

(2016) 05 AHC CK 0181

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 9952 of 2016

Manoj Kumar Rawat

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 30-05-2016

Acts Referred:

Army Act, 1950 — Section 21
Army Rules, 1954 — Rule 19, 20, 21
Constitution of India, 1950 — Article 19, 226

Citation : (2016) 6 ADJ 490

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Amrendra Nath Tripathi, Abhinav Nath Tripathi and Chandrakant Rai, Advocates, for the Appellant; A.S.G., Alok Mathur, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Attau Rahman Masoodi, J.—This writ petition filed under Article 226 of the Constitution of India, questions the legality of the order dated 20.10.2015 (Annexure-1), passed in purported exercise of powers conferred under Clause 3.4 of New Model Employee Service Rules, 2015 whereby the services of the petitioner on the post of Data Entry Operator (Clerk) have been dispensed with. The petitioner has further assailed the validity of Clause 3.4 read with Note-2 appended to Appendix-A of the New Model Service circulated under the authority of a Management i.e. Adjutant General vide letter dated 13.7.2015 as contained in Annexure-28 to the writ petition, which restricts tenure of civil and other rank employees to a maximum period of ten years. The rule framed by the Society is challenged alleging it to be violative of Article 14 of the Constitution of India.

2. An alternative relief for treating the rules to be applicable prospectively has also been made in the writ petition and the petitioner, inter alia, seeks his continuance in service on the basis of his renewal vide order dated 20.10.2015, according to which the contract of service in relation to the petitioner was

renewed up to 31.10.2016.

3. A preliminary objection has been raised by Sri Alok Mathur, learned counsel for the respondents no. 2 and 3, who has filed objections, wherein, relying upon a Division Bench judgement of this Court in the case of Union of India v. Dilip Kumar Pandey 2010 (7) ADJ 97, and a Division Bench judgement of Jammu and Kashmir High Court rendered in the case of Mrs. Asha Khosa v. Chairman, Army Public School, Northern Command and others [Writ Petition (Service) No. 1415 of 1996 decided on 17.2.1997], it is urged that the writ petition in respect of the relief as a whole is not maintainable hence liable to be dismissed at the admission stage. In the body of preliminary objections, it is averred that the Society i.e. Army Welfare Education Society, is a body registered under the Societies Registration Act, 1860 which, of course, does comprise of army personnel as ex-officio members but there is no control of the Central Government either financial or otherwise, which may bring the said Society within a pervasive control of the Central Government so as to be treated as other authority or instrumentality of the State under Article 12 of the Constitution of India, notwithstanding the fact that the Society does cater the public purpose of education for the children of army and exarmy personnel.

4. Noting the said preliminary objections, we had passed the following order on 9.5.2016:

"A preliminary objection has been raised by Sri Alok Mathur, learned counsel for the respondent No. 2 and 3 that the present writ petition would not be entertainable inasmuch as, the nature of relief against the respondent No.2 and 3 cannot be adjudicated in the writ jurisdiction for which reliance has been placed on three Division Bench judgments of this Court.

Sri Tripathi prays that he may be granted time to study the matter.

Put up tomorrow as fresh showing the name of Sri Alok Mathur as the learned counsel for the respondent No. 2 and 3."

5. We may also put on record that even though the dispute relates to a Class III post service where a petition would ordinarily lie before the learned Single Judge, yet in view of the challenge raised to the validity of the Model Service Rules, the same has been reported to be cognisable by a Division Bench in terms of the orders passed by Hon"ble the Chief Justice.

6. Learned counsel for the respondents has argued that the mere fact that a Society undertakes certain obligations in the nature of public purpose, the same would not be the sole test of treating a Society to be a State within the meanings of Article 12 of the Constitution of India.

