
(1994) 10 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24679 of 1992

Rajni Sharma

APPELLANT

Vs

Union Of India and others

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (1994) 10 AHC CK 0066

Hon'ble Judges : R.A.Sharma, J

Final Decision : Disposed Of

Judgement

1. Petitioner, who was a teacher in Army School (hereinafter referred to as the school) situate at Clement Town, Dehradun, which has been established and is managed by the Army Welfare Education Society (hereinafter referred to as the Society), has filed this writ petition challenging the termination of her service. Respondents have filed counteraffidavit and the petitioner has filed rejoinderaffidavit in reply thereto. I have heard learned counsel for parties.

2. Society has been registered under Societies Registration Act. Its aims and objects, as contained in the byelaws, a copy of which has been filed as annexure1 to the rejoinderaffidavit, so far as they are relevant for the present case, are as under :

(a) To create or augment educational facilities at Military Stations to meet the needs of children of Army personnel.

(b) To develop coeducational Army Schools and Army Public Schools in such a manner as to impart high standard of education to the children of Army personnel without distinction of their status.

(c) To prepare the students for All India Secondary School and All India Senior School Certificate (10+2 stage) examinations of the Central Board of Secondary Education with a common syllabi enabling the children of personnel who are transferred to be admitted in mid session.

(d) To promote development of academic excellence, discipline, personal character, high sense of values and national integration among the children of Army personnel."

Chapter 2 of the byelaws provides for organisations and functions of the Society, according to which the society has been registered "for the purposes of establishing and running Army Schools at stations recommended by command. Board of Governors of the Society consists of army officials which is clear from the byelaw 6 of Chapter2, which is reproduced below :

Board of Governors

6: Board of Governors is the Governing Body which would lay down policy guide lines for the management and functioning of the schools.

The Governing Body shall consist of the under mentioned officers and any other persons (s) nominated by the Chairman or elected by the Governing Body :

Chairman Adjutant General

ViceChairman Director General, Discipline and Ceremonials welfare.

Members Major Generals Administration, H Q Eastern, Western and Northern Commands and Brigadiers "A", HQ Southern & Central Commands.

Deputy Quartermaster General, Additional Director General Ceremonials and Welfare.

Additional Director General Military Training (Army Education)

Judge Advocate General.

Deputy Director General (Welfare)

Member Secretary, Army Welfare Education

Secretary Society (AWES)

Bye law 11 of the same Chapter lays down constitution of the Executive Committee, which is to assist the Board of management and to carry out day to day working. Its extract is as follows :

"President Director General, Discipline and Ceremonials Welfare.

Members Additional Director General, Ceremonials and Welfare.

Deputy Director General (Welfare)

Member Secretary. Army Welfare Education

Secretary Society (AWES)

Note 1. Members of the Board of Governors and the Executive Committee will be

coterminus with their respective offices."''

Byelaws 13 and 14, which deal with financial management being relevant are also reproduced below :

Financial Management

13. Corpus to the Schools will be provided as decided by the Board of Governors from the Welfare Funds of the Adjutant General's Branch, Army Head Quarters. Recurring expenditure and other expenses of Schools will be managed by the Board of Administration and the Managing Committee of the respective Schools.

Audit. 14. Additional Director General, Ceremonials and Welfare and Deputy Director General (Welfare) at the Army Headquarters will jointly operate the bank accounts of the Society. The accounts of the Society will be audited annually by a firm of Chartered Accountants, the Accounting year being from 1 April to 31 March of the following year (Financial year).

Chapter 3 of the Byelaws provides for Schools Managing Committee and selection of the staff. Such a Managing Committee, according to byelaw 31 is to consist of :

"Patron As nominated by Headquarters Commands concerned.

Chairman As nominated by the Patron or GOC Div or Area or Sub area Commander or Station Commander.

Member GSO 1 or AAC or Staff Officer CWE or GE OC Military Hospital or Medical Officer Two Parents of students in the School.

Two teachers of the School. Two educationists.

Secretary Principal

Army Educational Corps Officers could be nominated as educationistsmembers of the School Managing Committee in case of those Army Schools which were located in remote/field areas. The same set of AEC Officers may be appointed on more than one Army Schools also. However, this provision will not be applicable to Army Schools located in cities/town."

It is thus apparent that the Society has been registered with an object to run the schools for providing educational facilities at Military Stations to meet the needs of the children of the army personnel. The over all control of the Society and the school run by it vests in the Board of Governors and the Executive Committee, consisting of army officials. The school managing committee also consuls of army officials. Thus the administrative control of the Schools vests in the governmental authorities. The Society and its Schools are financed by Welfare funds of the Adjutant General's Branch Army Headquarters. The management of the School is also entitled to collect the fee and the donations, but this does not change the character of the Society or the School run by it. Both administrative and financial control of the Army over the Society and the School is almost total. The Society

satisfies the tests laid down by the Supreme Court in *Ajai Hasia v. Khalik Mujib Sehravardi* (AIR 1981 SC 497) and *Ramana Dayaram Shetty v. International Air Port Authority* (AIR 1979 SC 1628), for determining as to whether it is a "state" within the meaning of Article 12 of the Constitution of India, Applying those tests Supreme Court in *All India Sainik Schools Employees Association v. Defence MinistercumChairman* (AIR 1989 SC 88), has declared Sainik School as the "State". In the instant case also those tests are satisfied. The Society and the Schools run by it are "state" within the meaning of Article 12 of the Constitution, and thus amenable to writ jurisdiction of this Court.

