

(1997) 09 GAU CK 0011

In the Gauhati High Court

Case No : Civil Rule No. 73 (SH) of 1993

Krius Wahlang

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 08-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 2 GLJ 595 : (1997) 3 GLT 227

Hon'ble Judges : N.Surjamani Singh, J

Bench : Single Bench

Advocate : S.R.Sen, P.K.Deb, Advocates appearing for Parties

Judgement

1. Upon hearing the learned counsel of both sides, it appears to me that the writ petitioner has prayed for calling the relevant records from the DPI. Shillong, in respect of Khliehriat High School and also from Khliehriat High School with regard to the personal file of the writ petitioner, attendance register for teachers, salary register, school fees receipt, rent receipts for teachers quarters; for quashing the impugned termination order dated 16.6.93 as Annexure M to the writ petition and for further order and direction to the DPI to inquire and submit a report regarding the jugglery of accounts if any. and the utilisation of public exchequer, etc. The office letter/order dated 16.6.93 issued by the Secretary. Khliehriat High School as in Annexure M to the writ petition causing the termination of the services of the writ petitioner, is the main subject matter under challenge in this writ petition.

2. Considering the nature of the case, it is not necessary to elaborate the facts of the case in detail. However, for better appreciation on the point of controversy between the parties. I highlight the facts of the case in a short compass as hereunder.

3. According to the writ petitioner, he graduated with English Honours from NEHU and he is persuing MA in English and in course of time, he was appointed as

Assistant Teacher of Khliehriat High School in the year 1990, which is absolutely under the control of the Rev Father. The Salesians of Don Bosco had set up a school namely Khliehriat High School at Khliehriat, Jaintia Hills with Father Fantin Henry as Assistant Parish Priest cum Headmaster and the said school was recognised and rather was deficiated in course of time and as such, Khliehriat High School is absolutely under the financial control and management of the Education Department, Govt of Meghalaya inasmuch as the entire salary of the staff and teachers of the said school is borne by the DPI. Meghalaya. and on that ground alone the said school authority is answerable to the fundamental rights jurisdiction under Part III of the Constitution of India. It is also the case of the writ petitioner that though he was appointed in the year 1990 as Assistant Teacher of the said school, the respondent No.4 namely Secretary, Khliehriat High School did not issue any appointment letter/order either in the form of temporary or provisional or permanent. However, the petitioner continued in the said post with salary, quarter facilities and other benefits till the impugned order of 16.6.93 as in Annexure M to the writ petition was passed. The writ petitioner made certain allegations as against respondent Nos.4 and 5 and also he expressed about the irregularities committed by the school authority towards the teaching staff. Apart from this, the writ petitioner had charged the respondents/school authority by contending inter alia that the school authority never issued any receipt for school fees to the students and the petitioner is not in a position to believe that the school funds is so meagerly shaped that it cannot bear the burden of printing receipt books in spite of special note being incorporated at page 10 of the calendar books. According to the petitioner, the teachers are also not given any rent receipts for their accommodation though the respondents are collecting directly Rs.255/ per month for occupation of the staff quarter. Those allegations of the writ petitioner finds its place in para 8 to 19 of the writ petition. The respondent No.4 passed the impugned termination order dated 16.6.93 and served it personally upon the petitioner on the road telling him further that he should vacate the residential quarter within 48 hours on receipt of the impugned order. Being aggrieved by the impugned termination order as in Annexure M to the writ petition, the present writ petitioner approached this Court with this writ petition.

4. The case of writ petitioner was mainly contested by respondent Nos.2 to 5 by contending inter alia that the said school and hostel at Khliehriat, Jaintia Hills, have been set up by the Salesians with the Secretary of the said school: the said school is a Private Minority School and it is not absolutely under the financial control and management of the Education Department of the Govt of Meghalaya but it is purely a Private Minority Aided (Deficit System) School and as such the school is therefore not answerable to the writ jurisdiction under Part III of the Constitution of India or for violation of the statutory rights of the petitioner, as alleged or otherwise. The writ petitioner had once been a member of Salesian Don Bosco Society prior to his joining the school, but he was eased out of the same for his less than balanced behaviour. In the year 1988, when he was in Don

Bosco, he suddenly disappeared from circulation for about 10 days or more and the whole community of Don Bosco Technical School where he was residing, his friends and relations looked for him and they were under the impression that he might have been kidnapped or killed. The search extended from Shillong to Bhoi District and when the petitioner finally emerged, he was famished and haggard and till date, no one knows where he had been for those 10 days. The writ petitioner has also this peculiar habit of locking himself up in his room for days together without coming out for his bodily needs and natural call and he has utilised the kitchen of his residential quarter as his toilet and he also remains depressed very often, the contesting respondent No.2 to 5 contended. However, the petitioner was given a job by the school/respondents out of compassion so as to enable him to make a decent living. As the authorities were well aware of his strange and peculiar habits, he was not given any formal appointment letter. According to the contesting respondents, the writ petitioner has levelled false accusations on the respondent No.4 and which smacks off insubordination, indiscipline and an open challenge to the school authorities and also an interference with the administration of the school. The act of insubordination and indiscipline could not be tolerated by the school authority and as such, the matter was reported to the higher authorities and accordingly, the Managing Committee met and decided to terminate the services of the writ petitioner and also, he was directed to vacate his living quarter under the impugned order/letter dated 16.6.93. It was immediately thereafter, that the petitioner wrote a letter dated 17.6.93 as in Annexure N to the writ petitioner, tendering apology for an insulting letter written by him and thereby also he admitted his guilt.