7. The preliminary objection raised by Sri Mathur has been strongly refuted by the learned counsel for the petitioner, who has pointed out that the present writ petition involves a larger question of public importance to the effect that not only that the maintainability of Writ Petition under Article 226 is to be tested, which

issue being no more *res integra* in the light of the judgments rendered by the High Court of Uttarakhand in the case of *Km. Vimi Joshi v. Chairman School Managing Committee and others*, 2010 SCC ONLINE UTT 2462, and by Delhi High Court in the case of *Smt. Swapna Sood v. Director of Education and others*, (2007) 144 DLT 584, but challenge to the validity of Clause 3.4 of the Employees Service Rules, 2015 which restricts the tenure of appointment of employees (civilian and other rank) to a maximum period of ten years, enforced w.e.f. 13.7.2015 may also be considered by this Court in the exercise of writ jurisdiction. The stipulation in the service rules having force of law, according to the petitioner, is bound to be tested on the anvil of Article 14 of the Constitution of India, therefore, the relief prayed for is pressed on this larger issue as well. The petitioner whose term of employment is alleged to have wrongly been brought to an end, asserts his locus to challenge Clause 3.4 of the New Model Service Rules, 2015 as arbitrary on the ground that an order issued by the Adjutant General in his ex-officio capacity would amount to an exercise of power as an army servant which would be consequently amenable to writ jurisdiction under Article 226 of the Constitution of India.

8. It is true that during the currency of the renewed term of employment, the management i.e. respondent no. 2 has circulated New Model Service Rules, 2015 under the ex-officio authority of Adjutant General and the said rules are being implemented against the existing employees whose term of employment like the petitioner was yet to expire. The petitioner has pointed out that as a normal rule all such appointments were renewed from time to time on the basis of satisfactory service record and an employee had an advantage of working till attaining the normal age of superannuation i.e. 60 years or upto 65 years, as the case may be. The continuance of employees up to normal age of superannuation reflected under the rules applicable prior to the circulation of new model rules, having given rise to a cause to the petitioner and he being aggrieved claims to have locus to challenge the validity of the impugned rule inasmuch as the term of employment which is restricted to 10 years has prejudiced his existing status and continuance.

9. In the conspectus of aforesaid background, the issue that crops up before this Court is not only as to the maintainability of the writ petition against the Society but it also involves consideration of validity of the stipulation restricting tenure under the new rules which according to the stand of the petitioner is violative of Article 14 of the Constitution. Whether such a provision has a force of public law or not is also an issue to be dealt with before coming to the issue of maintainability of the present writ petition in the background of given facts.

10. Undisputedly Army Welfare Education Society is a Society registered under the Society Registration Act, 1860. The Society comprises of the army personnel and the objects of the Society are contained in Memorandum of Association, which include education for the children of army personnel/ex-army personnel as one of the fundamental objects.

11. In the instant case, a body registered under the Societies Registration Act, 1860 i.e. Army Welfare Education Society which comprises of the members of army while in service, its legal status first of all, will have to be tested within the ambit of freedom guaranteed under Article 19 (1) (c) available to a citizen qua the army officers who are governed under the Army Act, 1950. Section 21 of the Army Act, 1950 places certain restrictions upon the fundamental rights available to the persons who are governed under Army Act which reads as under:

"21. Power to modify certain fundamental rights in their application to persons subject to this Act. Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act-

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes

(c) to communicate with the press or to or cause to be published any book, letter or other document."

12. The Central Government has also framed Army Rules, 1954 which, under Chapter IV sets out the restrictions on fundamental rights available to army personnel. Rules 19, 20 and 21 for ready reference are reproduced as under:

"19. Unauthorised organisation. No person subject to the Act shall, without the express sanction of the Central Government -

(i) take official cognizance of, or assist or take any active part in, any society, institution or organisation, not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;

(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

20. Political and non-military activities.

(1) No person subject to the Act shall attend, address, or take part in any meeting or demonstration held for a party or any political purposes, or belong to or join or subscribe in the aid of, any political association or movement.

