
(2015) 08 RAJ CK 0121
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4868 of 1998

Ramavtar Sharma

APPELLANT

Vs

Rajasthan Non-Government Educational Institutions Tribunal
and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Constitution of India, 1950 — Article 39(d)

Citation : (2015) 08 RAJ CK 0121

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : D.P. Sharma, for the Appellant; Kushal Singh for Sanjay Kumar Sharma, G.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J—Aggrieved of the order dated 31st March, 1998, passed by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short "the Tribunal"), declining to interfere with the order of termination dated 31st May, 1996; the petitioner has approached this Court praying for the following relief(s):--

"(A) by an appropriate writ, order or direction the judgment dated 31.3.98 (Annex.4) passed by the learned Tribunal in appeal No. 136/96 be quashed and set aside;

(B) by an appropriate writ, order or direction the order of termination dated 31.5.96 passed by the Respondent No. 4 may be quashed and set aside and the same may also be declared as null and void;

(C) by an appropriate writ, order or direction the Respondent No. 4 may also be directed to make payment of difference amount of salary and allowances, which have been lesser paid to the petitioner from his due amount as per the provisions of law from the date of his initial appointment.

(D) cost of the writ petition be also be awarded to the petitioner;

(E) Any other beneficial order or direction which this Hon"ble Court deems fit and proper may also be passed in favour of the petitioner."

2. The skeletal material facts necessary for appreciation of the controversy raised herein are that the petitioner was appointed by the Management of respondent number 4 (Nitin Public School, Jaipur), vide order dated 25th June, 1994, on a fixed remuneration of Rs. 1,100/- for the academic session 1994-95, purely on temporarily basis. The order of appointment further stipulated a condition that the untrained candidates will have to acquire the required teacher's training qualification within two years. By another appointment order dated 26th June, 1995, the petitioner was again appointed for academic session 1995-96, on a fixed remuneration of Rs. 1,250/- purely on temporary basis upto 31st May, 1996, with a specific stipulation to the effect that the appointment was on contract basis and was subjected to termination at any time. Untrained Teacher was required to acquire the essential educational qualification within one year and failure to do so, would entail cancellation of the appointment.

On a consideration of the pleaded facts, response filed by the Management of Nitin Public School, Jaipur (respondent number 4), evidence and materials available on record; the Tribunal, vide impugned order dated 31st March, 1998, concluded that the petitioner was not in possession of the required "Teacher's training" qualification, being an untrained Teacher, and therefore, the action of the Management respondent-Institute in terminating the employment of the petitioner could not be faulted.

3. Learned counsel for the petitioner, reiterating the pleaded facts and grounds of the writ application, has challenged the impugned order dated 31st March, 1998, passed by the Tribunal on two grounds. Firstly, for non-compliance of the mandate of Section 18 of the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as the "Act of 1989", for short), and Rule 39 of the Rajasthan Non-Government Educational Institutions Rules, 1993 (hereinafter referred to as the "Rules of 1993", for short); and Secondly, for not according pay scale to the petitioner admissible to his counterparts in the Government Schools and/or Aided Institutions.

4. According to the learned counsel for the petitioner, Section 18 of the Act of 1989, mandatorily requires the consent of the "Director of Education" in writing, before the services of an employee can be terminated. Since no approval was sought, prior to terminating the employment of the petitioner, therefore, the impugned order is bad in the eye of law on that count alone. Learned counsel would further submit that Rule 39(2) of the Rules of 1993, contemplates a detail procedure for removal or dismissal of an employee, but in the instant case at hand, the Management of the respondent-institute did not comply with the mandatory requirements, and hence, the Tribunal committed a gross error in declining to interfere with the termination of employment of the petitioner

