

(1998) 08 MP CK 0016
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1118 of 1995

Neeti Bhan

APPELLANT

Vs

Miss Hill Education Society and Others

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya
Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 2, 6
Madhya Pradesh Ashaskiya School Viniyaman Adhiniyam, 1975 — Section 9(2), 9(3),
9(4)

Citation : (1999) 1 MPLJ 23

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : N.K. Mody, for the Appellant; R.D. Jain and Sandeep Dubey, for
Respondent Nos. 1 and 3 and R.K. Vashistha, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.P. Srivastava, J.

Feeling aggrieved by the order passed by the Management of the "Miss Hill School" terminating her service, the petitioner who had been employed in that "school" as an Assistant Teacher has now approached this Court seeking redress praying for the quashing of the order and for her reinstatement in service with full back wages.

I have heard the learned counsel for the petitioner and the learned counsel representing the respondents.

In this case the respondent society running and managing the school as well as the Principal of the School and the State of Madhya Pradesh, who have been arrayed as respondents, have filed separate counter-affidavits/returns in opposition to the writ petition.

The facts in brief, shorn of details and necessary for the disposal of this case lie in a narrow compass. The petitioner is a graduate from Jaipur University. Applications had been invited by the Management running and managing the school from eligible lady candidates having at least five years experience of serving Nursery schools of repute for appointment as a teacher. The petitioner was selected and granted an appointment in the time scale of pay of Rs. 545-10-575-15-800-20-900-25-925 with other allowances sanctioned by the Government from time to time. This appointment was indicated to be of a temporary nature and only upto 30-4-1986. It could be terminated even before this date subject to the need of the school. The petitioner was directed to report for duty in the nursery unit.

The Management finding the work and conduct of the petitioner to be satisfactory continued her to be in service, with the result that the conditions indicated in her appointment letter lost their significance as will be apparent from the certificate issued by the Principal of the school, counter-signed by the Deputy Director of Education. The certificate dated 1-10-1993, duly countersigned by the Deputy Director of Education, Gwalior, a copy of which has been filed as Annexure P-5, shows that the petitioner had been continuously working in the "school" from 24-7-1985 and drawing a salary of Rs. 2,416/- including allowances being placed in the grade of Rs. 1200-2040. An other certificate, a copy of which has been filed as Annexure P-4, issued in the year 1995 shows that she was continuing to be paid salary in the time scale of pay of Rs. 1200-2040 and getting a basic pay of Rs. 1,360/-. It was certified that she had full command over the subject and control on the students, and was studious, hardworking and punctual. The Principal testified that she was popular in the students and had the capacity to co-ordinate with the parents for the all round development of their wards. 5-A. It may be noticed that in the counter-affidavit filed by the respondents Nos. 1 and 3 it has not been disputed that the petitioner had to her credit all the minimum educational qualifications and satisfied the eligibility criteria for appointment as an Assistant teacher. She has been continued to be in service for a period of more than ten years and her work and conduct has been found to be satisfactory throughout. There is no grievance against her on this count.

The services of the petitioner were however terminated vide the order dated 31-7-1995 on the ground that they were no more required after 31-8-1995. The Management in its counter-affidavit/return has taken up the stand that the services of the petitioner were not protected by statutory rules and no grant-in-aid was paid by the State for payment of salary to her. She was, it is claimed, an unrecognised and unapproved teacher and as such no statutory protection was available to her. It has also been asserted that the respondent-institution is not an "authority" within the meaning of Article 12 of the Constitution of India and the writ petition is not maintainable. It has further been asserted that the institution is not in a position to bear the financial burden and hence the services of the petitioner were terminated.

