
(2011) 05 RAJ CK 0162

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6449 of 2008

Managing Committee, Seth Motilal (PG) College

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 17-05-2011

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 16

Citation : (2011) 4 RLW 3577

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble Rafiq, J.—This writ petition was filed by Managing Committee of Seth Moti Lal College, Jhunjhunu against the order of the Joint Director, College Education, Jaipur dated 24.5.2008 whereby the order of compulsory retirement of the respondent no.3 Dr. Y.K. Sharma passed u/s. 16 of the Rajasthan Non-Government Educational Institutions Act, 1989 has been set aside.

2. Shri N.K. Maloo, learned Senior Counsel for the petitioner has argued that the State Government has no competence to set aside an order passed by the Managing Committee compulsorily retiring respondent no.3 on his completing 25 years of service. The aforesaid order was passed by invoking provisions of Section 16 of the Rajasthan Non-Government Education Institutions Act, 1989 (for short-"the Act"). While Section 18 requires prior consent/approval of the State Government for passing an order of removal, dismissal or reduction in rank, section 16 does not envisage any such precondition. It is argued that the remedy of the respondent against the order of compulsory retirement was before the Rajasthan Non-Government Educational Institutions Tribunal u/s 21 of the Act. Respondent has already filed an appeal before the Tribunal on the same subject. The State Government therefore acted illegally in issuing the impugned order in the face of Specific provision u/s.21. Learned senior counsel cited the division bench judgement of this Court in Shri Agarwal Shiksha Samiti &/Anr. vs.

Shri Nand Kishor Sharma & Ors.-2009 (3) WLC (Raj) 600 and argued that division bench in the said case has reversed the single bench judgement in Surendra Kumar Verma & Ors. vs. Rajasthan Non-Government Educational Institutions Tribunal & Ors.- (2000) 3 WLC (Raj.) 84 and held that even if no specific procedure or rules are prescribed on the question of compulsory retirement envisaged in Section 16, compulsory retirement is subjective assessment and discretion of the competent authority in the interest of the institution and public at large. Learned senior counsel argued that this judgement was even upheld by the Supreme Court.

3. Shri D.P. Sharma, learned counsel for the respondent argued that the State Government is equally competent to entertain the dispute against the order of compulsory retirement because with regard to matters included in section 16, the powers are basically vested in the State Government and it is State Government alone which can exercise such powers. In this respect, reference was made to the caption of Section 16 of the Act which provides "power of the State Government to regulate the terms and conditions of employment". It is argued that when the Managing Committee could not pass the order of compulsory retirement of the respondent without the approval of the State Government, such permission should be deemed to have been refused and in that event, the remedy of the petitioner Managing Committee was to file an appeal against the order of refusal sub-section (1) of Section 19.

4. Shri D.P. Sharma, learned counsel further argued that Rule 29 of the Rules provides that Managing Committee can make appointment only after Obtaining approval of the competent authority and when the power of approval of the appointment has been conferred on the Director, he should be deemed to be appointing authority. No authority lower than appointing authority can make the order of removal/compulsory retirement and, therefore, the order of compulsory retirement being incompetent and honest, was rightly set aside by the State Government. Reliance in this connection is placed on judgement of Supreme Court in Dharam Dev Mehta Vs. Union of India (UOI) and Others,

5. Learned counsel also referred to Rule 10(xi) which provides that institution shall promptly comply with all the instructions/orders/decisions given from time to time by the department for the proper running of the institution. The Managing Committee in this case was therefore obliged in law to follow the instructions of Government contained in the impugned order dated 24.5.08 whereby the order of compulsory retirement dated 26.4.08 was set aside. Learned counsel argued that the grant-in-aid is given to the aided institution on the basis of its undertaking to comply with all such directions issued by the Government, which is also evident from the schedule appended to the Rules. It is therefore prayed that the writ petition be dismissed.

