

(2015) 05 RAJ CK 0145

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4093, 4094, 4095, 5744, 6302, 6303 and 6304 of 2005

Madhu Bala Prabhakar and Others

APPELLANT

Vs

Sindh Vidhya Mandir Samiti and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 05 RAJ CK 0145

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : G.R. Kalla, Deelip Kawadia and Sanjeet Purohit, for the Appellant; Nupur Bhati, Anita Gehlot, Tanwar Singh and B.L. Bhati, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—All above writ petitions are filed by the petitioners against the judgment dated 24.3.2005 passed by the Rajasthan Non-Government Educational Institution Tribunal, Jaipur whereby the appeals filed by the petitioners were partly allowed in the following manner:

2. As per brief facts of the case, all the petitioners were appointed on the post of Teacher Grade-III by the respondent No. 1 after due selection and on completion of probation period, their services were confirmed.

3. The respondent No. 1 Sindh Vidhya Mandir Samiti (hereinafter referred to as the respondent No. 1-Samiti for short) is running a Senior Secondary School known as Nav Bharat Uchh Madhyamik Vidhyalaya, Udaipur. The school was getting aid up to the extent of 80% from the State of Rajasthan and accordingly, all the petitioners were working on the aided posts but due to abolition of certain posts, the State Government withdrawn the aid and in compliance of said order for terminating the services of the petitioner on 11.1.2005, all the petitioners challenged the order of their termination by way of filing appeal under Section 19

of the Rajasthan Non-Government Educational Institution Tribunal Act, 1989 (hereinafter referred to as the Act of 1989 for short) in which it was submitted that their termination is in violation of Section 18(3) of the Act of 1989 and rule 30 of the Rajasthan Non-Government Educational Institution (Recognition, Grand-in-aid and Service Conditions Etc.) Rules, 1993 (hereinafter referred to as the Rules of 1993 for short) because prior to terminating the services of the petitioners, no prior approval was obtained by the institution, in spite of fact that approval is mandatory in nature.

4. The learned counsel for the petitioner submits that all the appeals were dismissed against the termination orders by the tribunal on the ground that a unanimous decision was taken by the administrative committee of the institution to terminate the services of the petitioners for the reason that the State Government stopped the aid and due to curtailment of aid the institution is suffering financial crises. The tribunal held that termination is not unconstitutional because a unanimous decision was taken by the institution.

5. The learned counsel for the petitioner submits that the finding given by the tribunal to uphold the order of termination is totally contrary to the provisions of law because there is no provision in the Act or the Rules to terminate the services of an employee appointed against the aided post without obtaining prior approval of the Governor, therefore, the learned tribunal has committed an error of law in upholding the order of termination, which is in violation of Section 18(3) of the Act of 1989 so also in violation of Rule 30 of the Rules of 1993. The learned counsel for the petitioner submits that all the petitioners were appointed against aided post and if the aid was stopped by the State Government then obviously before termination the services of the petitioners at least notice and salary was to be given to the employees but no notice or salary was given, therefore, the judgment of Tribunal deserves to be quashed and petitioners are entitled for reinstatement. In support of above contention, the learned counsel for the petitioner invited attention of this Court towards the judgment of the Full Bench of this Court in the case of Central Academy Society v. Rajasthan Non Government Educational Institutions (DB Civil Special Appeal No. 322/2001), decided on 31.5.2010 in which the full bench of this Court upheld the validity of Section 18 of the Act of 1989 and judgment of this court in the case of Nagendra Singh v. State of Rajasthan (SBCWP No. 3614/1997), decided on 22.09.2000 whereby the coordinate bench of this Court held that compliance of Rule 30 of the Rules of 1993 is mandatory, therefore, the judgment of the tribunal as well as the termination orders passed by the respondent Institution deserve to be quashed. Learned counsel for the petitioners further argued that without considering the mandatory provisions, the appeals filed by the petitioners are dismissed by the Tribunal only on the ground that unanimous decision was taken by the institution to terminate their services because institution was suffering financial crises, therefore, the judgment impugned deserves to be quashed because order of termination is in violation of mandatory provisions of the Rules and the Act.

6. Per contra Dr. Nupur Bhati appearing on behalf of the respondent-Institution and learned Government Advocate BL Bhati vehemently submits that due to financial constrained the State Government abolished certain posts of some aided institution including the respondent institution and after abolition of posts an unanimous decision was taken by the Management Committee of the institution to dispense with the services of the petitioners, therefore, the finding given by the tribunal to upheld the decision of the Management Committee does not require any interference. Therefore, all the writ petitions may be dismissed.

