

(2009) 09 P&H CK 0125
In the Punjab And Haryana At Chandigarh

Ms. Reema Talwar

APPELLANT

Vs

Chandigarh Administration and Others

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 156 PLR 595

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioner, who was working as permanent teacher in St. John's High School, Sector 26, Chandigarh (hereinafter referred to as "the respondent school"), has filed the instant petition for issuing writ in the nature of certiorari for setting aside the order dated 31.7.2009, whereby her services have been terminated by giving her one month salary, in view of the clause of the contract of service for teachers, when she was found guilty for giving corporal punishment to a child student in the Magisterial Enquiry,

2. It is the admitted position that the respondent school is a privately managed unaided institution, which is being administered by the Covenant of the Congregation of Christian Brothers, India. The petitioner was appointed as permanent teacher vide the contract of service for teachers dated 3.10.2007 (Annexure P-2). Clause 6 of this contract reads as under:

That now withstanding the conditions provided for in Clause 1 and 4 of this agreement it shall be competent to the Managing Committee, acting through the Head, to dispense with the services of the said Teacher immediately and without any notice whatsoever for gross misconduct, insubordination, corporal punishment or any other such act as may be considered inconsistent with and contrary to what is expected in a teacher of youth. The Teacher so dismissed without notice is entitled only to the salary of the current month upto the date of

dismissal. Should the teacher consider herself unjustly dismissed she may make representation to the Chairman of the Governing Body of the Congregation of Christian Brothers in India.

3. In this case, the petitioner is alleged to have inflicted corporal punishment on a child. The mother of the child made a complaint to the school authorities. The medical examination of the child was got conducted. When a hue and cry was made by the parents and guardians of the students of the school, the SDM (East) was asked to conduct preliminary enquiry. In the said preliminary enquiry, statements of various students and the petitioner were recorded. After considering the material, the SDM (East) submitted the report holding that the petitioner inflicted corporal punishment on a child. In view of the aforesaid preliminary report, the school authorities terminated the services of the petitioner, which action has been challenged by the petitioner in the instant petition.

4. In the petition, it is alleged that the petitioner did not give any slap or corporal punishment to the child, and he received injuries due to fall in the school. She has been falsely implicated in this case. It is further stated that in gross violation of principles of natural justice, the petitioner has been punished at the behest of the Chandigarh Administration, therefore, her termination order is liable to be quashed.

5. On a question of maintainability of the writ petition against a private person/institution, in a private dispute, particularly when an alternative remedy under the ordinary law of land is available, counsel for the petitioner, while relying upon the decisions of the Supreme Court in *Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others*, and *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, , argued that since by terminating the services of the petitioner, her fundamental right of livelihood has been infringed and the said termination order has been passed in gross violation of the principles of natural justice, therefore, the instant writ petition is maintainable.

6. After hearing counsel for the petitioner and going through the facts and circumstances of the case, I do not find any reason to entertain this petition, in view of the disputed questions of facts raised and availability of the alternative remedy under the ordinary law of land. The services of the petitioner have been terminated by the respondent school in terms of the contract of service. Admittedly, the respondent school is a privately managed un-aided institution, The dispute between the petitioner and the respondent school is private in nature. The grievance of the petitioner is not against any action of the State or its instrumentality, but is against the action of the private institution, for which the petitioner has an alternative remedy under the ordinary law of land. Even as per the contract of service, the petitioner has the remedy to make a representation to the Chairman of the Governing Body of the Congregation of Christian Brothers in India. Admittedly, the petitioner has not availed this remedy and has invoked the extra ordinary jurisdiction of this Court under Article 226 of

the Constitution of India. In my view, every termination results into hardship of the employee/workman and raises the issue of livelihood. In every such private dispute, a writ petition by the employee/workman, alleging that his/her illegal termination has resulted into violation of his/her fundamental right, cannot be entertained. Such employee/workman has been provided the remedy of redressal of his/her grievance under the ordinary law of land. It is true that rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not of compulsion, but in every case of violation of a right, wholly in a private dispute by a private person/institution, writ petition cannot be entertained on the ground that the said violation is against the principles of natural justice and violates the fundamental right of livelihood of the employee/workman. If the dispute is raised by the employee/workman against the action of the State or its instrumentality, the writ petition may be maintained, but in a wholly private dispute between two sets of private individuals unconnected with any State action, the writ should not be entertained. The present dispute is private one between two sets of private individuals. Merely because keeping in view the law and order problem, enquiry was held by the SDM, it cannot be said that the instant dispute is in connection with the State action. The judgments cited by learned Counsel for the petitioner are distinguishable. In both the judgments, actions of the State or its instrumentality were in question. In Kavalappara Kottarathil Kochunni's case (supra), the writ petition was filed under Article 32 of the Constitution of India, praying for issuing direction to the respondents to forebear from enforcing any of the provisions of the Madras Act 32 of 1955 against the petitioner and declare the same unconstitutional and invalid. In Harbans Lal Sahnia's case (supra), the action of termination of the dealership of the petitioner by the instrumentality of the State in gross violation of the principles of natural justice and effecting the right of livelihood of the dealer was challenged. As already stated above, in the instant case, the dispute is between two sets of two private individuals unconnected with any State action and the petitioner has the alternative remedy under the contract of service and under the ordinary law of land. Thus, the instant petition cannot be entertained, particularly when the disputed questions of facts have been raised in this petition. 7. In view of the above, without commenting any thing on the merits of the case, I am not inclined to entertain this petition.

Dismissed.

However, dismissal of this petition will not debar the petitioner from availing her alternative remedy under the ordinary law of land.