
(2008) 01 GAU CK 0022
In the Gauhati High Court

Mubarak Hussain and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2008) 1 GLT 615

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The challenge made in this writ petition by the two petitioners is the resolution of the School Managing Committee, by which, their services as teachers of Madrassa School have been dispensed with.

2. The petitioners joined the school called Bazia Gaon Anchalik M.E. Madrassa after they were appointed by the Managing Committee of the School by letters dated 11.12.87 and 19.2.94 respectively. Be it stated here that the school is at the venture stage and not a provincialised one. The petitioners have annexed Annexures-D and E inspection reports dated 27.6.1989 and 8.11.1990 furnished by Block Elementary Education Officer (BEEO) and Additional Deputy Inspector of Schools respectively. While by the first report recommendation was made for giving recognition to the school, by the second report recommendation was made for opening of additional classes, according approval to the appointments of the teachers and for provincialisation of the school.

3. By Annexures-F and G orders dated 30.3.1992 and 25.3.1994, the District Elementary Education Officer (DEEO) accorded approval to the proposals adopted by the Managing Committee of the School towards appointment of teachers including that of the petitioners. The petitioners are aggrieved by the resolution adopted by the Managing Committee of the School in its meeting held on 17.9.2004 dispensing with the services of the petitioners. Although, the copy of

the resolution has not been annexed to the writ petition, but the petitioner has annexed the Annexure-H letter dated 22.9.2004 addressed to the BEEO by the Headmaster/ Secretary of the Madrassa in which there is a reference to the said resolution. According to this letter, the resolution dated 17.9.2004 was adopted falsely indicating absence of the petitioners in the school for two years. According to the said letter two other persons have already been appointed in place of the petitioners.

4. It is the case of the petitioners that their services could not have been dispensed with in the manner and method in which the same has been done. Be it stated that the petitioners have not stated anything in the writ petition about the status of the Managing Committee of the School and as to whether it is amenable to writ jurisdiction.

5. The respondent No. 2 i.e. Director of Elementary Education, Assam as well as the respondents No. 4 and 5 i.e. the Headmaster and the Managing Committee of the School have filed their individual affidavits denying the contentions raised in the writ petition. In the affidavit filed by the respondent No. 2 it has been stated that the Managing Committee of the School is the sole authority in managing the affairs of the school and the matters relating to appointment, dismissal, finance etc. are under direct control of the Managing Committee and the Government has no jurisdiction in such matters.

6. In the affidavit filed by the respondents No. 4 and 5, it has been stated that the school being a private school being run and managed by its Managing Committee, is not amenable to writ jurisdiction, same being not an authority under Article 12 of the Constitution of India. Dealing with the merit of the case of the writ petitioners, it has been contended that the petitioners never attended their classes regularly ever since their appointment and eventually remained unauthorizedly absent with effect from 27.1.2002. In such a situation, the Managing Committee took resolution dated 2.10.2003 expressing concern on the resultant effect due to their such absence.

7. The respondents No. 4 and 5 have annexed the copy of the resolution dated 5.2.2004 adopted by the Managing Committee of the School dispensing with the services of the petitioners. Thus, contrary to the stand of the petitioners that their services were dispensed with vide resolution dated 17.9.2004, it is the resolution dated 5.2.2004, by which their services were dispensed with. In absence of any affidavit in reply filed by the petitioners, this stand of the Managing Committee of the School goes unrefuted. Consequently, the Annexure-H letter dated 22.9.2004 on which the petitioners have placed reliance will have to be understood in that context.

8. I have heard Mr. D.K. Saikia, learned Counsel for the petitioners as well as Mr. S.K. Das, learned Standing Counsel, Education Department. I have also heard Ms. S. Changkakati, learned Counsel led by Mr. P. Pathak, learned Sr. Counsel representing the respondents No. 4 and 5. While Mr. Saikia, referring to the fact

that the school has been recognized by the Directorate, submitted that in such a situation the services of the petitioners could not have been dispensed with by the Managing Committee without the approval of the Government, learned Counsel for the respondents questioned the very maintainability of the writ petition, the Managing Committee being a private body, whose action is under challenge.

9. Mr. Saikia, learned Counsel for the petitioner has placed reliance on the following decisions:

Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others,

K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another,

Dipak Kumar Biswas Vs. Director of Public Instruction and Others,

(1994) 1 GLR 202 : The Managing Committee, Silchar Collegiate School v. Devipada Bhattacharjee

2001 (2) GLT 361 : Dipankar Roy v. Principal & Secretary". Public College of Commerce.