effected vide impugned order dated 31st May, 1996. In support of his submissions, reliance has been placed on the opinion of the Division Bench of this Court in the case of Bhopalwala Arya Higher Secondary School v. Mr. Nand Lal & Ors. (D.B. Civil Special Appeal No. 860/2008), decided on 28th November, 2008; Central Academy Society Vs. Rajasthan Non-Government Educational Institutions Tribunal and Others, (2010) 3 RLW 2326 ; Managing Committee Through Chairman (BRID.) Dy. G.O.C., Army School & Anr. v. Smt. Pushpa Sharma & 4 Ors.: 2006 (3) WLC (Raj.) 504 ; Managing Committee S.S. Jain Subodh Siksha Samiti and Another Vs. Rajendra Kumar Rao and Others, (2005) 4 RLW 2994 : (2005) 4 WLC 262 ; Shantiniketan Hindi Primary School Vs. Pal Hariram Ramavtar and Others, AIR 2010 SC 656 : (2010) 124 FLR 740 : (2010) 2 SCALE 33 : (2010) 2 SCC 717 : (2010) 1 SCC(L&S) 662 : (2010) 2 SLR 189 : (2010) AIRSCW 943 : (2010) 2 Supreme 195 ; Managing Committee Hahaiya Kshatriya Shiksha Samiti v. Rajasthan Non-Government Educational Institutions Tribunal & Ors.: (D.B. Civil Special Appeal (Writ) No. 46/2002) decided on 22nd April, 2002; Yashpal Sharma and Others Vs. The Rajasthan Non-Government Educational Institutions Tribunal and Others, (2003) 1 WLN 689 ; Managing Committee, Shri Sanathan Dharam Senior Higher Secondary School, Bharatpur v. Rajasthan Non-Government Educational Tribunal, Jaipur & Ors. (S.B. Civil Writ Petition No. 1995 of 2001) decided on 10.8.2001; Haresh Dayaram Thaur v. State of Maharashtra & Ors.: 2000 WLC (SC) Civil 486 , and T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, AIR 2003 SC 355 : (2002) 9 JT 1 : (2002) 8 SCC 481 .

5. In response to the notice of the writ application, the respondent-institute, has filed its counter affidavit raising preliminary objections while supporting the action of the Management of respondent-institute in terminating the employment of the petitioner for he was not in possession of the required essential "teacher's training" qualification. Learned counsel further submitted that the petitioner was not entitled to the pay scale equivalent to his counterparts in the Government Schools and/or Aided Institutions. In support of his submissions, reliance has been placed on the opinion in the case of Kumari Regina Vs. St. Aloysius Higher Elementary School and Another, AIR 1971 SC 1920 : (1972) 4 SCC 188 : (1971) SCR 6 Supp ; U.P. Shiksha and Education Board Vs. Rajender Prasad Gupta, (1996) 3 AD 319 : AIR 1996 SC 1336 : (1996) 3 JT 378 : (1996) 2 SCALE 908 : (1996) 3 SCC 598 : (1996) 2 SCR 1053 : (1996) 1 UJ 815 ; Rajkiya Mahavidyalaya Aasthai Vyakhyata Sangharsh Samiti v. State of Rajasthan & Ors.: 1994 (1) WLC (Raj.) 196 ; Central Academy Society Vs. Rajasthan Non-Government Educational Institutions Tribunal and Others, (2010) 3 RLW 2326 ; Educational Society of Sophia High School & Ors. v. Raj. Non-Govt. Educational Ins. Tri. & Ors.: 2003 WLC (Raj.) UC 638 ; Adarsh Vidya Mandir Samiti and Another Vs. Raju Lal and Others, (2014) LabIC 1478 : (2014) 2 RLW 1753 ; Mahendra Singh Pooniya v. Union of India & Anr.: 1991 (2) WLC (Raj.) 313 and State of M.P. and Others Vs. Shyama Pardhi etc. etc., (1996) 1 AD 253 : AIR 1996 SC 2219 : (1995) 9 JT 578 : (1995) 7 SCALE 216 : (1996) 7 SCC 118 :

(1995) 5 SCR 448 Supp : (1996) 1 UJ 218 .

6. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

7. Indisputably, the petitioner was not in possession of the required essential educational qualification of a "trained Teacher". This fact is further reflected from the order dated 25th June, 1994, whereby the petitioner was accorded appointment on temporary basis, on a fixed remuneration of Rs. 1,100/- for the academic session 1994-95, with a specific condition stipulated therein to the effect that the untrained candidate(s) would acquire the required essential educational qualification of a "trained Teacher" within two years. Similarly, another appointment order dated 26th June, 1995, while extending appointment purely on temporary and ad hoc basis, to the petitioner, with effect from 1st July, 1995 to 31st May, 1996, stipulated a condition to the effect that "untrained Teachers" were required to acquire the essential educational qualification of a "trained Teacher" within one year and failure thereto, would entail termination of the appointment.

