

(1985) 04 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17338 of 1984

J.C. Reddy

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1986 All 154

Hon'ble Judges : O.P. Saxena, J;B.L. Yadav, J

Bench : Division Bench

Advocate : Bashisht Tewari and K.M. Dayal, for the Appellant; R.H. Zaidi and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Saxena, J.—By this petition under Article 226 of the Constitution the petitioner has prayed for:

(i) A writ of certiorari quashing the decision of the Board of Directors, Allahabad Agricultural Institute, Allahabad taken in a meeting held on 25-27 Oct. 1984 holding that the petitioner has ceased to be a member of the Board of/Directors after the date of his superannuation.

(ii) a writ of certiorari quashing the Government Order recognising the Agricultural Institute as a minority institution;

(iii) a writ of mandamus directing the opposite parties to pay the salary of the petitioner for the month of Oct. 1984 as well as accumulated leave for two months and seven days;

(iv) a writ of mandamus directing the opposite parties to consider the pension and pensionary benefits of the petitioner just after his retirement.

2. The petitioner was employed as a Lecturer in the Agricultural Institute, Allahabad. The Agricultural Institute, Allahabad is an Associated College of the

Allahabad University. It is administered by a Registered Society called the Board of Directors of the Allahabad Agricultural Institute. According to the service conditions the petitioner was to retire on attaining the age of 60 years.

3. On 9th Aug. 1984 the Director and the Executive Secretary of the Board of Directors sent letter (Annexure-A) to the petitioner informing him that his date of superannuation fell on 13th Sept. 1984 and that he would be relieved on that date,

4. Allahabad University (Tenth Amendment) Statute 1980 was published vide Notification No. 4353 dated Oct. 1, 1980. It provided for re-employment of the teacher whose date of superannuation fell between Oct. 1 and June 29 (both days inclusive) for the period up to 30th June.

5. The Allahabad University (14th Amendment) Statutes, 1981 was published vide Notification No. 4826 dated 15th Sept. 1981 (Annexure-G). The words "falls between Oct. 1 and June 29 (both days inclusive)" were substituted by the words "does not fall on June 30."

6. On 22nd Aug. 1984 the Director and the Executive Secretary of the Board of Directors sent letter (Annexure-C) informing the petitioner that he would be treated as re-employed with effect from 14th Sept. 1984 till -30th June 1985. He was further informed that he would not get any increment or new scale of pay, if any, after the date of superannuation which fell on 13th Sept. 1984.

7. On 20th Oct. 1984 the Executive Committee of the Board of Directors resolved that the petitioner would be treated as absent without leave and administrative action would be taken against him as he proceeded on leave without his application for leave being recommended by the Head of the Department and approved by the Principal.

8. In the 19th Annual Meeting of the Board of Directors held on 25-27th Oct. 1984 resolution No. 84-153 was passed (Annexure-B). It was decided that as the petitioner completed the age of 60 years on 13th Sept. 1984 and he was re-employed with effect from Sept. 14, 1984, he was not entitled to continue to be a member of the Board of Directors. It was decided that Sri R. V. Rao and Sri B. A. David be invited to attend the meeting of the Board of Directors as staff representatives.

9. On 29th Oct. 1984 the petitioner sent letter (Annexure H) along with medical certificate (Annexure-I) for leave salary for the period from 7th Oct. 1984 to 22nd Oct. 1984. On 5th Nov. 1984 the Director and Executive Secretary of the Board of Directors sent reply (Annexure-I) pointing out that he went on leave without prior approval. He was, therefore, treated on leave without pay with effect from 1st Oct. 1984 to 25th Oct. 1984.

10. The petitioner's case is that he was appointed member of the Board of Directors for a period of three years and the impugned resolution No. 84-153 dated 25th-27th Oct. 1984, is in violation of the Articles of Association. The

validity of the meeting of Board of Directors has been assailed. It was said that as the petitioner's service has been extended up to 30th June 1985, he is entitled to continue as member till then and the impugned resolution is liable to be quashed as it is violative of Art, 14 of the Constitution. The petitioner assailed the constitutionality of the 10th Amendment of the Allahabad University Statutes in so far as amendment of Statutes 16.24 and 17.15 is concerned. The petitioner claimed that he is entitled to the leave of Oct. 1984, accumulated leave of two months and compensatory leave for 7 days and assailed the decision of the Director and Executive Secretary of the Board of Directors. The petitioner placed reliance on Section 60(E) of the U. P. State Universities Act which provides that the State Government shall be liable for payment of salaries of teachers and employees of every college due in respect of any period after March 31, 1974. It was said that the U. P. Government by a letter dated 12th Sept. 1980 recognised the Agricultural Institute to be a minority institution against the provisions of Articles 14, 21 and 29 of the Constitution read with Article 30 of the Constitution. The petitioner also apprehended that the pension and pensionary benefits may be withheld by opposite party No. 4.

