

(2020) 07 RAJ CK 0196
In the Rajasthan High Court
Case No : Civil Writ Petition No. 742 Of 2020

Mridul Kumar Mathur

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 23-07-2020

Acts Referred:

Rajasthan Non-Government Educational Institutions Act, 1989 — Section 18, 19
Rajasthan Non-Government Educational Institutions Rules, 1993 — Rule 39(h)(iii)
Constitution Of India, 1950 — Article 12, 226, 226(1)

Citation : (2020) 07 RAJ CK 0196

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Manoj Bhandari, Govind Suthar, Kamal Dave

Judgement

1. Inviting Court's attention towards the requisite facts, Mr. Bhandari, learned counsel for the petitioner submitted that the petitioner was appointed on the post of Lecturer in the respondent Society - Lachoo Memorial College of Science Society in the year 2004 and has been discharging his services satisfactorily.
2. On 23.08.2018, when the petitioner appeared before the Managing Committee in relation to his pending promotion, some heated exchange of words took place, due to which the members got annoyed.
3. According to the Committee, the petitioner had misbehaved and thus an enquiry has been initiated against the petitioner, while placing the petitioner under suspension on 24.08.2018
4. A charge-sheet came to be served upon the petitioner on 30.10.2018.
5. Mr. Bhandari submitted that the petitioner has filed his preliminary reply and had also sought for certain documents and the enquiry was under-way.
6. Regardless of the fact that the enquiry was pending, the respondent Society has abruptly issued an order dated 06.01.2020 and terminated petitioner's

services while invoking Rule 39(h)(iii) of the Rajasthan Non-Government Educational Institutions Rules, 1993 (for short, hereinafter referred to as "the Rules of 1993").

7. No sooner had Mr. Bhandari apprised the Court with the basic facts, than Mr. Kamal Dave, learned counsel appearing for the respondent Society raised preliminary objections regarding the maintainability of the present writ petition on two counts; (i) that the respondent Society is not a State within the meaning of Article 12 of the Constitution and (ii) that the petitioner has got an alternative efficacious remedy in the form of appeal provided under Section 19 of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short, hereinafter referred to as "the Act of 1989").

8. Elaborating his arguments, Mr. Dave contended that the respondent Society is a society registered under the Society Registration Act and there is no direct and pervasive control of the Government, thus, no writ can be issued to the respondent Society.

9. It was also argued that the petitioner has an alternative efficacious remedy under Section 19 of the Act of 1989 and thus, the present writ petition is not maintainable.

10. In support of his argument aforesaid, learned counsel cited the judgment of Hon'ble the Supreme Court in case of Trigun Chand Thakur Vs. State of Bihar & Ors. [(2019) 7 SCC 513]. He informed that he has mentioned scores of judgments at page No.122 of the rejoinder to the preliminary objections (though the same were not placed for consideration).

11. In view of these submissions, learned counsel prayed that the writ petition be dismissed at the threshold.

12. Responding to the preliminary objections so raised by learned counsel for the respondent Society; Mr. Bhandari relied upon a decision of Hon'ble the Supreme Court in the case of Marwari Balika Vidyalaya Vs. Asha Srivastava & Ors., (Manu/SC/0365/2019) and submitted that in light of this judgment, writ petition against respondent Institution is maintainable. He added that even on merit, facts of the present writ petition are almost identical to the facts involved in the case of Marwari Balika Vidyalaya (supra).

13. Learned counsel for the petitioner further submitted that the respondents have proceeded vindictively against the petitioner. The respondents have initially launched disciplinary enquiry against the petitioner, and before the enquiry could take its natural course, they have abruptly terminated the petitioner by way of impugned order.

14. That apart, Mr. Bhandari argued that provisions contained under Section 18 of the Act of 1989 and Rule 39(h)(iii) of the Rules of 1993 presupposes prior approval/consent of the Director (Education), which in the present case has not been obtained and the order of termination is, therefore, fundamentally void and

without jurisdiction.

