
(2013) 02 PAT CK 0020
In the Patna High Court
Case No : CWJC No. 3537 of 2008

Md. Zaheeruddin	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Income Tax Act, 1922 — Section 25

Citation : (2013) 2 PLJR 909

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Siya Ram Shahi, Syed M. Ashraf and Ram Ganesh, for the Appellant;
S.M. Shabbir Alam for the Respondents No. 5 and 6, for the Respondent

Judgement

Ajay Kr. Tripathi, J.—A very determined kind of resistance was put up by the counsel representing the private respondents, Islamia High School, Simri, Bakhtiarpur, in the district of Saharsa that this Court does not have requisite power and jurisdiction to entertain the writ application of the petitioner since the institution in question is a minority institution and it has certain protection guaranteed under the Constitution in the way in which affairs of the institution are going to be run. How I wish the law propounded as above was in absolute terms on which learned counsel for the Managing Committee wanted to stick but it is not so. The constitutional guarantee which is being talked about in Article 30(1) of the Constitution of India is being reproduced herein, below. It lays down the parameters and ambit under which they have flexibility for setting up as well as running the affairs of such institution:--

30. Right of minorities to establish and administer educational institutions.--(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

2. If that is not enough, there is yet another enactment which has been in place right from the year 1981, which governs and regulates the standards of

education of such institutions. The relevant provision is Section 18(3) of the Bihar Non-Government Secondary School (Taking Over of Management and Control) Act, 1981, which too is reproduced hereinbelow:--

3. There is no dispute that this institution was established many years ago in the year 1945 but thereafter when the law was enacted by the State, certain liability was created under the statute. If that liability or obligation has not been met by the institution then to say the least, they are in default and are also vulnerable.

4. This Court, however, is not required to go into that aspect of the matter. What is on concern in the present writ application is the manner in which petitioner was hired and fired by the institution when he is a permanent employee or teacher of the said school.

5. The stand of the petitioner is that the action of termination as contained in Annexure-8 would show that it is a case of an order passed on whims and fancy of the Managing Committee, which has been at logger-heads amongst themselves. More than one Managing Committee are at each other trying to take control of the institution and the fall-out, according to the petitioner, is Annexure-8.

6. Rule 18(3) which has been reproduced above talks about creation of certain bye-laws providing for taking action against the teachers of the institution of such kind. Those bye-laws have to be approved by the State authorities. There is a serious doubt whether any such bye-laws are in existence so far this school is concerned. In fact, this Court can surely presume that there is none, not from the point of view of what has been produced by the petitioner in his supplementary affidavit, i.e. Annexure-12, where a clear finding has been given by the District Education Officer, Saharsa but failure on the part of the Managing Committee to produce any chit of paper in support thereof.

7. If this is a manner in which institution is being run then to say the least, there action cannot be sustained and it is bound to be interfered with because no minority institution can be a law by itself and it cannot plead that their action is not vulnerable merely because they are minority institutions. Any action taken by them will have to be in terms of the rules and laws which are in place.

8. Learned counsel representing the private respondents has not been able to shake off the enactment which is or has been in place, in the State of Bihar and has created obligation upon them, which they have failed to carry out.

9. The impugned order contained in Annexure-8 is quashed. Writ application is allowed. Counsel for the Managing Committee informs the Court that petitioner has superannuated in January, 2009 during the pendency of the writ application. It is clarified that the petitioner would be entitled to all the benefits under the rule relating to him, treating him not to have been terminated on the date, Annexure-8 was issued. He would be deemed to have continued on the post till the age of his superannuation. All consequential benefits flowing therefrom will

accrue to him and would be settled within a reasonable timeframe of three months.