
(2005) 11 GAU CK 0018
In the Gauhati High Court
Case No : WP (C) No. 4400 of 1999

Saleha Begum

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 09-11-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2006) 2 GLR 110 : (2006) 1 GLT 86

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : M.U. Mahmud, for the Appellant; N. Sinha and V.M. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The challenge made in this writ petition is in respect of termination of the services of the petitioner as Assistant Teacher (honorary basis) by the Managing Committee of the school.

2. The petitioner was first appointed as Assistant Teacher on honorary basis in the school in question by the Managing Committee of the school by its order dated 22.1.1989 in response to the application submitted by the petitioner on 8.1.1989. According to the petitioner she was the second seniormost teacher of the school after one Sri Anser Ali. Upon his resignation from the post of Headmaster of the school with effect from 26.3.1998 accepted by the Managing Committee on 25.5.1998, she was under expectation to be appointed as in-charge Headmistress of the school. However, contrary to such expectation, the Managing Committee circulated an advertisement on 12.5.1998 confining the candidatures only to the male candidates. According to the petitioner, same was done with a view to deprive her from the post of Headmistress.

3. In the aforesaid situation, the petitioner approached this Court by filing a writ petition being Civil Rule No. 2813/1998 and by interim order dated 10.6.1998,

the advertisement was stayed. Later on, the petitioner withdrew the writ petition on 11.8.1999. In between, the Managing Committee of the school terminated her service by its resolution adopted on 27.6.1998. It is the case of the petitioner that the Managing Committee, being annoyed with her in view of her filing the aforesaid writ petition, adopted such a course of action.

4. The petitioner filed the instant writ petition on 26.8.1999 making a challenge to the impugned order of termination, dated 27.6.1998, i.e., after about 15 months of such termination of service. In the writ petition, the petitioner has not even obliquely stated about the subsequent developments that took place in respect of the post earlier being held by her. While entertaining the writ petition, an interim order was passed directing the respondents to allow the petitioner to continue in her service. Such an order was passed on 29.9.1999. Being aggrieved, the Managing Committee of the school represented by the respondent Nos. 4 and 5 filed Misc. Case No. 1184/1999 disclosing the developments that took place after termination of services of the petitioner. It was stated in the application that the post earlier being held by the petitioner had since been filled up firstly by one Sri Himan Kumar Saikia and then by the respondent No. 7. It was contended that since the post had been filled up 9.9.1998 much before the interim order passed on 29.9.1999, the order would put the management in difficulty since there was no post to accommodate the petitioner. Be it stated here that the post in question is Assistant Teacher in Assamese presently being held by the respondent No. 7.

5. The interim order passed on 29.9.1999 was vacated by order dated 24.11.1999 taking note of the aforesaid facts and circumstances. The respondent No. 7 was not made a party to the writ proceeding, but later on as per order of this Court passed on 24.11.1999, she was added respondent No. 7 on the verbal prayer of the petitioner. Although, she stood impleaded in the writ proceeding, there is no challenge to her appointment in this proceeding. In fact, no averments have been made in respect of her selection and appointment.

6. The petitioner has not stated anything as to how the action of the Managing Committee of the school without any control over it of any governmental authorities could be amenable to writ jurisdiction. During the course of hearing of the writ petition, the question of maintainability of the writ petition was raised on behalf of the respondent Nos. 4 and 5. Be it stated here that these two respondents although have not filed any separate counter affidavit, but projected the aforesaid Misc. Case No. 1184/1999 to be their counter affidavit, the same having exhaustively dealt with the contentions raised in the writ petition.

