

(1991) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 890 of 1988

S. Ram, Principal

APPELLANT

Vs

G.P. Shrivastava, Registrar and Others

RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Madhya Pradesh Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 1(5), 2, 7
Madhya Pradesh Regulations of the Board of Secondary Education framed under Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 — Regulation 79

Citation : (1992) 1 MPJR 322 : (1992) 37 MPLJ 49 : (1992) MPLJ 49

Hon'ble Judges : K.L. Issrani, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; H.S. Ruprah, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, J.

Satpula Girls Higher Secondary School, Jabalpur is a Government aided education "institution" within the meaning of the provisions contained in M. P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyaon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (shortly hereinafter referred to as the Act). The above institution is run by minority community of Protestant Christians through a registered society under the M. P. Registrikaran Adhiniyam named Nagpur Diocesan Board of Education, Jabalpur (shortly referred hereinafter as N.D.B.E.). The petitioner worked as Principal of the above school and claimed to be fully governed, in the matter of her service conditions, by the provisions of the rules framed under the Act. The rules are named M. P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ko Padachyut Karne/Sewa Se Hatane Sambandhi Prakriya) Niyam, 1983.

The petitioner initially challenged in this petition under Article 226 of the Constitution of India the order dated 4-2-1988 (Annexure P-7) whereby she was

placed under suspension and now she challenges the impugned order dated 3-7-1988 compulsorily retiring her on the basis of a charge-sheet, an enquiry and an enquiry report submitted thereof. The above order of compulsory retirement and copy of the enquiry report are on record with the application made by the petitioner on 14-7-1988 seeking amendment of the petition. Formal amendment was not incorporated in the petition but we have allowed the parties to address arguments also on the same.

The only necessary facts to be stated are that the petitioner was charged inter alia for defying the authority of the Bishop of Jabalpur who was Chairman of N.D.B.E. at Jabalpur. Several acts of mismanagement were also alleged against the petitioner which led to delay in receipt of grants-in-aid for payment of salary to the staff and all round resentment from all concerned in the school. A charge-sheet was issued to her which she refused to have received by post. Notice of holding disciplinary proceeding was published in the local newspaper. Respondent No. 12 Smt. V. V. Mallaya, the then Principal, Government Prantiya Shikshan Mahavidyalaya, Jabalpur (who holds the rank equivalent to D.S.E. now designated as Joint Director of Education) was appointed as Enquiry Officer. The petitioner, although noticed to appear before the Enquiry Officer, did not participate in the enquiry. The Enquiry Officer submitted an adverse report against the petitioner, copies of which were sent to the concerned authorities of the State Govt. in compliance with the provisions of the rules. N.D.B.E., as governing body of the school, constituted a screening committee to consider the enquiry report and by the impugned order passed on 3-7-1988, keeping in view her past services to the school, she was compulsorily retired.

Learned counsel appearing for the petitioner has challenged the disciplinary proceedings and the order of compulsory retirement on several grounds. Firstly it is submitted that the management of the school alone was competent to take disciplinary action and N. D. B. E. with Bishop of Jabalpur as its Chairman was incompetent to take any action against the petitioner.

The above argument is satisfactorily met by respondents Nos. 6 to 10 who represent the management of the school by filing Annexure R-6/1 to show that N. D. B. E., with the Bishop of Jabalpur as its Chairman, was an independent registered society and had constituted a managing committee consisting of members named in the above document. The expression "management" has been defined under the Act in Section 2(g), which reads as under : -

"Management" in relation to any institution means the governing body thereof within the meaning of the Madhya Pradesh Society Registrations Adhiniyam, 1973 (No. 44 of 1973), and the expression "management" of the institution shall be construed accordingly."

N.D.B.E., Jabalpur, as registered society, has constituted a committee vide Annexure R-6/1. That body was the governing body of the school, included within the definition of management and was fully competent to take disciplinary action

against the petitioner as its employee.

The second contention raised on behalf of the petitioner is that regulation 79 of the M. P. Regulations of the Board of Secondary Education framed under the M. P. Madhyamik Shiksha Adhiniyam, 1965 has a binding statutory force and the services of the petitioner could not have been dispensed with without obtaining prior sanction of the Director of Education. Reliance is placed on the case of Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others, The above Regulation 79 of the Board of Secondary Education reads as under : -

"Regulation 79(1) : The Managing Committee shall not terminate the services and reduce the pay of Principal or Head Master appointed on written contract without first obtaining Director's sanction for holding a full enquiry into the charges against him. The incumbent shall be given in writing a statement of the charges against him, and also be afforded an opportunity of defending himself. His previous services and character with reference to his confidential file and service book shall also be taken into consideration before arriving at a decision.

(2) No decision as to termination of service or reduction of a Principal or a Head Master shall be valid unless passed at Special Meeting by a majority of two-third of members of the Managing Committee. No such resolution shall be valid, if passed at an adjourned meeting.

(3) The Principal or Head Master has a right of appeal to the Director against decision of the Managing Committee. The decision of the Director shall be final."

The above contention based on the above Regulation 79 is without any merit. The regulation can have no application on the face of the provisions contained in Section 1(5) and non obstante clause in Section 6 of the Act. By the above provisions, overriding effect has been given to the provisions of the Act over the regulations. Section 1(5) and Section 6 of the Act may be seen : -

"1(5). An institution to which this Act applies under sub-section (4) shall, with respect to matters provided for in this Act to be governed by the provisions of this Act notwithstanding anything to the contrary contained in any contract or document or in any other enactment for the time being in force."