8. The Management of the respondent-institute was called upon vide communication dated 5th June, 1997, by the Deputy Secretary, Secondary Board of Education to remove the defects/deficiencies pointed out therein, in order to process the case of the institution for recognition. One of the deficiency, which was specifically incorporated in the communication dated 5th June, 1997, to be complied with was to appoint "trained Teachers", in place of "untrained Teachers".

9. On being queried by the Court, the learned counsel for the petitioner admitted the fact that though the petitioner was not in possession of the required essential educational qualification of a "trained Teacher", yet it was mandatory on the part of the respondents, including the Management of the respondent-institute, to comply with the mandate of Section 18 of the Act of 1989 as well as Rule 39 of the Rules of 1993, while terminating the employment of the petitioner.

10. From the offer of the appointment dated 25th June, 1994 and 26th June, 1995, it is evident that the petitioner was not in possession of the required essential educational qualification of a "trained Teacher" and he was called upon to acquire the same and failure thereof, would entail termination of his employment/engagement.

11. The Tribunal while considering the pleaded facts, evidence and materials available on record, recorded a specific finding to the effect that the petitioner was not in possession of the required essential educational qualification of a "trained Teacher". After a careful consideration of the facts, circumstances and materials available on record in the backdrop of the law declared by the Hon'ble Supreme Court; the action of the management of the respondent-institute, in terminating the services of the petitioner, vide order dated 31st May, 1996, was

found legally sustainable. The reference made to the observations of the Hon''ble Supreme Court in the case of Andhra Kesari Educational Society Vs. Director of School Education and Others, AIR 1989 SC 183 : (1988) 4 JT 431 : (1988) 2 SCALE 1334 : (1989) 1 SCC 392 : (1988) 3 SCR 893 Supp : (1989) 1 UJ 42 , is of relevance and acquires much more significance in view of the fact that right to education has been declared as a fundamental right for the children until they acquired the age of 14 years. The Hon''ble Supreme Court has reiterated the importance and significance of the "training" of Primary School Teachers, who have to handle very young, delicate and impressionable minds.

12. By now, it is well settled law that an individual appointed on ad hoc/urgent temporary basis does not acquire a right to hold the post and he has to make room for regularly selected persons in accordance with the recruitment rules.

13. In the case of Mahendra Singh Pooniya (supra), a Coordinate Bench of this Court relying upon the opinion of the Hon''ble Supreme Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, AIR 1976 SC 376 : (1976) 1 SCC 311 : (1976) 8 UJ 15 and Prahlad Kumar Vs. University of Rajasthan, (1985) 2 WLN 679 ; held thus:--

"10. I have given my serious consideration to the rival submissions of the learned counsel for the parties and I am of the opinion that the petitioner cannot succeed on the plea of equitable or promissory estoppel. In view of my finding on the first contention of the learned counsel for the petitioner, it is clear that the petitioner lacked the minimum academic qualification, which could make him eligible for appointment as A.S.I. Merely because on account of mistake/error/over-sight the petitioner has been selected and order of appointment has been issued in his favour, the petitioner cannot claim that he has acquired a right to hold the post. Nor can it be said by any element of justification that the respondents should be compelled to continue the petitioner in service, although he was not having the requisite academic qualification for the purpose of appointment on the date of issue of order of appointment. The decision of the Supreme Court in Shri krishan's case (supra) and that of the Division Bench in Prahlad Kumar's case (supra) relate to admission matters. In the first case, the candidate was allowed to appear in the examination, although he lacked the minimum required percentage of attendance. The court held that once he had been allowed to appear in the examination, the respondent university was not entitled to withhold his examination. In the second case, the candidate was not having the requisite percentage of attendance. He was allowed to appear in the examination. The result was declared and after passage of long time, the University cancelled the examination. In that fact situation, the court invoked the principle of equitable estoppel and held that the University cannot now change the position of the petitioner. The principles laid down in these two cases cannot be applied in the case of employment to a public service."

14. In the case of State of M.P. & Ors. (supra), the Hon''ble Supreme Court held that in absence of prescribed qualifications, the appointment cannot be sustained.

15. Learned counsel for the petitioner, in the instant case at hand, referring to the details of persons as contained under paragraph 5, emphasized that the Management of the respondent-institute, retained many other Teachers, who were not in possession of the required educational qualifications of a "trained Teacher". Though the statement has been specifically denied in the counter affidavit to the writ application, yet in the opinion of this Court, there cannot be a claim for equality in illegality.

