
(1981) 10 PAT CK 0001

In the Patna High Court

Case No : C.W.J.C. No's. 3656 of 1979 and 252 of 1980

Md. Hashim and Taqui Ahmad

APPELLANT

Vs

District Education Officer and Others

RESPONDENT

Date of Decision : 24-10-1981

Acts Referred:

Constitution of India, 1950 — Article 12, 30

Citation : (1982) 30 BLJR 193

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—Both these writ applications have been heard together and are being disposed of herewith as the facts and the questions of law involved in them are almost indetical.

2. C.W.J.C. 3656/79.-The petitioner of this writ application, Md. Hashim, was appointed as the Headmaster of Tslamia High School, Simari Bakhtiarpur in the district of Saharsa, on 17-5-1975 and his services were terminated by the Managing Committee of the said school with effect from 1-12-1979. which fact was communicated to him by the Secretary of the school under his letter dated 30-11-1979 (Annexure 9),

3. C.W.J.C. 252/80.-The petitioner of this writ petition was appointed as a Science Teacher in the said school by the order of the Managing Committee dated 12-8-1971 (Annexure 2) which was subsequently approved by the Sub-division) Education Officer in 1973, It further appears that the pay scale of the petitioner was also raised in accordance with the direction of the Bihar Secondary Education Board. The Managing Committee of the school, however, terminated the services of two Assistant Teachers including the petitioner by its resolution dated 2-1-1980. with effect from 5-1-1980, which was communicated to the petitioner under the letter of the Secretary dated 4-1-1980 (Annexure 1).

4. The petitioners of both the writ petitions have challenged the termination of their services mainly on two grounds. Whereas Mr. J. N. P. Verma, appearing in support of the first petition, with reference to the various provisions of the different statutes and rules promulgated by the various authorities occupying the field of administering the Secondary education in the State of Bihar from time to time, contended that the Managing Committee was bound to follow the relevant provisions prescribed for terminating the services of Headmaster and in the absence of the same, the order of the Managing Committee cannot be permitted to stand; Mr. Prabha Shankar Mishra, who appeared in the next case, contended that although the Tslamia High School, Simari Bakhtiarapur, was a school established by a minority community, inasmuch as it was an aided school receiving grants from the State Government for payment of salaries to its teachers, it must be deemed to be a functionary of the State and. therefore, included within the meaning of "other authorities" under Article 12 of the Constitution of India. I shall deal with these two points first and then also some of the ancillary questions that were canvassed.

5. The following facts are undisputed in this case : (1) The school in question is a Muslim minority school within the meaning of Article 30 of the Constitution of India : (2) it is also an "aided" school, and (3) the erstwhile Bihar Secondary Education Board had also granted affiliation to the school on certain terms and conditions.

6. Although the communications issued to the writ petitioners terminating their services do not disclose the grounds for the Managing Committee to take the decision, in its counter-affidavit the Managing Committee has stated all the relevant facts and circumstances leading to the passing of the resolutions. From the statements made in the counter-affidavit it also appears that a regular disciplinary proceeding was started against the petitioner of the first writ petition including the framing of charges (vide Annexures D and E) and then taking the decision.

Similar is the position with respect to the other case, namely, the case of the Assistant Teacher, where also the Managing Committee in its counter-affidavit has brought to the fore all those facts, namely, of a regular proceeding followed by charges which were examined by a Sub-Committee constituted by the Managing Committee, which facts are admitted by the petitioner in paragraph 10 of his writ petition, ultimately resulting in passing of the impugned order.

7. Mr. Shreenath Singh, who appeared on behalf of the Managing Committee in the first case, took the stand that inasmuch as a minority community was not only entitled to establish an educational institution of its choice, it was also entitled to administer the same and, therefore, the impugned order of the termination having been passed against the petitioner in exercise of that power, even assuming for the sake of argument that there was any rule or law which could be said to be applicable to the petitioner's school, giving that much power to any authority to examine the propriety of the appointment and termination of

its teachers by the Managing Committee, would be violative of the protection guaranteed under Article 30 of the Constitution of India.

Although I fully appreciate the force of this argument and on that account both the writ applications must fail as no writ can lie against a private Managing Committee, since long arguments were made with respect to the relevant provisions of the statutes governing the secondary education in the 10* about 20 years" period, I would very briefly notice them to examine as to whether even in point of fact, any such rule or notifications and circulars issued by the authorities concerned, having the force of law containing various procedures for appointing and terminating teachers, ever applied to the school in question. The first rule in this regard that was brought to my notice by Mr. J. N. P. Verma was the notification dated 7th September, 1955, issued by the Education Department of the State Government containing the provisions with respect to the appointments, promotions, disciplinary actions, service conditions, qualifications of Headmasters and teachers and other school employees in non-Government High Schools. This was followed by the Bihar High Schools Control and Regulation of Administration) Act, 1960 (Bihar Act XIII of 1960) which applied to schools other than those owned by the State Government. Mr. Verma, however, endeavoured to rely upon the definition of "high school" within Clause (b) of Section 2 of this Act, according to which a high school meant a recognised school imparting secondary or higher secondary education and accordingly he argued that inasmuch as the petitioner's school was a recognised school, it was covered by the definition of high school.

The other relevant section of this Act is Section 9 which deals with validation of previous actions and it clearly prescribed that only those actions and orders made before the commencement of this Act in regard to the high schools referred to in Section 3(1) would be deemed to have been validly taken and made "in so far as they are not inconsistent with the provisions of the Constitution of India relating to schools established and administered by Anglo-Indians and minorities based on religion or language. It is, therefore, apparent that till the coming into force of this Act there was no law affecting the rights of the minorities, as contended by Mr. Verma.

