
(1998) 08 AHC CK 0059
In the Allahabad High Court
Case No : Writ Petition No. 1746 (M/S) of 1998

Ravindra Kumar, Advocate and anohter APPELLANT
Vs
State of U.P. and others RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226, 39, 45

Citation : (1999) 1 AWC 693 : (1999) 2 UPLBEC 51

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : H.S. Jain, for the Appellant; C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S.H.A. Raza, J.—Mr. H. S. Jain, the learned counsel for the petitioner, espousing the cause of millions of students, studying in Primary as well as Secondary Schools, all over the State, submitted that right of students to receive education who will determine the future of this country, cannot be spoiled by those teachers who went on strike which was declared illegal by the State of U. P.

2. Right of education in J.P. Unnikrisnan v. State of Andhra Pradesh, (1993) 1 SCC 642 , has been held a fundamental right by Hon''ble Supreme Court of India as that right is embedded under Article 21 of the Constitution of India. The petitioner who is a practising lawyer of this Court, by way of public interest litigation, has raised several grievances against the teachers who went on strike recently and prayed for grant of several reliefs which are mentioned hereinunder :

(1) issue a writ, order, direction or declaration to the effect that strike in schools and colleges being run under the Basic Shiskha Act, 1972. as well as the educational institutions recognised by the Director of Education, U. P., and the Board of High School and Intermediate Education, U. P. and the Government Secondary Institutions, is illegal being violative of students'' fundamental right to education ;

(2) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to ensure the opening of schools and colleges being run under the U. P. Basic Shiksha Act, 1972 and the educational institutions recognised by the Director of Education, U. P. and the Board of High School and Intermediate Education, U. P. as also the Government Secondary Institutions.

(3) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to take all measures for imparting education and smooth running of classes in the institutions being run by the opposite parties ;

(4) issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to pay any salary to the teachers, of the institutions, for the period they did not or do not perform their duties, applying the principle "no work no pay";

(5) issue a writ, order or direction to the effect that "strike period shall be taken as "break" in the services of striking teachers in the institutions ;

(6) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to take suitable action against the striking teachers dispensing with their services and make fresh appointments in their place ;

(7) Issue appropriate writ, order or direction in the nature of mandamus commanding the opposite parties, not to charge any fees from the students in the institutions for the period the classes were not running and institutions were closed due to strike :

(8) Issue an appropriate writ, order or direction in the nature of mandamus commanding the opposite parties not to reinstate those teachers whose services have been dismissed, terminated/dispensed with by them due to strike :

(9) issue any other appropriate writ, order or direction as the Hon"ble Court may deem fit under the circumstances of the case and in the interest of justice.

3. A child can develop to be a responsible and productive member of the society only when he is imparted education. If a child or student is deprived of his education, nation is also deprived of the potential human resources for social progress. The Constitution of India has bestowed the Importance of the role of the child in Its best for development. Article 39(f) enjoins that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 mandates that the State shall endeavour to provide free compulsory education to all children until they complete the age of 14 years. The period of ten years as provided in Article 45 has lost its relevance inasmuch as millions of children are denied compulsory primary education.

4. The convention on the rights of the child which was ratified by the

Government of India though belatedly on November 20, 1989 recognises the rights of the child for full and harmonious development of his or her personality. Article 22 of the convention on the rights of the child reads as under :

"(1) State Parties recognise the right of the child to education and with a view to education and with a view to achieving this right progressively and on the basis of equal opportunity they shall in particular :

(a) Make primary education compulsory and available free to all ;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the Introduction of free education and offering financial assistance in case of need ;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means ;

(d) Make educational and vocational information and guidance available and accessible to all children ;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. It is really unfortunate that although India is a signatory to International Convention on the right of the Child, mandate of the Constitution as contained In Article 39(f) has not been followed. India has assured the world Committee that by the end of this century the children will be provided free and compulsory education. If the State fails to fulfill this obligation under the Constitution, the Courts will have to issue directions to the State Government as well as the Union Government to fulfill its obligations under Article 39(f) of the Constitution of India and the International Convention on the right of the child to which this country is a signatory.

5. As far as the Courts are concerned, Hon"ble Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , has held that right to education at the secondary stage was fundamental right. In J. P. Unnikrishnan v. State of Andhra Pradesh (supra), the Constitutional Bench held the education upto the age of 14 years to be a fundamental right. A child is entitled to such a fundamental right and it will be incumbent upon the State to provide facilities and opportunities as enjoined under Article 39(e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary. In Bandhua Mukti Morcha v. Union of India and others 1997 (4) SC 609, Hon"ble Supreme Court held that basic education and employment-oriented vocational education should be imparted so as to empower the children with the segments of the society to retrieve them from property and thus develop basic abilities, skills and capabilities to live meaningful life for economic and social empowerment. Compulsory education, therefore, to these children is one of the principal means and primary duty of the State for stability of the democracy, social integration and to eliminate social

tensions.

6. In our country when the entire world was in darkness, Rishis and Gurus in their Ashrams used to impart education without expectation of receiving any remuneration. Whatever was given to them as "Dakshina" was accepted by those Rishis and Gurus. After the advent of Islam in India, the Khankas of the Dervish, Saints and Sufis became the centres for imparting education. The teachers who impart education in our country command great respect, not only from the students and their guardians but the society as a whole is indebted to them. The eminent teachers, namely, Prof. Radha Krishnan, Dr. Zakir Hussain and Pandit Shankar Dayal Sharma were elevated to the post of the President of the Republic. The elected representatives of teachers were given representation in Legislative Council of various States. But in the recent past, the teachers' associations have embarked upon agitational means for the enhancement of their salaries, employment's, allowances and other benefits.

