

(2001) 07 AHC CK 0044
In the Allahabad High Court
Case No : Special Appeal No. 757 of 2001

Sandeep Chauhan and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 11-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : (2001) 3 AWC 2176 : (2001) 3 UPLBEC 2259

Hon'ble Judges : S.K. Sen, C.J;A.K. Yog, J

Bench : Division Bench

Advocate : Ajay Yadav, for the Appellant; V.N. Upadhyay, for the Respondent

Judgement

S.K. Sen, C.J.—Heard Sri Ajay Yadav, learned counsel for the appellants and Sri V. N. Upadhyay, learned standing counsel appearing for the respondents.

2. This special appeal is directed against an order passed by the learned single Judge dismissing the writ petition on the ground of the maintainability of the writ petition following decision of this Court in the case of Ashok Kumar Chawla v. Central Board of Secondary Education. Shiksha Kendra. Preet Vihar. New Delhi and others, 1998 UPLBEC 370. In the aforesaid decision, the view taken by the Court was that a writ petition against a college run by a Society is not maintainable.

3. Learned standing counsel has, however relied upon a decision in the case of K. Krtshnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another AIR 1998 SC 295, in which the Supreme Court held that taking into consideration the claim of the employees of the said private educational institution, who were appointed on daily wages and kept in staff on non-teaching posts of Lab Assistants in the respondent private college, they should also be given on the basis of executive Instructions issued by the Government the pay scale at par with Government employees. The question that arose for

consideration before the Supreme Court was whether in absence of a statutory rule issued in that behalf, and the institution, at the relevant time, also not in receipt of grant in aid, writ petition under Article 226 of the Constitution was not maintainable? The Supreme Court held that in view of the long line of decisions holding that when there is an interest created by the Government in an Institution to impart education, which is a fundamental right of the citizens, the teacher, who teaches in the education, performs duties having element of public interest. As a consequence, the element of public interest requires to regulate the conditions of service of those employees at par with Government employees, and, therefore, the State has obligation to provide facilities and opportunities to the people to avail of the right to education :

"The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of the remedy provided under Article 226 of the Constitution of India."

4. Following the principles laid down by the Supreme Court in the aforesaid decision, we are of the view that the writ petition against Central Board of Secondary Education, Shiksha Kendra, Preet Vihar, New Delhi, is maintainable, However, we are not deciding other question on merit. We direct that the writ petition should be listed before the learned single Judge, it is stated before us that in the writ petition, counter and rejoinder-affidavits have been filed. In that view of the matter, the writ petition shall be listed before the learned single Judge after a week. It is also stated that there was an interim order passed by the learned single Judge, which stands vacated by virtue of the order of dismissal. However, it is open to the respondents to make an application for interim order before the learned single Judge.

5. The matter shall be listed after a week before the learned single Judge.