

(2002) 03 JH CK 0028
In the Jharkhand High Court
Case No : LPA No. 223 of 2001

Lalit Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-03-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2002) 50 BLJR 1497

Hon'ble Judges : M.Y. Eqbal, J;H.S. Prasad, J

Bench : Division Bench

Advocate : Anil Kr. Sinha and Ruby Parween, for the Appellant; M.M. Pan, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal under Clause 10 of Letters Patent is directed against the judgment and order dated 27.3.2001 passed in CWJC No. 2703 of 1999 (R), whereby the writ petition filed by the petitioner has been dismissed with a cost of Rs. 5,000/- on the ground that respondent-school is not a "State" within the meaning of Article 12 of the Constitution of India.

2. Respondent No. 5. The Chotanagpur Diocesan Education Society is a registered society under Societies Registration Act and several minority educational institutions including St. Paul's High School, Ranchi has been established by it. The said High School is a recognised High School and receives grant in aid from the State Government.

3. Petitioner's case is that he was working as acting Principal of St. Columbus Collegiate High School, Hazaribagh when he was selected and appointed as Principal of St. Paul's High School, Ranchi by respondent Nos. 5 and 6 who are the appointing authority. In 1999 by office order dated 3.2.1999 petitioner was put under suspension and a charge-sheet was issued in respect of certain charges levelled against him. It is contended that an inquiry was conducted and

thereafter show-cause was given to the petitioner as to why he should not be removed from the service. Respondents finally passed order of removal of the petitioner from the service. The petitioner in the writ petition challenged the order of removal from service as being illegal and in violation of the provisions of Dinar Non-Government Secondary School (Taking-over of Control and Management) Act, 1981 and the rules made therein. The learned Single Judge after holding that the Managing Committee of St. Paul's High School, Ranchi is not a "State" within the meaning of Article 12 of the Constitution of India, directed the petitioner to withdraw the writ application. However, after the learned Single Judge dictated the order, learned counsel for the petitioner prayed to the Court to pass an order of dismissal of the writ application instead of its dismissal as withdrawn. Learned Single Judge therefore passed the order dismissing the writ application with a cost of Rs. 5,000/-.

4. Mr. A.K. Sinha, learned senior counsel appearing for the appellant submitted that the Minority Educational Institutions run by the Society namely, St. Paul's High School is a Government aided recognised institution and the Managing Committee of the said school are bound to follow the provisions of taking over Act of 1981. Learned counsel further submitted that in the matter of appointment and removal of teachers of the school, the Managing committee is bound to follow the provisions of the Act. According to the learned counsel, the action of the respondents is therefore amenable to the writ jurisdiction under Article 226 of the Constitution of India. Learned counsel relied upon the decision of the Supreme Court in the case of Francis John Vs. Director of Education and Others, . in the case of "K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering and Another". AIR 1998 SC 295, and in the case of "Mubarak Hussain v. State of Bihar and Ors.", 1993 (1) PLJR 407.

5. On the other hand. Mr. M.M. Pan. learned counsel appearing for respondent Nos. 5 to 7 contended that the school in question is a minority institution and the Managing Committee is vested with absolute power to remove and terminate the service of the teachers. Learned counsel submitted that the school is run by society registered under the societies Registration Act and therefore no writ is maintainable against the Society or the Managing Committee of the School. Learned counsel put reliance on the decision of Supreme Court in the case of "All Bihar Christian Schools Association v. State of Bihar", 1988 PLJR (SC) 7 and in the case of "Smt. Manju Devi v. District Superintendent of Education, Bhagalpur and others". 1987 PLJR 962 Pat.

6. The only question that falls for consideration in the instant appeal is whether the respondents namely, the Society and the Managing Committee of the School are the State within the meaning of Article 12 of the Constitution of India and therefore action of the respondents is amenable to the writ jurisdiction.

