
(1998) 07 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 414 of 1993

N. Jogendra Kumar Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Constitution of India, 1950 — Article 12
Government Aided Private School Teachers (Discipline, Punishment and Appeal) Rules, 1975 — Rule 3
Manipur Grant-in-Aid Rules, 1977 — Rule 4(viii)(b)

Citation : (2001) 1 GLT 117

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : Kh. Chonjohn Singh, for the Appellant; A. Jagatchandra Singh and L. Nandakumar Singh, for the Respondent

Judgement

N.S. Singh, J.—In this writ petition, the Petitioner Mr. N. Jogendrakumar Singh, made a prayer for quashing the impugned order dated 20.1.1993 issued by the competent authority terminating him from his services with effect from 23.11.1992 (after noon) as in Annexure A/3 to the writ petition, coupled with a prayer for his reinstatement as Assistant Teacher of Chingangleam. Thamboumacha High School by contending inter alia, that he is a Bachelor Degree holder in Arts with Political Science and Philosophy under the Gauhati University in the year 1976 and had entered service as Assistant Graduate Teacher in Lamboikaongangkhang High School, Imphal. Now renamed as Chingamgbam Thamboumadha High School on 7.3.1983 and since then, he had been working in the said school till the impugned order of termination was communicated to him and, that the said school has already been a Govt. Aided institution since before his entry in service. The Petitioner also worked as Examiner of the Board of Secondary Education, Manipur, on requisition of his services as a teacher of the said school and apart from it, he completed 2 years; probationary period prescribed by Rule 5 of Section 1/Chapter IX of the Manipur

Education Code, 1982 long ago to the satisfaction of his employer. The Petitioner had been on leave on some occasions at intervals as he had been out of station twice in connection with the medical treatment of his wife, suffering from womb cancer at Tata Memorial Hospital Bombay, and also on account of the demise and Shradh ceremony of his mOrs. .

2. According to the writ Petitioner, on 10.2.1993, a copy of the impugned order of 20.1.1993 as in Annexure-A/3 to the writ petition was delivered to him by Respondent No. 5 namely, the Secretary of the Managing Committee of the Chingangbam Thamboumacha High School, Imphal, which is hereinafter referred to as School, informing the Petitioner that he has been terminated from service with effect from 23.11.1992 on the alleged grounds of unauthorised absence, negligence of duties and unsatisfactory performance of duties. It is also the case of the writ Petitioner that, the Petitioner has been condemned unheard for the alleged changes and no formality had been observed in issuing the impugned termination order with mala fide intention on the part of the Respondent No. 5 and some of his/their right hand men in the school, the instance of which, is that two new incumbents namely one Ch. Memo Devi, daughter of the Secretary of the Managing Committee himself and one P. Kamala Devi, daughter of a School Managing Committee member Shri P. Naren Singh, have been appointed as Assistant Teachers of the School for which approval has been sought for from the Inspector of Schools concerned (Respondent No. 4) soon after the issuance of the impugned termination order.

3. The case of the writ Petitioner is mainly contested by the Respondent No. 5 namely the said Secretary/Managing Committee of the school by filing counter affidavit and contending inter-alia, that the said school is purely a private school managed with the funds provided by the State-Respondents in respect of four teachers and one LDC, as lump sum grants and funds raised by the Managing Committee of the school and, as such, the Respondent No. 5 is not an authority within the meaning of Article 12 of the Constitution of India that the Managing Committee of the said school though constituted in terms of the Manipur Aided High and Higher Secondary Schools (Managing Committee Rules), 1977, which is purely an executive instruction issued by the Govt. for the purpose of efficient management of the schools for improving the standard of education and the Respondent No. 5 is not an authority within the meaning of Article 12 of the Constitution of India.