8. Under the rule-making power of this Act, rules regarding service conditions of teachers of non-Government high schools were framed which were known as the Bihar High School (Service Conditions) Rules, 1972, laying down exhaustive service conditions of the teachers, These rules occupied the field until the Bihar Secondary Education Board Ordinance came into force on 20-5-1974 which was continued successively until the Bihar Act XXV of 1976 was promulgated repealing Bihar Act XIII of 1960 as well as dissolving the Bihar Secondary Education Board.

Section 69 of the 1976 Act specifically says that the provisions of this Act would not apply to such schools which were established and were administered by the minorities, whether based on religion or language, although they were receiving

aids, either in part or in full, from the State Government, unless the Managing Committee of such a school itself made a request to be governed under the provisions of the Act. There was no rule-making power under this Act and accordingly a Bench of this Court in the case of *Nand, Kishore Prasad Mandal v. President, Bihar Secondary Education Board and Ors.* 1977 P. L. J. R. 277 on examining the scheme of the 1976 Act took the view that the 1972 Rules "perished" along with the 1960 Act.

9. Therefore, on taking a bird's eye view of the relevant provisions, it is obvious that whenever any law was promulgated, that by itself contained a provision excepting the educational institutions covered by Article 30 of the Constitution from the application of their provisions. The argument of Mr. J. N. P. Verma that there was some provision of any rule or law which was specifically directed towards schools of the nature concerned in this case, cannot be accepted.

10. It is, no doubt, true that Article 30 itself does not lay down any limitations upon the right of a minority to administer its educational institutions, this right is not absolute but must be subject to reasonable regulations for the benefit of the institution and is subject to regulatory measures which may be necessary for ensuring orderly, efficient and sound administration of the school. The permissible regulatory measures are those which achieve this purpose without annihilating the rights of the minorities to administer the institution. Any measure destroying the right of management by conferring a right of veto on any outside agency cannot be treated as a permissible regulatory measure and would infringe the right guaranteed under Article 30 and it cannot be said to be a "chapter for mal-administration". Obviously, the right to administer a school includes the right to form its own Managing Committee, its own committee for the selection of its employees and its own disciplinary authority for taking action against erring employees. Although the procedure of these bodies can be regulated in the interest of the efficiency of their functioning, but the authority of these bodies cannot be abridged.

The Supreme Court in the case of *All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others*, , after reviewing the relevant law on the subject, has held that the State can take regulatory measures to promote the efficiency and excellence of the educational standards and issue guidelines for the purposes of the Act, ensuring the security of the services of the teachers or other employees of the institution, Nothing, however, was brought to my notice as to whether any such regulatory measure of this nature which could apply to the school in question, had been issued and which was violated by the respondent Managing Committee. In the case before the Supreme Court the validity of some of the provisions of the Andhra Pradesh Recognised Private Educational, Institutions Control Act, including Section 3 thereof, was under challenge. Section 3(1) of the Act provided that no teacher employed in private educational institutions shall be dismissed, removed or reduced in rank or otherwise terminated except with the prior approval of the competent authority.

This provision was held to be of ultra vires Article 30 of the Constitution.

Mr. Verma's argument for application of the general rules somewhat similar nature to the present case, therefore, cannot be accepted and, must be overruled.

11. Mr. Prabha Shankar Mishra, if I may say so, having well appreciated the difficulty in pressing the case from this angle, tried to apply Article 12 of the Constitution as already said earlier, and advanced an argument that the principle enunciated by the Supreme Court in the case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, should be extended further to bring within the net of Article 12 an aided school also, as according to him by granting aid and affiliation, the State was discharging its obligation of imparting education and, therefore, such a school can be said to be an instrumentality or agency of the Government and, therefore, "an authority" within the meaning of Article 12.

I do not find any warrant for accepting this argument as, in my opinion, it is too bold to be accepted. Ours is a welfare State and if only on this account Article 12 should apply then it must apply of *ortiori* to small scale unit industry, any an artisan who is given financial assistance to establish or develop his undertaking. It has already been seen earlier that in consideration for granting aid or recognition to an institution coming under Article 30(1), the State may impose reasonable restrictions only for the purpose of ensuring some regulatory measures such as competence of teachers, standard of education maintenance of discipline and the like and that the aid is utilised for the purpose for which it is granted, but the regulation cannot go to the extent of virtually annihilating the very right guaranteed under Article 30. The argument of Mr. Mishra if accepted, would be quite in conflict with the protections and rights guaranteed to the minorities under the Constitution of India. In two Bench decisions of this Court, namely, (1) *Smt. Radha Kumari Singh alias Radha Kumari v. The Governing Body of Mahanth Mahadevanand Mahila Maha-vidyalaya and Ors.* 1976 B.B.C J. 470 to which I was a party, and (2) *The Managing Committee. High School, Jamui and Anr. v. Shri Sheonandan Siriha "Vikas, and Ors.* 1977 B.B.C.J. 464 it was held that no writ can issue against a managing committee of a school or any governing body which is neither a creature of any statute nor created by or under any such statute inasmuch as the relationship between the parties is purely that of master and servant.

On the above discussions I come to the following conclusions:

(i) There was no law and at least no such law, if any, was brought to my notice which can be said to have provided any guideline or regulatory measures ensuring the security of the services of the petitioners, and in the absence of the same the Managing Committee was competent to pass the impugned orders.

(ii) The Managing Committee was within its right to pass the order of termination of both the petitioners in exercise of its administrative control over the school.

(iii) The Managing Committee of a private school, although receiving aid from Government or affiliated to it, cannot be said to be an instrumentality of the State and thereby covered under Article 12 of the Constitution of India. In that view of the matter no writ can issue against such a Managing Committee.

12. I, therefore, do not find any merit in either of the applications. They are accordingly dismissed, but without any order as to costs.