7. After hearing learned counsel for the parties it emerges from the fact that the petitioners were appointed against the aided post which is not in dispute. It is also not in dispute that services of the petitioners were terminated due to curtailment of aid by the State Government, therefore, the management of the institution took unanimous decision to dispense with the services of the employees working against the aided posts, but in my opinion even if unanimous decision was taken by the management of the institution to terminate the services of the employees for want of aid, then also it was the duty of the institution to comply the mandatory provisions of law. Learned counsel for the petitioners invited attention of this court towards Section 18 of the Act of 1989, which is as follows:

"18. Removal, dismissal or reduction in rank of employees - Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained:

Provided further that this section shall not apply, -

(1) to a person who is dismissed or removed on the ground of conduct which led to him conviction on a criminal charge, or

(ii) where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the action is taken or

(iii) Where the managing committee is of unanimous opinion that the services of all/oil employee cannot be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing."

8. Validity of the aforesaid provisions was challenged before this Court in case of Central Academy Society (supra) and while deciding the reference, the Full Bench of this Court examine the validity of Section 18 and gave following verdict, which

reads as under:--

"Similarly, clause (iii) of second proviso is also of dispensing with the requirement of reasonable opportunity of hearing but here the managing committee has to form unanimous opinion that services of an employee cannot be continued without prejudice to the interest of the institution; and, upon such unanimous opinion, the services of such an employee can be terminated after giving him six months notice or salary and obtaining the consent of Director of Education. Here again, for the permissibility of dispensing with regular enquiry and opportunity of hearing, the requirements as stated are to be strictly complied with and cannot be ignored. The requirement of obtaining consent in this clause is also, in our opinion, not such a consent which may stand at contradiction to the dictum in *Pai Foundation*. Here, in clause (iii), the Institution is not taking disciplinary action but is dispensing with the services on a unanimous decision. The necessity of obtaining consent in this provision is also a mandatory one and cannot be avoided."

Thus, we find that even while the first proviso to Section 18 of the Act of 1989 would not apply in the disciplinary action by the unaided private educational institution, the other provisions of Section 18 are, without any doubt, applicable to all the institutions, aided or unaided.

Before concluding, we may point out that a decision by the learned Single Judge of this Court in the case of *Managing Committee S.S. Jain Subodh Siksha Samiti and Another Vs. Rajendra Kumar Rao and Others*, (2005) 4 RLW 2994 : (2005) 4 WLC 262 has been referred during the course of arguments. In this case, the learned Single Judge observed that the decision in *Pai Foundation* overrules clause (iii) of the second proviso to a limited extent that it would not be necessary for the unaided institution to obtain the consent of Director of Education but other mandates of this clause (iii) ought to be followed in letter and spirit. With respect, we are unable to endorse the first part of the views so stated in this decision. In our considered opinion, as stated *supra*, nothing contained in second proviso to Section 18 is hit by *Pai Foundation*. What is eclipsed by the ratio of *Pai Foundation* in relation to an unaided institution is only the first proviso to Section 18; and not the other provisions contained in Section 18 viz., the principal provision, and so also the second proviso. These other provisions of Section 18 do apply, as they are and in mandatory form, to unaided institution as well. THE ANSWERS:

In view of what has been discussed above, our answer to this reference is that the first proviso to Section 18 of the Act of 1989 does not apply in relation to the disciplinary action by private unaided recognised institution but the other provisions of Section 18 including the second proviso do apply to such unaided private recognised educational institution too.

The record be now placed before the concerned bench for decision of the appeals on their merits."

9. In the case of Nagendra Singh v. State of Rajasthan and Ors. (supra) the coordinate bench held that Rule 30 of the Rules of 1993 is mandatory, which reads as under:--

"Thus, in view of the above, as admittedly there is no compliance of mandatory requirement of rule 30 of the Rules of 1993, the judgment and order of learned Tribunal dated 25th July, 1997 as well as termination order of the petitioner dated 25.1.1996 are hereby set aside. Petitioner shall be deemed to be in continuous service and shall be entitled for all consequential benefits. However, respondents are at liberty even at this stage that if they are not satisfied with the services of the petitioner, they may move before appropriate authority for approval and proceed in accordance with the Rules."