2003 (3) GLT 555 : Tractor Farm Equipment Ltd. v. Secretary, Government of Assam.

10. All the aforesaid decisions have been pressed into service to buttress the argument that the instant writ petition is maintainable, though the action involved pertains to a private body, in the said decisions, the Courts, dealt with the question of maintainability of the writ petition in the touchstone of public duty involved and the positive obligation of the authority to the affected party.

11. In Tractor Farm Equipments Ltd. (supra), this Court has held that the World Bank being a financial institution and one of the United Nation specialized agencies performing a public duty is an authority under Article 226 of the Constitution of India. This case is of no help to the case of the petitioner. The petitioners cannot equate the Managing Committee of the School, a private body with that of World Bank discharging public duty.

12. In K. Krishnamacharyulu (supra), the Apex Court having found that the claim for parity in pay scales was based on Government instruction held that the employees of non-aided private educational institution had an enforceable right. Same is not the case in hand. Unlike the said case there is no creation of any right by the Government with consequential element of public interest requiring regulation of the conditions of service of the petitioners on a par with Government employees.

13. The case of Andi Mukta Sadguru (supra), is also of no help to the case of the petitioners. In that case, the writ petition was filed by the retrenched teachers of

a private aided college (a public trust) affiliated to University, unlike the present case, in which there is no such affiliation or any control of the Government over the Managing Committee of the School, whose action has been put to challenge. It has been held in the said case that no writ petition would lie in case of plea for specific performance of contractual service or declaration for continuation of service. In the said case, there was no prayer for putting the retrenched teachers back into the college. Same is the situation in *Dipankar Roy (supra)*, in which the writ petition was held to be maintainable having regard to the fact that the college was affiliated to the University and there was requirement of approval etc. of the Government.

14. It is not understood as to how the case of *Devipada Bhattacharjee (supra)* is of any assistance to the case of the petitioners, in which it has been held that a private institution, whether or not, it receives of grants-in-aid, if the right of the employees in the school is purely of a private character, the management performs no public duty and consequently, no writ would lie. Thus, this case rather supports the case of the respondents. In the said case, the Division Bench of this Court observed thus:

12. Although a private educational institution performs public duty in so far as imparting of education is concerned, it may not discharge public duty in other matters. The present case is purely of a private institution, and the management of the school is also a private body. Therefore, if the right of the employees in this school is purely of a private character, the management performs no public duty in this regard. The petitioner is an employee of a private body. He is not a civil servant nor a workman under the industrial law. This being the position, if the petitioner is directed to be reinstated in service it would be against the preponderant judicial pronouncement of the Court that a service contract cannot be specifically enforced. Therefore, the alleged right of the petitioner in this case is of a private character, and no mandamus can issue and no petition for mandamus will lie.

14. The next question which, therefore, arises for consideration is whether the principles of natural justice would be attracted in the present case. It has already been concluded that the school in question is a private institution (not Government aided school), and that the alleged rights of the petitioner are of purely a private character. Therefore, the law of master and servant shall apply in such a case. Thus being the situation, no prior notice or affording the servant of an opportunity to have his say is required before termination or dismissal. If the servant sues the master and the master satisfies the Court that the master was justified in terminating or dismissing the service, it will be sufficient. The view taken by us finds support from a decision in *Ridgway v. Hungerford Market* (1835) 3 Ad & EL 171. In that case, it was held that it was sufficient if, when the servant sued the master the master satisfied the Court that he was justified in terminating the service (see also *Halsbury's Law of England*, 4th Edition, Vol. 16, para 648). Therefore, the principle of natural justice is not attracted in such a

case.

15. In *Dipak Kr. Biswas (supra)*, the Apex Court held that the college in which the appellant was appointed as a lecturer was not a statutory body. In that case, the Director of Public Instruction had proceeded on the erroneous assumption that the Assam Aided College Employees Rules, 1960 and the Assam Aided College Management Rules, 1965 had been adopted by the State of Meghalaya. In such a situation, the Apex Court refused to accept the appellant's contention that he should be granted a declaration that he continues to be in service of the college. Thus, this case is also of no help to the case of the petitioners.

