such it is not necessary to issue any notice to him at this stage inasmuch as all the other counsel for the respondents pray that the matter be disposed of finally without waiting for any further counter-affidavit.

2. The facts have been elaborately disclosed in the writ petition and the documents have been placed on record on the basis whereof learned counsel for both the parties have advanced their submissions as such the matter is being disposed off under the Rules of the Court with their consent.

3. Challenge raised in this writ petition is to the order passed by the respondent Registrar dated 01.05.2013, where by he has proceeded to reject the claim of the petitioners as teachers in Madarsa Rizviya Ahle Sunnat, Rustampur, Post Sanichara Bazar, Tehsil Khalilabad, District - Sam Kabir Nagar. Simultaneously he

has further found four teachers to be the validly appointed teachers of the Madarasa through the respondent No. 7 -Idrish Khan who are other than the petitioners. He has further held that the jurisdiction to decide the dispute was available with him, and since the petitioners have been appointed against unavailable posts, namely that they were not vacant on the date of their appointment, their claim has been rejected. The Registrar, has further held that the dispute with regard to the validity of the Committee of Management stood resolved finally in terms of the order dated 06.06.2011 and in such circumstances, the petitioners cannot claim any right to continue in the institution. Accordingly, the termination orders of the petitioners issued by the respondent Nos. 5 and 6, the recognised Management has been upheld.

4. Sri. Ausaf, learned counsel for the petitioners contends that the order is perverse and full of self contradictions, inasmuch as, firstly, while deciding the issue of jurisdiction the Registrar has proceeded to assume all jurisdiction under the garb of Clause 34 of the Madarasa Niyamawali of 1987 which is an erroneous approach. He further submits that the Registrar had earlier passed the order in this very matter on 30th January, 2013, which was challenged by the respondent Committee of Management in Writ Petition No. 8320 of 2013, which was allowed on 19th February, 2013, with a clear direction to decide the matter in the light of the observations made therein. This also included the question of jurisdiction, the validity of the action of the Committee then existing and the nature of appointments that have been made during the pendency of the litigation which had travelled up to the Apex Court. Pending such decision, further directions were issued not to take any action with regard to any appointment that were alleged to have been made during the interregnum period.

5. Sri. Ausaf submits that the Registrar has not complied with any of the directions in the judgment dated 19.02.2013 and therefore, the impugned order deserves to be set aside.

6. As an additional argument Sri. Ausaf contends that the Registrar himself in another matter has observed that any dispute relating to the management of a Madarasa, so long as no other party is recognized, the earlier Manager should continue to be treated as the de facto manager. This opinion has been expressed by the Registrar in the order dated 25th March, 2013 in relation to another Madarasa. This aspect relating to the de facto status of the Committee of Management in the present case has been overlooked and therefore the impugned order is vitiated.

7. Sri. M.A. Quadeer, learned senior counsel contends that the issues which have been raised boil down to the main bone of contention, namely the power of the respondent Nos. 5 & 6, Committee of Management to remove the petitioners from service. He submits that the Committee has already terminated their services and in such circumstances even if they had been appointed by Idrish Khan or had not been appointed by him, this issue becomes irrelevant with the passing of the termination orders. He therefore, submits that the issue of

termination of the petitioners has become final and the same cannot be the subject-matter of appeal either before the Registrar/Inspector or even before this Court in the exercise of jurisdiction under Article 226 of the Constitution of India as the institution is a Minority Institution recognized and protected under Article 30 of the Constitution of India.

8. Replying to the submissions of Sri Ausaf, Sri. M.A. Quadeer submits that, in principle, if the power of the Committee is absolute then in that view of the matter the issue of jurisdiction does arise and this argument on behalf of the Committee of Management had been noted for being decided in the earlier judgment dated 19.02.2013. He therefore contends that the Registrar cannot have entered into the question relating to the termination of the services of the petitioners as even otherwise, it was final and was not subject to any appeal. He however, submits that the termination order having been upheld, to that extent the Committee has no grievance against the observations of the Registrar. Sri. Quadeer contends that since the entire facts are on record and contained in the impugned order it is not necessary to file any counter-affidavit and this Court may proceed to dispose of the matter finally.

9. Having heard learned counsel for the parties it appears that the Registrar has relied on the decision of a Division Bench of this Court in relation to the issue of jurisdiction to assume powers to decide the dispute.