11. Sri R. H. Zaidi, learned counsel for opposite party No. 4 raised an objection regarding the maintainability of the writ petition against opposite party No. 4, a private registered society, in the absence of any breach of any legal obligation or duty imposed by a statute.

12. Sri K. M. Dayal and Sri B. Tewari, learned counsel for the petitioners submitted that the writ petition is maintainable against a private body for the breach of statutory obligations.

13. There is abundant authority for the proposition that a writ petition lies against a private body for enforcement or performance of any legal obligation or duty imposed by a statute. A Full Bench of this Court held in Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, , that such a writ is maintainable against a Committee of Management of an Intermediate College. A learned Single Judge took the same view in Kumari Rama Chauhan v. Committee of Management Chiraunji Devi Girls Intermediate College 1983 UPLBEC 721 . The Delhi High Court held in Kumkum Khanna and Others Vs. The Mother Aquinas and Another, that a writ is maintainable against the Principal of the college in respect of exercise of statutory power or failure to perform public duty. In Pradeep Kumar Mukerjee v. The Managing Committee Sant Vinoba Degree College, Deoria 1984 UPLBEC 183, Division Bench of this Court issued a writ quashing the resolution of the Committee of Management accepting the resignation of the petitioner without complying with the statutory requirement and obtaining the approval of the Vice-Chancellor.

14. No writ petition, however, lies against a private body where there is neither a statutory nor public duty imposed on it by a statute, nor is there any corresponding legal right for enforcement of such statutory or public duty. We may refer to The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, . In

Radha Charan Sharma v. U. P. Co-operative Federation, 1982 ALR 342 a Full Bench of this Court held that a writ petition challenging the suspension or dismissal of a Co-operative Federation employee is not maintainable and a writ cannot be issued against a private body. The service rules were framed not by the State Government but by the Federation.

15. Article II of the Articles of Association of Agricultural Institute provides for a Board of Directors. Clause A(3) provides : --

"Two confirmed Christian Academic staff members appointed by the Board of Directors to be chosen by the Board of Directors from among confirmed Christian members of the staff who have completed five years of continuous service from the date of confirmation in a substantive post."

16. Clause B(1) provides that the term of office of all elected members of the Board of Directors will be three years.

17. Statute 13.05 of the Allahabad University Statutes, 1976 provides the guidelines for the constitution of Management Committee to be provided in the constitution of the institution.

18. Clause (a) provides that the Principal of the College will be ex-officio member of the Management Committee.

19. Clause (b) provides that 25% members of the Management Committee will be teachers including the Principal.

20. Clause (c) provides that the teachers excluding the Principal will be members for a period of one year by rotation in order of seniority.

21. It would appear that the provisions of Article II of the Articles of Association are materially different from the provisions of Statute 13.05 on the following points :

(1) There is no provision in the Articles that 25% members of the Management Committee will be teachers including the Principal.

(2) There is no provision in the Articles that seniormost teachers will be members.

(3) The Articles provide for a term of 3 years, whereas the Statutes provide for a term of one year.

22. The Agricultural Institute is a minority institution and is entitled to the benefit of Article 30 of the Constitution. Statute 13.05 will - not affect the right of the minority institution to have its own rules regarding constitution of Board of Directors. We may refer to All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others,

23. In paras 7 and 8 of the petition, the petitioner assailed the validity of the resolution No. 84-153/25.27th Oct. 1984, on the ground that it is violative of the

Articles of Association. There is no reference to the Statute 13.05 of the Allahabad University Statutes.

24. In para 5 of the petition it was said that the petitioner was appointed member of Board of Directors for a period of 3 years and the first Annual Meeting of the Board of Directors took place on 29th-30th Nov., 1982. The petitioner's case is that he is entitled to continue as member till the third annual meeting thereafter as provided in Article II(B)(1) of the Articles of Association. Under Statute 13.05 Clause (c) the term of a member is only one year. The petitioner could not plead breach of Statutes, but only breach of Articles of Association. The Articles of Association were framed not by the State Government but by the Agricultural Institute.