"6. Prohibition on creation of posts and appointments of staff and termination of services - Notwithstanding anything contained in any law for the time being in force or any rules, regulations, byelaws, statutes or regulations thereunder : -

(a) on and from the appointed date, -

xx xx xx xx

(iii) 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 :

xx xx xx xx"

Lastly it was contended on behalf of the petitioner that the provisions of the rules regulating disciplinary proceedings have not been followed and due approval of the competent authority under the Act, i.e. D.S.E., has not been obtained to the action of the management in removing her from service. Learned counsel drew our specific attention to the following quoted rules, complaining its non-compliance : -

"7. Enquiry Officer. - (1) After the written statement is received from the teacher or other employee in accordance with Rule 5 or if no statment is received, within the time specified a reference shall be made : -

xx xx xx xx

(b) in case of a teacher of Higher Secondary School to the concerned Divisional Superintendent of Education."

xx xx xx xx

"12. Decision of Management. -

(1)... ..

(2)

(3) (a) The Management shall after considering the representation, if any, made by the teacher or other employee, determine what action, if any, should be taken against the teacher or other employee and make a proposal for the order which it intends to pass.

(b) The Management shall thereupon forward the whole case along with its proposal of the Order intended to be passed to the competent authority for its approval and the competent authority shall not refuse to grant such approval except on one or more of the following grounds : -

(i) that there has not been, in the course of enquiry, proper or sufficient compliance of the procedure laid down in these rules;

(ii) that the provisions of the Act are likley to be defeated by the said Order; and

(iii) that the said Order, on the face of it, is perverse."

Learned counsel appearing for the institution, in reply to the above last contention, placed reliance on a general circular of the State Government in the Directorate of Public Instructions, bearing No. Ami/A/84/1493, dated 11-4-1984. In para 2 of the above circular, it has been clarified that the provisions of Section 6(a)(iii)(iv) and 6(c) and (d) of the Act will have no application to an aided minority institution. On the basis of the above circular, submission on behalf of the management is that there was no legal requirement on their part to obtain sanction or approval of the competent authority under the Act before taking disciplinary action against the petitioner.

Learned counsel for the petitioner in its counter reply challenged the constitutional validity of the above Government circular and contended that regulatory provision for educational institution in the Act with regard to the minority institution receiving aid from the Government, cannot be held as violating rights of the minority institution under Article 30(1) of the Constitution of India. Reliance is placed on the case of *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, Reference is also made to other decisions on Article 30(1) in *Mrs. Y. Theelamma v. Union of India and Ors.*, : AIR 1987 SC 1210 and *All Bihar Christian Schools Association and Another Vs. State of Bihar and Others*,

Having considered the ratio of the rulings cited above, at the Bar, on the content and ambit of Article 30(1) of the Constitution of India protecting the rights of minority to administer its educational institution, in our opinion, the ratio laid down by the Division Bench of this Court in the case of *Siddhi Bala Bose Library Association and Ors. v. State of M. P. and Ors.* 1979 MPLJ 379, based on the provisions of the Act under consideration before us, still holds the field.

The following observations in the Division Bench case of this Court (*supra*) fully support the stand taken by the management: -

"From the provisions of sub-clause (iii) of Section 6(a), *M. P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam*, it is clear that the ultimate power is not with the management but with outside authority. Similarly sub-clause (iv) takes away the management's power of disciplinary control and suspension of an employee or his termination of service. Provisions of clauses (b) and (c) of Section 6 enable reversing of management's decision. By these provisions the right of management has thus been destroyed by conferring power of veto on the competent authority or appellate authority. The provisions of Section 6(a)(iii) and (iv), (b) and (c) therefore, violate the right guaranteed by Article 30(1), Constitution of India and, therefore, cannot be made applicable to educational institutions established and administered by religious and linguistic minorities."

The only legislative change, after the above decision, was amendment of Section 6(a)(iii) of the Act and prescribing procedure of holding disciplinary enquiry by rules which include the provision for getting approval from the competent authority before terminating or removing or dispensing with the service of an employee of an educational institution. On the same reasoning, on which unamended provisions in the Act, were held violative of Article 30 of the Constitution of India. Similar provisions in the rules intending to interfere with the right of disciplinary control of minority over their institutions can be held invalid under Article 30(1) of the Constitution. We do not find anything in the later decisions of the Supreme Court (*supra*) taking a different view with regard to the power of the disciplinary control of Authority of an aided minority institution. The circular of the Government is, therefore, in tune with the spirit and content of Article 30(1) of the Constitution and the rules quoted above on

which reliance has been placed by the petitioner can have no application to the minority institutions. A passage in Frank Anthony Public School (*supra*) to which our attention was specially invited by the learned- counsel for the petitioner fully supports the view taken by the Division Bench of this Court in the case of Siddhi Bala Bose Library (*supra*). The other permissible regulatory provisions for the aided minority institutions, which were made inapplicable to unaided institutions by the provisions of Section 12 of the Delhi School Education Act, have been held discriminatory by the Supreme Court in the case of Frank Anthony Public School (*supra*). But the provisions of Section 8(2) of Delhi Act, requiring approval to disciplinary action, is substantially similar to Section 6(a)(iii) of the Act and Regulation 79 of the Board of Secondary Education (quoted above), have been held violative of Article 30(1) of the Constitution of India. The following observations contained in paragraph 20 and a part of paragraph 21 in Frank Anthony Public School case will make the above legal position clear : -

"20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 inapplicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the Government.

The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) inapplicable to unaided minority institutions....."

Even otherwise, on facts, we find that in this case, enquiry was conducted by a high ranking independent officer in the Education Department of the State. The petitioner has herself to blame for not taking part in the enquiry and refused to avail the right of defence.

Consequently, the petition fails and is hereby dismissed, but without any order as to costs. The amount of security, if deposited, be refunded to the petitioner.