6. Having heard the learned counsel for the parties and perused the material on record, I have given my anxious consideration to the rival submissions.

7. No doubt, caption of Section 16 is mentioned as "power of the State Government to regulate the terms and conditions of employment", but it cannot be deduced therefrom that the powers with regard to matters included in that provision has to be in the first instance exercised by the State Government. This is evident from sub section (1) of Section 16 which provides that the State Government may regulate the recruitment and conditions of service, including conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline, of persons appointed as employees of aided institutions in the State. This would mean that the State Government can lay down the procedure by means of Rules or otherwise by executive orders, for regularising terms and conditions of service of employees of the aided institutions. But at the same time, this does not provide that the State Government itself has to pass the necessary orders on matters included either in the Act or covered by such Rules by executive orders. Third proviso to Section 16 provides that irrespective of the age of retirement prescribed, action may be taken for compulsory retirement of such an employee after completion of 25 years of service or on attaining of the age of 50 years whichever is earlier, in accordance with the procedure as may be prescribed.

8. Contention that this power of compulsory retirement should be deemed to have been vested in the State Government because appointment is required to be preceded by a prior approval or consent of the State Government, cannot be accepted because the order of compulsory retirement has to be necessarily made by the managing committee on its satisfaction as to advisability of compulsory retirement of an employee and that would be determined not merely on completion of 25 years of service or attaining the age of 50 years but also on the pre-requisite satisfaction that the employee concerned has been rendered a liability to or dead wood to service and that he has lost his utility to the service or that otherwise he has had such adverse service record that justifies invocation of power of compulsory retirement. Moreover, there is a marked difference between what has been provided in Section 18 of the Act with regard to removal, dismissal or reduction of rank of an employee of recognised institution and what has been provided in third proviso of Section 16 of the Act. While first proviso to Section 18 provides that no final order regarding removal, dismissing or reduction in rank of an employee shall be passed unless prior approval of the Director of Education or an officer authorised by him is obtained, third proviso to Section 16 does not envisage any such pre-condition. Similarly, second proviso to Section 18 in clause (ii) lays down consent of Director of Education in writing before the action is taken as a condition precedent wherever the Managing Committee were to hold that it was not practicable or expedient to give an employee showing cause against the proposed action.

9. Contention that is raised on the basis of judgment of Supreme Court in Nand Kishore Sharma, supra, that since the order of compulsory retirement has to be made with the prior approval of the State Government, therefore, the compulsory retirement even of an aided institution has to be made by the State

Government is also liable to be rejected because primarily the decision to compulsory retire an employee has to be that of the Managing Committee and not of the State Government. Merely because the appointments are made with the approval of the competent authority, it cannot be held on that basis that the authority competent to pass the order of compulsory retirement is the Director of Education and not the Managing Committee. It cannot be therefore accepted that the order in the present case has been passed by the authority lower than the appointing authority and therefore on analogy that the State Government is the competent authority to pass such order, it was justified in directly entertaining the dispute and quashing the order of compulsory retirement. No such conclusion can also be arrived at on the basis of general conditions incorporated in Rule 10(xi) and the undertaking furnished by the petitioner to the State Government that it shall follow the general conditions.

10. Having analysed the legal position, I find that the State Government was not competent to directly entertain the dispute on the question of validity of compulsory retirement, much less when the order of compulsory retirement for which the respondent has remedy of appeal before Rajasthan Non-Government Educational Institutions Tribunal, which he has actually availed.

11. In view of above discussion, this petition deserves to succeed and is accordingly allowed. The impugned order dated 24.5.2008 is quashed and set aside. It is however made clear that discussion made above should be construed to reflect only on the validity of the order of the Government dated 24.5.2008 and the Tribunal may not take any influence from observations contained herein while examining validity of the order dated 26.4.2008. The Tribunal is directed to decide the appeal within three months from the date copy of this order is produced before it.

12. The writ petition is allowed with the aforesaid observations.