No doubt due to the spiraling prices, the State is bound to neutralise the rise in prices either by increasing the dearness allowance or enhancing salaries, but from the side of the State it is being said that out of the budgetary allocation for education more than ninety per cent of the allocated money is being spent on the payment of salaries to the teachers and little amount is left for opening of new schools, construction of school buildings and providing such schools with other necessary facilities, like arrangement of water, libraries, laboratories etc. Hence, it is urged before this Court that considering the meagre resources available, it would not be possible to enhance, further, salaries of the teachers as demanded by them.

7. It is really unfortunate that the budgetary allocation for education in this State is less than 5 per cent which shows the apathetic and careless attitude of the State in not giving priority to education which is vital for the social progress and economic empowerment and social stability and good citizenry. Time has come when conscious efforts should be made to increase the budgetary allocation for education to provide better education in schools and colleges. The half starved shabbily clothed teachers of primary schools as well as secondary schools cannot fulfill their obligations.

8. But there is another aspect of the matter which requires consideration ; as to whether the teachers who may have genuine grievances can go to the extent of paralysing the schools and colleges by going on strike as a result of which the admission process cannot be started, when the schools open after vacation and courses cannot be finished. No doubt in democratic country like ours every person has right to raise his grievance by organising meetings and demonstrations, but the question which has cropped up in this writ petition is as to whether the teachers can be permitted to stall the entire educational system by going on strike.

In my opinion the teachers had no right to press their cause by going on an

indefinite strike, which was later on prohibited by the State Government, and the services which they render by imparting education were declared essential services. However, the wisdom was dawned, and the teachers' associations called off the strike, but inspite of the fact that they had withdrawn the strike, services of the teachers were terminated and there was influx of writ petitions in the High Court in which the order terminating the services of the teachers were assailed.

9. In the present writ petition, the petitioner wants this Court to issue a direction commanding the State of U. P. to ensure the opening of schools and colleges run under the U. P. Basic Shiksha Act, 1972 and the educational Institutions recognised by the Director of Education, U. P. and the Board of High School and Intermediate Education. U. P. as also the Secondary Education. There is no necessity for this Court to issue such a direction to the respondents because the schools were never closed, but as a result of the strike of teachers the education could not be imparted to the students during the period of strike. The State has done its duty by prohibiting the strike and in consequence thereto, the strike was withdrawn and in every school smooth running of classes started. This Court cannot Issue a direction to the State Government not to pay salary to the teachers for the period they did not perform their duty applying the principle of "no work no pay" and the strike period be taken as "break in service" of those striking teachers. This is a question of policy for which no directions can be issued. It is for the State either to "forget or forgive" or to take necessary action against them, considering the situation. Similarly this Court cannot issue a direction to dispense with the services of those teachers and make fresh appointments in their place particularly when the strike has been withdrawn. The State has taken some action and the services of several teachers have been dispensed with and against such orders writ petitions have been filed which are pending. This Court in exercise of its powers under Article 226 of the Constitution of India cannot issue direction to the State Government in the matter of policy. The question as to whether the schools would be entitled to realise the fee from the students Studying In various schools and colleges for the period when the teachers were on strike is concerned, I am of the view that such a relief cannot be granted by this Court.

10. However, Sri H. S. Jain, learned counsel for the petitioner further submitted that in view of the observations of Hon"ble Supreme Court in H.M.T. Ltd. Vs. H.M.T. Head Office Employees" Assocn. and others, and Communist Party of India (M) Vs. Bharat Kumar and Others, strike of teachers may be declared unconstitutional and illegal and they be not paid their wages/salary for the period they went on strike. In this regard, I am of the view that the direction of the Supreme Court in those cases pertained to the strike by workers and it has no relevance to the facts and circumstances of the present case and this aspect of the matter can be looked into by the appropriate authorities.

11. The learned counsel for the petitioner insisted that this Court should issue

direction to the State Government not to re-instate those teachers whose services have been terminated. I am of the view that this Court cannot Issue such a direction particularly when the question as to whether the services were rightly terminated or not is the subject-matter of several writ petitions which are pending before this Court. Such a direction cannot also be given for the reason that it pertained to the matter of policy, the determination of which rests completely with the State Government.

12. As stated in the fore-going paragraphs, the strike has been withdrawn by the teachers association. It is expected that the teachers will finish their course before examination. It cannot be denied that inspite of many ills which have crept in various segments of public life and services the system goes on. The teachers generally realise their obligations/duties towards their pupils and the society at large and it is their duty to see that the children are not deprived of their education because the students cannot develop to be reasonable and productive members of society unless they are equipped with proper education which rests on the teachers. With the hope and expectation that teachers will provide the students with better education which is necessary for their physical and Intellectual development and the State will make an earnest endeavour to increase the budgetary allocation for education and resolve the dispute pertaining to the salaries and emoluments of teachers expeditiously, so re-occurrence of such unfortunate events may not take place in future, I conclude.

13. With aforesaid observations the writ petition is accordingly disposed of.