
(1993) 06 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3698 of 1993

Rekha Sharma

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision : 02-06-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 106 PLR 745

Hon'ble Judges : R.K. Nehru, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Ravinder Chopra, for the Appellant; Sumit Mahajan, for the Respondent

Final Decision : Allowed

Judgement

R.K. Nehru, J.—The petitioner has sought a mandate to the respondents, including the Managing Committee, Mahabir Sanatan Dharam Public High School, Bathinda, to permit her to join duties as Director Physical Education, in this petition under Articles 226/227 of the Constitution of India.

2. The petitioner joined the service of Mahabir Sanatan Dharam Public School, Bhatinda ("the M.S.D School", for short) as Director Physical Education on July 23, 1983 and since then she had been working continuously as such; that she was initially appointed on probation for a period of one year and she completed her probation period satisfactorily on August 22, 1984 and was made permanent; that respondent No. 3 obtained security deposit of Rs. 1000/- on her successfully completing the probation period; that after her confirmation in the service of the M.S.D. School, regular Provident fund deductions were started from her salary and she was allotted Account No. 11191 by the Regional Provident Fund Commissioner, Chandigarh; that the service conditions of the petitioner are governed by the Privately Managed Recognized Schools (Employees Security of Service) Act, 1979 and the Rules of 1981 framed thereunder, but to her surprise, respondent No. 3 did not allow her to enter the school premises on April 2, 1993

when as usual she went to attend her duties.

3. Written statement has been filed on behalf of respondent No. 3. A preliminary objection has been taken that the M.S.D. School is not a State within the meaning of Article 12 of the Constitution of India and as such the writ petition under Article 226 of the Constitution is not maintainable against it; that the provisions of the Privately Managed Recognised Schools (Employees Security of Service) Act, 1979 are not applicable as respondent No. 3 does not receive grant-in-aid from the State of Punjab; that the affairs of the M.S.D. School are controlled by Sanatan Dharam Mahabir Dal Education Board, Punjab and that the petitioner does not come to the School in the evening for conducting evening physical exercises of the students.

4. A reading of the written statement in unmistakable terms suggests that respondent No. 3 is not permitting the petitioner to join the School and perform her duties as Director Physical Education. The ground now taken in the written statement that the petitioner is not attending the School in the evening for conducting physical exercises and games of the students is a recent innovation, presumably cooked up for defending the writ petition. If what is stated in the written statement is correct, the petitioner should have been given a show cause notice to explain her conduct, a regular enquiry would have been held and thereafter action taken. It is unbecoming on the part of respondent No. 3 to treat their teachers in such an unfair manner. To say the least, they have acted as despots. It is desirable that respondent No. 3 must respect the rule of law. Even if they have to get rid of the petitioner for assumed or valid reasons, an enquiry consistent with the principles of natural justice is a sine qua non. The action of respondent No. 3 deserves deprecation.

5. The defence taken by respondent No. 3 that this Court cannot issue any direction to it is untenable. A writ of mandamus can be issued to undo injustice wherever it is found. It will be useful to refer to the following observations of the apex Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, :-

"The Law relating to mandamus has made the most spectacular advance. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This striking departure from the English law. Under Article 226, writs can be issued to "any person or authority." It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of the positive

obligation owned by the person or authority to the affected party. No matter by what means the duty imposed. If positive obligation exists mandamus cannot be denied. It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226."

In the light of this, the objection of respondent No. 3 that no writ of mandamus can be issued to it is overruled.

6. For the reasons stated above, we allow the writ petition and direct respondent No. 3 to take back the petitioner in service forthwith. She will be deemed to be in service throughout the period commencing from the date when she was refused to enter the School premises. She will be released all her arrears of salary on or before June 30,1993.