3. School in question is recognised by the Central Board of Secondary Education. The School while imparting education discharges a public duty. Society and the school which is by it are "authorities" within the meaning of the terms under Article 226 of the Constitution. In this connection reference may be made to the decision of Supreme Court in *Shri Anadi Mukta Sadguru v. V. R. Rudani* (AIR 1989 SC 1 07). For this reason also the Society and the School run by it are amenable to writ jurisdiction of this Court.

4. Petitioner was appointed as a teacher in the School on probation for a period of one year by the appointment letter dated 181987, a copy of which has been filed as annexure1 to the writ petition. Para 3 of the appointment letter provided that services of the petitioner "will be governed by the Rules and Regulations enforced at present and as modified from time to time." She was confirmed in 1989. By letter dated May 30, 1992 her services have been terminated w.e.f. 1st June, 1992. Reason for termination, as contained in the letter dated 3051S92 is the decision of Managing Committee of the School to abolish nursery and K.G. Sections of the School with effect from 161992.

5. Learned counsel for the petitioner has challenged this order on two grounds; viz (i) the petitioner is Primary teacher and is not teacher of K..G. and nursery sections of the School and as such, on the abolition of these classes, her services could not have been terminated; and (ii) she has been removed from service without giving reasonable opportunity of being heard.

6. Letter of appointment dated 181987 mentions that petitioner has been appointed as a teacher in the Army School. There is no mention in this letter about the petitioner being primary or K.G/nursery teacher. However, in the writ petition, petitioner has categorically stated that she was appointed and joined as primary teacher in 1987 and has been teaching classes I and II. It is further stated that at the request of the management, as interim arrangement, she was also taking nursery classes from time to time. She has also filed a certificate issued by the Principal of the School, in which it has been mentioned that the petitioner is primary teacher in the school since 1987 upto the date of certificate (951990). In the counter affidavit filed on behalf of the respondents it has been denied that the petitioner was appointed as primary teacher. It has, however, been admitted that she was teacher of Classes I and II in 198990 and 199091. The certificate issued by the Principal of the School, certifying the petitioner as

primary teacher, has been disputed on the ground that it was issued by the Principal in personal capacity after his retirement. This statement is factually incorrect, because from perusal of the para 8 of the rejoinder affidavit it is apparent that Principal who has given the certificate, has retired on September 30, 1990, whereas the certificate was given on May 9, 1990, when he was working as Principal of the School.

7. In paragraphs 13 and 19 of the counter affidavit it has been stated that services of the teachers of K.G./nursery sections of the Schools, are not governed by the Rules and Regulations of the Society and these Rules and Regulations apply only to the teachers who teach Classes I onwards. In the appointment letter of the petitioner it has specifically been stated that her conditions of service will be governed by the Rules and Regulations of the Society. As these Rules and Regulations are applicable to the teachers of Class I and above, the petitioner is liable to be treated as a primary teacher on the basis of averments made by the respondent themselves in their counter affidavit. The statement in para 13 of the counter affidavit, to the effect that by inadvertence in the appointment letter of the petitioner it was written that her service will be governed by Rules and Regulations of Society, is not worth relying. When relationship of master and servant is created by the contract, its terms and conditions govern the service and they cannot be discarded on mere plea that those conditions were inserted due to inadvertence, specially when the teacher has continued for several years. If that condition was inserted in the appointment letter due to inadvertence, it should have been corrected immediately after the petitioner joined the service in the school. In any case it is not open to the respondents to say so now after the termination of her service.

8. From the following undisputed facts it is established that the petitioner was a primary teacher:

(a) Service of the primary teachers is governed by Rules and Regulations of the Society. Appointment letter of the petitioner specifically provided that her services will be governed by Rules and Regulations of the Society.

(b) Certificate issued by the Principal dated May 9, 1990, certifying that the petitioner is primary teacher in the School since August, 1987.

(c) admission of the respondents in the counter affidavit that she was in the past teaching Classes I and 11 in the School.

9. On abolition of nursery/K.G. sections of the School the services of the petitioner could not have been terminated, because she was primary teacher.

10. That apart, the petitioner was entitled to opportunity of being heard before termination of her services. Para 116 (b) of the Byelaws of the Society lays down that before termination of services of the confirmed employees he or she shall be given showcause notice explaining the reason why his or her services were proposed to be terminated. Giving of show cause notice proposing to terminate

services contemplates opportunity of hearing to the concerned teacher. It is not disputed that such an opportunity was not given. That apart, in case respondents wanted to treat the petitioner as teacher of K.G./nursery, it was incumbent on them to give her an opportunity to prove that she is not such a teacher. Such an opportunity was not given to her. Order of termination of service passed by the respondents is, therefore, illegal, unfair, unreasonable and arbitrary. It, as such, cannot be sustained.

