
(2004) 07 AHC CK 0026
In the Allahabad High Court
Case No : Writ Petition No. 394 (M/B) of 1988

Harold James

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 30, 30(1)

Citation : (2004) 5 AWC 5025

Hon'ble Judges : Kamal Kishore, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : P.K. Khare, S.C. Mishra, R.C. Tiwari and L.P. Misra, for the Appellant; Azamad Husain, H.S. Sahai, M. Zaheer Hasan, Vishal Singh, R.P. Singh, Mohd. Arif Khan and S.P. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—Law always is in a process of evolution. Laws, which were considered to be of much significance at the relevant time, by the efflux of time, became ineffective due to modernisation, development and changing needs of the public. Earlier, the Courts used to issue directions that have all the necessary ingredients of being coined as an Instrumentality or Agency of the State but of late the Hon"ble Supreme Court has laid down certain requirements to achieve ends of justice, which earlier could not be done under the prerogative writ of mandamus. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. Needless to mention that the Court will lose its efficacy if it cannot possibly respond to the need of the society.

2. In State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , the Hon"ble Supreme Court observed that the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected

of educational institutions, or under the guise of exclusive right of managements, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.

3. In *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, , the Supreme Court while considering the question regarding scales of pay and other conditions of service of teachers and other employees of the Frank Anthony Public School, New Delhi, compared unfavourably with those of their counterparts of the Delhi Administration Schools, said that the management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. In *Francis John Vs. Director of Education and Others*, , the Petitioner, who was a Head Master in a school and whose services were terminated, challenged the order of the High Court, which has held that the writ petition is not maintainable. The Hon''ble Supreme Court did not agree with the view of the High Court and took a contrary view holding that the writ petition in such matter is maintainable.

Paragraph 5 of the report reads as under:

?It is obvious that the Management, in the circumstances could not have terminated the services of the Appellant without the communication received by it from the Director of Education. In such circumstances it cannot be said that the decision is that of a just private management governed by private law. It is the part of the process of public law which affects public exchequer.

4. If the rights are purely of a private character no mandamus can be issued. In other words, if the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions for issue of writ of mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , the Hon''ble Supreme Court, in paragraph 79 of the report, observed that educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty.

5. In *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, , while observing that the teachers who impart the education get an element of public interest in the performance of their duties held that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226 of the Constitution.

6. In the present case, the Petitioner who was working as Principal in 7th Day Adventists School has challenged the validity of the order dated 7th December, 1987, by which his services were terminated by the opposite party No. 3, namely, the Northern Union of 7th Day Adventists which is running various

institutions in the State including the aforesaid school. This school is affiliated to the Council for the Indian School Certificate Examinations, New Delhi. A perusal of the guidelines for affiliation shows that for a school seeking affiliation to the Council for its examinations is required to obtain a certificate of recommendation/ No Objection Certificate from the State Department of Education concerned. There are various other requirements, which a school is required to fulfil for getting the school affiliated.

7. Condition No. 3(a) prescribes that the school should be run by a registered Society or a Trust for Educational purposes. It must not be run for profit. On the other hand, condition No. 5(b) lays down in clear words that the conditions of service, salaries, allowances and other benefits of the staff, must be comparable to that prescribed by the State Department of Education.

8. Furthermore, a perusal of Annexure-8 to the writ petition indicates that while giving No Objection Certificate, the State Government has communicated to the council for the Indian School Certificate Examinations, New Delhi, that there shall be a Member of the Education Department in the Management Committee of the college.

9. In *Imran Abbass and another Vs. Catholic Diocese of Lucknow and others*, , on which reliance has been placed by the learned Counsel for the Respondent, it was held that the Cathedral Educational Society which runs the Cathedral School a private minority institution unaided and not managed by Government, is neither an agency nor instrumentality so as to come within the expression "State" as contemplated under Article 12 of the Constitution.

