

(2005) 08 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2813 of 2002

Managing Committee S.S. Jain Subodh Siksha Samiti and
Another

APPELLANT

Vs

Rajendra Kumar Rao and Others

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 18, 2, 21

Citation : (2005) 4 RLW 2994 : (2005) 4 WLC 262

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

**Advocate : Sanjeev Prakash Sharma and Manish Bhandari, for the Appellant;
Praveen Balwada, for the Respondent**

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—Since both the writ petitions relate to the termination of service of the respondent employee (for short "employee"), I proceed to decide these petitions by a common order.

2. The petitioner Institution (for short "Institution") published an advertisement on June 5, 1996 for recruitment on the post of Assistant Teacher for Dance. The required qualification as shown therein was Visharad in Music. The employee being Sangeet Visharad from Bhatkandh Sangeet Vidyapeeth Lucknow applied for the said post and was appointed on post of Teacher (Dance) under order of the Institution dated June 1, 1996. The appointment order did not bear any condition or reference of any undertaking by the employee that he had to acquire any additional qualification. When the employee was not paid due salary and order as regards his confirmation was not passed the employee got served legal notice on September 24, 2001. The Institution in its reply dated October 3, 2001 given out that since the employee did not acquire requisite qualification, there was no option left with the institution except to terminate the services of the

employee with effect from November 6, 2001. The employee assailed the said order by filing an application u/s 21 of Rajasthan Non Government Educational Institution Act, 1989 (for short "1989 Act") before the Rajasthan Non Government Educational Institutions Tribunal Jaipur (for short "the Tribunal"). The Tribunal vide order dated April 5, 2002 set aside the aforesaid order dated October 23, 2001 of the Institution and directed the Institution that the employee shall be treated as confirmed with effect from the date when probation period expired with all consequential benefits. The said order of the Tribunal has been impugned by the Institution in SB Civil Writ Petition No. 2813/2001.

3. During pendency of the said writ petition the Institution passed another order dated October 18, 2003, which reads as under:--

"No. SS/Estt/F-5/2003-2004, Date 18.10.2003

OFFICE ORDER

Shri Rajendra Kumar Rao was engaged as Music Teacher though he was not in possession of the required qualifications for the said engagement coupled with the fact that Subodh Public School is an unaided institution being managed by Minorities in view of the recent notification issued by the Government of Rajasthan on 19.9.2,003 and thus the provisions of Section 18 of the Non Government Educational Institutions Act of 1989 no more remain applicable to the Institution in view of the DB Judgment of the Hon"ble High Court seat at Jodhpur as well as the judgment of the Constitutional Bench of the Hon"ble Supreme Court. Therefore, the services of Shri Rajendra Kumar Rao, Music Teacher are hereby terminated with immediate effect as his continuance in the school is not found to be in the interest of the Institution and a decision has already been taken by the Management Committee to pass this order. Shri Rao is given a cheque for a sum of Rs. 22,5787- (Rupees Twenty Two thousand Five hundred Seventy Eight only) as notice pay though the same is also not required, plus upto date salary."

The employee thereafter filed appeal u/s 18 of the 1989 Act before the Tribunal. The Tribunal vide order dated March 3, 2005 allowed the appeal of the employee and set aside the termination order dated October 18, 2003. The order of the Tribunal has been impugned by the Institution in S.B. Civil Writ Petition No. 3409/2005.

4. It is contended on behalf of the Institution that since the Institution is a minority institution and not getting any grant in aid the provisions of 1989 Act are not applicable to it. According to the Institution the services of the employee were rightly terminated as he was not having required qualification. In support of the submissions learned Counsel placed reliance in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Educational Society of Sophia High School v. Raj. Non Govt. Educational Institutions Tribunal, 2003 WLC (Raj.) UC 638.

5. I find no merit in the contentions of learned Counsel for the institution. In TMA Pai Foundation v. State of Karnataka (supra), Hon''ble Apex Court propounded that any recognised private educational institution which is not receiving any aid from the State, there has to be least interference by the State in the managerial functions of such institution. It was indicated in para 64 of the judgment that it will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.

6. Ratio indicated in TMA Pai v. State of Karnataka (supra), over rules proviso (iii) of Section 18 of 1989 Act to a limited extent. As per Section 18 it is incumbent on a recognised institution to provide an opportunity of hearing against the proposed action of removal, dismissal or reduction in rank of an employee but as per proviso (iii) Section 18 shall not apply 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 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.

7. Section 18 shall be applicable to all the recognised institutions. It is not necessary that the institution should be aided one. "Aided Institution" as defined in Section 2(b) of 1989 Act means "a recognised institution which is receiving aid in the form of maintenance grant from the State Government." Whereas "recognised institution" as per Section 2(q) of 1989 Act means "a non-Government educational institution affiliated to any University or recognised by the Board, Director of Education or any officer authorised by the State Government or the Director of Education in this behalf."

8. Thus in view of mandate propounded in TMA Pai v. State of Karnataka (supra), it was not necessary for the institution to obtain the consent of Director of Education but other mandates of proviso (iii) of Section 18 of 1989 Act ought to have been followed in letter and spirit. There ought to have been unanimous opinion of the Managing Committee of the Institution that the services of the employee could not have been continued without prejudice to the interest of the institution and the services could only have been terminated after giving the employee six months notice or salary in lieu thereof.

9. I also do not find any substance in the submissions of the learned Counsel that the employee was not having required qualification for the post on which the appointment was given to him. As already noticed the employee was possessing the required qualification as shown in the advertisement by the Institution therefore he could not have been asked to acquire any additional qualification.

10. Since the proviso (iii) of Section 18 of 1989 Act has not been followed in

letter and spirit by the Institution in terminating the services of the employee I do not find any illegality in the orders of the Tribunal. In my considered opinion learned Tribunal has proceeded within its parameters and supervisory jurisdiction under Article 227 of the Constitution is not required to be invoked. In *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, Three Judge Bench of Hon"ble, Supreme Court in para 7 indicated thus:--

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

11. For these reasons the writ petitions fail and stand dismissed without any order as to costs.