

(2013) 02 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 6940 of 2013

Nand Kishore

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Citation : (2013) 4 AWC 4020

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : R.S. Yadav, for the Appellant;

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Ram Sagar Yadav, learned counsel for the petitioner. The petitioner claims to have been appointed as a Faculty in the institution on the post of a Full Time Instructor for imparting computer courses. The services of the petitioner have been dispensed with, and aggrieved, the petitioner is before this Court.

2. The background in which the petitioner's engagement came to be made in the Institution in question is that the State Government came up with a scheme of providing free computer education, instructions and training in Intermediate Colleges recognized under the U.P. Intermediate Education Act, 1921 for which purpose the State Government through the Director of Education proceeded to engage Private Agencies and the same was outsourced in terms of the agreement dated 20th of December, 2010. A copy of the said agreement between the Director of Education and the Uttar Pradesh Development System Corporation Limited, Uptron Building, Second Floor Gomti Nagar, Lucknow and other Telecommunications Consultants India Limited has been placed before the Court.

3. The respondent No. 4 is a Private Limited Company that has outsourced the petitioner to the Institution, namely, Lal Bahadur Shastri Smarak Inter College Mandholi. District Rampur. The petitioner was continuing but his services have

been dispensed with on the asking of the Principal of the Institution by the respondent-company and aggrieved the petitioner is before this Court.

4. On a query raised by the Court with regard to maintainability of the writ petition in relation to the nature of the engagement of the petitioner, learned counsel submits that a writ petition would also lie keeping in view the provisions of Article 12 of the Constitution of India as also the nature of the agreement which can be supported on the strength of statutory provisions. He, therefore, submits that the dispensation of the petitioner's services even though contractual can be subjected to judicial scrutiny under Article 226 of the Constitution of India.

5. Sri Yadav has relied on the decision of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , and the judgment in the case of Popcorn Entertainment and Another Vs. City Industrial Development Corpn. and Another, . to contend that keeping in view the ratio of the said decisions a writ petition would be maintainable, inasmuch as, even if there is no statutory provision, the respondents are bound to observe the principles of natural justice which have been clearly violated in the present case. He has also invited the attention of the court to the Circular issued by the Director of Education dated 7th of December, 2009 to contend that the engagement has been made pursuant to the aforesaid circular and, therefore, It stands statutorily protected, hence, the writ petition Is maintainable.

6. I have carefully perused the agreement as well as the circular issued by the Director of Education and it provides that the Private Limited Company would be obliged to provide a Full Time Instructor. It also provides that the Company will take full responsibility of such engagement and shall also make the payments to such faculty. Not only this, the installation and commissioning has to be done by the Company at its own cost and the entire operation is to be carried out on the terms and conditions as agreed by between the Director and the Private Limited Company.

7. It is in this context that the circular was issued by the Director on 7th of December, 2009. There is however no clause which may indicate any State control or control of the authorities including that of the institution over such a faculty. The Instructor so appointed is, therefore, fully within the control of the Private Limited Company and is not governed by any statutory rules or any instructions. The decisions which have been relied upon by the learned counsel for the petitioner arose out of certain statutory provisions either under the Trade and Merchandise Act or under Rules of a Government Corporation. None of the said contingencies exist in the present case. The question of violation of principles of natural Justice, therefore, does not get attracted on the strength of the decisions which have been relied upon by the Sri Yadav.

8. Learned counsel then contends that a similar writ petition has been entertained being writ petition No. 49186 of 2012 in which directions have been

issued to exchange affidavits.

9. In view of the reasons given hereinabove, I am not persuaded by the said order passed by the learned single Judge keeping in view the fact that our own court has clearly ruled in the case of M.K. Gandhi and Others Vs. Director of Education (Secondary) and Others, , as modified by the judgment in the same case by the Apex Court that such a contractual engagement or employment cannot attract the writ jurisdiction of this Court. The writ petition is not maintainable and is accordingly dismissed.