7. Noticing the question of maintainability of the writ petition, this Court by order dated 23.9.1999 directed the petitioner to file an affidavit as to the status of the school, whether it was a provincialised or an aided school. The petitioner filed an additional affidavit enclosing therewith certain documents relating to permission for opening of classes, provisional recognition for only one section on each class and sanctioning of adhoc grant to the school. Apart from annexing such

documents no statement has been made in the additional affidavit as to whether the school was a provincialised one or an aided one. On the other hand the respondent Nos. 4 and 5 in their Misc. Case has made the following statements in paragraphs 14 and 15:

14. That the school has the full strength of teacher permissible in respect of recognized school which is not receiving any grants from the government and as such it would not be possible for the school's Managing Committee to allow the writ petitioner to continue serving the school as she has been terminated from her service on 27.6.1998 and her post has been filled up long back.

15. That Barpathar High School is not a provincialised school or Government school and such the action of the Managing Committee of the said school are not amenable to the writ jurisdiction of this hon'ble court and as such the writ petition (c) No. 4400/99 filed by Mrs. Saleha Begum is liable to be dismissed on this ground alone and the interim order dated 29.9.1999 is liable to be recalled as well.

8. Mr. MU Mahmud, learned Counsel for the petitioner during the course of hearing made an unusual and unfortunate submission somewhat communalizing the issue contending that the petitioner has been discriminated she being a Muslim and that the respondent No. 7, has been preferred, she being a Hindu. Another submission made was that the respondent No. 7, has been appointed mala fide and is colourable exercise of power by the respondent Nos. 4 and 5. On being asked as to whether any such allegations have been made in the writ petition including any challenge to the appointment of the respondent No. 7, Mr. Mahmud had to concede that such allegations, neither in the writ petition nor in the additional affidavit are available. Situated, thus, Mr. Mahmud, learned Counsel for the petitioner withdrew the submission so made and in fact expressed his regret for making such a submission. He submitted that the action on the part of the respondent Nos. 4 and 5 being violative of the principles of natural justice, same is not sustainable and consequently, the impugned order/resolution of the Managing Committee is liable to be set aside.

9. As against the claim of the petitioner that she had been rendering her continuous service in the school with effect from the date of appointment, the respondents have stated in their miscellaneous application about the unauthorized absence of the petitioner from the school for about 19 months, with effect from 1.6.1993. They have also stated as to how by the resolution adopted by the Managing Committee of the school on 31.12.1994, her such unauthorized absence from duty was treated as break in service. According to the respondents there was suppression of material fact on the part of the petitioner in not disclosing such vital aspect of the matter. They have also raised similar plea of suppression of material facts in the earlier writ proceeding in which the writ petitioner challenged the advertisement for appointment of headmaster in the school. The advertisement was issued on 12.5.1998 confining the candidature to the male candidates alone, but the same was withdrawn within 13 days, i.e., on

25.5.1998. However, the petitioner filed the writ petition and obtained the interim order on 10.6.1998 suppressing withdrawal of the advertisement. Thus, according to the respondents the petitioner is guilty of suppression of material facts.

10. The respondents in their miscellaneous applications has also highlighted about the educational qualification of the petitioner vis-a-vis the respondent No. 7. While the petitioner is a simple BA, the respondent No. 7 is a Master Degree holder in the related subject, i.e. Assamese with Major in Assamese in her degree qualification. They have also raised the issue of delay in approaching the Court and non-availability of any vacancy in the school.

11. Mr. N. Sinha, learned Counsel appearing for the respondent Nos. 4 and 5 apart from arguing the matter on merit also questioned the maintainability of the writ petition on the ground that the school being a privately managed school without involving any authority of the Government more particularly, in the matter of appointment and termination of the services of the teachers. He submitted that even otherwise also, the petitioner having not approached the Court with clean hands and there being delay in approaching the Court coupled with crystallization of right in favour of the respondent No. 7, she is not entitled to any relief.

