

(1998) 07 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 363 of 1995

Rekha Bhatia

APPELLANT

Vs

Miss Hill Education Society and Others

RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 2, 6

Citation : (1998) 2 MPJR 101 : (1998) 2 MPLJ 598

Hon'ble Judges : S.P. Shrivastava, J

Bench : Single Bench

Advocate : N.K. Mody, for the Appellant; R.D. Jain, for Respondent Nos. 1 and 3 and J.D. Suryavanshi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.

Feeling aggrieved by the order passed by the Secretary, Miss. Hill Education Society, Gwalior, dated 15-5-1994, terminating her services, indicating that they were no longer required after 15-5-1994; the W. P. No. 363 of 1995 decided on 10-7-1998. (Gwalior) petitioner has now approached this Court seeking redress praying for the quashing of the aforesaid order and a direction for her reinstatement with full backwages.

I have heard the learned counsel for the petitioner as well as learned counsel for the respondents Nos. 1 and 3 and the learned counsel for the respondent No. 2.

2A. The Society, respondent No. 1 and the State of Madhya Pradesh respondent No. 2 have filed separate counter-affidavits in opposition to the writ petition.

The facts in brief shorn of details and necessary for the disposal of this case lie in a narrow compass. Miss. Hill Education Society (hereinafter referred as the Society) is a registered Society under the provisions of the Madhya Pradesh Registration Act and runs an educational institution imparting education upto the

Higher Secondary level. This institution receives grant-in-aid from the state and is also recognised not only by the State Government but also by the Education Board.

The petitioner was granted an appointment vide the order dated 13-7-1992, on the post of an Assistant Teacher in the aforesaid educational institution in the grade of Rs. 975-1600/- with other allowances according to the Society rules on a purely temporary basis upto the end of the Academic Year i.e. 15-5-1993, with a condition that her services could be terminated at any time without any prior notice.

The aforesaid appointment was however continued vide the letter of the Secretary of the Society dated 12-5-1993 upto the end of 15-5-1994, only on the same terms and conditions as contained in the order dated 13-7-1992.

The learned counsel for the petitioner has strenuously urged that the impugned termination order had been passed in utter disregard of the principles of natural justice, and was also in violation, of the protection available to the teachers employed in such institutions as envisaged u/s 6 of the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (hereinafter referred to as the Act No. 20 of 1978) which provides that notwithstanding anything contained in any law for the time being in force or any rules, regulations, byelaws, statutes or regulations made thereunder on and from the appointed date, no teacher or other employee shall be dismissed or removed from service or his services terminated except by an order passed after following such procedure as may be prescribed.

The learned counsel for the contesting respondents have urged that the educational institution in question does not receive any grant-in-aid for the payment of salary, etc., of the petitioner. It was further pointed out that she was an unrecognised and unapproved teacher and had no statutory protection.

It is further urged that in the circumstances, the petitioner is not entitled to any relief in the present proceedings under Article 226 of the Constitution of India.

I have considered the above submissions and have carefully perused the record.

It is not disputed before me that the recruitment of the teachers in the educational institution in question is regulated by the Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ki Bharti) Niyam, 1979.

It is further not disputed that the service conditions of the teaching staff of an educational institution falling within the purview of the Act No. 20 of the 1978, are regulated by the provisions contained in the Madhya Pradesh Ashaskiya Sikshan Sanstha (Adhyapakon Tata Anya Karmcharyon Ke Padachut Karne/Seva Se Hatane Sambhandi Prakriya) Niyam, 1983.

The question which therefore arises for consideration is as to whether in the circumstances of the present case, the petitioner is entitled to the relief as

claimed in the present proceedings.

The facts in this case which are not disputed clearly indicate that the petitioner had not been appointed after following the procedure prescribed under the rules and further the educational institution was not being provided any grant-in-aid for the payment of salary, etc., to the petitioner.

The provision contained in Section 2(i) of the Act No. 20 of 1978, defines "Teacher" which means a teacher of an institution in respect of whose employment maintenance grant is paid by the State Government or the Ayog, as the case may be, to the institutions and includes any other teacher employed, with the prior approval of the authority specified by the State Government in this behalf, in fulfilment of the conditions of recognition/affiliation of an institution or of a new subject or a higher class or a new section in the existing class by the Madhya Pradesh Board of Secondary Education or any University or the Ayog, as the case may be, and shown on the pay roll of the institution against a post as being in the employment as such but does not include a teacher whose appointment is disapproved under Clause (c) of Section 6.

The petitioner admittedly does not fall within the ambit of "teacher" as contemplated under the aforesaid Act. Further, her appointment was not made in accordance with the rules regulating the recruitment of such a "teacher".

I am of the clear opinion that the protection envisaged u/s 6 of the Act No. 20 of 1978, could not be extended to a teacher falling in the category of the petitioner.

It may be noticed at this stage that ordinarily a contract of personal service cannot be specifically enforced especially when under the terms and conditions of the contract, the employee has no right to continue in service but when it is claimed that the order putting an end to the service of the employee is vitiated on account of any statutory invalidity of an act done by the employer, it ceases to be a case of specific enforcement of contract of service but falls in the category of a case where an order putting an end to the service being null and void is no order in the eye of law and the question of enforcing specific performance of the contract of employment does not arise. In a case where the law, as distinct from contract, imposes a mandatory obligation prescribing the kind of contract which may be entered into by an employer and the manner in which alone the service of an employee may be terminated, any termination of service is effected in breach of such statutory obligation it would be invalid and ineffective and in such a case the Court may treat it as null and void.

In the present case, what I find is that the petitioner had been appointed by the Society subject to certain terms and conditions which had been accepted by her. In the absence of the prerequisite conditions regulating recruitment of an assistant teacher in a recognised educational institution receiving grants-in-aid, having been satisfied; the statutory protection as envisaged under the Act No. 20 of 1978 referred to hereinabove, could not be extended to an assistant teacher falling in the category of the petitioner.

Taking into consideration the facts and circumstances indicated hereinabove, I am of the clear opinion that no justifiable ground can be said to have been made out justifying an interference in the present proceedings while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

In the aforesaid view of the matter, this writ petition is dismissed.

There shall however be no order as to cost.