

(2006) 10 DEL CK 0065

In the Delhi High Court

Case No : Writ Petition (Civil) No. 20551 of 2005

Ms. Anu Saxena

APPELLANT

Vs

Jesus and Mary College and Others

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 30, 32

Citation : (2006) 92 DRJ 331

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : P.P. Khurana and Zeba Kher, J.H. Jafri and A.N. Sabri, for the Appellant; Romy Chacko and A.K. Jha for Respondents -1-3 and Amit Bansal, for Respondent-4, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—Admit.

2. The petitioner was working as a Lecturer in Mathematics in the Jesus and Mary College, respondent No. 1. On 9.3.2004 she submitted a letter expressing her desire to resign from the post of Lecturer w.e.f. 10.3.2004. She further added that three months' notice period may be adjusted against her earned leave. On 11.3.2004 the petitioner wrote to respondent No. 2, namely, the Principal of respondent No. 1, withdrawing the resignation letter of 9.3.2004. She reiterated her withdrawal vide another letter dated 22.3.2004. Subsequently she received a letter dated 19.3.2004 from respondent No. 2 saying that her resignation submitted on 9.3.2004 had been accepted and that she stood relieved of her services w.e.f. 10.3.2004. The petitioner made a representation to respondent No. 2 on 29.3.2004 and thereafter wrote to the Vice-Chancellor of the University and Director of the South Campus, respondents No. 4 and 5, and to the Governing Body of respondent No. 1, namely, respondent No. 3, requesting for an intervention. The Director of South Campus wrote letters to respondent No. 2 to ignore the letter of resignation. The relief prayed for by the petitioner is for

quashing the acceptance of resignation vide letter dated 19.3.2004 and for a direction on the respondents to reinstate her along with back wages.

3. The writ petition is opposed by respondents Nos. 1 to 3. They challenge the maintainability of the writ petition on the ground that respondents No. 1 to 3 are not State or other authority under Article 12 of the Constitution and that no fundamental right of the petitioner has been violated. Further, it is pleaded that respondents Nos. 1 to 3 are entitled to constitutional protection under Article 30 and have the fundamental right to appoint any staff or accept the resignation of its employee and for this purpose no permission or satisfaction of the Vice-Chancellor or any other officer of the University is required. In addition, it is pleaded that the petitioner is seeking to enforce a contract of personal service which cannot be enforced through law. Coming to facts, it is not denied that the petitioner had submitted a resignation letter and had also submitted a letter withdrawing her resignation two days after the first letter but submitted that before the letter dated 11.3.2004 and subsequent letters withdrawing the resignation were submitted, the resignation had already been accepted w.e.f. 10.3.2004. Further, it is contended that the Governing Body of the College, namely respondent No. 3, had ratified the action of the second respondent in accepting the resignation. So far as the requirement under Para-12 of Ordinance XII of the approval of the Vice-Chancellor for termination of services for a Teacher was concerned, respondents Nos. 1 to 3 pleaded that the same was not applicable to the respondents being a minority institution protected by Article 30 of the Constitution.

4. Respondent No. 4 has filed a separate counter affidavit contending, inter alia, that respondent No. 2 was not competent to accept the resignation as the same was required to be accepted by the Governing Body i.e. respondent No. 3, subject to the satisfaction of the Vice-Chancellor of respondent No. 4, that from the Minutes of the Governing Body meeting held on 31.3.2004, it appears that the Governing Body merely considered the resignation of the petitioner and relieved her from the services of the College without taking any notice of her subsequent applications withdrawing the resignation, that there was a provision of notice of three months and, Therefore, resignation could not have been accepted without waiting for three months, that the Vice-Chancellor has not accorded his satisfaction for the resignation and acceptance thereof and that respondents Nos. 1 to 3 were bound by the Ordinance of the University as the affiliation of the College was conditional on the terms and conditions of the employment of teaching staff being in accordance with the Ordinance of the University.

5. The first thing to decide is whether the writ petition is maintainable against respondents Nos. 1 to 3. It is conceded that the respondent No. 1 College is not a State or other authority within the meaning of Article 12 of the Constitution. Nonetheless, it is contended that the writ petition is maintainable under Article 226 of the Constitution and for this purpose reliance is placed, inter alia, on the

Division Bench judgment of this Court in the case of Kumkum Khanna and Others Vs. The Mother Aquinas and Another, . It was held in this judgment that though the office of the Principal can exist outside a statute, it becomes a statutory office when the college is admitted to the privileges of the University. It was further held that the office of the Principal is a public office because the powers and duties of the Principal relate to a large section of public, namely, to the students of the college. It was also held that a writ of mandamus will lie against the college. Admittedly, this judgment has not been set aside so far. Nor is it the case of the respondents that in any subsequent litigation the respondent No. 1 has been held to be not amenable to the writ petition. The respondents No. 1, 2 and 3 are bound by the judgment.