10. The controversy involved in the *Imran Abbas* case (supra) was that the school struck the name of Imran Abbas and Rehan Abbas from the rolls of the school by an order dated 8th May, 1996. A writ petition was filed before this Court challenging the order dated 8th May, 1996 and a prayer was also made to readmit them in their respective classes. This writ petition was dismissed by one of us holding that a writ petition is not maintainable as the Society, which runs the school does not fall within the expression "State". While deciding the aforesaid case, the judgment pronounced by a Division Bench of this Court in *S. C. Pandey v. District Basic Education Officer* 1991 (9) LCD 105 and the cases cited above were neither brought to the knowledge of the Court nor were considered. In *S. C. Pandey's* case this Court followed the Hon'ble Supreme Court decisions rendered in *Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others*, and *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , held that "the writ petition cannot be thrown out on the ground of non-maintainability arising from the fact that it is a private institution which is not receiving financial assistance from the Government. The Division Bench referred the Supreme Court decision in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , wherein the writ petition filed by a member of the academic staff whose services were terminated by a trust which did not have statutory

origin. The trust resisted the writ petition on the ground that it was not a statutory body and, therefore, it was not amenable to writ jurisdiction under Article 226 of the Constitution. The plea of the trust was negated holding that the words "any person or authority" used in Article 226 should not be confined only to statutory authorities and instrumentalities of the State but should cover any other person or body performing public duty.

11. Having considered the aforesaid cases and the cases cited by the learned Counsel for the Respondent such as Imran Abbas (*supra*), T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , we are of the view that the instant writ petition is maintainable.

12. We would also like to refer here that this writ petition was filed in the year 1988 and a perusal of the order sheet indicates that no question regarding maintainability of the writ petition was ever raised at the time of admission or at the time of passing of the order dated 21.4.1988, when the writ petition was admitted and an ad-interim order restraining the Respondent from evicting the Petitioner was passed. In A.V.G.P. Chettiar and Sons and Others Vs. T. Palanisamy Gounder, , the Hon"ble Supreme Court has laid down that an objection to the maintainability of the appeal, like other points of demurrer, may be relevant at the time of the admission of the appeal. Once the appeal is admitted without reserving the issue of maintainability and the matter is heard on merits, such a preliminary objection does not survive. For this reason also, the plea of non-maintainability of the writ petition at the time of final arguments is also not sustainable and the writ petition is maintainable.

13. Now we come to the merits of the case.

14. The Petitioner was appointed as a teacher in Seventh Day Adventists School, Roorkee, district Saharanpur in the year 1969. Thereafter the Petitioner, in the year 1985, took charge as Principal of the Seventh Day Adventists School, Lucknow. In between the Petitioner was posted at Hapur, Moradabad and other places. According to the Petitioner, in the year 1987, he was suspended without there being any cogent reasons and by the order dated 7th December, 1987, his services were terminated. The order of termination is alleged as illegal, arbitrary and has been passed without giving due opportunity of hearing. The assertion of the Petitioner is that the enquiry which was conducted in the matter was also not fair and the documents requested for inspection, were not made available to him. It has further been asserted that threats were also extended to him and his wife to vacate the premises, which he was given in his official capacity as Principal of the college as such he had to make an application for temporary injunction before the civil court.

15. Learned Counsel for the Petitioner has also contended that order of termination is also non est as it has been passed ignoring the provisions of Uttar Pradesh Intermediate Education Act, which is applicable on the institution and the restrictions imposed on a Minority Institution have also not been followed by

the opposite party No. 3. While passing the impugned order of termination, which amounts to dismissal from service, the explanation given by the Petitioner was not taken into consideration.

16. Sri Mohd. Arif Khan, learned Counsel appearing for the Respondent No. 3 stated that the School is being managed and run by opposite party No. 3 and has privilege of Article 30 of the Constitution being a Minority Institution. The recognition was granted after proper enquiry and registration. The Seventh Day Adventist School is affiliated to the Council for Indian School Certificate, New Delhi and the examination of the School is conducted by the Council for the Indian School Certificate Examination and the syllabus is also prescribed by the said Council, as such the provisions of Uttar Pradesh Intermediate Act are not applicable.