4. According to the Respondent No. 5, under the provisions of the Manipur Grant-in-Aid Rules, 1977, appointment of teachers whose pay and allowances are paid by the Govt. in terms of the Grant-in-aid Rules and that the same is also to be made on the recommendation of a Selection Committee constituted in terms of Rules 4(viii)(b) of the said rules and the services of such teachers appointed is commonly known as approved teachers and governed by the principles laid down under the Govt. Aided Private School Teacher (Discipline, Punishment and Appeal) Rules, but the Petitioner, being a teacher appointed by the Managing

Committee of the School, the service of the said teacher is not covered by any provisions of the Manipur Aided Private Teachers (Discipline, Punishment & Appeal) Rules and, as such, the Respondent No. 5 is not amenable to the writ jurisdiction.

5. Supporting the case of the writ Petitioner, Mr. Kh. Chonjohn Singh, learned Counsel contended, that the impugned order amounts to major penalty namely removing the Petitioner from services but the same has not been imposed by the punishing authority prescribed in Rule 3 of Section III of the Govt. Aided Private School Teachers (Discipline, Punishment & Appeal) Rules hereinafter referred to as Discipline, Punishment and Appeal Rules of the Manipur Education Code, 1982 and as such, the impugned order is incompetent and void-abinitio. It is also submitted by the learned Counsel that, principles of natural justice has been completely violated by the Respondent No. 5 inasmuch as, procedure for imposing penalties prescribed under Rule 5, Section III of the said Code of 1982, have not been followed and complied with at all and the writ Petitioner has been totally condemned unheard in the matter.

6. According to Mr. Chonjohn, the said school authority/Respondent No. 5 is amenable to the writ jurisdiction as the said school is a Govt. recognised and aided high school, giving instructions in secondary education and preparing students for matriculation or High School Leaving Certificate Examinations (HSLC) and the Managing Committee of such recognised aided high school means the body of individuals who are entrusted with the management of any such recognised aided educational institution and the said school has also been recognised by the Board of Secondary Education, Manipur, and, as such, the school is therefore governed by Manipur Secondary Education Act, 1972 and the Manipur School Education Act, 1979. Supporting this contention, Mr. Chonjohn had relied upon three decisions of the Apex Court rendered in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, ; Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, ; and Miss Raj Soni Vs. Air Officer in Charge Administration and another, and submitted, that employees of non-aided private educational institution seeking parity in pay scales with employees of Govt. instructions have an enforceable legal right and there is an enforceable legal right and there is an element of public interest because there is a right to education and, any person or authority performing public duty and owing positive obligation to the affected party is amenable to writ jurisdiction and, when any authority is required to act in a particular manner under a statute, it has no option but to follow the statute and the authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India.

7. Mr. Chonjohn further argued, that the competent authority/Inspector of Schools concerned (Respondent No. 4), issued an office order dated 26.3.1993 as in Annexure A/5 to the writ petition by holding that the termination of the

services of the writ Petitioner is unfounded and baseless under the grant-in-aid rule, thus, refusing to approve the impugned termination order and directing the Respondent No. 5 to revoke the impugned termination order without affecting his services, but that was not followed by Respondent No. 5.

8. At the hearing, Mr. L. Nandakumar Singh, the learned senior Counsel for the Respondent No. 5 contended, that the said school is purely a private school managed with the funds provided by the State-Respondents in respect of four teachers and one LDC as a lumpsum grants and funds and as such, the Respondent No. 5 is not an authority within the meaning of Article 12 of the Constitution of India. The learned senior Counsel also submitted, that the writ Petitioner being a teacher appointed by the Managing Committee of the school, his service is not covered by any provisions of the Discipline, Punishment & Appeal Rules and the writ Petitioner is not at all an approved teacher as seen in the document marked Annexure R/1 to the counter affidavit supporting his arguments, Shri L Nandakumar Singh has drawn my attention to a decision of the Apex Court rendered in the State of Assam and Another Vs. Ajit Kumar Sharma and Others, and submitted, that the employees of aided institution cannot seek enforcement or non-enforcement of rules in nature of administrative instructions without any statutory force by maintaining writ petition as the said rules confer no right on them. Referring to an Ors. decision of the Apex Court rendered in Chander Mohan Khanna, Appellant v. The National Council of Educational Research & Training and Ors. Respondents reported in AIR 1922 SC 76, Mr. L. Nandakumar Singh, learned senior Counsel submitted, that the organisation having activities comprising undertaking of programmes and activities connected with co-ordination of research services and training not wholly related to governmental functions though the Govt. control with regard to the proper utilisation of the Govt. grant, one source of income, such organisation is not State under Article 12 of the Constitution of India. Here, in the instance case also, the said school is a private aided school and, as such, it is not within the purview of Article 12 of the Constitution of India and it is not amenable under writ jurisdiction. Mr. L. Nandakumar Singh argued.

