

(2012) 10 PAT CK 0089

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10205 of 2012

Nutan Kumari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2013) LabIC 196 : (2013) 1 PLJR 321

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Ravindra Kumar Shukla, for the Appellant; Parth Sharthi, S.C. Chitranjan Sinha and Ranjit Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard Learned counsel for the petitioner and for the respondent School. The petitioner, a Teacher in the respondent school is aggrieved by her order for transfer dated 9.5.2012 from D.A.V. Public School, Patliputra to the D.A.V. Public School, SECL Chhal District-Raigarh.

2. Learned counsel for the petitioner submits that the transfer is malicious, punitive, without an opportunity to represent against the same, and a consequence of her husband, a physical education teacher at the Khagaul Branch of the School, protesting against the school management on behalf of the Association of Teachers regarding service issues of teachers.

3. Earlier, she was posted at Begusarai on 20.5.2000 denying her any of the three options submitted for posting. When she reminded the authorities for her D.A. and T.A. she was transferred to Aurangabad on 13.3.2004. Barely three months later she was transferred to Patna on 20.6.2004. She was again denied T.A. and D.A. alleging that it was a posting at her request. She had represented her service grievances which included arrears of salary, time bound promotion etc. On 28.4.2012 she requested for posting at Khaugal as the incumbent was to

retire and the petitioner's husband was posted in Khaugal. It was denied. Her husband was threatened for spearheading issues on behalf of the teachers association. He filed informatory petition No. 2820 of 2010 before the Chief Judicial Magistrate, Patna on 6.9.2010. C.W.J.C. No. 1824 of 2011 was also filed by him for upgradation/promotion/regularization of teachers in which notice has been issued. He had also lodged a complaint on 7.2.2012 against the school management before the C.B.S.E. and the Bihar Vigilance Commission. He had sought information under the R.T.I. Act which was denied. On 25.1.2012, show-cause was issued by C.B.S.E. to the school at Khaugal why provisional affiliation may not be withdrawn for failure to furnish information under the R.T.I. Act. Her husband has also been transferred on 6.1.2011 to the D.A.V. Public School, SECL, Jhillmilli, Pandavpura, District-Korea in Chattisgarh. He has also been subjected to departmental proceedings unreasonably.

4. The school was performing duties of public nature imparting education and was therefore, amenable to jurisdiction under Article 226 of the Constitution as it falls within the definition of "any person or authority". Reliance was placed on certain judgments which shall be noticed subsequently and discussed.

5. Counsel for the school raised a preliminary objection that the writ application was not maintainable against a private school. The cause of action was individual with no public law element involved. It was a non-aided minority school run by "Arya Samaj", and not a "State" under Article 12 of the Constitution. All the judgments relied upon were distinguishable and not applicable. The transfer was routine in exercise of administration and management. The writ application deserved to be dismissed. Reliance was placed on certain other orders of the Court which shall be discussed subsequently.

6. It is not the case of the petitioner that the school fulfills the requirements of a "State" under Article 12. No material has been placed on behalf of the petitioner that the school was receiving any financial aid from the Government. To maintain the writ application invoking Article 226, there will have to be a public element involved in the controversy. No action of any public authority or statutory functionary has been assailed. Transfer of an individual teacher can never have a public element. It necessarily has a private element of grievance by the aggrieved transferred.

7. In *D.A.V. College Trust and Management Society and Others Vs. Director of Public Instruction and Others*, the question did not relate to transfer, but that the school which was receiving substantial grant in aid from the State administration was a "Public Authority" under the R.T.I. Act. The information denied related to annual fee structure, Programmes, diploma and certificate courses. It was held that these were public functions irrespective of financial aid. In Review petition No. 395/2008 (*Jitendra Singh Tyagi v. Director of Education*), the Delhi High Court was considering the challenge to an order of transfer seeking mandamus to implement the administrative direction of the Director Education, Delhi, in context of statutory powers u/s 24(3) of the Delhi School Education Act and