In the counter-affidavit/return filed by the State it is not disputed that "school" is being run by the respondents Nos. 1 and 3 and this "school" was getting grant-in-aid from the Government only for the approved teachers and for other administrative purposes. The petitioner was not an approved teacher therefore no grant in aid had been given by the State to the respondents Nos. 1 and 3 to meet the payment made to the petitioner. It has been further asserted that the petitioner was not entitled to protection of the provisions of M. P. Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 and the protection envisaged u/s 6 of the said Act cannot be extended to her.

7-A. The copies of the documents filed by the aforesaid respondent, as Annexures to its counter-affidavit/return, however, unmistakably indicate that the "school" in question was at the relevant time i.e. in the year 1985 when the petitioner had been appointed, being run in the name and style of "Miss Hill Primary School" and the payment admissible to a teacher of the category of the petitioner was being made in the time-scale of pay as provided to the petitioner.

The petitioner has filed a rejoinder-affidavit. She has asserted that the claim of the respondents Nos. 1 and 3 that her services were terminated on the ground that the petitioner was unable to bear the financial burden was absolutely false. It has been pointed out that in the year 1995 itself the management had appointed six new teachers and lakhs of rupees had been spent by the management on furniture and fixtures and an amount of Rs. ten lakhs had been spent by it on renovation.

On the pleadings of the parties as indicated above the question which arises for consideration is as to whether the petitioner is entitled to any security of tenure under the law which may entitle her to get. any relief in the present proceedings.

In the aforesaid connection it may be noticed that "The Madhya Pradesh Ashaskiya School Adhiniyam, 1975" was enforced op 27-10-1975 with its publication in the M. P. Gazette extraordinary. It was enforced to provide regulation of Ashaskiya schools in the State of Madhya Pradesh and for the better organisation, development and matters connected therewith or incidental thereto.

The expression "school" has been defined under this Act in Section 2(g) and has in its ambit an Ashaskiya Primary School also. The provision contained in Section 8 of the Act provides that no school other than a recognised school and new school awaiting recognition in accordance with the provisions of the Act shall have the word "school" or its equivalent in any Indian language as a part of its name.

In the present case, the institution in question has the word "school" as a part of its name. This is evident from the certificate, a copy of which has been filed as Annexure P-5, to the writ petition which has been counter-signed by the Deputy Director of Education and also apparent from the copies of the documents filed by the State along with its return. In fact, the State has clearly admitted the

status of the Institution in question to be that of a primary "school" as envisaged under the aforesaid Act.

12-A. It is, therefore, obvious that the "school" wherein the petitioner had been granted an appointment was a recognised school as envisaged under the provisions of the Act of 1975.

The provisions contained in Section 9(2), (3) and (4) of the aforesaid Act are to the following effect:-

"9,...

(2) No existing employee or employee of a recognised school shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated save in accordance with the rules made in this behalf.

(3) Any existing employee or employee of a recognised school who is dismissed, removed or reduced in rank may within thirty days from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted u/s 11.

(4) If an existing employee or employee who is placed under suspension continues to be so for more than three months he may make an application for revision to the Director. After giving opportunity of being heard to the parties concerned, the Director shall pass such orders thereon as he may deem fit."

The implications arising u/s 9(2) of the Act, clearly, it seems to me, provide a statutory protection to an employee of a recognised school, falling in the category of the petitioner. It may be noticed that as clarified u/s 6(2) of the Act any recognition granted under sub-section (1) of Section 6 of the Act could not by itself entitle any school to receive aid from the State. This obviously meant that while the State could not be saddled with any responsibility in regard to the payment of salary etc. admissible to a teacher yet the teacher appointed in a recognised "school" stood provided with a security of tenure and protection envisaged u/s 9(2) of the Act.