25. We are, thus, of the opinion that the petition has not been filed against a private body for breach of any statutory rule or obligation, but for the breach of Articles of Association and is consequently not maintainable.

26. The petitioner's learned counsel urged that the amendment of Statutes 16.24 and 17.15 Allahabad University (Tenth Amendment) Statutes, 1980, was violative of Article 14 of the Constitution as it gave the benefit of re-employment to teachers retiring between 1st Oct. and 29th June and not to teachers retiring between 1st July and 30th Sept. Annexure S-A to the Supplementary affidavit filed on 10-1-1985 is a copy of the relevant amendment. This virus was removed by the amendment of Statutes 16.24 and 17.15 by the Allahabad University (Fourteenth Amendment) Statutes, 1981. The words "falls between Oct. 1 and June 29" were substituted by words "does not fall on June 30". Annexure G is a copy of the amendment. Now the benefit of re-employment is available to all teachers who do not retire on June 30th. There is no discrimination and there is no substance in the contention that the provision violated Article 14 of the Constitution.

The proviso to Statute 16.24(3) is as below :

"Provided that if the date of superannuation of a teacher does not fall on June 30, the teacher shall continue in service till the end of academic session, i.e. June 30 following and he will be treated as on re-employment from the date immediately following the date of his superannuation till June 30 following.

27. We are unable to accept the contention of the learned counsel for the petitioner that the portion underlined is violative of Article 14 of the Constitution. The relevant provision applies uniformly to all those whose date of superannuation does not fall on June 30th. It is a reasonable classification and the provision is valid and legal.

28. We are unable to accept the contention of the learned counsel for the petitioner that as he continues to be in service of the institution till 30th June 1985, he is entitled to continue to be member of the Board of Directors. The tenure of a service comes to an end on the date of superannuation. A person

cannot continue in service thereafter until he or she is re-employed. A person re-employed starts a fresh tenure of service from the date of re-employment. He may get the pay and allowances and may also enjoy the privileges attached to the post to which he is re-employed. He does not retain his old seniority or lien after the date of superannuation. Under Clause A(3) of Article II of the Articles of Association only a confirmed Christian member of the staff of Agricultural Institute would be a staff representative on the Board of Directors. The petitioner ceased to enjoy the status of a confirmed teacher after the date of superannuation. As a fresh tenure of service started on his re-employment, he could not continue to be a member of the Board of Directors after the date of his superannuation.

29. We are unable to accept the contention of the learned counsel for the petitioner that the Government Order dated 12th Sept. 1980 recognising the Agricultural Institute as a minority institution should be quashed. The petitioner has relied on Clauses A(3) and B(1) of Article II of the Articles of Association of Agricultural Institute. He has claimed that a confirmed Christian member of staff is entitled to be chosen as a member of Board of Directors for a period of three years. He has sought to avoid the rigour of Statute 13.05 of the Allahabad University Statutes which provides for appointment of staff representatives in order of seniority for a period of one year only on the ground that the Agricultural Institute is a minority institution. He cannot be permitted to approbate and reprobate at the same time. As he has placed reliance on the Articles of Association in supersession of the statutes on the ground that the Agricultural Institute is a minority institution, he cannot be allowed to challenge the recognition, of the Agricultural Institute as a minority institution. Apart from this, the Agricultural Institute is admittedly an educational institution run by Christians who are a minority community and has been rightly recognised as a minority institution.

30. As far as the petitioner's grievance regarding the salary for the period from 1st Oct., 1984 to 25th Oct. 1984 is concerned, the learned counsel for opposite party No. 4 stated that he would see that the petitioner is allowed salary for the period due to him.

31. As far as the pension and pensionary benefits are concerned, the opposite party No. 4 has never refused to give the same. In the letter dated 9-8-1984 (Annexure A) the petitioner was informed that the pension and General Provident Fund shall be settled by the Department of Education.

32. As far as gratuity is concerned, the petitioner made his submission in a supplementary affidavit filed on 10-1-1985. He has assailed validity of the Government Order dated 30th March 1983. He has made no such averment in the writ petition. No relief has been sought in respect of the said Government Order. In a writ petition, the petitioner can raise new grounds by amending the petition and adding new paras and reliefs. He is not entitled to do so by filing a supplementary affidavit only. As the petitioner has not amended the petition and

has not sought any relief in respect of the Government Order, we are unable to consider the submissions made in the supplementary affidavit.

33. We find no merit in the petition. It is also not maintainable. The petition is dismissed. There will be no order as to costs.