

(1996) 04 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 66 of 1996

Ms. Indira Thakur and Others

APPELLANT

Vs

Harprit Education Society and Another

RESPONDENT

Date of Decision : 25-04-1996

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 311
Contract Act, 1872 — Section 23

Citation : (1997) 1 ShimLC 410

Hon'ble Judges : R.L. Khurana, J;P.K. Palli, J

Bench : Division Bench

Advocate : M.S. Chandel, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Palli, J.—The Petitioners were teachers under the employment of Respondent No. 1, which is a private school and they were employed on different dates given in para 3 of the writ petition. Their appointment letters have been placed on record as Annexures P/2 and P/3. It is said in the petition that the work and conduct of the Petitioners have been throughout excellent and stood appreciated by the Respondents. The Petitioners have placed on record Annexures P/4 to P/6 in this respect. The admitted position as put forth by the Petitioners in para 4 of the petition is that they were being paid consolidated salary. The Petitioners were constantly representing to the management for the enhancement of their salaries and that they should be paid adequately and the management ultimately agreed to enhance the salary of the staff to the extent of Rs. 300 per month w. e. f August 1995. Strangely, nothing in writing was given to the Petitioners in respect of the enhancement in their salaries.

2. It is stated that the school closed down for winter vacation on 11th December, 1995 and the Petitioners were surprised when they received communication dated 9th December, 1995 addressed to them by the principal whereby their services were ordered to be terminated as not being required any longer. Three

months" salary by way of cheque was sent alongwith letters in lieu of the notice period given in the appointment letters. These termination orders have been impugned and are placed as Annexures P/7 to P/12. It is said that the services of the Petitioners have been terminated without assigning any reasons and was most arbitrary and no opportunity whatsoever was afforded to them before terminating their services. This violates the principles of natural justice, as said in the petition. The petition further reads that the action taken by the Respondents was wholly mala fide and the Respondents were discharging public duties in the field of education and were expected to behave in a reasonable and responsible manner. The Petitioners were said to be highly educated and efficient who have been placed on the road in total violation of Article 14 of the Constitution of India.

3. In reply from the side of the Respondents, it is said that Respondent No. 1 is a registered Society under the Societies Registration Act and is running the said school which is purely private and no aid is being received by it from the Government or any other authority. A preliminary objection is raised that the Respondents are not a State or an authority as contemplated by Article 12 of the Constitution of India and this writ petition is not maintainable against the Respondents.

Respondents have further pleaded that the services of the Petitioners stood terminated with immediate effect in December 1995 and salary for three months in lieu of notice in terms of the contract of employment was paid to them which has been received by the Petitioners No. 4, 5 and 6. They have even encashed these cheques which were given to them alongwith notices and thus they could not be permitted to challenge the action by way of this petition. It is also said that no relief can be granted to the Petitioners as it was contractual obligation and no reinstatement can be made. At best, the Petitioners can resort to the remedy of civil suit for wrongful termination of their services and may claim damages in this respect. The school, according to the Respondents, was established to impart a high degree education to the weaker sections of the society and was started initially in a rented premises with Nursery classes without any financial assistance from any quarter. It was only because of the efforts of Mrs. Pritpal Singh who nursed and developed this institution Due to ill-health of the Principal, Anr. person Ms. Chanderkanta Chadha was selected, who took over the charge in March 1995. During her period the school considerably improved its reputation. Ms. Indira Thakur and Ms. Prem Rathore, Petitioners No. 1 and 2 alongwith other teachers started instigating the colleagues and the members of the staff in order settle their score with the management. They started political activities in the school and the innocent students were made scapegoats. The Petitioners were constantly raising demands for the enhancement of their salary. In the year 1995, the salary of the staff as well as administrative staff was raised and the session started smoothly under the new Principal.

4. The trouble started when in August 1995 an association was formed by some members of the staff with the affiliation by CITU whose President was Mr. Rakesh Singha and a charter of demands was presented, which is Annexure R-I/3. The motive which is attributed to Ms. Indira Thakur, is that being unable to get the post of Principal, she masterminded the plans. There were constant threats to the management and lot of pressure was used resulting in meetings, dharnas, strikes and agitations. Even the Labour Department was put after the management and the parents too were not spared. Some negotiations were held as the demands were wholly unreasonable, same were not accepted. The association ultimately served an ultimatum asking for the decision of the demands by 14th August, 1995 as per Annexure R-I/4. Several instances of strike, dharnas, threats and exchange of letters have been mentioned from page 8 to 12 of the writ petition.

5. It is further said that a civil suit had to be filed against the Petitioners and the association and stay was obtained in November 1995 restraining the Petitioners from raising slogans, holding dharnas within fifty meters of the school premises and not to cause any nuisance or obstruction in the running of the school. The plaint and the order have been placed on record as Annexure R-I/11 and R-I/12. The management, during this period was obliged to advise the members of the association to refrain from such like activities and even inspite of the stay orders granted by the Civil Court, the association and the Petitioners made no improvement and instead aggravated steps.