10. In the case of Managing Committee, Rao Tularam Rashtriya Unnati Vidyalaya No. 2, Patel Nagar, Bikaner reported in 2005 (3) WLC (Raj) 456 the following adjudication was made by this Court:

"So far as contention of the petitioner-Institution that services of the employees were terminated by a unanimous decision of the management committee, it may be stated here that it has clearly been mentioned in Section 18(iii) that where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee can be terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing. None of the conditions was fulfilled by the petitioner-Institution, prior to terminating the services of its employees vide order dated 16.5.2002.

If there is any inconsistency in the provisions of the Act, 1989 and the Rules, 1993, then the provisions of the Act will prevail over the Rules, as the Rules have been framed under the Act and the Act has an overriding effect by virtue of Section 40 of the Act, 1989.

In the instant case, it appears that no such procedure has been adopted by the petitioner-Institution. Hence, the argument of the petitioner-Institution that on account of abolition of the posts and refusal of grants-in-aid by the State Government the decision to terminate the services of the employees has been taken unanimously by the managing committee, is not at all sustainable in the eye of law as the said decision has been taken by the managing committee, without following the procedure laid down under Section 18 of the Act, 1989 as well as Rule 39(2) of the Rules, 1993. Thus, the petitioner-Institution has concealed the material facts and has not come to the Court with clean hands.

It is, thus, clear that the petitioner-Institution has passed the order of termination dated 16.5.2002 in non-compliance of Section 18 of the Act, 1989 and Rule 39(2) of the Rules, 1993. Neither any Specific Act, nor the Rule has been mentioned, under the aforesaid termination order has been passed. The termination order dated 16.5.2002 is punitive in nature, by which the service

conditions of the employees have been affected. The termination of service affects service conditions and the employees should have moved the application before the Tribunal under Section 21 of the Act, subject to appeal before the Tribunal under Section 19(2) of the Act. But in the termination order dated 16.5.2002, no specific Act/Rule has been mentioned, under which the said order has been passed by the petitioner-Institution. The termination order has affected the service conditions, but the action of the petitioner-Institution has attracted Section 18 of the Act, 1989, therefore, respondents (employees) have rightly preferred an appeal under Section 19(2) of the Act before the Tribunal. Apart from that, since the petitioner-Institution does not appear to have passed the order of termination under Rule 39(2) of the Rules, 1993, Rule 40 (filing an appeal before the State Government) is not attracted. It is pertinent to mention here that vide order dated 6.7.2002, the petitioner-Institution was directed to re-instate the services of its employees, but the petitioner-Institution has not followed the directions of the Higher Authorities by not reinstating its employees in service and, thus, violated Rule 10(xi) of the Rules, 1993 also, referred to above.

In view of the aforesaid discussion and keeping in view all the facts and circumstances of the case in hand as well as taking an over all view of the matter, I am of the opinion that the judgment dated 20.11.2004 passed by the learned Tribunal is based on sound reasonings and correct appreciation of evidence available on record. It does not call for any interference by this Court under its supervisory jurisdiction under Article 227 of the Constitution of India.

I do not find any force in any of the aforesaid three writ petitions. The same are, therefore, hereby dismissed.

There will be no order as to costs."

11. I have considered the facts of all the writ petitions and found that before terminating the services of the petitioners, no compliance of Section 18(3) of the Act of 1989 and Rule 30 of the Rules of 1993 was made and only on the ground that State Government has curtailed the aid for certain posts, the services of the employees who were working substantively on their respective posts in the school of the respondent No. 1 were terminated. In my opinion, it is a case in which services of the petitioners were terminated without making compliance of mandatory provisions of law. Therefore, in the light of the above judgments, I have no hesitation to held that Tribunal has committed grave error to upheld the order of termination solely on the ground that unanimous decision was taken by the Managing Committee to terminate the services of the petitioners that too without providing an opportunity of hearing.

12. In view of the above, all the writ petitions are hereby allowed. The judgment dated 24.3.2005 passed by the learned tribunal upholding the termination orders of all the petitioners dated 11.1.2005 is hereby quashed and set aside with further direction to the respondent Institution to reinstate the petitioners on their

respective posts with all consequential benefits. However, on the consideration of the principle of "no work no pay", it is directed that the petitioners will be entitled for 30% back wages only.