7. Admittedly, the respondent No. 5 the Chotanagpur Diocesan Education Society is a registered society under the Societies Registration Act. It has established several Schools including St. Paul's High School. Ranchi. The said School is

getting aid from the State Government. It is also not in dispute that the school is recognised High School and governed by the provisions of Bihar Non-Government Secondary School (taking over of management and control) Act 1981 (in short Act of 1981), there is no doubt that respondent Nos. 5 and 7 namely, the Society and the Managing Committee of the School have a right to manage and administrate the school but at the same time they are bound to follow the provisions of the Act of 1981. The Managing Committee has the power to take disciplinary action and pass order for dismissal of a teaching employee but with the approval of Bihar Education Service Board.

8. Respondent No. 4 namely, the District Education Officer, Ranchi in his counter-affidavit has stated that the School in question is a minority High School and is governed by the provisions of the Act of 1981. Section 18/3 of the Bihar Non-Government Secondary School (Taking-over of Control and Management) Act, 1981 reads as under :--

"(i) There shall be a managing Committee for every minority secondary school which shall be registered institution under the Societies Registration Act, 1860 and for which there shall be a written constitution for the constitution of the managing committee and management of the School.

(ii) The managing committee of the minority secondary School shall appoint teachers, within sanctioned limit of posts by the State Government as per qualification prescribed by the State Government for the taken-over Secondary Schools with the approval of Vidyalaya Sewa Board Constitution u/s 10 of this Act. Provided that under this sub-section, at the time of accordingly approval to the appointment of a teacher, the Board shall examine only whether the proposed appointment, has been done according to the prescribed qualification and as per procedure laid down for it in the Rule made for this purpose and it shall not enter into any other matter or it shall not have any right to examine the justification for the proposal.

(iii) The managing Committee may with the approval of the Vidyalaya Sewa Board remove teachers of schools, terminate their service, discharge/dismiss them and degrade them."

9. In the case of "Francis John v. Director of Education and Ors", (supra) the Headmaster of a School which was being run by Calangute Don Bosco Educational and Welfare Foundation and which was provided grant in aid by the Government, was removed from service in a disciplinary proceeding. The said order of dismissal from service was challenged in a writ petition. The High Court dismissed the writ petition on the ground that the same was not maintainable under Article 226 of the Constitution of India against the Management of the School which was private body. The matter went on appeal before the Supreme Court. Their Lordship held that any private School which receives aid from the Government under the Grant-in-Aid Code, which is promulgated not merely for the benefit of the Management but also for the benefit of the employees in the

School for whose salary and allowances the Government was contributing from the public funds cannot escape from the consequences flowing from the breach of the Code.

10. In the case of "K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering and Anr.", (supra) the question for equal pay for equal work was claimed by the employees of the Private Educational Institutions, their Lordship observed :

"It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on par with the Government employees. The question is when there is no statutory rules issued in that behalf, and the Institution, at the relevant time, being not in receipt of any grant-in-aid, whether the writ petition under Article 226 of the Constitution is not maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an Institution to impart education, which is a fundamental right of the citizens, the teachers who teach the education gets an element of public interest in the performance of their duties. As a consequence, the element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition alongwith the appellant had later withdrawn from the writ petition and thereafter the respondent-Management paid the salaries on par with the Government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. 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 needs of the 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, 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 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. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution."

11. In the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , the Supreme Court while considering a question whether mandamus can be issued against public trust running college held :

"If the rights are purely of a private character, no mandamus can issue. If the

management of the college is purely a private body with no public duty, mandamus will not lie. These are two exceptions to Mandamus. But once these are absent, and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See The Evolving Indian Administrative Law by M.P Jain (1983) p. 266. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party."

12. Their Lordships further observed :

"The term "authority" used in Article 226. in the context, must receive a liberal meaning unlike the term in Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

13. Similarly, in the case of Miss Raj Soni Vs. Air Officer in Charge Administration and another, , the fact of the case was that the petitioner retired from the post of teacher in the Air Force Central School, New Delhi on her attaining the age of 58 years. The School was a society registered under the Societies Registration Act. 1860. In this petition under Article 32 of the Constitution of India, petitioner claimed that under the Delhi Education Code read with the Delhi Education Act, 1973 and the Rules made thereunder, the age of superannuation of the teacher is 60 years and as such the management of the school acted arbitrarily in depriving her of two years of service and consequential benefits. While answering the question raised by the management of the school regarding maintainability of the writ petition, it was held that :

"The recognised private school in Delhi whether aided or otherwise are governed

by the provisions of the Act and the Rules. The respondent management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When any authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India."

