

(2011) 02 CHH CK 0004
In the Chhattisgarh High Court
Case No : Writ Petition No. 3355 of 2003

Narendra Kumar Tiwari

APPELLANT

Vs

Regional Secretary and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2011) 02 CHH CK 0004

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The Petitioner seeks a direction to the Respondents to allow the Petitioner to work with them and further, to grant backwages including arrears and other service benefits.

2. The facts, in brief, as projected by the Petitioner, is that the Petitioner was appointed as Lower Division Teacher in Gurudev Vidya Mandir, Manendragarh, and was posted there upto the year 1989. Thereafter, he was transferred to Saraswati Shishu Mandir, West Chirmiri and the Petitioner remained at West Chirmiri, till 11.7.2002. Due to his and his wife's illness, he was on leave from 12.7.2002 to 14.7.2002 for three days. During this period, the transfer order dated 04.07.2002 (Annexure P/1) was passed transferring the Petitioner from West Chirmiri to Saraswati Shishu Mandir, Kusmi. The Petitioner, thereafter attempted to join his duty at West Chirmiri but he was declined. Thus, this petition.

3. Ms. Pushpa Dwivedi, learned Counsel appearing for the Petitioner would submit that the impugned transfer order was passed during his illness and as such, the same was illegal and on the basis of the order passed on 04.07.2002, the Petitioner could not have been asked to join the new place of posting. Thus, the Respondent authorities be directed to permit the Petitioner to join at

Saraswati Shishu Mandir, West Chirmiri and consequential benefits of arrears of pay and other service benefits may be granted to the Petitioner. Ms. Dwivedi would further submit that the Petitioner has also sent a legal notice to the Respondents on 24.03.2003 (Annexure P/5). Ms. Dwivedi would rely on Clause 21.1 of the service code of Saraswati Shiksha Sansthan, Madhya Pradesh in support of her contention. She would further rely on a decision of the Supreme Court in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, .

4. None appears on behalf of Respondent No. 1 to 3, despite service of notice. However, in their reply, the Respondents rely on a decision of the Supreme Court in Executive Committee of Vaish Degree College Samiti v. Laxmi Narain AIR 1976 SC 888 and Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, , to oppose maintainability of this petition under Article 226 of the Constitution of India.

5. Heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. With regard to maintainability of the writ petition, the Supreme Court, in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, , held as under:

4. ?We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek, enforcement of the orders issued by the Government. The question is asto which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide.

7. In Executive Committee of Vaish Degree College Samiti AIR 1976 SC 888 and Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi, , the issue involved was whether the Principal of the College who was terminated, is entitled to the benefit of provisions of Article 311 of the Constitution of India. Thus, the same is not applicable to the facts of the case wherein the Respondents have raised the question of maintainability and not the applicability of the statutory provisions. The question with regard to maintainability was neither in issue nor discussed in the above judgments.

8. Thus, the petition filed by the employee of a private institute which is providing educational opportunities to the children, is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

9. On perusal, it is found that the application dated 11.7.2002 (Annexure P/2) for grant of leave was rejected on the ground that the Petitioner had already been

transferred, by the Principal, Saraswati Shishu Mandir, West Chirmiri. The Petitioner has further not produced any document to indicate that he was on leave on 04.07.2002, when the transfer order was passed. Contention of the Petitioner that he could not have been transferred as he was holding the post of Varistha Acharya under the provisions of service code of Saraswati Shiksha Sansthan, Madhya Pradesh, is rejected. Clause 21.2 of the service code clearly states that on administrative ground, the Principal or Acharya can be transferred in public interest. Clause 21.1 provides that in normal course, there should not be transfer, but that does not restrict or prohibit transfer of Acharya and Principal in public interest and administrative exigency.

10. Clause 21 of the Service Code, reads as under:

11. Except the self-same statement that the Petitioner was on leave from 12.7.2002 to 14.7.2002, no other document has been produced to indicate that the Petitioner, was on leave with prior permission. Even otherwise, the impugned transfer order was passed on 04.07.2002 when the Petitioner was not on leave and the Petitioner had made application for leave on 11.7.2002, which was not granted. Thus, there is no illegality or infirmity in the impugned order.

12. For the reasons mentioned hereinabove, there is no merit in the case and the petition is dismissed.

13. No order asto costs.