6. The respondent is placing reliance on the judgment of Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another, , wherein it was held that the college affiliated to Banaras Hindu University was not a creature of statute and, Therefore, not amenable to the writ jurisdiction.

7. The net of Article 226 of the Constitution of India has thereafter been greatly widened and various private bodies have been found to be amenable to the jurisdiction under Article 226 of the Constitution. So far as the status of a college affiliated to a university is concerned, reference can be made to the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, in which the Supreme Court held that a college affiliated to the Gujarat University was amenable to the jurisdiction under Article 226 of the Constitution of India. The Supreme Court observed:

19. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, Therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

8. In this judgment taking a liberal view with respect to application of Article 226, the Supreme Court further observed:

21. ...The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available `to reach injustice wherever

it is found". Technicalities should not come in the way of granting that relief under Article 226. We, Therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

9. In the recent judgment in the case of Binny Ltd. and Another Vs. V. Sadasivan and Others, the Supreme Court has further elaborated the situations in which a private party can be subjected to writ jurisdiction. It was held that though the writ of mandamus is pre-eminently a public law remedy the same is available against a private body or person if (a) such private body is discharging a public function, (b) the decision sought to be corrected or enforced is in discharge thereof, and (c) the public duty imposed is not of a discretionary character. Explaining what is public function, the Supreme Court said that a body is performing a public function when it seeks to achieve some collective benefit for the public or section thereof and is accepted by the public or section thereof as having authority to do so. The Supreme Court, however, emphasized that it is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority and that there cannot be a general definition of public authority or public action.

10. In view of this legal position, Mr. Romy Chacko appearing for Jesus & Mary College stated that although a writ of mandamus will lie against a college as it performs public function, vis-a-vis, the students, so far as the matter in the present writ petition is concerned, namely, acceptance of a resignation letter, the same is not a public function. Such an argument is totally unacceptable. The College is engaged in performing public function and the function can be discharged only when the teachers are engaged by the College.

11. The next important question to be considered is whether the respondent who may enjoy a special status by virtue of Article 30 of the Constitution, can deal with its employees without in any way being restricted by the Delhi University Ordinances. The contention of Mr. Romy Chacko is that being a minority institution, it has its right to administer the institution unhindered by the university regulations and, Therefore, its impugned action cannot be challenged. Mr. Chacko has made several references to various judgments relating to the privileges of the minority institutions. None of these judgments, however, say that a minority institution can hire and fire its employees in the manner suggested by Mr. Chacko. It is not necessary to refer to these judgments for the simple reason that in the appointment letter of the petitioner, respondents Nos. 1 to 3 has included the clause No. 5 which is in the following language,

Your appointment will be governed in all respects by the Rules and Regulations of the College and of the University of Delhi, in force from time to time.

12. The Rules and Regulations of the university as well as University of Delhi thus become part of the appointment letter. The minimum that can be said about this clause is that the Rules and Regulations of the College is a part of the contract of service between the petitioner and respondent Nos. 1 to 3. It cannot be pleaded

that being a minority institution respondent No. 1 will not be bound by this contract. Thus, the minority status of respondent No. 1 will not in any way affect the right of the petitioner in seeking a writ of mandamus.

13. This takes us to the objection of the respondent to the effect that petitioner's employment is only a contract of personal service and cannot be enforced by law. The petitioner's employment is not of the nature as is being suggested by respondent Nos. 1 to 3. The employment of the petitioner is governed by, inter alia, the Rules and Regulations of the University of Delhi. The petitioner is seeking its relief under those Rules and Regulations and, Therefore, the writ petition cannot be dismissed on this score.

14. Coming to the merits of the case, the undisputed facts are that the letter of resignation was submitted on 9.3.2004 and was withdrawn on 11.3.2004. The respondents' claim is that the resignation letter was accepted on 10.3.2004. Admittedly the resignation was accepted by respondent No. 2, namely, the Principal of respondent No. 1. This is also the admitted position that only the Governing Body of the College, namely, respondent No. 3, was competent to accept her resignation. It is also thus the admitted position that on 11.3.2004 when the resignation was withdrawn the resignation had not been accepted. The College produced the relevant records for inspection of the court. It was found that on receiving the resignation letter, respondent No. 2 sought the advice of the Chairman of respondent No. 3 and on his advice the resignation was accepted by respondent No. 2. This further fortifies that respondent No. 2 was not the authority to accept the resignation. Undisputedly the College's Governing Body was competent to accept the resignation letter and the withdrawal letter. The acceptance by the Governing Body was further subject to the satisfaction of the Vice Chancellor as provided in the annexure to the Ordinance XII. In fact, every college teacher is required to fill the agreement in that prescribed form wherein such a clause is incorporated. The agreement, if any, signed by the petitioner may be available on the record of the respondent Nos. 1 to 3. However, even if no such agreement has actually been executed by the petitioner and respondent Nos. 1 to 3, the clause regarding satisfaction of Vice Chancellor will have to be read into the contract of service by virtue of Clause 5 of the appointment letter quoted above. Therefore, in fact, it is established that the withdrawal letter had been submitted before the resignation letter was accepted. The resignation is a unilateral act and there could not be estoppel against the withdrawal of this resignation. It has been the consistent view of the courts that a resignation letter can be withdrawn before it is accepted and on such withdrawal of the resignation the services of an employee cannot be terminated by accepting the resignation after its withdrawal.