6. It is said that this act and conduct on the part of the Petitioners resulted in gross indiscipline and students were misguided and pressure to join agitation alongwith parents was made. The matter was even reported to the police and the Petitioners failed to comply with the Court orders. Proceedings for Contempt of Court were also initiated which are stated to be pending.

7. According to the Respondents, no injustice has been done to the Petitioners and their services stood rightly and legally terminated. They were holding only temporary positions and none of them stood confirmed and as per terms and conditions of the appointment letters, the Petitioners were not entitled to be given any opportunity nor any enquiry was contemplated under the terms of the contract. The Petitioners are said to be wholly irregular in teaching the children and engaged themselves into the activities which were motivated and no care was taken to the requests and warning given by the management to them. The behaviour of the Petitioners thus was most unreasonable inasmuch as in total defiance of the instructions and directions given by the Respondents. Be that as it may.

8. The learned Counsel for the Petitioners contends that the termination orders impugned here in this petition are straightway liable to be quashed as these orders have been passed in total negation of the principles of natural justice and equity. The Petitioners are confirmed employees and there should have been a regular charge-sheet, notice and opportunity of being heard before inflicting this

punishment upon them According to the learned Counsel, all these Petitioners have served the institution for several years and have a rich experience in the field of education for the purposes of teaching and the Respondent-Management could not be permitted to play with their lives and career in the manner it has been done. It is contended that nothing has been said in the termination order as to the reasons for dispensing with their services. Learned Counsel has further pressed in service the observations made by the Hon'ble Supreme Court reported in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others* etc. etc., , *Unni Krishnan, J.P. and Ors. v. State of A.P. and Ors.* and an unreported decision given by this Court in Civil Writ Petition No 1049/95, decided on March, 1996. *Deep Chand SooJ v. State of Himachal Pradesh and Ors.* Learned Counsel has pressed that a writ of Mandamus can be issued against the Respondents and the petition cannot be thrown out simply on the ground that the Respondents are not a State or its agency as contemplated by Article 12 of the Constitution of India. Stress has been further laid on the words "any other person" appearing in the said Article. This case law has been cited to support this contention and it is argued that in these cases even though the Respondents were not a State but the writ was issued. It is said that the Respondents are discharging public functions and duties in the field of education and they are entitled to get the relief of reinstatement with all back wages after the termination orders are quashed.

9. Learned Counsel appearing for the Respondents Mr. K.D. Sood while opposing the petition submits, in reply, that the present writ petition could not be held to be maintainable as the Respondents are not a State nor performing any such duties or functions. It is contended that there is a contract of service between the parties and the petition arises out of the contractual obligations and no relief in the terms of reinstatement can be granted as per settled law. Learned Counsel has further high lighted the role of the Petitioners and their activities, particularly, the agitational approach for the fulfilment of their demands. Our attention has been drawn to several documents in the form of annexures that have been appended to the reply. According to the learned Counsel, there are no service rules in the institution and as per terms of the service conditions, the Petitioners who were not confirmed and were temporary hands, could be asked to go and for that purpose only a notice was needed to be sent and the salary in lieu thereof. Learned Counsel submits that it was after lot of deliberations that this extreme step was taken as the act and conduct of the Petitioners had brought the institution to a grinding halt resulting in the sufferings of the innocent students and the reputation of the institution.

10. After having heard the learned Counsel for the parties at length and after having gone through the pleadings and other relevant material placed on record as well as the case law cited at the Bar, we are of the opinion that no relief can

be granted to the Petitioners in these proceedings The Petitioners have to cross two hurdles on their way and only thereafter the merits can be examined as to whether any relief can be granted to them or not. The first question, thus, comes is whether the present writ petition against the Respondents, who are said to be neither State nor its instrumentality, is maintainable? If the answer to this question is given in the affirmative, the next question that arises is whether the reinstatement can be ordered after quashing the termination orders arising out of contractual obligations?

11. It cannot be lost sight of and would be most appropriate here at this stage to observe that nothing has been placed on record that the Petitioners are confirmed employees. The Petitioners have added these words by pen in the body of the petition and this has been vehemently denied by the other side. It was thus for the Petitioners to place on record and prove that their services were of permanent nature and they were not temporary employees In order to resolve the controversy, it has become necessary to reproduce here the order of appointment which the Respondents have made and the Petitioners have placed ii as Annexure P 2 at page 15 of the record. The relevant material is given in paras 1, 2 and 3 of this letter:

1. That this appointment shall initially be a temporary one till confirmed by the School Board of Governors at its discretion. During this period this appointment can be terminated by either side (you or the undersigned) by giving one month's notice or pay in lieu thereof and without assigning any reason.

2. That on confirmation you shall be entitled to a regular scale and all the benefits given to the confirmed employees of this school. After confirmation this appointment can be terminated by either side by giving three month's notice or pay in lieu thereof and without assigning any reason ordinarily after confirmation you will continue to serve in the position appointed till the age of superannuation as fixed by the School Board of Governors.