A perusal of the various provisions of the M. P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978, for short "the Act of 1978", indicates a legislative policy specifically meant for a different category of teachers as compared to the category of teachers contemplated under the Legislative policy underlying the provisions of Madhya Pradesh Ashashkiya School Viniyaman Adhiniyam, 1975, for short "the Act of 1975", which had been brought into effect after obtaining the assent of the President. In the Act of 1978, the word "teacher" has been defined u/s 2(i) of the Act which means a teacher of an institution in respect of whose employment maintenance grant is paid by the State Government or the Ayog, as the case may be, to the institution and includes any other teacher employed, with the prior approval of the authority specified by the State Government in this behalf, in fulfilment of the conditions of recognition/affiliation of an institution or of a

new subject or a higher class or a new section in the existing class by the Madhya Pradesh Board of Secondary Education or any University or the Ayog, as the case may be, and shown on the pay roll of the institution against a post as being in the employment as such but does not include a teacher whose appointment is disapproved under clause (c) of Section 6.

The provision contained in Section 3 of the Act of 1978 saddles the State Government with the liability in respect of payment of the salary etc. to a teacher falling within the ambit of Section 2(i) of the Act. Since the liability in this regard stands fastened on the State Government various conditions stand imposed under the Act and the Rules framed thereunder regulating recruitment, appointment and creation of post. Section 6(iii) of the Act of 1978 provides a statutory protection to a teacher falling within the ambit of Section 2(i) of the Act in the matters relating to security of tenure ensuring that such a teacher is not dismissed or removed from service without the prior approval of the Competent Authority and is provided other service benefits as specified under the Act and the rules ensuring security of tenure.

It seems to me, that the teachers envisaged under the Act of 1975 and under the Act of 1978 are of entirely different categories. For a teacher envisaged under the Act of 1975 even though the State Government does not stand saddled with any responsibility in regard to payment of salary etc. to such a teacher, yet a security of tenure stands provided to such a teacher to ensure efficient discharge of the duties attached to a post of a teacher without any threat or hindrance, harassment or victimisation.

In the circumstances, the mere fact that the petitioner did not fall within the ambit of the definition of a "teacher" as envisaged under the provisions contained in the Act of 1978 cannot come to the rescue of the respondent-management and protect it as against any order visiting a teacher with an evil consequence affecting the security of tenure provided to him as noticed hereinabove.

It may be noticed, at this stage, that the restraint envisaged u/s 6 of the Act of 1978 in regard to the creation of a post of a teacher has to be read with reference to the definition of "teacher" as envisaged u/s 2(i) of the Act and Section 6(a)(i) of the Act of 1978 and the purpose behind it is to prevent a situation where the Government is unnecessarily without any justification burdened or saddled with a liability in regard to the payment of salary etc. to an incumbent appointed on such a post created otherwise than as provided for. In a case, where such a situation does not arise and the management of the institution has to pay the salary etc. to a teacher out of its own resources, there is no bar in creating a post as the payment in respect thereof has to be made by the Management without putting any burden on the State. But, once an appointment is made and there is nothing to indicate that the appointment is contrary to any statutory provision, the appointee teacher becomes entitled to have a statutory protection in regard to the security of tenure as envisaged

under the Act of 1975 and such a teacher cannot be dealt with in an arbitrary manner adopting the rule of "hire and fire."

The learned counsel for the contesting respondents have strenuously urged that the writ petition is not maintainable as the respondent-society does not fall within the ambit of Article 12 of the Constitution. In this connection suffice it to say that in the decision of this Court in the case of *Dinesh Kumar Sharma v. M. P. Dugdha Mahasangh Sahkari Maryadit and Anr.*, rendered by a Full Bench of this Court, reported in 1993 MPLJ 786 : 1993 JLJ 512, this Court had after considering the various decisions of the Apex Court had clarified that to be enforceable by mandamus a public duty does not necessarily have to be imposed by a statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice where it is found. Technicalities should not come in the way of granting that relief under Article 226. Deriving support from the observations made by the Apex Court to the effect as indicated above in its decision in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Full Bench of this Court had approved the view expressed by the Division Bench of this Court in the case of *Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others*, wherein after holding that the society was not an "authority" under Article 12, it was held that normally such societies will not be amenable to writ jurisdiction of the High Court except in cases where according to the provisions of the Statute or rule or regulations framed under the Act by which the Society is governed, there is a statutory or public duty imposed on it, and the enforcement of which is being sought. The Division Bench had further observed that Article 226 of the Constitution provides that every High Court shall have power to issue any person or authority orders or writs in the nature of habeas corpus, mandamus, etc. for the enforcement of the rights conferred by Part III of the Constitution and for any other purpose and it was well understood that a mandamus lies to secure the performance of public or statutory duty in the performance of which, one who applies for it, has a legal right and interest.

