

(2014) 12 MAD CK 0309

In the Madras High Court

Case No : Writ Appeal No. 1272 of 2014 and M.P. No. 1 of 2014

J. James Anbiah

APPELLANT

Vs

The Joint Director of School Education

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 12 MAD CK 0309

Hon'ble Judges : Satish K. Agnihotri, J;K.K. Sasidharan, J

Bench : Division Bench

Judgement

1. The instant writ appeal arises from the order dated 04.10.2013 passed by the Writ Court in W.P. No. 27490 of 2013.

2. For the sake of brevity and clarity, the parties are referred to as per their rank in the instant appeal.

3. The appellant, being aggrieved by the order dated 21.08.2013 passed by the third respondent, preferred a writ petition under Article 226 of the Constitution of India, seeking quashing of the same as being illegal and unlawful and a further direction to reinstate him as Record Clerk in the fourth respondent school, with all consequential service and monetary benefits.

4. The facts in nutshell, relevant for the purpose of this appeal are that the appellant was working as Record Clerk in the fourth respondent school. The third respondent, being the Corporate Manager and Secretary of the Corporate Management Schools under which the fourth respondent school is working, passed the impugned order, placing the appellant under suspension, on account of certain allegations. There against, the appellant filed a writ petition. The Writ Court dismissed the writ petition summarily, holding that the same is not maintainable against the order passed by the third respondent, which is not a statutory authority.

5. We have heard Mr. S. Nambi Arooran, learned counsel for the appellant, Mr. P.

Godson Swaminath, learned counsel for respondents 3 and 4 and Mr. K. Karthikeyan, learned Government Advocate appearing for the respondents 1 and 2.

6. It is well settled proposition of law that an order, decision, action, inaction, etc. in relation to (i) the State (Government), (ii), an authority, (iii) a statutory body, (iv) an instrumentality of the State, (v) a company financed and owned by the State, (vi) a private body run substantially on State funding, (vii) a private body discharging public duty or positive obligation of public nature and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function, is amenable to writ jurisdiction under Article 226 of the Constitution of India.

7. Now, we have to examine as to whether the fourth respondent school, wherein the appellant is working as Record Clerk, is discharging a public duty or positive obligation of public nature. Needless to state that an educational institution cannot work effectively and efficiently in the absence of ministerial staff and as such, a Record Clerk is a necessary part of the school functioning. It is not in dispute that the fourth respondent school is imparting education, which is under the control of the third respondent, it appears, for the purpose of management and administration. Imparting education is certainly a public duty and also it is a positive obligation of the State to provide education to children and as such, it is of public nature.

8. The Supreme Court, in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, , while dealing with the issue of maintainability of a writ petition against a private unaided college held as under:

x x x We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. 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; the jurisdiction part is very wide. It would be a different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable.

9. Subsequently, in Ramesh Ahluwalia Vs. State of Punjab and Others, , the Supreme Court observed as under:

14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided

private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.

10 In view of the clear proposition of law laid down by the Supreme Court and applying the same to the facts of the case, we are of the considered opinion that the third respondent may not be a statutory authority. However, keeping in view the fact that the appellant is working in an educational institution, which is engaged in imparting education to children, a writ petition is maintainable against the order passed by any authority, touching the administration of the school. Thus, we do not agree with the view taken by the Writ Court that the writ petition is not maintainable. We are not inclined to go into the merits of the case. Thus, holding that the writ petition is maintainable, we remit back the matter to the Writ Court for decision on merits, in accordance with law.

11 The writ appeal stands allowed accordingly. No costs. Connected Miscellaneous Petition is closed.