11. The question still remains whether this Court under Article 226 of the Constitution can direct reinstatement of the petitioner. The Society which runs the school is "State" within the meaning of Article 12 of the Constitution and is discharging public duties. It is, as such, amenable to writ jurisdiction of this Court. However, the conditions of service of the petitioner are not governed by any statutory rules and Regulations. They are governed by Rules and Regulations of the Society, which are contained in its Byelaws. These Byelaws do not have statutory force. They, as such, are not enforceable under Article 226 of Constitution of India. Here is a case where conditions of service are governed by nonstatutory contract. Such a contract cannot be enforced under Article 226 of the Constitution.

12. In the case of *Executive Committee of Vaish Degree College v. Lakshmi Narain* (AIR 1976 SC 888), it was laid down that a contract of service cannot be enforced except in the case of Government servant, workman within the meaning of Industrial Disputes Act and employees whose services are governed by statutory Rules and Regulation, Same principle was reiterated by the Supreme Court in *J. Tewari v. Jwala Devi Vidya Mandir*, 1981 UPLBEC 34 (SC) and *Dipak Kumar Biswas v. Director of Public Instruction and others*, 1987 UPLBEC 801. Petitioner's case does not fall in any of the three categories where contract of service can be enforced. Under the circumstances although termination of her service was illegal, but it is not possible for this Court to direct her reinstatement, because specific performance of contract of her service is not permissible under Article 226 of the Constitution.

13. Learned counsel for petitioner has, however, contended that this court can direct reinstatement of the services of petitioner. In support of his contentions he has placed reliance on *Shri Anadi Mukta Sadguru v. U. R. Rundani* (AIR 1989 SC 1607), *All India Sainik School Employees Association v. Defence Minister* (AIR 1989 SC 88), *Shri Shanker Ji Singh v. School of Engineering & Rural Technology*, 1994(2) UPLBEC, 10(3; *Narendra Pal Gahlaut v. State of U. P.* 1994 (1) UPLBEC, 51 and *Lal Ji Srivastav v. Allahabad District Cooperative Bank*, 1994(1) UPLBEC 297. In *Shri Anadi Mukta Sadguru v. Rundani* (supra) there was no prayer for reinstatement in service and enforcement of contract of service of the concerned employees. This is clear from para 5 of the judgment. What teachers were claiming was the terminal benefits to which they were entitled under law. This case is not authority for the proposition that contract of service can be enforced by High Court under Article 226 of the Constitution, even though such a contract

is nonstatutory contract and the case does not fall in any one of the three exceptions laid aoun by the Supreme Court in the case of Vaish Degree College (supra). The case of All India Sainik School Employees Association (supra) is also of no assistance to the petitioner. It is true that Sainik School Society was held to be "state" and therefore, Article 14 of the Constitution was applicable to it. But this case also was not a case where relief for reinstatement was sought. There, what was claimed was implementation of the recommendation of the 4th Pay Commission and extension of all the benefits given to Kendriya Vidyalaya. The case of Shri Shanker Ji Singh v. School of Engineering and Technology (supra) has been decided by a learned Single Judge of this Court. Prima facie it appears from para 33 of the judgment of this case that relief of reinstatement in service was not sought for. That apart, operation of this judgment has been stayed by a Division Bench of this Court in Special Appeal No. 209 of 1994.

14. The case of Narendra Pal Gahlaut v. State of U P. (supra) is altogether different. There, service of workman was terminated in violation of Certified Standing Orders without giving opportunity of hearing. The Standing Orders have statutory force and termination of service in violation thereof was declared bad by learned Single Judge under Article 226 of the Constitution. That is not the position in the instant case. The case of Lal Ji Srivastava v. Allahabad Distt. Cooperative Bank (supra) is also of no help to the petitioner. There, the employee of the Cooperative Society was retired in violation of statutory Regulation.

15. Although this Court cannot direct reinstatement of the petitioner in service, but she is entitled to damages for wrongful termination of her service. For such a relief Civil Court is appropriate forum. But to relegate the petitioner to the Civil Court after lapse of two years, after termination of her service, for restarting the litigation afresh, will be asking for almost impossible, because such a litigation may not be economically possible for her. In view of the facts and circumstances of the case it will meet the ends of justice if she is awarded certain amount as damages by this Court in this petition itself. Supreme Court in the case of Vaish Degree College (supra) awarded damages of Rs. 21,000/ to the concerned teacher. In the case of J. Tewari (supra) petitioner was awarded damages equivalent to pay of three years by the Supreme Court. In Dipak Kumar Biswas (supra) also damages equivalent to three years pay was awarded to the teacher. In view of the facts and circumstances of the case it will be appropriate to award a sum equivalent to two years' salary as damages to the petitioner.

16. The writ petition is accordingly disposed of. The impugned order of termination of service is declared as illegal, but relief of reinstatement is refused. Instead the respondents no. 2 to 4 are directed to pay to the petitioner, the sum equivalent to two years' salary, within three months from the date of presentation of certified copy of this order before them.

(Ordered accordingly)