
(2010) 01 RAJ CK 0091
In the Rajasthan High Court

Immamuddin

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 19, 2, 21

Citation : (2010) 1 WLN 416

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Petitioner, as alleged in petition, was appointed in the cadre of Class IV in Air Force School Kanak Ghati, Amer Road, Jaipur on 04/01/1983 and continuously discharged his duties but on one fine morning, his gate pass to enter the School was taken away and was not allowed to enter the campus, which compelled him to approach this Court initially by filing CWP-1536/94. However, that writ petition came up for admission on 30/03/1994, and as alleged in para 2 of instant petition, it was orally observed by the Court that petitioner may seek remedy before Central Administrative Tribunal and accordingly, he withdrew the same and that petition was dismissed with a liberty to file afresh. Consequently, petitioner preferred OA No. 232/94 before the Central Administrative Tribunal wherein preliminary objection was raised by respondents in regard to jurisdiction of the Tribunal and accordingly he was allowed to withdraw original application vide order dt. 29/08/95 for seeking remedy under law.

2. Obviously application was filed by petitioner u/s 21 of Rajasthan Non Govt. Educational Institutions Act, 1989 ("the Act, 1989"). It appears from the order impugned dt. 13/12/95 (Ann.1) that when the matter came up at the admission stage, the learned Tribunal after taking note of Section 2(p) of the Act, 1989, observed that the Air Force School is not a non-Govt. Educational institution, accordingly the same was dismissed holding the application preferred by petitioner being not maintainable. However, merits of the dispute have not been

examined by the Tribunal while passing order impugned; hence the petitioner has approached this Court by way of instant petition.

3. Only question to be examined by this Court is as to whether the Air Force School being affiliated and recognised by Central Board of Secondary Education ("CBSE"), any dispute arising in between its management & employee is appealable under the Act, 1989 or not.

4. Government Counsel submits that the order impugned herein was passed at the admission stage without examining relevant provisions of the Act, 1989; and however, in the case of Smt. Ruby Khan who was also employee of Air Force School and whose services were terminated, and she too preferred appeal 26/2000 before the Education Tribunal wherein also, preliminary objection was raised by the Air Force School that the Tribunal has no jurisdiction under the Act, 1989; and taking note of material on record in the case of Ruby Khan, learned Tribunal examined the scheme of the Act, and finally observed in para 16 that provisions of the Act, 1989 are applicable to employees of the Air Force School, and they are entitled to seek protection under the Act, 1989 vide judgment dt. 11/04/2000 - against which no writ petition was filed by Air Force School.

5. Apart from what has been observed (*supra*) in the case of Ruby Khan, the learned Tribunal in instant case has failed to consider scheme of the Act, 1989. Section 2(c) read with Section 2(p) & 2(q) being relevant for present purposes are referred to *ad infra*:

(c) "Board" means the Board of Secondary Education, Rajasthan or the Central Board of Secondary Education, Delhi and shall include the Council for the Indian School Certificate Examinations.

(p) "non-Government educational institution" means any college, school, training institute or any other institution, by whatever name designated, established and run with the object of imparting education or preparing or training students for obtaining any certificate, degree, diploma or any academic distinction recognized by the State or Central Government or functioning for the educational, cultural or physical development of the people in the State and which is neither owned nor managed by the State or Central Government or by any University or local authority or other authority owned or controlled by the State or Central Government.

(q) "recognized institution" means a non-Government educational institution affiliated to any University or recognized by the Board, Director of Education or any officer authorised by the State Government or the Director of Education in this behalf.

A conjoint reading of provisions (*supra*), clearly depicts that those institutions which are recognised or affiliated by the Board of Secondary Education, Rajasthan or the Central Board of Secondary Education, or Council for the Indian School Certificate Examinations, are considered to be "recognized institutions".

6. Indisputably, present institution (Air Force School) being a non-Government educational institution recognised by CBSE as defined in Section 2(q) of the Act, 1989 certainly its employees are provided with protection to seek remedy by filing application u/s 21 and appeal u/s 19 of the Act, 1989.

7. Consequently, writ petition is allowed. Order dt. 13/12/95 of the Tribunal is hereby quashed & set aside. The matter is remitted back to the respondent-1 (Rajasthan Non-Govt. Educational Institutions Tribunal, Jaipur) to examine the same on merits. Since dispute is pending since the year 1994, it is expected of the learned Tribunal to expedite the matter. Parties are directed to appear before the Tribunal on 01/02/2010. No costs.