

(2015) 12 CHH CK 0022
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 6175 of 2011

Khalsa Education Society

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, Article 30(1)
Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ko Padachyut Karne, Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 — Rule 12(3) (b)
Madhya Pradesh Ashaskiya Shikshan Sansthan (Anudan Ka Praday) Adhiniyam, 1978 — Section 6(a)(iii)

Citation : (2016) 2 CGLJ 4

Hon'ble Judges : Shri Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Mr. Ashish Shrivastava and Mr. Soumya Rai, Advocates, for the Petitioner; Mr. Gary Mukhopadhyay, Dy.G.A, for the Respondent/State No. 1 to 3; Mrs. Fouzia Mirza, Advocate, for the Respondent No.4

Final Decision : Allowed

Judgement

Shri Sanjay K. Agrawal, J.—Predominant issue that has cropped up for consideration is whether Section 6 (a) (iii) of the Act of 1978 and the Rules framed thereunder, particularly Rule 12(3) of the Rules of 1983 requiring approval from the Competent Authority before terminating the services of an employee is applicable to the petitioner/educational Institution established and administered by religious and linguistic minority under Article 30(1) of the Constitution of India.

2. Petitioner-Institution i.e. Khalsa Education Society is a society registered under the provisions of the Chhattisgarh Societies Registrikaran Adhiniyam, 1973 (hereinafter referred to as "the Act of 1973") and running a school in the name of "Khalsa Public School" and is a minority Institution within the meaning of Article 30(1) of the Constitution of India. The respondent No.4 worked as

Assistant Teacher in petitioner's school was removed from service by order dated 12.7.1995 (Annexure P/4). She preferred an appeal before the respondent No.3/ Appellate Authority i.e. District Education Officer, Raipur and the Appellate Authority/ District Education Officer by order dated 3.9.2011 (Annexure P/1) allowed the appeal filed by the respondent No.4 and set aside the order of removal from service and directed reinstatement along with consequential benefits.

3. Feeling aggrieved against the above-stated order, the petitioner herein i.e. Khalsa Education Society has preferred this writ petition under Article 226 of the Constitution of India questioning the order passed by the respondent No.3 setting aside the order of removal of the respondent No.4 from the post of Assistant Teacher stating inter-alia that order passed by the District Education Officer, Raipur/Appellate Authority is unsustainable and bad in law as service of the respondent No.3 was governed by the provisions of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Anudan Ka Pradaya) Adhinyam, 1978 (hereinafter referred to as "the Act of 1978") and the provisions contained in Section 6 (a) (iii) of the said Act requiring prior approval of the competent authority before the termination has been held to be violative of Article 30 (1) of the Constitution of India by a judgment of the High Court of Madhya Pradesh in the matter of Siddhi Bala Bose Library Association and others v. State of M.P. and others, 1979 MPLJ 379 and as such, the order passed by the Appellate Authority allowing the appeal on the sole ground 1 1979 M.P.L.J. 379 of absence of prior approval from competent authority is bad and unsustainable in law and therefore, the writ petition deserves to be allowed and order of the Appellate Authority deserves to be set aside.

4. Respondents No.1 to 3 by filing return have supported the order of the Appellate Authority granting appeal in favour of the respondent No.4.

5. Respondent No.4 has filed separate return supporting the order of the Appellate Authority stating inter-alia that after decision of High Court of Madhya Pradesh in the matter of Siddhi Bala Bose Library Association, 1979 MPHL 379 (supra), the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ko Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 (hereinafter referred to as "the Rules of 1983") has been framed. Rule 12(3) (b) of the Rules of 1983 prescribes the procedure in which approval of the competent authority is necessary and therefore, order of the Appellate Authority is not required to be interfered with.

6. Mr. Ashish Shrivastava, learned counsel appearing for the petitioner would submit that Section 6 (a) (iii) of the Act of 1978 requiring prior approval of the competent authority by the minority Institution has been held to be violative of Article 30 (1) of the Constitution of India by a Division Bench of High Court of Madhya Pradesh in the matter of Siddhi Bala Bose Library Association, 1979 MPHL 379 (supra) and therefore, there was no such requirement of taking prior approval of the competent authority before terminating the service of the

respondent No.4. He would further submit that the Rules of 1983 prescribing the approval from the competent authority runs contrary to a decision of the High Court of Madhya Pradesh in the matter of Siddhi Bala Bose Library Association (supra). He would also submit that the rule must be in accordance with the parent Act and it cannot travel beyond the Act and as such, order of the Appellate Authority holding removal to be bad on the ground that prior approval of the competent authority has not been obtained is unsustainable and liable to be quashed being contrary to law.