9. Now, this Court is to examine as to whether the Respondent No. 5 is amenable to writ jurisdiction and the same is within the purview of Article 12 of the Constitution of India or not and, whether, the writ Petitioner has an enforceable legal right in the instant case or not?

10. First, this Court is also to examine as to whether public interest element emerges in the instant case and there is interest created by the Govt. in the said school to impart education and the writ Petitioner as an Assistant Teacher (now terminated), who impart education, get an element of public interest in the performance of his duties, and whether, the said school is under statutory obligation, apply and follow the provisions of the related Act and Rules.

11. From the available materials on record, it has been revealed that the said school is a Govt. recognised and aided high school, giving instructions in

secondary education and preparing students for matriculation or HSLC examination and the Managing Committee of the said school is being entrusted with the management of the said aided school which has been recognised by the Board of Secondary Education, Manipur for the purpose of admission to the privileges of the said Board and the same is governed by the Manipur Secondary Education Act, 1972 and Manipur School Education Act, 1979. The said school is an institution receiving recurring grants-in-aid from the Govt. and, as such, it is not a private institution. Apart from it, the Managing Committee of the said school is governed by the Manipur Aided Secondary School (Managing Committee) Rules, 1975 and the formation of the said Managing Committee has been approved by the Inspector of Schools concerned and, that the Respondent No. 5 is a body created/constituted by or under the said Manipur Secondary School Education Act, 1972 and the Manipur School Education Act, 1979 and the related rules thereunder and as such, it is not a private institution but an aided high school and the teachers of the said school impart education. Hence, in my considered view, there is an interest created by the Govt. of Manipur in the said school impart education which is a fundamental right of the citizens and the teachers of the said school who impart education get an element of public interest in the performance of their duties. Over and above this, the said school is required to act in a particular manner under the Manipur Secondary Education Act, 1972 and Manipur School Education Act, 1979 as the said school is governed by the said statute. Therefore, the submission of Mr. L. Nanda Kumar Singh, that the said school is a private school holds a little water as the said school is not managed by a private Managing Committee but the Respondent No. 5 is functionary under the aforesaid Acts.

12. So far, the decision of the Apex Court relied upon by Mr. L. Nandakumar Singh, the learned senior Counsel, rendered in the State of Assam and Anr. Appellants v. Ajit Kumar Sarma and Ors. Respondents reported in State of Assam and Another Vs. Ajit Kumar Sharma and Others, , the Apex Court did not interfere with the order of the High Court in so far as it is against the governing body of the college namely Hanidque Girls College, Gauhati, which is a private college at the relevant time teaching upto B.A. standard and affiliated to the Gauhati University at the relevant period. In the said case, the Apex Court held, that the High Court was in error in granting a writ of mandamus against the State through the Director once it found that the rules had no statutory force and were mere administrative instructions for the purpose of giving grant-in-aid to private colleges and, where such conditions of grant-in-aid are laid down by mere executive instructions, it is open to a private college to accept those instructions or not to accept them. In my considered view, the facts of the said case is quite different from the instant case and, as such, the said decision does not help the case of the Respondent No. 5.