Rules, 1973. It was held that the managing committee of the school was amenable to the jurisdiction of the Director under the Acts and Rules. In (*Miss Snighdha Sardar v. Chief General Manager*), the Orissa High Court relied upon the provisions of Article 287(25) of the Orissa Education Act to hold that the statutory period of one month notice before termination had not been complied by the management. The Court did not consider it necessary to decide the question whether the writ jurisdiction could be invoked after noticing it in Paragraph-9 but proceeded to decide on other issues. Writ Petition (c) 6448 of 2007 : (reported in *Smt. Saroj Devi (Widow) Vs. Union of India (UOI) and Others*), the Delhi High Court was considering a claim against the Army Welfare Housing Organization. It was noticed that if the rights were purely of a private character no writ would lie. It related to housing issues. There had to be a public law element and private right could not be enforced. In *Dav College Managing Committee Vs. Surender Rana* and Another the issue related to removal without permission of the Director of Education contrary to Rule 105 of the Delhi School, Education Rules, 1953. In L.P.A. No. 192/2006 (*D.A.V. College Managing Committee v. Surender Rana*) the Delhi High Court held that the action of the school was contrary to Rule 105 of the Delhi Rules Education Rules, 1973 as approval of the Director has not been taken before termination. In Writ Petition No. 1326 of 2011 (*M/s. Anmol Sandhu v. CICSE*) school boys had been expelled by the Sherwood College at Nainital. Invoking the right to education, as having a public law element expulsion for a solitary incident affecting growth of children, Chapter III of the Constitution was relied upon and invoking Article 14 of the Constitution, relief was granted in completely different circumstances. C.W.J.C. No. 4707 of 2007 (*Mater Vedant Dhari Sinha v. State of Bihar*) related to the detention of a student from promotion affecting his educational career invoking the public law element disapproving the action of the respondent under Article 14 of the Constitution of India. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the question was with regard to grant of revised pay scales pursuant to a University resolution. It was held that if the rights were of a private character no writ would lie. Relief came to be granted since it had a public law element dealing with the rights of the teachers in general. All the cases are distinguishable and have no application to the present facts.

8. The respondents have relied upon C.W.J.C. No. 1358 of 1994 (R) (*Madhunanda Banarjee v. Coal India Limited*) (DB) holding that the D.A.V. Public School was not a "State", transfer was a matter of internal management and not in the performance of any public duty. In C.W.J.C. No. 4581 of 2004 (*Raj Kumar Gupta v. C.B.S.C.*) *Anadi Mukta* (supra) was considered in context of a challenge to termination by the school holding that the writ jurisdiction was not available against a private managing committee arising out of termination by a privately managed school for which the appropriate remedy lay before the Civil Court.

9. In *Sushmita Basu and Others Vs. Ballygunge Siksha Samity and Others*, the writ jurisdiction was held not maintainable against a private school recognized by

the Government holding:--

3...We find considerable merit in the submissions on behalf of the respondents. In the absence of a statutory provision, we are not in a position to agree with learned counsel for the appellants that interference by the High Court under Article 226 of the Constitution is warranted in this case. We find on the whole that there has been just treatment of the teachers by the first respondent institution and there is no reason to interfere even on the ground that the appellants are being treated unfairly by their employer, the educational institution, or on the basis that this is a case in which the conscience of the Court is shocked, compelling it to enter the arena to afford relief to the teachers.

10. In *M. Raja Vs. CEERI Educational Society Pilani and Another*, , it was held:--

25. This Court clearly held that interference in the affairs of a private educational institution would be justified only if public law element is involved.

11. There is no need to enter into any further discussion on the subject. Suffice it to hold after consideration of the above that a challenge to an order of transfer by a teacher of a private school is a individual cause of action and can never have a public law element to it whether financial aid be there or not. The writ petition is, therefore, held to be not maintainable.

12. The writ petition could have been disposed on the aforesaid ground alone. But since strenuous arguments were made on merits, the duty of the Court is to consider it so that the petitioner is not left with a lurking sense of injustice that her claims were not properly understood, considered and appreciated.

13. A Teacher occupies an exalted status of a guide, mentor, role model, an embodiment of selfless service to the Society. It cannot be equated with any employment simplicitor. The constituents of the Society are shaped by teachers as harbingers of change in the next generation. This cannot be construed that gross injustice may not be protested in a manner permissible in the law and that injustice must be suffered in silence. In *Dr. G.Marulasiddaiah Vs. Dr. T.G. Siddapparadhya and Others*, it was observed (Para 14 of AIR):--

16. Before parting with this case we cannot but express our disapproval in noting that the canker of litigiousness has spread even to a sphere of life where discipline should check ambition concerning personal preferment. A teacher is justified in taking legal action when he feels that a stigma or punishment is undeserved but he is expected to bear with fortitude and reconcile himself to his lot suppressing disappointment....

14. In *Manager, Nirmala Senior Secondary School, Port Blair Vs. N.I. Khan and Others*, it was observed:--

2. Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the

student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important.