15. In the case of Srikantha S.M. Vs. Bharath Earth Movers Ltd., , the Supreme Court went to the extent of saying that a resignation could be withdrawn even after acceptance but before the actual date on which the employee concerned was to be relieved. In the present case, it is pointed out by Mr.P.P. Khurana, Senior

Advocate appearing on behalf of the petitioner, that the respondents in the first place did not intimate the petitioner of the acceptance of the resignation and further respondent Nos. 1 to 3 never cared to actually relieve the petitioner till the resignation was withdrawn on 11.3.2004.

16. It remains to be said that respondent No. 3 in accepting the resignation had not acted fairly. In the first place by the time the meeting of the Governing Body was held the resignation had already been withdrawn and the Governing Body, Therefore, while considering the letter of resignation should also have considered the letter of withdrawal. This certainly was not done. Neither the minutes nor the agenda make any reference to the letter of withdrawal. Paragraph XII of the minutes relates to the resignation letter, which reads as under:

XII. One of the staff representative expressed her view as to why the acceptance of the resignation could not be reconsidered on humanitarian ground. A detailed discussion followed where many of the Governing Body members expressed their views and legality involved in the matter. Finally it was voted upon by show of hands. 8 were in favor upholding the decision taken by the Principal and 4 were against.

17. There is no whisper about the letter of withdrawal. The petitioner herself sent the copy of the letter of withdrawal to the members of the Governing Body. However, the agenda did not include the letter of withdrawal. Nor did it include the other letters reiterating the withdrawal. The minutes only mention the humanitarian ground. No mention whatsoever is made to the letter of withdrawal of resignation.

18. Respondent Nos. 1 to 3 have raised a plea that under the University Rules and Regulations, the petitioner should have referred her dispute to the arbitration of the Appeal Committee of three independent persons appointed by the Chancellor who would have power to inquire into all the facts of the case and to interpret the terms of this agreement. Para 9 of the Form of Agreement of Service of the College Teachers, inter alia, makes this provision that any dispute arising in connection with the termination of service of the teacher, except when on probation, by the Governing Body shall be referred to the arbitration of an Appeal Committee to be appointed by the Vice-Chancellor. It is further provided here that the Arbitration Act, 1940 would apply to arbitration under the clause. Admittedly, the respondents have not taken any steps under the Arbitration Act, 1940 or under the Arbitration and Conciliation Act, 1996 to get the writ petition stayed or to get the matter referred to any arbitration. What the counsel for the respondents has pleaded is that such an avenue being open, the petitioner should have gone in appeal/arbitration to the Appeal Committee before invoking the writ jurisdiction. It is generally the rule that all other avenues of relief should be explored before the writ jurisdiction is invoked. There is, however, no hard and fast rule that a writ petition will not be maintainable unless all other remedies are explored. Reference can be made to *A.V. Venkateswaran, Collector of Customs, Bombay v. Prem Chand Sobhraj Wadhvani and Anr.* (1962) 1 SCJ

170. It can, at the same time be said, that the acceptance of the petitioner's resignation is not complete till the satisfaction of the Vice Chancellor is accorded thereon. So far the Vice Chancellor has not accorded his approval to the resignation accepted by respondent No. 3. Therefore, the resignation has not become final and the petitioner is not required to proceed either in appeal or in arbitration. In any case, even in spite of such a rule (with which the respondents themselves do not want to bind themselves) the present writ petition is maintainable.

19. The result of the above discussion is that the acceptance of the resignation has to be deemed to be inoperative and the petitioner will be deemed to have continued in service of respondent Nos. 1 to 3. The writ petition is allowed and the letter dated 19.3.2004 accepting the resignation letter of the petitioner dated 9.3.2004 is hereby quashed. The petitioner shall be deemed to have continued in service unhindered by the resignation and its acceptance and shall be entitled to all consequential benefits of having continued in service.