(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself or allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, the legislature of a State or a local authority, or any public body or act as a member of a candidate's election committee, or in any way actively promote or prosecute a

candidate's interests.

21. Communications to the Press, Lectures, etc. No person subject to the Act shall-

(i) publish in any form whatever or communicate directly or indirectly to the Press any matter in relation to a political question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or

(ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf."

13. The abrogation of rights under the aforesaid Act and the rules framed thereunder clearly demonstrates that the constitution of AWES under Societies Registration Act, 1860, cannot be said to confer any statutory or other rights including exercise of statutory authority unless it has the sanction of the Central Government.

14. In the pleadings on record it is nowhere mentioned that the constitution of AWES and participation of army personnel therein was sanctioned by the Central Government, therefore, having no option but to proceed on an assumption that a sanction may have been obtained for registration of AWES, the question would be whether such a sanction which goes to the root of the constitution of AWES would enable the Society to derive a status of other authority within the meaning of Article 12 of the Constitution of India.

15. The "Sovereign State" is a broad model of human coexistence in the universe which has developed over centuries now. This model concept is governed by rule of law written or unwritten. In our sovereign State, the citizens are governed under a written constitution which guarantees a set of fundamental rights under Part-III of the Constitution of India. It is important to know that Part-III of the Constitution of India guarantees civil rights to the life and growth of citizens and other legal persons within their independent or self acquired lawful means. It is in the backdrop of these civil rights available to the serving army personnel under article 19 (1)(c) of the Constitution of India that a Society known as AWES has come to be registered under the Societies Registration Act, 1860. The Society for the purposes and objects sought to be achieved is a private body having the existence of a legal person and participation of any army officer in his ex-officio capacity in the affairs of the Society, is purely discharge of private duties and no action in such a capacity can be assumed to derive sanctity of sovereign public law which may be amenable to the writ jurisdiction treating it to be an action of public authority. It is to be noted that there is no classification of the Societies provided under the Societies Registration Act, 1860 drawing a

distinction between a Society run by private persons and persons employed in civil or army service so long as it is governed by the Societies Registration Act, 1860. If the Society has a private character then, by virtue of its registration under the Societies Registration Act, 1860, any action of any office bearer irrespective of his status in civil or army service, is inconsequential and does not have a trapping of sovereign authority or public authority amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. The rights guaranteed under Part-III of the Constitution of India by their very nature being civil shall not assume the character of a sovereign/public function so long as the tests of three dimensional theory are satisfied which postulate (a) financial control; (b) pervasive administrative control; and (c) the public purpose.

16. We are not persuaded to hold the issuance of letter dated 13.7.2015 circulating the New Model Service Rules, 2015 to be in the capacity of a public authority, therefore, it remains to be a correspondence in relation to the private affairs of the Society which cannot be tested on the anvil of Article 14 of the Constitution of India for the reason that a person whose contract of service is itself time bound cannot claim anything beyond what stands settled in the terms of contract and violation of the terms of contract would be amenable only to civil remedy, but a writ petition would not lie. Accordingly, challenge to Note-2 appended to the New Model Service Rules, 2015 under Article 226 of the Constitution of India fails.

17. Now coming to the maintainability of this writ petition in view of the decisions cited before us, it is to be noted that a Division Bench of this Court of which one of us (Hon"ble A.P. Sahi, J.) was a member, after elaborate consideration of the matter has held that a writ petition by an employee of AWES would not be maintainable. The decision has been rendered in view of the decisions of the apex court in the case of Zee Telefilms Ltd. & Anr. v. Union of India, AIR 2005 SC 2677 and Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111. The Division Bench judgement being rendered by this Court has a binding effect on us, therefore, it is difficult for us to take a different view of the matter, particularly in a situation where nothing under the three dimensional theory as pointed out has altered the position in the present case.

18. In the result, the preliminary objections are sustained and the writ petition filed under Article 226 of the Constitution of India is dismissed at the admission stage. No orders as to cost.