17. It has been pointed out by the learned Counsel for the Respondent No. 3 that the Petitioner was dismissed earlier when he was posted at Roorkee on account of immoral acts committed by him. Later on, he tendered unconditional apology, as such he was re-employed but was given Clerical job with lesser teaching responsibilities at Hapur. Thereafter he was posted as Head Master at Jhansi School, where he remained for 11 years.

18. It has been contended that the Petitioner did everything against the interest of the students including the school and had caused great damage to the institution. Apart from serious financial irregularities, which were detected, it was found that the Petitioner had promoted the failed students and gave Transfer Certificate (T.C.) to the failed students and changed the grades of certain students. There were written complaints against the Petitioner from the parents that he demanded money for promotion and admission in the school. Moreover, he was running the school according to his own method and was not following the prescribed rules. A promotion committee is required to be constituted with respect to giving promotion, but he never constituted any committee and acted according to his own style. During the inspection it was also found that 25 failed students were sitting in the next higher class and 20 failed students were given pass Transfer Certificate.

19. With regard to opportunity, it has been stated that the Petitioner was given ample opportunity to put his version. He was asked to appear before the President of opposite party No. 3 at New Delhi but he avoided to appear before him on one pretext or the other. The Board of Respondent No. 3 considered all the documents, charge-sheet and the reply furnished by the Petitioner and thereafter again he was called for personal hearing and to give reply of certain points. But neither the Petitioner appeared before the opposite party No. 3 nor gave any reply. It is incorrect to say that the Petitioner was not allowed to inspect the record. As a matter of fact, it clearly emerges out from the record that the Petitioner was given ample opportunity.

20. Having examined the submissions made by the learned Counsel for the

parties and relevant record, we are of the view that the Petitioner was given ample opportunity of hearing to defend himself but he avoided to avail the same. The Board of opposite party No. 3, which consists of seven members, after considering the enquiry report, the charge-sheet and the reply to the charge-sheet unanimously resolved to terminate the Petitioner as the services of the Petitioner were found to be not beneficial for the institution, rather were against the progress of the school. It has been specifically stated in paragraphs 10, 11 and 12 of the counter-affidavit that the Petitioner was showed all the documents demanded by him but he deliberately made excuses so as to prolong the enquiry.

21. Definitely the acts of giving next higher class to failed students, issuing pass Transfer Certificate to failed students and demanding money for promotion and admission are very serious in nature and are not teacher like qualities. Such acts, no doubt, would result not only in deterioration of the standard of education but will also pollute the pious mind of the students. The teachers while teaching critical thinking skills, deeper understanding of subject matter also inculcate good morals and etiquettes, values of life and vision in students. They play a significant role in nation building and enjoy high regard in the society, Schools depend on cooperation and interdependence among staff members.

22. It may be mentioned here that the Petitioner was provided official accommodation inside the school complex, which he is still occupying on account of interim order, granted by a Division Bench of this Court on 21.4.1988. The Petitioner, as stated above, was given official accommodation because of his "service occupation". The Petitioner, as it comes out from the record, has neither paid the rent nor the electricity dues. On account of non-payment of electricity dues, the electricity was disconnected by the LESU. It has been brought to our notice that the Petitioner has been creating all sorts of nuisance and is even creating a venomous atmosphere against the school and its administration by spreading false stories among the students and their guardians thus ruining the reputation of the institution.

23. In view of the aforesaid discussions, we find no merits in the writ petition and is hereby dismissed. The interim order shall stand vacated. The Petitioner shall vacate the official accommodation within a period of forty-five days from today failing which the school authorities may take help of necessary police force for getting the Petitioner evicted. It is made clear that the Petitioner would be liable to pay the electricity dues and other dues for the period he occupied the accommodation given to him by the school authorities.