7. Mr. Gary Mukhopadhyay, learned Deputy Government Advocate appearing for the respondents No.1 to 3 would submit that the petitioner-institution has already adopted Rule 12 (3) (ii) of the Rules 1983, which requires approval from the competent authority before such removal and as such, the Appellate Authority has rightly held that prior approval has not been obtained before passing the order of termination and therefore, the Appellate Authority has rightly set aside the order of removal for want of prior approval and as such, the writ petition deserves to be dismissed upholding the order of the Appellate Authority.

8. Mrs. Fouzia Mirza, learned counsel for the respondent No.4 would submit that after decision of the High Court of Madhya Pradesh in the matter of Siddhi Bala Bose Library Association, 1979 MPHL 379 (supra), Section 6 (a) (iii) of the Act of 1978 underwent amendment and new Section 6 (a) (iii) has been substituted which prescribes that order of removal has to be passed after following such procedure as may be prescribed and the Rules of 1983 framed in accordance with Section 6 (a) (ii) of the Act particularly Rule 12 (3) (b) of the Rules of 1983, which requires approval from the competent authority and therefore, the Appellate Authority is absolutely justified in holding that order of removal without prior approval of the competent authority is unsustainable and rightly allowed the appeal preferred by the respondent No.4 and as such, the writ petition deserves to be dismissed.

9. Mr. Ashish Shrivastava, learned counsel for the petitioner while submitting rejoinder argument would submit that unamended Section 6(a) (iii) of the Act of 1978 has been held to be violative of Section 30(1) of the Constitution of India in the matter of Siddhi Bala Bose Library Association (supra) by the High Court of Madhya Pradesh and Rule 12 (3) (b) of the Rules 1983 framed subsequently runs contrary to the law laid-down in the matter of Siddhi Bala Bose Library Association (supra) and as such, the Rules of 1983 cannot go beyond Section 6 (i) (a) of the Act of 1978.

10. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.

11. It is not dispute in dispute that petitioner-institution is minority institution within the meaning of Article 30(1) of the Constitution of India and running a

school known as "Khalsa Primary School", in which the respondent No.4 was employed as Assistant Teacher. She was terminated by order dated 12.7.1995, against which appeal was preferred, which has been allowed by the respondent No.3/Appellate Authority by impugned order by recording following finding:-

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12. The question that has cropped up for consideration is whether the petitioner-minority Institution was required by the Act of 1978 and the Rules made thereunder to seek prior approval of the Competent Authority before terminating the services of the respondent No.4. In order to resolve the controversy, it would be appropriate to notice Legislative changes in Section 6 (a) (iii) of the Act of 1978 and the Rules made thereunder. Unamended Section 6 (a) (iii) of the Act of 1978 provides as under:-

"(iii) no teacher or other employee shall be dismissed or removed from service or his services terminated without prior approval of the competent authority."

13. The Constitutional validity of Section 6(a) (iii) of the Act of 1978 was subject-matter of challenge before a Division Bench of High Court of Madhya Pradesh in the matter of Siddhi Bala Bose Library Association (supra), in which Their Lordships after consideration summarized the legal position in this regard by holding that sub-clause (iii) of clause (a) of Section 6 of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adniniyam, 1978 (No.20 of 1978) requiring prior approval of the Competent Authority before termination of service is violative of Article 30(1) of the Constitution of India to the minority Institution and therefore, that provisions have no application to educational institutions established and administered by religious and linguistic minorities. Paragraph 32 of the report states as under:-

"32.The three recent decisions of the Supreme Court in St.Xaviers College case, Rt. Rev. Magr Mark Natos case and Lily Kurians"s case summarise the law laid down by the Supreme Court on this point. It is, therefore, not necessary to refer to any earlier decision. Following the law laid down by the Supreme Court, we hold that subclauses (iii) and (iv) of clause (a) and clauses (b) and (c) of section 6 of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adniniyam, 1978 (No.20 of 1978) are violative of Article 30(1) of the Constitution and therefore, they have no

application only to educational institutions established and administered by religious and linguistic minorities. No other part of the impugned Act has been shown to be invalid."

14. Thereafter, Section 6 (a) (iii) of the Act of 1978 suffered amendment and Section 6 (a) (iii) of the Act of 1978 was substituted by M.P. Act No. 24 of 1981 w.e.f. 20.7.1981. The amended Section 6 (a) (iii) provides as under:-

"6(a) (iii) no teacher or other employee shall be dismissed or removed from service or his services terminated except by an order passed after following such procedure as may be prescribed."

15. The State of Madhya Pradesh in exercise of powers conferred by sub-clause (i) of clause (e) of sub-section (2) of Section 10 read with sub-clause (iii) of clause (a) of Section 6 of the Act of 1978 framed and Rules known as the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ko Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983 (hereinafter referred to as "the Rules of 1983. Rule 12 (3) (b) of the Rules of 1983 provides as under:-

"12(3)(b) The Management shall thereupon forward the whole case along with its proposal of the Order intended to be passed to the competent authority for its approval and the competent authority shall not refuse to grant such approval except on one or more of the following grounds:-

(i) that there has not been, in the course of enquiry, proper or sufficient compliance of the procedure laid down in these rules;

(ii) that the provisions of the Act are likely to be defeated by the said Order; and

(iii) that the said Order, on the fact of it, is perverse."