16. The issue whether Section 18 of the Act of 1989, would be applicable or not, in the instant case, is no more res-integra in view of the specific reference answered by a Full Bench of this Court in the case of Central Academic Society (supra), wherein the Full Bench after a careful consideration of the text of Section 18 of the Act of 1989, in the backdrop of opinion of the Hon''ble Supreme Court in the case of T.M.A. Pai Foundation (supra), and held thus:--

"23. As noticed, in Sophia School, the learned Division Bench read down the provision of Section 18 in the light of the decision of the Hon''ble Supreme Court in Pai Foundation; and held that in view of the law so declared by the Hon''ble Supreme Court, the requirement of Section 18 cannot be made applicable to an unaided institution taking disciplinary action. Thus, imperative it is to refer to the relevant ratio from Pai Foundation.

27. Therefore, the law as declared by the Hon''ble Supreme Court in Pai Foundation remains binding, unaltered and unaffected by any other observation made in any other decision; and hence, for the purpose of the issue at hands, there does not appear any necessity to refer to other past and later decisions as referred by the learned counsel for the parties.

28. A bare reference to the above-quoted passage from Pai Foundation and particularly the highlighted portions leaves nothing to doubt or even to ponder that so far unaided private educational institution is concerned, as per the dictum of the Hon''ble Supreme Court, there cannot be any requirement to seek consent or approval of any governmental authority before taking any disciplinary action; and that it is not necessary for the institution to get prior permission or even ex post facto approval while taking disciplinary action against a teacher or any other employee. Thus, so far disciplinary actions are concerned, as per the law declared by the Hon''ble Supreme Court, the matters are to be left for the unaided institution itself to take appropriate action about; and for such an action, the unaided institution need not go on seeking approval whether prior or post from the governmental authorities."

17. While answering the reference the conclusion arrived at, reads thus:--

"In view of what has been discussed above, our answer to this reference is that the first proviso to Section 18 of the Act of 1989 does not apply in relation to the disciplinary action by private unaided recognised institution but the other provisions of Section 18 including the second proviso do apply to such unaided private recognised educational institution too. "

18. In the instant case at hand, the specific stand of the Management - respondent institute, has been that the petitioner was not in possession of the required essential educational qualifications of a "trained Teacher", and therefore, termination of the employment of the petitioner was a consequence of non-compliance of the conditions stipulated in the offer of appointment itself. Moreover, the petitioner was offered the appointment for academic session 1994-95 and 1995-96, with a specific stipulation therein to acquire the required essential educational qualification of a "trained Teacher" and failure to do so, was to entail termination of employment of the petitioner. Since, the petitioner failed to acquire the necessary educational qualification of a "trained Teacher", his services have been terminated. Therefore, Section 18 of the Act of 1989, is not attracted in the instant case at hand.

19. Another issue raised by the petitioner for he was not accorded the pay scale equivalent to his counterparts in the Government Schools and/or Aided Institutions, is of no substance for the reason that the issue has already been considered and adjudicated upon by a Division Bench of this Court in the case of Adarsh Vidya Mandir Samiti, Bharatpur (supra), holding thus:--

"23. In the instant Scheme of Rule 1993 Schedule 2 on which emphasis was made by the counsel for respondent appended to R.5(1) of the Rules Para 14 suffice it to say that the State Government has highlighted for making payment of scale of pay & allowances for recognized institution as per rules of the state govt. but as noticed there are no rules to this effect framed by the state government so far prescribing scale of pay & allowances for employees of unaided educational institution and what being urged by counsel for respondent if still has been violated it may be within the institution and the state government but employee of unaided institution cannot seek mandamus regarding scale of pay & allowances equal to and in parity to the employees of government institution more so when the legislature has confined as regards scale of pay & allowances of employees of the aided institution similar to the employees of govt. institution but we make it further clear that for other purpose as regards recruitment, recognition, condition of service, leave, accounts & audit, conduct & discipline, constitution of managing committee etc. the legislative in its wisdom has put its control over the recognized institutions irrespective of the fact whether the institution is aided or unaided but in the instant matter scale of pay & allowances is the subject matter in our considered view under the Scheme of Act 1989 & Rules 1993 it is confined to the employees of non govt. aided institution and not for the employees of non government recognized unaided institutions.