12. The Managing Committee and appointed the petitioner on honorary basis in the school. Since the School is a privately managed one, there was no question of obtaining any approval of any government authorities. The Managing Committee also terminated her service and on that occasion also there was no question of obtaining such approval. The challenge made in the writ petition is not in respect of any order passed by the authorities of the Education Department, Government of Assam. There is no dispute that the school at the relevant time was not a provincialised one nor it was in receipt of any regular grants-in-aid as is understood in the context of the relevant rules. Till the termination of service of the petitioner, there was not control over the appointment and termination of the services of the teachers by any authority of the Government. It was purely a private affair between the Managing Committee of the school and the petitioner. That being the position, the challenge made to the resolution of the Managing Committee of the school terminating the services of the petitioner is not amenable to writ jurisdiction.

13. The resolution of the Managing Committee of the school impugned in this proceeding is a decision of just a private management governed by private law. It cannot be said to have involved any public law. As discussed above, a private body, i.e., the Managing Committee of the school has terminated the services of the petitioner. The Managing Committee, who at the relevant point of time did not have any control of the Government, was a pure and simple private body. This is precisely the reason as to why no approval of the Government or any authorities of the Education Department was required to be obtained towards termination of the services of the petitioner. Obviously, no decision of any officer

of the Government is under challenge.

14. It is in the above context, the Apex Court in the cases of Francis John v. Director of Education and Ors. reported in 1989 Supp (2) 598 Tikaram Vs. Mundikota Shikshan Prasarak Mandal and Others, noticing that the Director of Education, who was a public authority and whose orders had been questioned before the High Court held the writ petitions to be maintainable. In both the cases, the Managing Committee of the school terminated services of the appellants as school teachers. However, their such termination of service had the approval of the Deputy Director and Director, who were officers of the Government. It was the approval of the Government officers, which were put to challenge and not the decision of the Managing Committee of the school as such. It was in that context, the writ petitions were held to be maintainable keeping the options open in case of not following the order of the Director by the Managing committee. Both the cases were governed by statutory school code under which the Deputy Director/Director were the Government officers responsible for approval of the decision of the Managing committee. Thus, in both the cases the principle that the decision of a private school is not amenable to writ jurisdiction was recognized.

15. In the instant case the school Managing Committee was not governed by any statutory rules nor the termination of services of the petitioner required any approval of any Government officer. Thus, the decision to terminate the service of the petitioner was purely a private affair between the school Managing Committee and the petitioner. Consequently, such a decision is not amenable to writ jurisdiction.

16. It cannot be said to be a case of having any control of the State Government or its authorities on the Managing Committee and its action, not to speak of in the realm of all pervasiveness. The Managing Committee being not an authority or even instrumentality of the State is amenable to writ jurisdiction under Article 226 of the Constitution of India. Jurisdiction under Article 226 can be exercising only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is public law remedy. In the instant case, neither the Managing Committee is a statutory body nor the employer-employee relationship involved any public duty. The School Managing Committee also did not have any control of any Government officers unlike the aforesaid two cases. This is precisely the reason as why the termination order by way of resolution of the Managing Committee did not involve any approval or disapproval of any authority of the Government.

17. The additional affidavit, filed by the petitioner also does not help the case of the petitioner. The query made by this Court, by its order date 23.9.1989 was as to whether the school was a provincialised or aided one. No answer has been furnished to the said question in the additional affidavit except annexing certain documents one of which is relating to permission for opening the school/class. Another documents annexed is the provisional recognition granted to the school

by the Board of Secondary Education. The third document annexed to the additional affidavit is in respect of an adhoc grants. These document are of not help to the case of the petitioner in respect of the question of maintainability of the writ petition. Admittedly, at the time of passing the impugned resolution, the school was neither provincialised nor aided in the context of the rules holding the field so as to establish that there was all pervasive control of the Government over the school, more particularly in respect of appointment of teachers and dispensation of their services. In the case of Shatrughan Nishad about which a discussion has been made below, the writ petition was held to be not maintainable even after noticing that the Mil in question used to get some financial assistance from the Government. Such financial assistance in the form of adhoc grants is not decisive of amenability to writ jurisdiction on the decisions of the Managing Committee of the private school.