16. Thereafter, the State Government in the Directorate of Public Instructions bearing M.P. No. Anudan/A/84/1493, dated 11.4.84, it has been clarified that provisions of Sections 6 (a) (iii) (iv) and 6 (c) (d) of the Act will have no application to an aided minority Institution. Para 2 of the circular states as under:-

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2- e;/izns"k v"kkldh; f"kk{k.k laLFkk v/;kidksa rFkk vU; deZpkfj;ksa ds osruksa dk lank; vf/kfu;e] 1978 dh /kkjk 6(d) dh mi&/kkjk rhu] pkj ,oa 6([k) rFkk 6(x) ds varxZr ,slh laLFkkvksa }kj lapkfyr "kkykvksa esa ;fn deZpkfj;ksa ds fo:) fuyacu] inP;qfr vkfn dh dk;Zokgh dh tkrh gS rks mlds fy;s f"kk{kk foHkkx ds vf/kdkfj;ksa dh iwoZ vuqefr vko";d ugha gksxhA lacaf/kr laLFkk }kjk ;fn ;g izekf.kr fd;k tkrk

gS fd ,slh dk;Zokgh djus ds iwoZ muds }kjk] "kklu }kjk fofgr dk;Zokgh iw.kZ dj
yh xbZ gS rFkk blds i"pkr~ gh ;g dk;Zokgh dh xbZ gSa] rks mls ,slh dk;Zokgh ds
vkSfpR; ds fy;s ;Fks"B ekuk tkosxA"

17. In the matter of S. Ram, Principal v. G.P. Shrivastava, Registrar and Ors., 1992 MPLJ 149 the Division Bench of Madhya Pradesh High Court again considered the question whether prior approval of the Competent Authority is required by minority Institution before terminating the service after Section 6 (a) (iii) of the Act of 1978 suffered amendment in the light of judgment rendered in the matter of Siddhi Bala Bose Library Association, 1979 MPHL 379 (supra) (supra) and in view of Rule 12 (3) (b) of the Rules of 1983. The Division Bench pertinently held as under:-

"The only legislative change, after the above decision, was amendment of Section 6(a) (iii) of the Act and prescribing procedure of holding disciplinary enquiry by rules which include the provision for getting approval from the competent authority before terminating or removing or dispensing with the service of an employee of an educational institution. On the same reasoning, on which unamended provisions in the Act, were held violative of Article 30 of the Constitution of India. Similar provisions in the rules intending to interfere with the right of disciplinary control of minority over their institutions can be held invalid under Article 30(1) of the Constitution. We do not find anything in the later decisions of the Supreme Court (supra) taking a different view with regard to the power of the disciplinary control of Authority of an aided minority institution. The circular of the Government is therefore, in tune with the spirit and content of Article 30(1) of the Constitution."

18. Similar is the law laid by the Supreme Court in this behalf. In the matter of Bihar State Madarsa Education Board v. Anjuman Ahle-Hadees and another, 1994 Supp (2) SCC 509, Their Lordships of the Supreme Court have categorically held that rule requiring prior approval of the competent authority is violative of Article 30 of the Constitution of India by holding as under:-

"3. The reasons adduced by the High Court for striking down these two provisions appear to us unexceptionable as these provisions are patently violative of Article 30 of the Constitution. As is evident, tremendous control is put in the hands of the Board to meddle with the affairs of the minority institutions. Such control is inconceivable in the scheme of things and specially in the context of Article 30 of the Constitution. In the situation, it is for the State Legislature to consider and examine whether it would be prudent and feasible to redraft these two provisions in the manner in which the Board appellant is attempting to have these provisions read down. We do not think that this would be healthy and prudent in the facts and circumstances to redraft legislation by means of judicial interpretation. If the Board wants to assume some power in the context, it may have to request the Government to introduce legislation in the spirit of Article 30 of the Constitution to carry out the aims and objects of the Act. For these reasons, we dismiss this appeal. No costs."