14. In the case of Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others, . the petitioner had challenged the approval of termination of services of teacher by statutory authorities u/s 3 of the Punjab Aided Schools (Security of Service) Act. The High Court declined to grant any relief on the ground that an Aided School is not "Other authority" under Article 12 of the Constitution and is therefore not amenable to the writ jurisdiction of the High Court. When the matter came before the Supreme Court, it was held that :

"Educational institutions receiving financial grant from the Government and the teachers of the school have received statutory protection under the Act. the action of the school in the matter of termination of services is amenable to the writ jurisdiction of the High Court."

15. In the case of "Mubarak Hussain v, State of Bihar and Ors.". 1993 (1) PLJR 407, the fact of the case was that the writ petitioner applied for appointment as a teacher pursuant to the advertisement issued by the Cosher High School, Ranchi. Petitioner appeared before the Interview Board and was appointed to the said post. Petitioner's appointment was required to be approved in terms of the provisions of Section 18 of the Bihar Non-Government Secondary Schools (Taking-over of Management and Control) Act, 1981. However, petitioner was informed that his appointment was not approved by the respondents and thus his service stood terminated. Petitioner challenged the said order by filing writ petition in the Patna High Court. The Management of the School took the stand that the school is a recognised minority school and therefore, writ against said School was not maintainable. A Division Bench of Patna High Court after considering the various judgments of the Supreme Court and other High Courts held :

"Since petitioner's service was protected in terms of Section 18 (3) of the Act and his service could have been terminated only in the event the same was not approved u/s 18 (3) (b) of the Act. However, order of termination passed against a teacher must also have approval of School Service Board in terms of Section 18 (3) (b) of the Act, Minority recognised institutions performing statutory duty is therefore State within the meaning of Article 12 of the Constitution and thus amenable to the writ jurisdiction.

16. Mr. M.M. Pan, learned counsel appearing for the respondent trust and the Managing Committee of the school put heavy reliance on the decision of the Supreme Court in the case of "Smt. Manju Devi v. District Superintendent of

Education, Bhagalpur, (supra) where a Division Bench of the Patna High Court held a writ against a private School run by Managing Committee is not maintainable. In that case, the school in question was Middle School, purely private in character and was run by Managing Committee of its own and the School was not taken over under the provisions of Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1976. In that situation it was held that no writ is maintainable. In the instant case, admittedly respondent is registered society running several minority Schools and is getting financial aid from the State Government for running the school. The said school is a recognised High School and it is governed by the provisions of Bihar Non-Government Secondary Schools (Taking-over of Management and Control) Act, 1981. In the matter of appointment of teachers and termination of their services, the school is bound to follow the provisions of the aforesaid Act and the Rules made thereunder. Respondent No. 4, District Education Officer, Ranchi in his counter-affidavit has stated that petitioner has been removed from service without approval from the School Sewa Board. The contention of the petitioner in the writ petition is that the authorities of the school have violated the provisions of Section 18 (3)(b) of the Act.

17. In the view of the facts pleaded by the petitioner in the writ petition and having regard to law laid down by the Supreme Court, we are of the definite view that a writ challenging the action of the respondents namely, Trust and the Managing Committee of the school is maintainable. Learned Single Judge is not correct in law in holding that respondent is not a State in terms of Article 12 of the Constitution of India and thereby the writ petition is not maintainable.

18. We, therefore, allow this appeal and set aside the order dated 27.3.2001 passed by learned Single Judge in CWJC No. 2703/1999 (R) and remit the matter to the learned Single Judge for hearing the writ petition on merit. Let it be recorded that we have not at all entered into the merit of the case of the petitioner and the writ petition shall be decided on its own merit.