

(2015) 09 CHH CK 0003

In the Chhattisgarh High Court

Case No : WP Nos. 523 of 1999 and 1948 of 1996

Mukul Ranjan Ganguly and Others

APPELLANT

Vs

Board of Secondary Education and Teachers Training and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1(r)
Constitution of India, 1950 — Article 12, 226

Citation : (2016) 148 FLR 121

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : S.S. Rajput and A. Verma, for the Appellant; N.K. Shukla, Sr. Adv., Saurabh Sharma and T.N. Nande, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J—Petitioners were working as Teachers in the Salem English School, Raipur run by the respondent No. 1, which is an unit of Church of North India, the respondent No. 3. They are aggrieved by their termination by orders dated 25-4-1997 (in respect of petitioner Smt. Maya Ganguly) and 29-3-1996 (in respect of petitioner H.C. Bhattacharya).

2. Admittedly, the institution run by the Church of North India is not an aided institution, therefore, it is a private unaided minority educational institution. In that view of the matter, the issue fallen for consideration is - Whether a writ or direction under Article 226 of the Constitution of India can be issued against such private entity in matters concerning employer-employee or master-servant relationship between the petitioners and the said unaided private educational institution?

3. The law is well settled in "n" number of decisions that a writ would lie against any other "authority" even if it is not a state within the meaning of Article 12 of the Constitution of India, if the said authority discharges public functions and

there involved public law element in the dispute brought before the Court, however, when the grievance is personal in nature, the other authority not being a state, a writ or direction would not lie against the respondents.

4. The Supreme Court in *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, AIR 1998 SC 295 : (1997) 3 JT 455 : (1997) 2 SCALE 558 : (1997) 3 SCC 571 : (1997) SCC(L&S) 841 : (1997) 2 SCR 368 , has held that a writ petition is maintainable against a non-aided private educational institution when public law element is involved and the claim is based on the Government instructions.

5. Referring to the decision rendered in *K. Krishnamacharyulu (supra)*, the Supreme Court in *Sushmita Basu and Others v. Ballygunge Siksha Samity and Others*, has held thus in para 4:

4. In this context, we must also notice that the Writ Petition in the High Court is filed for the issue of a writ of mandamus directing a private educational institution to implement the recommendations of the Third Pay Commission including their implementation with retrospective effect. Even the decision relied on by learned counsel for the appellants, namely, *K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg.* shows that interference under Article 226 of the Constitution of India to issue a writ of mandamus by the court against a private educational institution like the first respondent herein, would be justified only if a public law element is involved and if it is only a private law remedy no Writ Petition would lie. We think that even going by the ratio of that decision, a writ of mandamus could not have been issued to the first respondent in this case.

6. Yet again the Supreme Court in *Mrs. Satimbla Sharma and Others Vs. St. Paul's Senior Secondary School and Others*, AIR 2011 SC 2926 : (2011) 130 FLR 1065 : (2011) 8 JT 611 : (2011) 9 SCALE 92 : (2011) 13 SCC 760 : (2011) 10 SCR 203 : (2011) 5 UJ 3460 : (2011) AIRSCW 4643 , referred to the decisions rendered in *K. Krishnamacharyulu (supra)* and *Sushmita Basu (supra)* and, thereafter, concluded that when the dispute brought before the writ Court against a private unaided educational institution does not fall within the domain of public law, but it involves employer and employee relation between the parties, a writ would not lie. It is held thus in para 11:

11. We also do not think that the Court could issue a mandamus to a private unaided school to pay the salary and allowances equal to the salary and allowances payable to teachers of Government schools or Government aided schools. This is because the salary and allowances of teachers of a private unaided school is a matter of contract between the school and the teacher and is not within the domain of public law. In *Sushmita Basu and Others Vs. Ballygunge Siksha Samity and Others*, (2006) 111 FLR 841 : (2006) 12 JT 205 : (2006) 9 SCALE 459 : (2006) 7 SCC 680 : (2006) SCC(L&S) 1741 : (2006) 7 SCR 506 Supp : (2007) 2 SLJ 210 , the teachers of a recognized private school known as Ballygunge Siksha Sadan in Calcutta filed a Writ Petition in the High Court of

Calcutta praying for issuance of writ of mandamus directing the authorities of the school to fix the salary of teaching and non-teaching staff of the school and to remove all anomalies in the scales of pay as recommended by the Third Pay Commission as extended to other Government aided schools and Government schools and this Court held that in the absence of statutory provision no such direction can be issued by the High Court under Article 226 of the Constitution. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid teachers of Government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of Government schools and therefore a mandamus could not be issued to pay to the teachers of private recognized unaided schools the same salary and allowances as were payable to Government institutions.

7. In the case at hand, before the impugned termination orders were issued against the petitioners, they had preferred civil suit seeking prohibitory injunction to restrain the school/management from suspending them and the matter went up to the High Court in Misc. Appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908. It is the case of the petitioners that they are governed under the 1968 Regulations framed by the Board of Secondary Education. Clause 78(3) of the Regulations provides for raising arbitration dispute. Thus, the statute provides for inbuilt grievance redressal mechanism and it is not a case where the petitioners are left without any remedy.

8. Learned counsel appearing for the petitioners have strenuously urged that when the writ petition is pending for about 19 years, relegating the petitioners to avail another remedy, at this stage, would itself amount to injustice.

9. This Court has all the sympathy for the petitioners, however, when it has no jurisdiction to entertain the writ petition, mere sympathy would not clothe this Court to issue writ/direction against the private entity when the subject dispute does not involve any public law element. Doing so would set a dangerous trend to entertain writ petitions purely on sympathy even in cases where the Court has no jurisdiction under Article 226 of the Constitution of India.

10. It is well settled proposition of law that the writ Court should not proceed unless it has jurisdiction to entertain the dispute.

11. Ex-consequencia, both the writ petitions are liable to be and are hereby dismissed, as not maintainable.

12. No order as to costs.