3. That you will draw pay as applicable to the category of staff in which you are appointed and as amended from time to time. At present you will be placed in the consolidated pay of Rs.100000 pm. after completion of one year service the scale will Rs. 1600/40-2300 (consolidated).

One more argument, the learned Counsel has advanced, is that the Petitioners had no option but to accept the terms of appointment and it was a contract between two unequals. Stress is being laid on the language of Clause (1), emphasis is being laid that this clause be declared void and violative of Section 23 of the Contract Act.

12. These are disputed questions and cannot be gone into under Article 226 of the Constitution of India. The Petitioners can seek this remedy in an appropriate forum in case it is so permitted under the law.

13. In view of the reading of the aforesaid appointment letter and the terms and

conditions of service, the Petitioners cannot be granted any relief as the contract was purely for rendering personal services. Such a contract cannot be specifically enforced. Six broad tests have been laid down by the Hon'ble Supreme Court in *Unni Krishnan's case* (supra), which were taken out from *Ajay Has's case* and it was held that applying the tests, it would not be possible to hold that private educational institutions, either by recognition or by affiliation to the University, could ever be called instrumentality of State. In the present case, the conceded position is that it is purely a private institution and receiving no aid from the State or any other quarter. Article 12 of the Constitution of India would come for the purposes of the enforcement of fundamental rights as given in the Constitution. It has not been shown as to how any fundamental right of the Petitioners has been put in cloud.

No doubt, under Article 226 of the Constitution it is not only to the statutory authorities or the instrumentalities of the State that a writ can be issued, but the same can be issued in appropriate case to any person or body performing public duties. The duties have to be looked into in the light of positive obligations. In a case of a situation, this Court would not hesitate in issuing appropriate writ order or direction as the exigencies of the situation may require. We find from the narration of events, as projected in the pleadings and other documents placed on record, that the Petitioners have rights which are purely of a private character and in our opinion, no *Mandamus* can be issued against the Respondents which is purely a private body. Even if we accept the proposition, as put forth by the learned Counsel for the Petitioners, that a writ petition against the present Respondents would be competent, the Petitioners in the instant case cannot come out of the second question when it comes to the grant of relief. Admittedly, no document has been placed to show that they are confirmed employees. Again, there is nothing on record to show that by any act or conduct on the part of the Respondents they were ever treated in that capacity. There was, thus, no reason to give any explanation or state the grounds in their termination order as to why their services are being put to end. The parties in the present case are to be governed by the letter of appointment laying down the terms and conditions therein. In a judgment rendered by the Hon'ble Supreme Court in *Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others*, it was held that even where the dismissal was wrongful, no order could be made which would have the effect of reinstatement in service. The dismissed employee would be entitled to claim a decree for damages.

14. Almost in an identical situation, the matter was examined by Hon'ble Division Bench of this Court in Civil Writ Petition No. 434 of 1993 along with bunch of other connected matters decided on January 14, 1994, *Rajender Vecta and Ors. v. Prem Public School and Ors.* After examining several decisions on the point, it was held that the Petitioners did not fall in any of the given exceptions and, therefore, were not entitled to any direction which would have the effect of the contract of their personal service being specifically enforced. They were held neither entitled to seek declaration under the contract of

personal service nor entitled to the directions against the management to take them back in service. Some reliefs were given to the Petitioners in those cases where the institutions, though private, were aided by the State funds or the State had some role to play or there was violation of some statutory rules.

15. Before parting, reference can usefully be made to the observations made by the Hon^{ble} Supreme Court in a case reported in 1990 Suppl (2) SCC 493, Integrated Rural Development Agency v. Ram Pyare Pandey. In this decision, it was ruled that a contract of employment cannot ordinarily be enforced by or against employer. The remedy was to sue for damages. It was also held that the grant of specific performance was purely discretionary and must be refused when not warranted by ends of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirement, Courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer. The exceptions to this rule may be of public servant dismissed from service in contravention of Article 311 of the Constitution. Their Lordships held that the High Court was not justified in granting the relief of reinstatement in service as also arrears of salary from the date of termination.

16. We cannot further refrain from observing that the act and conduct on the part of the Respondents, as projected in the reply which is based on several documents placed on record on their behalf, that the agitational approach of the Petitioners indulging in processions, slogans, shoutings and "Dharnas" is not expected from disciplined teachers. If they resort to such tactics and pressures, the deterioration in educational institutions which is already there, would further make the things worse. Such acts disrupt the studies of innocent children and further result in making them indisciplined class. It further appears that the matter is already being agitated before Courts of law and even the stay orders granted by the Courts, have not been respected. The institution had been brought to a very low ebb where the administration might have thought to dispense with the services of the Petitioners. In the peculiar situation of this kind, the Petitioners are held to be not entitled to any relief whatsoever from this Court. They may, if so advised and also if the law so permits, approach an appropriate forum for claiming damages for the wrong done to them.

In view of what has been said above, the writ petition is dismissed with no order as to costs.