15. In the backdrop of present case, Mr. Bhandari contended that even if for the sake of arguments it is assumed that the alternative remedy of appeal is available to the petitioner, since the order impugned is fundamentally without jurisdiction, the remedy of appeal deserves to be ignored, in light of various decisions of Hon'ble the Supreme Court. He relied upon rather recent judgment of Hon'ble the Supreme Court in case of Maharashtra Chess Association Vs. Union of India & Ors. (MANU/SC/0992/2019). Relevant para 11 to 13 of the same are reproduced hereunder :

"11. Article 226 (1) of the Constitution confers on High Courts the power to issue writs, and consequently, the jurisdiction to entertain actions for the issuance of writs. The text of Article 226(1) provides that a High Court may issue writs for the enforcement of the fundamental rights in Part III of the Constitution, or "for any other purpose". A citizen may seek out the writ jurisdiction of the High Court not only in cases where her fundamental right may be infringed, but a much wider array of situations. Lord Coke, commenting on the use of writs by courts in England stated:

The Court of King's Bench hath not only the authority to correct errors in judicial proceedings, but other errors and misdemeanours [...] tending to the breach of peace, or oppression of the subjects, or raising of faction, controversy, debate or any other manner of misgovernment; so that no wrong or injury, public or private, can be done, but that this shall be reformed or punished by due course of law...

Echoing the sentiments of Lord Coke, this Court in Uttar Pradesh State Sugar Corporation Limited v. Kamal Swaroop Tondon Manu/SC/7082/2008 : (2008) 2 SCC 41 observed that:

35... It is well settled that the jurisdiction of the High Court Under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High court "to reach injustice wherever it is found."

12. The role of the High Court under the Constitution is crucial to ensuring the Rule of law throughout its territorial jurisdiction. In order to achieve these transcendental goals, the powers of the High Court under its writ jurisdiction are necessarily broad. They are conferred in aid of justice. This Court has repeatedly held that no limitation can be placed on the powers of the High Court in exercise of its writ jurisdiction. In A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani MANU/SC/0158/1961 : (1962) 1 SCR 753 a Constitution Bench of this Court held that the nature of power exercised by the High Court under its writ jurisdiction is inherently dependent on the threat to the Rule of law arising in the case before it:

10... We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of

each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre- eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible Rules which should be applied with rigidity in every case which comes up before the court.

The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict legal principles so as to hobble the High Court in fulfilling its mandate to uphold the Rule of law.

13. While the powers the High Court may exercise under its writ jurisdiction are not subject to strict legal principles, two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. First, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. It is a well settle principle that the writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the Rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review Under Article 226 is an intrinsic feature of the basic structure of the Constitution.

16. In response to petitioner's assertion that prior approval of the Director (Education) was not obtained, though, nothing has been stated in the preliminary reply, Mr. Dave, learned counsel for the respondent Society, however submitted that the Society had written a letter to the Director, who refused to grant such approval, as according to him, the respondent Society is not aided and the Government is having no control over it.

17. Having regard to the facts and circumstances of the case, this Court is of the prima-facie opinion that the respondents' action is arbitrary and vindictive. Indisputedly, the enquiry was pending and there was no compelling reason, requiring the respondent Society to take such an extreme action of terminating the petitioner, practically for the same reason, for which the enquiry officer was seized of the matter.

18. That apart, prior approval of the Director (Education), which is precursor for taking action under Section 18 of the Act of 1989 read with Rule 39(h)(iii) of the Rules of 1993 is totally absent.

19. That being the position, the petitioner has made out a case worth interference by this Court in its extra ordinary jurisdiction. Violation of fundamental right is writ large and the order has been shown to be void ab-initio, having as the same has been issued without prior consent of the Director.

20. Hence, admit. Issue notice. Mr. Kamal Dave, learned counsel accepts notices on behalf of respondent No.3 to 7. He seeks time to file reply to the writ petition.

Time prayed for is allowed. Let notices be issued to respondent No.1 and 2 only, returnable within a period of three weeks.

21. The order of termination of petitioner was passed six months ago, however, considering the fact that he had preferred the present writ petition (13.01.2020) immediately after he was served with the order of termination dated 06.01.2020 and the matter remained pending for consideration of stay application, which could not be taken up for consideration due to COVID-19, this Court feels that merely because six months have passed since petitioner was terminated, he cannot be denied the relief to which he is otherwise entitled to.

22. In view of the facts noticed above and in light of the discussion aforesaid, considering it appropriate, expedient and in the interest of justice, this Court hereby stays effect and operation of the order dated 06.01.2020 (Annexure-20).