
(1999) 05 AHC CK 0227

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18044 of 1999

Mrs. Veena Mediratta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1999) 2 UPLBEC 1595

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant; Arvind Kumar Sharma and Ravi Kant, for the Respondent

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—This writ petition has been filed challenging the termination order of the service of the petitioner.

2. Mr. Ravi Kant, learned Counsel for the respondents raised a preliminary objection as regards maintainability of the writ petition on a contention that the institution concerned is a private institution under the management of a private society and its affiliation is with the Central Board of Institution which is also run by a Society not being an authority under Article 12 of the Constitution of India.

3. Mr. V.K. Shukla, learned Counsel for the petitioner contends that in view of law presently prevailing, such order of termination of service of a teacher of an educational institution can be challenged in writ jurisdiction. In support of such contention reference has been made to the judgments in the case of Smt. Rajni Sharma v. Union of India, reported in (1995) 3 UPLBEC 1664 ; Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and particular reference was made to paragraph Nos. 111 and 113 of the said judgment. Further reference was made to the case of Arvind Kumar Sharma v. Central Board of Secondary Education, reported in (1996) 2 UPLBEC 1331; Purnima

Banerjee v. Council for the Indian School Certificate Examination, reported in (1995) 1 UPLBEC 265; Sri Ram Saran v. State of U.P. and Ors., reported in (1998) 3 UPLBEC 1867 and K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another,

4. Relying on the aforesaid law it has been contended that education up to primary level has been recognised as fundamental rights and a private institution is discharging public duty in making such education available and therefore such writ petitions are maintainable.

5. Mr. Ravi Kant, learned Counsel for the respondents contended that private body not governed by the statutory regulations nor aided by the Government funds is not amenable to writ jurisdiction. He argued and distinguished the judgments relied on by the learned Counsel for the petitioners. He also contended that in the present facts no writ petition is maintainable. Even statutory rules when adopted by a private body, do not stand in the position of statutory rules and therefore the writ petition is not maintainable.

6. After considering the aforesaid, I find that the law in this regard as relied on by the learned Counsel for respective parties requires consideration.

7. On behalf of petitioner main reliance was placed on the case of Smt. Rajni Sharma (supra). In the said case after considering the facts involved, it was held that the society and its schools are financed by Welfare Funds of the Adjutant General's Branch of Army Headquarters. It was also found there that both administrative and financial control of the Army over the society and the school is almost total. In that factual background it was held that the said society and the schools are by it are "State" within the meaning of Article 12 of the Constitution of India and thus amenable to writ jurisdiction.

8. In the case of Arvind Kumar Sharma (supra), it has been considered in the factual background relating to right of admission and it was held that if action of educational institutions is prejudicial to the right to education of any individual, he may approach the writ Court and such writ petition is maintainable. This finding relating to right to education does not help the petitioner in maintaining the present writ petition challenging termination order of a teacher.

9. In the case of Purnima Banerjee (supra), also the right of students regarding admission was the subject-matter under consideration and in that factual background the writ petition was held maintainable. The other reference of the petitioner is of the case of Krishnamacharyulu (supra). The said case was considering the applicability of the pay scale following the Government Order and in that factual background, it was held that the teachers were seeking enforcement of order issued by the Government and there was a public interest created. With the said finding the writ petition was held maintainable.

10. The case of Ram Saran (supra), was decided upon considering the function of co-operative society and the law relating thereto.

11. In view of aforesaid, it appears that the law relied on by the petitioner entirely relates to education as right of a citizen to such education upto primary level has been held to be a fundamental right in the case of Unni Krishnan (supra).

12. With regard to service of teachers and non-teaching employees in a private educational institution not enjoying any aid from Government funds and also affiliated to a body which has not been created under a statute nor its expenses are borne by the Government, the writ petition in such circumstances has been held to be not maintainable in the case of Ashok Kumar Chawla Vs. Central Board of Secondary Education and Others,

13. I find that the circumstances involved in the present case are identical to the case of Ashok Kumar Chawla (supra). The present institution is also a private body run by a registered society and is affiliated with the Central Board of Secondary Education which also does not get aid or grant from the Government nor it has been created by any statute. The statement made in the counter affidavit of the present writ petition in this respect also is relevant.

14. In the aforesaid circumstances, I am of the opinion that such a writ petition against action of committee of management of the institution concerned is not maintainable as neither any statutory provision has been violated nor there is any failure to perform any public duty or obligation imposed by either Constitution or any Government Order.

15. In view of aforesaid findings, the writ petition is held to be not maintainable and the same is, therefore, dismissed.