10. This Court in the judgment inter partes dated 19.02.2013 had clearly directed that the issue of jurisdiction shall be raised keeping in view the decisions that have been relied upon by the respective counsels for the parties. The Division Bench judgment which has been referred to by the Registrar only holds that the Registrar/Inspector will have the jurisdiction and it will not be correct to say that he has no jurisdiction at all. The Division Bench judgment does not travel further to define the extent of jurisdiction. For this one will have to refer to Clause 34 of the 1987 Niyamawali which clearly indicates that in disciplinary matters if any irregularities have been found, then the Registrar/Inspector will have a right to forward his recommendation/suggestions to the Management. This provision nowhere indicates that the authority will have a right to sit in appeal over the decision of the Committee of Management or pass an order adverse to the opinion of the Committee of Management as an appellate authority. The power provided is only to enable the Inspector to revisit the matter before the Committee of Management in case of any irregularities having been committed and not any thing beyond that.

11. In the instant case, the impugned order records that under Clause 34 the Registrar has all powers in relation to disciplinary proceedings and service conditions of all employees of Madarasa. In the opinion of the Court the Registrar has read his powers too widely under Clause 34 which does not include all powers as observed by him. Powers are clearly circumscribed as per Clause 34 itself and as indicated hereinabove. The Registrar therefore fell in error in assuming jurisdiction in the widest possible terms which he does not possess.

Therefore his opinion on the issue of jurisdiction is erroneous and the order impugned on this ground cannot be sustained. The Registrar should have referred to the U.P. Board of Madarasa Education Act 1 of 2004 and the applicability of any rules existing thereunder.

12. Coming to the issue of merits of the matter relating to the basis of appointment of the petitioners, the Registrar as recorded a finding that certain appointments were made on 15th August, 2009. The said appointments made by Idrish Khan have been held to be valid under the impugned order. Simultaneously, since the said appointments were held to be valid, it has further been observed, that since the aforesaid posts were not vacant therefore, the petitioners could not have been appointed as against the said posts. The fate of the petitioners therefore is directly relatable to the said posts.

13. Sri. Ausaf has invited the attention of the Court to the fact that those persons who had been appointed on 15th August, 2009 filed a Writ Petition before this Court in relation to their continuance, being Writ Petition No. 56633 of 2011. The matter was contested and it has been pointed out to the Court that the services of such persons were terminated and the petitioners therein were appointed against the said posts. Since there was no challenge raised to the appointment of the petitioners, the writ petition was dismissed on 29.09.2011, observing that it shall be open to those petitioners to file a fresh writ petition in case they seek to challenge appointment of the present petitioners. Sri. Ausaf states at the bar that no fresh writ petition was filed and consequently the claim of those persons namely Abu and others who were appointed on 15th August, 2009 attained finality. This aspect was pointed out to the Registrar, but he has completely over looked the said fact and has thus arrived at a perverse conclusion that those persons are entitled to continue in service.

14. In the opinion of the Court the aforesaid argument of Sri. Ausaf has to be accepted inasmuch as while dealing with this matter in paragraph 8 of the impugned order the Registrar has no where referred to the above-mentioned facts which are on record and remains undisputed.

15. Apart from this, it is also stated by Sri. Ausaf that Idrish Khan had filed an affidavit which is also on record indicating that those persons were never appointed. For this reason also he submits that the finding as reached in paragraph 8 of the impugned order is perverse for non-consideration of the this relevant material. In the opinion of the Court this argument also deserves to be accepted inasmuch as there is no reference to the said affidavit while passing (he impugned order.

16. Coming to the issues that were raised and were required to be answered by the judgment dated 19.02.2013, the validity and status of the Committee of Management had also to be gone into, in view of the fact that the controversy had travelled up to the Apex Court. Sri Quadeer is right in his submission that said issue has not been dealt with keeping in view the impact of the order of the

Prescribed Authority dated 06.06.2011. The Registrar appears to have avoided this and therefore has arrived at a wrong conclusion. Thus, in sum and substance the Registrar has travelled beyond the scope of the direction issued in the judgment dated 19.02.2013, according to Sri Quadeer as well.

17. In the aforesaid circumstances, in view of the submissions so raised the writ petition deserves to be allowed.

18. Accordingly the impugned order dated 1st May, 2013 is quashed. The matter is remitted back to respondent No. 2 to decide the matter again in the light of the observations made expeditiously, preferably within a period of two months" from today. The writ petition is allowed.