

(2010) 11 AHC CK 0239
In the Allahabad High Court
Case No : Special Appeal No. 1671 of 2010

Sanjay Kumar Sharma

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Education Code of Air Force School, 2005 — Chapter 2, Clause 1, Clause 2, Clause 5(a)

Citation : (2010) 11 AHC CK 0239

Hon'ble Judges : F.I.Rebello, CJ and A.P.Sahi, J

Final Decision : Dismissed

Judgement

1. The appellant, a teacher in the Air Force School, Bamrauli, Allahabad, was removed from his service on 1st August, 2006 which order was assailed by him in a writ petition giving rise to this special appeal, which has been dismissed by a learned single Judge on the ground of being not maintainable.
2. The learned single Judge following a Division Bench judgment delivered by us in the case of Union of India and others Vs. Dileep Kumar Pandey reported in 2010 (7) ADJ 97 (DB), has held that the writ petition is not maintainable.
3. This special appeal in effect raises the same issues once again which has already been answered by us in the aforesaid decision.
4. Sri B.N. Tiwari, learned counsel for the appellant has contended that certain facts and certain arguments had not been either advanced or considered by this Court while deciding the case of Dileep Kumar Pandey (supra) and, therefore, on the strength of the submissions raised, Sri Tiwari contends that if this court is persuaded to reverse the view earlier taken, the matter may require to be referred to a larger Bench for resolving the dispute with regard to the maintainability of writ petition in such matters.
5. Sri Tiwari, learned counsel for the appellant has extensively cited several decisions and has invited the attention of the Court to various paragraphs of the

writ petition as also the rejoinder affidavit filed by the petitioner before the learned single Judge to contend that, the deep and pervasive control of the authorities of the Air Force clearly establishes, that the entire administrative, functional and financial control over the institution is of the Air Force department and hence the writ petition would be maintainable.

6. Sri Tiwari further submitted that the service conditions of the appellant are governed by the Education Code which have been framed under the authorization of the society, which manages the institution. He submits that even otherwise the Code having been adopted by the respondents any violation of the Code can certainly be complained of and a writ petition can be entertained for violation of such a Code in the exercise of jurisdiction under Article 226 of the Constitution of India by this Court.

7. Sri Tiwari has vehemently urged that the issue raised relates to education, which is now a guaranteed fundamental rights as acknowledged by the Constitutional provisions, and the service rendered by the appellant being one which sub serves the said purpose, would also be subject to judicial scrutiny by this Court as it forms part of the sovereign function of imparting education. To substantiate his submissions Sri Tiwari has cited the following decisions.

"1. AIR 1976 SC 425 (Rohtas Industries Ltd. and another Vs. Rohtas Industries Staff Union and others).

2. AIR 1981 SC 344 (Fertilizer Corporation Kamagar Union (Regd.) Sindri and others Vs. Union of India and others).

3. AIR 1981 SC 487 (Ajay Hasia Vs. Khalid Mujib Sehravardi and others).

4. AIR 1984 SC 363 (B.S. Minhas Vs. Indian Statistical Institute and others).

5. AIR 1984 SC 541 (P.K. Ramachandra Iyer and others Vs. Union of India and others).

6. AIR 1986 SC 1571 (Central Inland Water Transport Corporation Ltd. and another Vs. Brojo Nath Ganguly and another).

7. AIR 1989 SC 1607 (Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. R. Rudani and others).

8. AIR 1990 SC 1305 (Miss Raj Soni Vs. Air Officer in charge Administration and another).

9. AIR 1999 SC 753 (U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and others).

10. AIR 2005 SC 411 (Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and another).

11. (2009) 5 SCC 694 (State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha).

12. AIR 2010 SC 1384 (Smt. Poonam Vs. Sumit Tanwar).

13. AIR 2010 SC 1476 (State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.)"

8. Apart from this, Sri Tiwari has further relied on certain decisions of this Court and other High Courts to substantiate his arguments which in essence are to the same effect as the judgments referred to hereinabove. He however particularly referred to the decisions in the case of Sarnam Singh Vs. President, Konch Sahkari Kraya Vikraya Samiti Ltd., Konch, District Jalaun and others reported in (1992) 1 UPLBEC 464 and in the case of Arvind Kumar Sharma (Minor) Vs. Central Board of Secondary Education New Delhi and another reported in 1996 (2) UPLBEC 1331. He has also invited the attention of the Court to the decision in the case of Niraj Kumar Tripathi and others Vs. School Management Committee and others reported in (2001) 2 UPLBEC 1876.

