
(2011) 08 GAU CK 0033

In the Gauhati High Court

Case No : Writ Petition (Civil) No. (SH) 123 of 2011

Melonia Kharkamni

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 26-08-2011

Acts Referred:

Citation : (2013) 2 GLR 457

Hon'ble Judges : T.Vaiphei, J

Bench : Single Bench

Advocate : For the Petitioner :Mr MZ Ahmed, Sr. Adv Mrs B. Dutta, Mr N. Syngkon, Advs, For the Respondents :Mr N.D. Chullai, Sr. GA., Advocates appearing for Parties

Judgement

1. I have heard Mr. M.Z.Ahmed, the learned senior counsel for the petitioner and Mr. N.D. Chullai, the learned senior Government Advocate, who entered his appearance for the Staterespondents. In view of the preliminary objection on the maintainability of the writ petition raised by the learned State counsel, I did not think it necessary to issue to the private respondents and decided to dispose of the writ petition at the motion stage.

2. The contention of Mr. N.D. Chulai, the learned senior State counsel, was that the writ petition is not only hit by the doctrine of laches but was also barred by the principles of constructive res judicata. To appreciate his submissions, I will briefly refer to the facts of the case, which are hardly in dispute. The petitioner was initially appointed as Teacher of Sacred RCLP School, Mawshbuit in the East Khasi Hills District on 1561981 by the Managing Committee of the School, represented in this writ petition by the respondent Nos. 4 and 5, vice one Meristella Kharkongor, and her appointment was subsequently approved by the District Council of the Shillong. In the year 1993, the State Government took over the School from the District Council. She has eight children from her wedlock with her husband, who, however, committed adultery with another woman and abandoned her and their children whereafter she has to maintain

herself and their children from her meagre salary. In the year 1997, she and her colleagues were made to sign an agreement by the Managing Committee of the School pertaining to the rules of the Managing Committee having religious overtones, which were inconsistent with the Constitution of India. However, she had to sign the agreement for fear of losing her job. In course of time, she was married to one Andreas Kharumnuid and gave birth to another child. Soon after her marriage with Andreas Kharumnuid, the respondents Nos. 4 and 5 started harassing her with a view to abandon her husband on the ground that her association with her husband was incompatible with the rules and regulations of the School. This was followed by the letter dated 1421998 issued by the respondent No. 4 terminating her service w.e.f. 1221998. The respondent No. 4 thereafter forwarded the termination letter to the respondent No. 3 for according his approval thereto, but the respondent No. 3 refused to approve the same and advised the respondent No. 5 to draw up a disciplinary proceeding against her. The respondents No. 4 and 5 did not abide by the instruction of the respondent No. 3 and instead withheld her salaries and appointed the respondent No. 6 in her place without the approval of the respondent No. 3. This prompted her to file WP(C) No. 273(SH) of 1999 before this Court, which by the order dated 11122002 disposed of the same by directing the respondent No. 3 to reexamine and reappraise the entire matter in the light of the facts presented in the judgment and record his decision for the grant of, or refusal to accord, approval to the impugned termination within a period of three months. After an inordinate delay, the petitioner was served with the impugned letter dated 1362003 issued by the respondent No. 3 informing her of the adoption of the resolution in terms of the direction of this Court approving the termination of her service as proposed by the respondent No. 5 and of the forwarding of the proposal to the respondent No. 2 for his approval. On receipt of this letter, the petitioner through her counsel issued a notice to the respondent No. 3 complaining the adoption of the resolution behind her back and without affording her an opportunity of being heard and of concealing the resolution, which was adopted way back in January, 2003 and requesting him to review the decision strictly in compliance with the judgment dated 11122002 of this Court. Instead of reviewing that decision, the respondent No. 3 was learnt to have disbursed the salary of the respondent No. 6 regularly. It is further alleged by the petitioner that the respondent No. 2 by his letter dated 1762003 informed the respondent No. 3 of his nonapproval to the resolution and directed him to call both the parties and reeducate the issue of termination of her service in the light of the said judgment, but nothing came out of it. This led her to initiate another round of litigation by approaching this Court in WP(C) No. 262(SH) of 2003. This court, on contest, dismissed the writ petition on 972009 by holding that issuance of writ, when she did not even challenge the order dated 13112006 and the corrigendum dated 28112006 approving termination of her service, would be ineffective and futile. It is more than two years after the dismissal of the aforesaid writ petition, this writ petition is filed by her challenging the aforesaid order and corrigendum dated 13112006 and 28112006 respectively. In my opinion, there is force in the contention of the

learned senior counsel for the State that this writ petition is barred by laches or, at any rate, by the principles of constructive res judicata. It may be noted that though the petitioner was aware of the existence of the said order and corrigendum when the State respondents filed their affidavit in opposition in WP(C) No. 262(SH) of 2003, she did not bother to challenge the same by amending her writ petition to this effect (incidentally, this was precisely the reason which prompted this Court to dismiss the writ petition). Whether the order approving her termination order is illegal or not, was an issue which might or ought to have been raised by her in WP(C) No. 262(SH) of 2003. Having not done so, she is now barred from raising this issue in this writ petition by the principles of constructive res judicata. Alternatively, to quash the said order and corrigendum is the relief which was to be claimed by her in that writ petition. As she did not do so, the writ petition is also barred by the principles of res judicata. That apart, the petitioner is, in substance, challenging her termination order dated 13062003 and the order of approval thereof dated 13112006 in the year 2011. Admittedly, the rights of a third party i.e. the respondent No. 6 are being affected. It is a settled proposition of law from a long line of judicial decisions that where there is inordinate and unexplained delay and third party rights are created in the intervening period, a writ court would not interfere even if the State action complained of is unconstitutional being violative of Article 14 of the Constitution or illegal. See R.S. Dedhar v. State of Maharashtra, AIR 1974 SC 259. Resultantly, this writ petition is not maintainable and is accordingly dismissed at the very threshold but by directing the parties to bear their respective costs.