15. Teachers and their role was again considered in *Sushmita Basu and Others Vs. Ballygunge Siksha Samity and Others*, holding as follows:--

5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the "guru". It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students, former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the guru, the teacher, in our ethos is equal to that of God (*Matha Pitha Guru Daivam*). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.

16. Transfer and postings are routine incidence of service. Unless there are any statutory violations, reduction of rank or pay the Court cannot substitute its wisdom in place of the management of the school. In *Novartis India Ltd. Vs. State of West Bengal and Others*, it was held (Paras 33 and 34 of AIR):--

34.....This Court in *State Bank of India Vs. Anjan Sanyal and Others*, observed that the conduct of an employee in a transfer case is material as he cannot get a premium for his disobedience.....There cannot furthermore be any doubt that the transfer is an incidence of service. Unless an order of transfer is passed contrary to the provisions of the statutory rule or settlement, the same should not be interfered with.

17. Mala fide is more easily alleged than proved. Option creates no right to demand acceptance much less can denial of option in 2000 constitute mala fide in 2012. On the contrary fairness by the respondents is apparent from the requests made by the petitioner on 15.4.2003 for posting at Patna for personal reasons acceded to by the school when she was transferred to Patna on 20.6.2004. On 28.4.2012 she again requested for a transfer to Khagaul because

her husband was posted there. The fact is that he was transferred to Chattisgarh on 6.1.2011 relieved on 28.1.2011, failed to join leading to paper publication against him on 14.11.2011, departmental proceedings initiated, service of charges by registered post returned with the postal note "everyday the house is locked" leading to paper publication on 19.9.2012. It is significant that the address in the paper notice on which charge-sheet was sent by registered post is the same as that of the petitioner in the cause title of the writ petition. Apparently, the postal peon was persuaded to take it back on a wrong report by the husband of the petitioner. No case for mala fide in transfer is, therefore, made out. It is not the case of the petitioner that her husband has challenged the action of the management against him in any appropriate proceedings.

18. Discipline in an educational institution is an absolute essential to be maintained both by its pupil and teachers. Ventilation of grievances against the Management by filing a writ petition or seeking information under the RTI Act may be a valid mode. The same cannot be said of abusing the right and process of law by teachers filing complaints before the Chief Judicial Magistrate against transfer, gradation and salary issues making allegation of coercion against the management of the school. The complaint filed by the husband before the Bihar Vigilance Commission, Central Vigilance Commission, writing to the Prime Minister's office, the Lokayukta, The Director General of Police, the District Magistrate, the Chief Minister and the Governor alleging corrupt practices in granting false and fake experience certificate to incompetent persons do not qualify as legitimate protest by a teacher and are subversive of discipline classified as attempts to browbeat. The query by C.B.S.E. with regard to declining furnishing of information under the R.T.I. Act and the issue of provisional affiliation in context of the same are entirely irrelevant for the present controversy. There is nothing to demonstrate that the impugned order is propelled by the same and not issued in routine management.

19. The importance of discipline in educational institutions has been emphasized in Director (Studies) and Others Vs. Vaibhav Singh Chauhan, : Novartis India Ltd. Vs. State of West Bengal and Others, holding:--

12. ...We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational institutions are curbed with an iron hand.

20. It will indeed be a sad day if the Court were to impose its authority and subjective opinion over the school authority and subjective jurisdiction of the respondents to maintain academic atmosphere and discipline. Any attempt by the Court to do so shall clearly be counter productive and detrimental to one and all in the facts of the present case. The petitioner has herself annexed letters dated 18.9.2010 and 12.7.2001 which demonstrates that all was not well with the conduct of the petitioner's husband as a teacher. The conduct of the

petitioner or her husband in obtaining signatures of students from Class VIII and IX in the attempt to garner support is considered reprehensible and is deprecated by the Court.

21. In M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, the employees right to ventilate grievances, the fundamental freedom of speech and expression were considered with the limits of the same and when they amounted to breach of discipline holding as follows:--

19. In the present case, the appellant had made a direct public attack on the head of his organisation. He had also, in the letter to the Governor, made allegations against various officers of the Corporation with whom he had to work and his conduct was clearly detrimental to the proper functioning of the organisation or its internal discipline. Making public statements against the head of the organisation on a political issue also amounted to lowering the prestige of the organisation in which he worked. On a proper balancing, therefore, of individual freedom of the appellant and proper functioning of the Government organisation which had employed him, this was a fit case where the employer was entitled to take disciplinary action under Rule 22.

22. In conclusion, even on merits the impugned order calls for no interference. The writ application is dismissed.