18. In the case of Supriya Basu and Others Vs. West Bengal Hsg. Board and Others, the Apex Court noticing that the society in question being not a department of the State and also not being a creature of a statute, but merely governed by a statute, upheld the decision of the High Court by which it was held that the writ petition was not maintainable as no statutory action had been assailed. It was noted by the High Court that the dispute involved in that proceeding essentially related to claims in the realm of private bodies. Same is the case in hand.

19. Mr. Mahmud, learned Counsel for the petitioner placed reliance on two decisions of the Apex Court reported K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, and (2003) 6 SCC 697 Islamic Academy of Education v. State of Karnataka. Both the cases are totally misplaced. In the first case, paragraph 9 on which Mr. Mahmud placed reliance is in respect of the distinction between minority and non-minority institutions. I have failed to understand as to in what context this judgments has been referred to. In the second case, when the employees of the non-aided private educational institution claimed parity in pay scales with employees of Government Institutions and such claim being based on executive instructions of the Government it was held that the writ petition was maintainable. Same is not the case in hand. Details have been discussed above.

20. In the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, about which a mention has been made above, the Apex Court noticing the various earlier judgments held the writ petition to be not maintainable. That was a case relating to termination of service of the workmen of the Mil in question, a co-operative society. It was argued that even if the Mil is not an authority within the meaning of Article 12 of the Constitution, writ application can be entertained as mandamus can be issued under Article 226 of the Constitution against any person or authority which would include a private person of body. After noticing that the dispute did not involve any public function, the Apex Court held that the jurisdiction of the High Court under Article

226 of the Constitution could not have been invoked. In the said case, the Apex Court summarized the expression "other authorities" after expressing a note of caution that it must be realized that it should not be stretched so far to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A note of caution was expressed that wide enlargement of the meaning must be tampered by wise limitation.

21. Above being the position of law relating to amenability to writ jurisdiction of a private body, I am of the considered opinion that the writ petition is not maintainable. Once it is held to be so the other facets of the case such as suppression of material facts and delay in approaching the Court although need not be gone into, but under the facts and circumstances, same have a vital bearing to the defence of the respondents. The petitioner has not denied the allegations of the respondents regarding her unauthorized absence from the school for long 19 months leading to break in service and non-mentioning of the vital fact of withdrawal of the advertisement in question in her earlier writ petition. The petitioner has simply arrayed the respondent No. 7 as party to the proceeding and that too at the insistence of the Court without making any challenge to her appointment. In fact, no averments have been made against her. She was appointed well before the petitioner approached this Court and at the time of filing of the writ petition, her right was crystallized. The petitioner inspite of moving the writ petition after about 15 months of termination of her service, during which period, all the developments relating to appointment of the respondent No. 7 took place, withheld such developments, but for which perhaps the interim order would not have passed.

22. From the aforesaid factual aspects of the matter there is no gainsaying that the petitioner is also guilty of suppression of materials facts and on that score also, the petitioner is not entitled to any relief. Similarly, the writ petition is also hit by the principles of delay and laches. The respondents in their miscellaneous application have contended that the petitioner after termination of her service remained silent for 15 months without raising any grievance and then approached this Court at a time when the right of the respondent No. 7 got crystallized. Law is well settled that delay itself deprives a person of his remedy available in law. The petitioner did not even make any representation to the Managing Committee and naturally she could not have made any to the Governmental authorities, the school being a purely privately managed one. As has been observed by the Apex Court in the case of P.S. Sadasivaswamy Vs. State of Tamil Nadu, it is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.

23. Thus, on the above counts also, namely, suppression of material fact and the delay and laches on the part of the petitioner, the writ petition is not maintainable. It the Managing Committee of the school for the reasons recorded in their impugned resolution coupled with the style of functioning of the petitioner in the school as reflected in the miscellaneous application lost confidence on her, no fault can be attributed to them.

24. For the foregoing reasons and discussions, the writ petition is not maintainable on all the counts discussed above and consequently, it is dismissed. However, under the facts and circumstances, there shall be no order as to costs.