16. In the instant case, the school Managing Committee is not governed by any statutory rules, nor the termination of services of the petitioners required any approval of the Government. Thus, the decision to terminate the services of the petitioners was purely a private affair. It cannot be said to be a case of having any control of the State Government or its authorities on the Managing Committee and its action, not to speak of in the realm of all pervasiveness.

The Managing Committee being not an authority or even instrumentality of the State is not amenable to writ jurisdiction under Article 226 of the Constitution of India. Jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty. Writ is a public law remedy. In the instant case, neither the Managing Committee is a statutory body nor the employer-employee relationship involved any public duty. The School Managing Committee also did not have any control of the Government.

This is precisely the reason as why the termination order by way of resolution of the Managing Committee did not involve any approval or disapproval of any authority of the Government.

17. In the case of *Supriya Basu and Others Vs. West Bengal Hsg. Board and Others*, the Apex Court noticing that the society in question being not a department of the State and also not being a creature of a statute, but merely governed by a statute, upheld the decision of the High Court by which it was held that the writ petition was not maintainable as no statutory action had been assailed. It was noted by the High Court that the dispute involved in that proceeding essentially related to claims in the realm of private bodies. Same is the case in hand.

18. In the case of *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others*, the Apex Court noticing the various earlier judgments held the writ petition to be not maintainable. That was a case relating to termination of service of the workmen of the Mill in question, a co-operative society. It was argued that even if the Mill is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include a private person or body. After noticing

that the dispute did not involve any public function, the Apex Court held that the jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked. In the said case, the Apex Court summarized the expression "other authorities" after expressing a note of caution that it must be realized that it should not be stretched too far to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A note of caution was expressed that wide enlargement of the meaning must be tempered by wise limitation.

19. I now revert back to the plea of the petitioners that the resolution was adopted under pressure and that, they were in continuous service of the school till illegal dispensation of their services. The Annexure-H letter dated 22.9.2004 only refers to the purported resolution adopted on 17.9.2004 towards dispensation of the services of the petitioners. In the counter affidavit, the respondents No. 4 and 5 have annexed the copy of the resolution dated 5.2.2004 (Annexure-B) by which the services of the petitioners were dispensed with, with further resolution to appoint two other teachers in their place. It is also on record that the posts have already been filled up. Thus, the services of the petitioners were dispensed with by the resolutions adopted on 5.2.2004 and not 17.9.2004. The petitioners have not denied the plea of the respondents that the petitioners were irregular in their attendance and remained absent from the school from 27.1.2002. The endeavor made by the learned Counsel for the petitioners to show that the petitioners were present in the school by producing photocopies of some Attendance Register during the course of hearing cannot be given any credence.

20. Learned counsel for the respondents No. 4 and 5 has produced the records pertaining to the resolutions adopted by the Managing Committee of the School in its meeting held on 30.1.2003, 2. 10.2003, 5.2.2004 and 12.2.2004, which lend support to the case of the respondents. In fact, by resolution adopted on 12.2.2004, the posts earlier being held by the petitioners have been filled up by others namely Musstt. Mansura Sultana and Md. Azizul Hoque. In case of issuing direction for reinstatement of the petitioners, naturally the said two teachers would be affected, who are not party to this proceeding. If the petitioners were irregular in their attendance and remained unauthorisedly absent for more than two years, it cannot be said that the Managing Committee committed anything wrong in adopting the resolution dated 5.2.2004 to terminate the services of the petitioners. Said resolution is also not under challenge in this proceeding.

21. The plea of the petitioners that the purported resolution dated 17.9.2004 towards dispensing the services of the petitioners was adopted falsely and the same was communicated by the respondent No. 4 is also not acceptable. Firstly, there was no such resolution adopted on 17.9.2004 and secondly, the same very Headmaster/Secretary of the School, who had purportedly written the letter dated 22.9.2004 (Annexure-H) has sworn the affidavit filed on behalf of the respondents No. 4 and 5 justifying the action of the Managing Committee upon a

reference to the resolution dated 5.2.2004, by which the services of the petitioners were dispensed with. The said resolution dated 5.2.2004 was also signed by the respondent No. 4 in the capacity of Headmaster-cum-Secretary of the School. The stand of the respondents No. 4 and 5, as stated above, has gone unrefuted in absence of any affidavit-in-reply filed by the petitioners.

22. For all the foregoing reasons and conclusions, the writ petition merits dismissal, which I accordingly do.

Writ petition is dismissed, without, however, any order as to costs.