5. Supporting the case of the writ petitioner, Shri P. Deb, learned counsel for the writ petitioner, contended that the impugned order dated 16.6.93 as in Annexure M to the writ petition terminating the services of the writ petitioner was passed by the respondents concerned in complete violation of the principles of natural justice. Atleast. the respondents concerned ought to have served a show cause notice upon the writ petitioner before the impugned order was passed, Shri Deb contended.

6. At this stage, Shri Deb has drawn my attention to a decision of the Apex Court rendered in the Governing Body St Anthonys College, Shillong & others vs. Rev Father Paul Petta, Shillong reported in AIR 1988 SC 2005 and submitted that even though the St Anthonys College is a religious minority institution under Article 30 of the Constitution of India, and it is receiving Govt grants in aid, the transfer of the Principal of the school appointed with the approval of the educational authority as a teacher of another school without giving him opportunity of hearing, has been deprecated by the Apex Court as well as by the High Court as the transfer from the post of Principal to the post of teacher seriously affected the status of the writ petitioner/Principal and the same would not have been ordered without giving him opportunity of hearing. On the main ground of violation of the principles of natural justice alone, the impugned termination order can be quashed, Shri Deb contended. While arguing, Shri Deb

supported all the points taken by the writ petitioner in his writ petition.

7. At the hearing, Shri S.R. Sen, learned counsel for respondent Nos.2 to 5 submitted that the writ petition is not maintainable inasmuch as the same is not amenable to the jurisdiction as the dispute between the parties appertain to the internal management of the school authority. Shri Sen further submitted that the writ petitioner was not a regularly appointed teacher but he was simply given a job and a living out of compassion so as to enable him to make a decent living. As the authorities were well aware of his past strange and peculiar habits, the writ petitioner was not given any formal appointment letter but he was allowed to get his salary for the work and duties which he discharged for his school from time to time. No question of violation of principles of natural justice does arise in the instant case and there is no violation of fundamental rights of the writ petitioner as the alleged rights of the writ petitioner are of purely private character and as such, no prior notice or affording the writ petitioner of an opportunity to have his say is required before the impugned order is passed. The school authority was justified in terminating the writ petitioner from his service and the validity of the impugned termination order cannot be questioned under the writ jurisdiction. Supporting the case of the respondents. Shri Sen had relied upon a decision of the Apex Court rendered in *State of Maharashtra & others vs. Lok Shikshan Sanstha* reported in AIR 1973 SC 588 and another decision rendered in the *State of Assam & another vs. Ajit Kumar Sarma*, reported in AIR 1965 SC 1196 and submitted that the governing body earning out terms of direction and passing order affecting rights of employees, the employees cannot seek enforcement or non enforcement of rights by maintaining/filing writ petition.

8. It is an admitted position that the respondent/school is a Private Minority School and purely a Private Minority Aided (Deficit System) School.

9. Now, this Court is to examine whether such an institution like Khliehriat High School will be amenable to writ jurisdiction and. whether the principles of natural justice shall be attracted in the instant case or not. In this regard, a reference can be made to a decision of this Court rendered in, the *Managing Committee, Silchar Collegiate School vs. Debipada Bhattacharjee & others*, reported in (1994) 1 GLR 202 (1993 (2) GLJ 312) wherein this Court held thus:

"In view of the above observation, a private institution, whether or not it receives grant-in-aid, performs or discharges public duty in so far as it concerns imparting of education; and the question, whether such an institution will be amenable to writ jurisdiction depends upon the nature of the right duty relationship between the institution and other persons."

In that case, *Managing Committee Silchar Collegiate School vs. Debipada Bhattacharjee & others* (supra), this Court had relied upon another decision of the Apex Court rendered in *Vaish Degree College vs. Lakshmi Narain* reported in AIR 1976 SC 888 wherein the Supreme Court held thus :

"On consideration of the authorities mentioned above it is clear that a contract

of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial law; (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute."

10. In the instant case, there is no formal appointment order to and in favour of the writ petitioner even though his continued service right from the year 1990 till the passing of the impugned order of termination, was admitted by the respondents. The present school is purely of a private institution and the management of the school is also a private body and as such, the respondent/school did not perform public duty while passing the impugned order of termination as against the writ petitioner who is an employee of a private body and he is not a civil servant nor a workman under the Industrial law and, the nature of the petitioner's services cannot be specifically enforced. Hence, in my considered view, the alleged right of the petitioner in the instant case is of a private character and as such, he has no enforceable right. The decision of the Apex Court rendered in the *Governing Body St Anthonys College & others vs. Rev Father Paul Petta* (supra) does not help to the case of the writ petitioner inasmuch as in the aforesaid case, the Principal of St Anthonys College was appointed with the approval of the educational authority and he was transferred from the post of a Principal to the post of a teacher of a school affecting his status. But, in the instant case, there is no formal appointment order to and in favour of the writ petitioner showing the iactum of the nature of the said appointment.

11. As discussed above, the school in question is a Private Minority School and not purely Govt Aided School and that, the alleged rights of the writ petitioner are of purely private character and, as such, the law of Master and Servant relationship shall apply in the present case. This being the position, no prior notice or affording of reasonable opportunity of being heard to the writ petitioner is called for before the termination of the writ petitioner from his service. Hence, the principles of natural justice shall not be attracted in the instant case.

12. For the foregoing reasons and observations made above, this writ petition is devoid of merit and accordingly, it stands dismissed but no cost.

13. Despite the dismissal of the writ petition, I am constrained to make the following observations in view of the existing facts and circumstances of the case.

14. This judgment and order shall not stand on the way of the respondent Nos .4 and 5 to consider the case of the writ petitioner relating to his reinstatement in service as Assistant Teacher of Khliehriat High School, Jaintia Hills and to

ventilate his grievances as it is the wisdom of the respondent Nos. 4 and 5 in the matter.