13. In the present case in hand, the Petitioner being a teacher of such recognised school has also been assigned by the Board of Secondary Education, Manipur, with the duty for evaluation of answer scripts of HSLC examination

every year in respect of civic paper as seen in the document marked Annexure A/10 to the rejoinder affidavit There is also control of the State Respondents over the management and policies of the Respondent No. 5 inasmuch as, the Inspector of Schools concerned can dissolve the Managing Committee and constitute an ad-hoc Committee in its place for various reasons including violation of the orders of the Govt. by the Managing Committee. From these existing facts and circumstances, it can be easily arrived at the conclusion that though the financial contribution in the form of grant-in-aid to the said school is not conclusive for determination of Respondent No. 5 as State under Article 12 of the Constitution, there is combination of State-Respondents aid coupled with material degree of control over the management and policies of the Respondent No. 5 which has been rendering an important public service, the Respondent No. 5 is within the meaning of "Authority under the Article 12 of the Constitution of India, and, as such, the Respondent No. 5 cannot defy those statutes mentioned above on the pretext that it is neither a State nor an "authority under Article 12 of the Constitution of India.

14. There is also specific order from the end of the competent authority/ Inspector of School concerned for revocation of the said impugned termination order by holding that the impugned termination order is unfounded as seen in the document mark Annexure A/5 to the writ petition.

15. On bare perusal of the impugned order dated 20.1.1993, it has been revealed that the writ Petitioner was terminated from service with retrospective effect i.e. on and from 23.11.1992 (afternoon) as the impugned order was issued on 20.1.1993, which in my considered view it is not tenable in the eye of law. That termination order was also made on the charges of unauthorised absence, negligence of duties, and unsatisfactory performance of duties levelled against the writ Petitioner but he was not afforded any opportunity of being heard by the authority concerned before the impugned termination order was issued. At this stage, I hereby recall the words of Prof Mr. H.W.R. Wade who stated in his book "Administrative Laws" as here under:

Where an administrative act or decision is vitiated by a breach of natural justice, the Court may award any appropriate remedies. The remedy will frequently be certioraris to quash, on the footing that the vitiated decision is void and a nullity.

Traditionally natural justice has been confined to the two rules now to be discussed: that a man may not be judge in his own cause; and that a man's defence must always be fairly heard. It has not, as yet included the requirement that reasons should be given for decisions. On the Ors. hand there is an isolated judicial statement that natural justice requires decision to be based on some evidence of probative value. The Courts are not so conscious of natural justice that they may well extend its scope in both these directions.

How far can this obvious principle of justice be transplanted from its native judicial soil into the territory of administrative? Can the Courts impose an

administrative technique to their own devising by laying down standards, and are there any standards of universal validity? The answer is that the Courts have succeeded in enforcing the principle very widely, broadly speaking in all cases where legal rights or status are affected by the exercise of administrative power, saving only cases where the difficulty is insuperable.; and that, accordingly, natural justice has become a doctrine with a high degree of universality. It does not follow that it need be modeled strictly on Court procedure; hearings need not always be oral hearings, nor need sources of evidence always be disclosed. But in general the notion of a fair hearing extends to the right to have notice of the Ors. side's case, the right to bring evidence and the right to argue.

16. Applying all these established principles of law as mentioned above, and also on perusal of the available materials on record, I am of the view that the impugned order of 20.1.1993 is arbitrary and violative of the principles of natural justice and accordingly it is not tenable in the eye of law. Hence, impugned termination order is hereby quashed. The Respondents, particularly Respondent No. 5 is directed to take back the Petitioner into service forthwith. It is made clear that the Petitioner shall not be entitled for his arrear/back salaries of the principle of, "No Work, No Pay". However, the period from the date of termination of the services of the writ Petitioner till the date of his reinstatement, shall be counted for Ors. service benefits like, seniority.

For the reasons, observations and directions made above, this writ petition is allowed with a costs of Rs. 5,000 to be paid by the Respondent No. 5 to the Petitioner within a month from today.