9. On the other hand, Sri Ajay Bhanot, learned counsel for the respondent nos. 2 to 6, and Sri H.N. Pandey learned counsel for the respondent no. 1 contend, that the said issues have already been dealt with by this Court in the case of Dileep Kumar Pandey (supra) and, therefore, the arguments advanced by the learned counsel for the appellant are mere repetitions of the same issues which have already been decided. Hence, the special appeal deserves to be dismissed.

10. They further contend that the arguments of the learned counsel for the appellant are virtually seeking review of the earlier judgment on the same set of facts and law and in respect of the same institution, which is impermissible and there being no legal infirmity having been pointed out, there is no occasion to reconsider the aforesaid judgment. They contend that not only the legal issues but also the factual issues have been dealt with in the earlier judgment and in view of the law laid down by the Full Bench of this Court in the case of Rama Pratap Singh and others Vs. State of U.P. and others reported in 1995 (1) ACJ 200 such an attempt would not be permissible for this Court to entertain the arguments advanced on behalf of the appellant.

11. Sri Bhanot contends that the writ petition as drafted and filed by the appellant did not contain any specific averment so as to substantiate the plea of deep and pervasive control of the Air Force Authorities, and the School being established, run and managed by a Society registered under the Societies Registration Act, 1860, its actions can not be subjected to a writ petition in relation to the terms and conditions of service of its employees. He submits that the contract of employment is not governed by any statutory rules and even otherwise assuming that a petition may be maintainable, there being no violation of any statutory rules no relief can be granted. He relies on the Apex Court decision in the case of Executive Committee of Vaish Degree College, Shamli and others Vs. Lakshmi Narain and others reported in AIR 1976 SC 888 and has invited the attention of the Court to the judgments relied upon in the earlier case of Dileep Kumar Pandey (supra) to contend that the special appeal deserves to

be dismissed. He has particularly invited the attention of the Court to the decision of the Apex Court in the case of Delhi Public School Ghaziabad decided on 14.08.2007 in Civil Appeal No. 339 of 2007 and the Full Bench decision of this Court in the case of M.K. Gandhi and others Vs. Director of Education (Secondary), U.P. Lucknow and others reported in 2005 (4) ESC 2265. He also reiterated the same stand taken in the earlier appeal pointing out the relevant paragraphs in the case of Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and others reported in (2002) 5 SCC 111.

12. Summing up his submissions Sri Bhanot contends that there is no new material or any existing material that would otherwise persuade this Court to take a different view on the question of financial and administrative control of the institution by the Air Force Authorities.

13. Before embarking upon the judgments which have been cited at the bar, we may once again gainfully referred to the Education Code on which reliance has been placed on behalf of the appellant. The said Education Code defines Society under Clause 5 (a) as follows:

"5(a) Society. Refers to the Indian Air Force Educational and Cultural Society, registered under the Societies Registration Act XXI of 1860 and established by Air Headquarters at Directorate of Education to administer and manage all Air Force Schools set up at various units all over India."

14. Under Chapter 2 (1) of the Education Code the aims of the Society have been described as follows:

"Aims of the IAF Education & Cultural Society.

1. The IAF Educational and Cultural Society is a nonprofit making welfare institution registered under Societies Registration Act XXI of 1860 on 25th Sep. 80 vide registration no. S/11214. Its primary objective is promotion of education, fine arts & culture and diffusion of useful knowledge mainly amongst the past and present employees of IAF, their children and families."

15. The objectives of the Society are contained in Clause 2 of Chapter 2, which is as follows:

"Objectives of Society.

2. All Air Force Schools are administered under the aegis of IAF Educational and Cultural Society. The individual schools are not to approach any other state body or central agency for registration or open a society of its own. The objectives of the society include the following:

(a) To bring good education and culture within the financial reach of the personnel of the IAF, their families and children.

