
(2014) 06 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10536 of 1992 (O&M)

Puran Devi

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 06 P&H CK 0036

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : S.K. Sharma, Advocate for the Appellant; P.S. Bajwa, DAG, Punjab and Amit Sharma, Advocate for Avnish Mittal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition is a matter relating to termination of a Peon in a school on 08.01.1978. On an earlier round of litigation that came to this court by a writ petition in CWP No. 3253 of 1982, the matter that fell for consideration was the validity of the order of the Commissioner, Patiala, who upheld the decision of the Management for termination. However, the challenge brought to this court did not see a disposal on merits but it was sent back to the Director of School Education for consideration and the Director had passed an order upholding the decision of the Management terminating the services. At the time when the writ petition came to be filed, the Peon had already expired and the litigation was carried through by his legal representatives. It was a case of an action having said to be taken for an alleged theft committed by the Peon. He had been dismissed from service but later reinstated when an intervention was made by higher authority. Secondly, after he was reinstated, he was served with simpliciter order of termination on 09.01.1978 and was given a one month salary in lieu of notice period. It was this order that was in challenge on a plea that the Punjab Privately-Managed Recognized Schools Employees (Security of Service) Rules, 1981 prescribed for a procedure that made possible a penalty to be imposed only after the Management took the sanction from the Educational

Society of the State. In so far as the termination was effected without such permission, the order was canvassed to be not valid. This objection of the employee prevailed before the authority of first instance but this was stated as not applicable by the higher authority only by pointing out to the fact that the school was a minority run institution and, therefore, the question of securing permission from the State did not arise. The DPI had actually referred to the fact that the respondent-institution, namely, S.D. Pritinidhi Sabha was a religious body in Punjab and it was established, through a judgment delivered in CWP No. 48/46 dated 23.02.1987 and it was also confirmed in the appeal No. 10 of 1987-Shri Om Parkash Versus The Management K.K. High School, Rajpura, that it was a minority institution entitled to constitutional privileges. The authority therefore reasoned that the religious and linguistic minority enjoyed immunity against State intervention by Article 30 and, therefore, the rule that provided for sanction from the State for termination did not apply to the management.

2. The issue of the extent of intervention that is possible to minority institution has been examined through several decisions. In a recent decision in Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others, , the Supreme Court was examining the relevance of the provisions of the State Education Code and the application relating to Government permission before issuing an order of termination in the light of its applicability to minority institution. The court has held that the minority institution will not be governed through the provisions that prescribe a procedure for taking permission of the State authority.

3. The counsel for the petitioners made a laboured presentation with reference to some of the decisions rendered earlier even before the dispensation in TMA Pai's case that even minority institutions cannot take any action which is arbitrary. I am sure a court's intervention under Article 226 would always be possible even against minority institutions if there is manifest arbitrariness in their action or if there was anything mala fide in the action that would make possible a court's intervention. If, in this case, the order of termination has been a simpliciter order of removal from service without casting any stigma to the employee, and the termination order provided for a month's salary which was the period prescribed for a notice before terminating the contract, there is nothing left for the court to interfere. I will not, therefore, think it necessary to bring all the case law which the counsel relies before me to say that even a minority institution will be bound by the court's intervention, if the order of termination is bad. I must notice that there are some decisions also which considered the issue of autonomy that the minority institution would set up against the actions by the State for intervening in unjust actions of termination. The decisions that have allowed for the State to interfere are in respect of State interventions for ensuring that there is no mal-administration or there is no license to mismanagement. The order of termination cannot be seen in the context of any act of mismanagement or mal administration for a State's intervention. I do not think there is any case made for interfering with the order passed by the DPI (Schools). The impugned order is

maintained and the writ petition is dismissed.