I am of the considered opinion that the persons or bodies who have legal authority to determine question affecting the common law or statutory rights or obligations of other persons as individuals as well as the persons or bodies who are entrusted by the Legislature with functions, powers and duties which involve making of decisions of a public nature and such power and duties when exercised may lead to the detriment of subjects who may have to submit to their jurisdiction and any other person or body of a public nature exercising public duties, deserve to be kept under control by the remedy of judicial review.

I am further of the view that it should be ensured that such bodies or persons should not act outside their powers and realise that they are duty bound to enquire fairly and impartially and according to law. It is incumbent upon them to exercise discretion reasonably and come to a reasonable decision. It should not be so unreasonable that no reasonable man could come to it. The Court will only interfere with the decision if it is without jurisdiction or outside the bound of reasonableness.

It must be emphasised that ordinarily a contract of personal service cannot be specifically enforced especially when under the terms and conditions of the contract, the employee has no right to continue in service but when it is claimed that the order putting an end to the service of the employee is vitiated on account of any statutory invalidity of an act done by the employer, it ceases to be a case of specific enforcement of contract of service but falls in the category of a case where an order putting an end to the service being null and void is no order in the eye of law and the question of enforcing specific performance of the contract of employment does not arise. In a case where the law, as distinct from contract, imposes a mandatory obligation prescribing the kind of contract which may be entered into by an employer and the manner in which alone the service of an employee may be terminated, any termination of service effected in breach of such statutory obligation would be invalid and ineffective and in such a case the Court may treat it as null and void.

In the present case admittedly the impugned order had been passed without affording any opportunity of hearing or show-cause to the petitioner adopting the course of "Hire and fire". The ground for terminating the services as indicated in the order itself and as shown in the return are contradictory. Further, the own conduct of the employer as evident from the facts disclosed in the rejoinder indicate that the need for the teacher still subsists. The impugned order in the circumstances cannot be sustained.

It should not be lost sight of that even under the provisions contained in the Act of 1975 there is a right of appeal secured in favour of an Assistant Teacher who feels aggrieved by an order terminating his services, I am of the considered opinion that if the petitioner is relegated to this remedy the matter would be further delayed, specially when no investigation of facts is required in this case. It is also very necessary to clarify the legal position in regard to the security of tenure to a teacher falling in the category of the petitioner. Public interest requires that the law should be settled by this Court at the earliest.

In the aforesaid view of the matter and taking into consideration that the impugned order has been passed in flagrant disregard of the statutory provision indicated hereinabove and visits the petitioner with evil consequences, doing away with the statutory protection provided to her, the petitioner does not deserve to be relegated to the alternative remedy, specially when this writ petition was entertained long back in the year 1995, and has been awaiting its final decision.

Taking into consideration the totality of the circumstances brought on record and my conclusions referred to hereinabove, sufficient ground has been made out for interference by this Court.

In the result, this petition succeeds. The impugned order, a true copy of which has been filed as Annexure P-I, to the writ petition is quashed with a direction to the respondents not to interfere in the functioning of the petitioner as an Assistant Teacher otherwise than in accordance with law.

It is further directed that the respondents Nos. 1 and 3 shall ensure payment of the entire arrears of salary to the petitioner within a period not later than one month from the date of production of a certified copy of this order before them.

There shall, however, be no order as to costs.