19. Thereafter, in the matter of Yunus Ali Sha v. Mohamed Abdul Kalam and others, (1999) 3 SCC 676. decision rendered in the matter of Bihar State Madarsa Education Board (supra) was followed with approval and similar provision requiring approval of the Director before termination of the services of a teacher struck down by holding as under:-

"6. Section 10-A of the Orissa Education Act which requires prior approval of the Director before termination of the services of a teacher of an aided institution, therefore, has no application to a minority institution such as the appellant's institution. While the Directorate of Education, Orissa may have power to supervise the functioning of the said school in order to ensure that it does not mal-function or is not mal-administered, in view of Article 30(1) of the Constitution the Directorate has no control over the actual management of the School including hiring or termination of services of teachers. This is entirely within the control of the Managing Committee of the minority institution. In the case of Bihar State Madarsa Education Board v. Anjuman Ahle-Hadees and Anr. (1994 Supp. (2) SCC 509), this Court struck down Sections 7(2)(n) and 24 of the Bihar State Madarsa Education Board Act, 1981 as violative of Article 30(1). Section 24 provided, inter alia, that no teacher of a Madarsa shall be discharged or dismissed from service without the prior approval of the State Madarsa Education Board. This Court considered the provision as interfering with the management of the said School. In The Ahmedabad St. Xaviers College Society v. State of Gujarat, (AIR 1974 SC 1389), a provision requiring approval of the Vice-Chancellor for termination of a teacher's services was held as interfering with the minority institutions disciplinary control over the staff. (See also Lilly Kurian v. Sr. Lewina (AIR 1979 SC 52).

8. Looking to the minority status of the educational institution, the Managing Committee of the institution was entitled to terminate the services of respondents 1 and 2 without obtaining prior approval of the Director or Inspector of Schools since the management and discipline of such an institution is entirely under the control of the Managing Committee of the minority institution."

20. Thus, from the aforesaid legal analysis, it is quite vivid that Section 6 (a) (iii) of the Act of 1978 requiring prior approval of the competent authority before terminating the services was held to be violative of Article 30 of the Constitution of India and further held to have no application to the educational Institution established and administered by religious and linguistic minorities by the Division Bench of the Madhya Pradesh High Court in the matter of Siddhi Bala Bose Library Association (supra). Thereafter, Section 6 (a) (iii) of the Act of 1978 was amended w.e.f. 20.7.1981 and the Rules of 1983 including Rule 12 (3)(b) prescribing procedure of holding disciplinary proceeding requiring approval from the Competent Authority of an educational Institution was framed by the State Government. The State Government issued circular dated 11.4.1984 clarifying that Section 6 (a) (iii) (iv) and 6 (c) (d) of the Act of 1978 will have no application to an aided minority Institution and it has read so and held to

inapplicable by the High Court of Madhya Pradesh in the matter of S. Ram (supra). Thus, the crystallized legal position as on day is that Section 6 (a) (iii) and (iv) of the Act of 1978 and Rule 12 (3) (b) of the Rules of 1983 is not applicable to an aided minority Institution. It is held accordingly.

21. The above-stated determination brings me back to the factual score of the present case in which the Appellate Authority i.e. respondent No.3 has relied upon Rule 10 (a) of the Appeal Rules of 1978. Rule 10 (a) of the Appeal Rules of 1978 provides as under:-

"(a) Whether prior approval of the competent authority was obtained before the order appealed against was passed."

The Appellate Authority while following the Rule 10(a) of the Appeal Rules of 1978, which is procedural in nature, allowed the appeal & set aside the order passed by the petitioner terminating the services of the respondent No.4 without considering the substantive legal position on issue as the provision requiring prior approval from the competent authority had already held to be violative by a Division Bench decision in the matter of Siddhi Bala Bose Library Association (supra) and also failed to take into consideration the subsequent legislative change/ amendment in Section 6 (a) (iii) of the Act of 1978 and thereafter the Rules of 1983 has been framed and the State Government has issued the circular dated 11.4.1984 clarifying that provision of Section 6 (a) (iii) (iv) and 6 (c) (d) of the Act will have no application to an aided minority Institution and also failed to notice the judgment rendered by a Division Bench of Madhya Pradesh High Court in the matter of S. Ram (supra) which considered the legal position after amendment in Section 6 (a) (iii) of the Act of 1978 and enactment of the Rules of 1983 as well the judgment of the Supreme Court in the matters of Bihar State Madarsa Education Board (supra) and Yunus Ali Sha (supra). Thus, the Appellate Authority has failed to consider the appeal on its merit, particularly failed to take cognizance of legislative change and further failed to notice correct legal position as obtaining on the day applicable to the facts of the present case, which makes the appellate order vulnerable.

22. As a fall out and consequence of the aforesaid discussion, order impugned dated 3.9.2011 (Annexure P/1) passed by the respondent No.3/Appellate Authority is hereby quashed. The said appeal is restored to the file of District Education Officer, Raipur for hearing and disposal afresh in accordance with law on its own merit within a period of two months from the date of receipt of certified copy of this order. Parties are directed to appear before the District Education Officer, Raipur/Appellate Authority on 11th January, 2016. No notice would be necessary to the parties. The parties will cooperate in disposal of the appeal as the termination was passed as back as on 12.7.1999.

23. Accordingly, the writ petition is allowed to the extent indicated herein above but without imposition of cost(s).