(b) To ensure provision of healthy, liberal & sound system for preprimary, primary, secondary and senior secondary education including mental, moral &

physical education.

(c) To establish or run schools, colleges and educational institutes in New Delhi and other parts of India on sound educational lines in conformity with the statutory provisions and educational schemes of the Government of India/Union Territories/State Governments and also to provide for correspondence courses wherever possible.

(d) To control the functions, finances and administration of the schools, colleges or other organisations established or taken over by it or entrusted to its care."

16. The said code has been framed under the authority of the Chairman, Board of Governors Indian Air Force Educational and Cultural Society, New Delhi.

17. The institution is affiliated to the Central Board of Secondary Education. The funding of the institution is from the internal resources of the Society and also grants received from the community welfare funds or from the Air Force Central welfare funds. The aforesaid Education Code, therefore, makes it clear that the society has been registered under the Societies Registration Act, 1860. The said Education Code, therefore, does not reflect any direct control or even pervasive control of the Central Government or of the Defence Ministry. The Society is in more of the nature of a welfare society for the children of the Air Force personnel and to provide education to them.

18. There is nothing on record to indicate the allocation of funds from the Central Government or by any State authority as to establish the financial control of the State on the running of such institutions. Even administratively it is the local Station Commander who heads the affairs of the institution on an exofficio basis in terms of the byelaws of the Society. Further the Education Code as referred to hereinabove which was framed in the year 2005 in supercession of all earlier Codes, does not indicate that it was framed under any law made by the legislature for the time being in force. It is an internal Administrative Instructions Manual formulated by the Board of Governors of the Society in order to manage these institutions. Therefore, we do not find any statutory flavor in it.

19. One of the main contentions advanced by Sri Tiwari, learned counsel for the appellant was that in view of the law laid down in the case of B.S. Minhas (supra) the respondents were bound by their own byelaws and any violation thereof would invite constitutional scrutiny as per the parameters of Articles 14 & 16 of the Constitution of India. As indicated above, the said Education Code is a mere compilation of administrative instructions. Strictly speaking it is not in the shape of the byelaws of the Society. Nonetheless the same having no statutory flavor as suggested by the learned counsel for the appellant, the question of applying Articles 14 and 16 of the Constitution of India would not arise. Even assuming that any of the rights of the appellant have been violated, then the same Education Code prescribes the legal jurisdiction being conferred on the local court nearest to the location of the School for the redressal of such grievances. Clause 6 of Chapter 1 of the said Education Code is quoted below:

"Legal Jurisdiction

6. In case of any dispute with the management involving employees of the school/other parties such as parents, vendors, and contractors etc., jurisdiction of the local court nearest to the location of the school will only be applicable."

20. The aforesaid clause, in our opinion, is in consonance with the view expressed by the Full Bench decision of this Court in the case of M.K. Gandhi (supra) as modified by the Apex Court in the case of Delhi Public School referred to in our earlier judgment in the case of Dileep Kumar Pandey (supra).

21. The appropriate remedy, therefore, for the appellant even for a violation of the nature as alleged would be to approach the Court of competent jurisdiction and a writ petition would not be maintainable. Needless to say that the Air Force school where the appellant is employed is undisputedly affiliated to the Central Board of Secondary Education and, therefore, in view of the law referred to hereinabove an employee would not be able to maintain a writ petition under Article 226 of the Constitution of India for a complaint relating to his service conditions.

22. Sri Tiwari relying on the decision in the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust (supra) contends that sovereign functions are being discharged by the respondents and, therefore, they are amenable to the writ jurisdiction. The said decision and the other decisions relied on by Sri Tiwari are in relation to the rights of students to receive education. The same therefore do not provide any aid to the arguments on the issue relating to the service conditions involved herein.