24. As regards judgment on which learned single Judge has placed reliance of the Apex Court in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, AIR 1998 SC 295 : (1997) 3 JT 455 : (1997) 2 SCALE 558 : (1997) 3 SCC 571 : (1997) SCC(L&S) 841 : (1997) 2 SCR 368 it was based on principles of equal pay for equal work enshrined in Art. 39(d) of

the Constitution but that could always be referred in reference to the scope of the relevant Act and Rules framed thereunder but under the present Scheme of the Act 1989 & Rules 1993 it does not provide scale of pay & allowance to such of the employees of the unaided institution and the teacher of unaided institution cannot seek mandamus in isolation u/Art. 39(d) of the Constitution and parity with the employees of the govt. institution and apart from it the respondent employee was an untrained teacher and there is no provision under the Scheme of govt. rules to recruit untrained teacher and the fact is that the government does not recognize untrained teacher in its establishment and under these facts and circumstances parity even otherwise cannot be claimed by the respondent employee for scale of pay & allowances admissible to the employee of the government institution as prayed for and accordingly, in our considered view the judgment of the learned single Judge and so also of the Educational Tribunal are not legally sustainable."

20. The contention raised by the counsel for the petitioner referring to Para 66 in the case of T.M.A. Pai Foundation (supra), while staking his claim for pay in the same scale as admissible to his counterparts in the Government Schools and/or Aided Institutions; on a close scrutiny, is found to be without any factual foundation. Be that as it may, even if, there was non-compliance of any clause of agreement between the Educational Institute and the Government; a third party such as a Teacher aggrieved of the order of the Management cannot drive any enforceable right against the Management as has been observed by the Hon'ble Apex Court of the land in the case of Kumari Regina (supra). The Hon'ble Apex Court of the land while dealing with somewhat similar controversy held thus:--

"24. But it cannot also be gainsaid that as the Government has the power, to admit schools to recognition and grants-in-aid, it can, de hors the Act, lay down conditions under which it would grant recognition and aid. To achieve uniformity and certainty in the exercise of such executive power and to avoid discrimination, the Government would have to frame rules which, however, would be in the form of administrative instructions to its officers dealing with the matters of recognition and aid. If such rules were to lay down conditions, the Government can insist that satisfaction of such conditions would be condition precedent to obtaining recognition and aid and that a breach or non-compliance of such conditions would entail either the denial or withdrawal of recognition and aid. The management of school, therefore, would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. The rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce those rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, such as a teacher aggrieved by some order of the management, cannot derive from the rules any enforceable right against the management on the ground of a breach or noncompliance of any of the rules. To illustrate the point, suppose the management of a school were to terminate the service of a teacher after giving

one month's notice, or one month's salary in lieu thereof in accordance with the contract of employment between the teacher and the management, such a termination would be valid. But the Government can insist that since its rules provide for three months' notice, the management cannot terminate the service of a teacher by giving only one month's notice. Though, in the absence of statutory provision having the effect of controlling or superseding the contract of employment agreed to between the parties, the termination would in law be valid, nevertheless, the Government can withdraw, under Part II Rules, the recognition and aid it has given to the school since its rules governing recognition and aid were not complied with. But that does not mean that Part II Rules confer upon a third party, viz., an aggrieved employee of a school, any remedy enforceable at law in the event of the management of an elementary school refusing to comply with these rules which, inter alia, enjoin upon a school to abide by the directions given thereunder by the education officers of the Government named therein."

21. Admittedly, the petitioner was not in possession of the required essential educational qualifications of a "trained Teacher". Further, his appointment was made on purely temporary/ad hoc basis for academic session 1994-95 and 1995-96, with a specific stipulation in the offer of appointment to acquire the essential educational qualifications of a "trained Teacher" within the period stipulated therein and failure thereof, would entail termination of the appointment. Since the petitioner failed to acquire the essential educational qualifications of a "trained Teacher", the employment was rightly put to an end. In the aforesaid singular facts and circumstances of the instant case at hand, the findings as well as the conclusion arrived at by the Tribunal, cannot be faulted.

22. For the reasons and discussions herein above, the writ petition is devoid of any substance, and lacks in merit, and therefore, deserves to be dismissed.

23. Ordered accordingly.

24. In view of the final adjudication on the writ application, the stay application stands closed.

25. However, in the facts and circumstances of the case, there shall be no order as to costs.