
(2010) 01 MP CK 0013
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12379 of 2009

Mrs. Kavita Bapat

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 131 FLR 1055

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Dharmendra Soni, for the Appellant; S.K. Rao , with Shri V.K. Pandey for respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Petitioner, who is working as a Teacher in respondent No. 3's institute, had filed this petition and it the case of the petitioner that the school is affiliated to the Indian School Certificate Examination (hereinafter referred to as TCSE") and as per the rules of affiliation the terms and conditions of employment of the employees working in schools affiliated to ICSE should be as prescribed by the corresponding State Government.

2. Inter alia contending that retirement age of teachers in the schools in the State of Madhya Pradesh is 62 years, petitioner has filed this petition-seeking enhancement of age of retirement from 60 to 62 years. It is the case of the petitioner that she cannot be retired before attaining the age of 62 years.

3. On notices being issued, respondents have filed preliminary objection and it is stated by the respondents that the school in question is not receiving grant-in-aid from the State Government. It is a private Institute managed by a minority community, having its own bye-laws and, therefore, a writ petition against such an institute is not maintainable, inter alia contending that in the matter of retirement of an individual teacher, no public interest is involved and, therefore,

the writ petition is not maintainable.

4. Placing reliance on a judgment rendered by a Bench of this Court, in the case of Yashwant Singh Sikarwar v. Teresian Carmel Educational Society, 2008(4) MPLJ 611 Shri S.K. Rao, learned Senior Advocate, sought for dismissal of this writ petition.

5. Shri Dharmendra Soni, learned Counsel placing reliance on an order dated 9.4.2009, passed by the Chattisgarh High Court in W.P.(S) No. 275/2008 Mrs. Kamini Bharadwaj v. Sri Sankara Education Society and others submitted that a petition under Article 226 is maintainable and, therefore, the preliminary objection should be rejected. He further took me through the rules of affiliation and the circulars issued by the State Government and submits that petitioner can seek enforcement of these provisions by this writ petition.

6. Having heard learned Counsel for the parties and on consideration of the facts that have come on record, it is clear that in the case of Yashwant Singh Sikanwar (supra) under similar circumstances when a teacher working in a convent school, in Gwalior, sought for enhancement of the age of retirement on the ground that the rules of affiliation of the ICSE entitles him to work upto the age of 62 years, a Bench of this Court after considering the following Judgments: Lal Singh v. Chairman, School Administration Board, BSF Tekanpur, Gwalior, M.P. No. 996/1991; Narcndra Pal Singh v. M.P. Dugdh Mahasangh, Bhopal, 1993 (2) MPJR 20 Smt. Nirmalal Gangajaliwale v. Management of Carmal Convent School, Gzvalior, W.P. No. 1273/1997 decided on 27.7.2001; Miss Malini Karkhedkar v. Teresian Carmel Educational Society and others, W.P. No. 792/1999; K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, and, S.K. Varshney v. Principal, Our lady of Fatima H.S.S. and others, Civil Appeal No. 8783/8784 of 2003 decided on 19.7.2007, has so held in paragraph 8:

8. The order passed by the Apex Court makes it very clear that in case of retirement and in case of termination, no public law element is involved. The Apex Court has held that a writ under Article 226 of the Constitution of India against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element involved, no writ lies. In the present writ petition, the petitioner is claiming continuance in service beyond 58 years of age and, therefore, there is no question of public law element involved inasmuch as the grievance of the petitioner is of personal nature.

7. In the present case also, the factual scenario is exactly identical and similar and in the light of the law laid down in the case of Yashwant Singh Sikarwar (supra), this Court has no option but to hold that the present writ petition against a private institute is not maintainable and as no public law element is involved in the matter, petition cannot be entertained by this Court.

8. Accordingly, upholding the preliminary objection, this writ petition is dismissed.