23. To explain this position it would be apt to quote paragraph 8 to 11 of the decision of the Apex Court in the case of Miss Raj Soni (supra):

"8. Learned Counsel for the petitioner has contended that prior to the coming into force of the Act and the Rules, the management was following the Delhi Education Code which provided 60 years as the age of superannuation and as such under Rule 110 of the Rules the petitioner has a statutory right to continue up to the age of 60 years. Mr. N.C. Sikri, learned Counsel appearing for the management, however, contends that the School is being run by a private management, there is no Government control in the management of the school and no aid of any kind is being given to the school. According to him, the management of the school is neither State nor an authority under Article 12 of the Constitution of India and as such no writ petition against the respondentmanagement is maintainable. On merits he contends that Delhi Education Code has no force of law and as such the petitioner has no enforceable right much less under Article 32 of the Constitution of India.

9. The Executive Committee which manages the school is headed by Air Force Officer Incharge Administration, Air Force Headquarters, New Delhi and consist of all high ranking Air Force Officers of the rank of Sqdrn. Leader to Air Marshal.

The said membership is in their Official capacity which indicates complete control over the school by the Air Force. It is, however, not necessary to decide in this case as to whether or not the school is a State or an authority under Article 12 of the Constitution of India.

10. The recognised private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When any authority is required to act in a particular manner under a statute it has no option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India.

11. It is not necessary and we do not propose to go into the question in this case as to whether the petition is maintainable under Article 32 of the Constitution, because this petition has been pending in this Court since 1981. The petitioner's claim is just. It will, therefore, be a travesty of justice to send her to any other forum at this stage. In any case the petitioner seeks to enforce her statutory right under Section 8 of the Act read with Rule 110 of the Rules with a further contention that she has been discriminated in the matter of superannuation so much so that other teachers similarly situated were retired at the age of 60 years whereas the petitioner has been singled out and retired at the age of 58 years."

24. It is, therefore, clear from the ratio of the aforesaid decision which has been relied upon by Sri Tiwari that the issue relating to whether an Air Force School was within the meaning of State or Authority was not decided and on the other hand the Court went on to hold that there were certain implications of the Delhi Education Code framed under the the Delhi Education Act, 1973 which had an impact on the issues raised therein. It is to be noticed that the said decision was in a petition under Article 32 of the Constitution of India and in view of the peculiar situation of that case as indicated in paragraph 11 of the decision, the Court did not find it necessary to relegate the petitioner therein to any other remedy.

25. The aforesaid decision, in our opinion, does not come to the aid of the appellant and even otherwise as far as the law in relation to such a petition is concerned, has now been clearly dealt with in the case of Pradeep Kumar Biswas (supra) and the decisions which have already referred to in our decision in the case of Dileep Kumar Pandey (supra).

26. Sri Tiwari then went on to invite our attention to the allegations that had been made in the writ petition, the counter affidavit filed by the respondents and the rejoinder affidavit filed on behalf of the appellant entailing therein certain facts to demonstrate that the society was running 141 Air Force Schools all over country which are being managed by the Air Force personnel and the entire infrastructure was being provided which would establish a deep and pervasive

control of the authorities officially. He also submitted that notices on behalf of such schools are being accepted by the learned counsel for the Union of India. The same also indicates that the Union of India is bearing the said expenditure in relation to such disputes under the Education Code, which is also an evidence of the control of the State over such institutions.

27. We have perused the paragraphs to which our attention was invited but we have been unable to find any material worth substance to establish that the schools are exclusively or substantially founded or they are controlled by any statutory law framed by the Government. There is nothing to indicate that the Central Government is controlling the management and affairs of the institutions which have been established under the society referred to herein above. The allegations made in the affidavit although in a different colour, are to the same effect as were made earlier in the case of Dileep Kumar Pandey (*supra*).

28. There being hardly anything new in the arguments advanced, it is not necessary for us to refer to each and every judgment as cited at the bar and suffice it to say that the aforesaid aspects have already been considered and dealt with in our earlier judgment, which does not require any reconsideration. We further find that any new argument or novelty in the manner of presentation of the dispute in respect of the same issue, does not permit us at all in judicial propriety to take a Uturn in the absence of any substantial material, and deliver a different view, as indicated in the Full Bench decision this Court in the case of Rana Pratap Singh (*supra*).

29. The submission that the learned Counsel for the Union of India has accepted notice on behalf of the Society and School establishes control of the government is a fact to be noted for being rejected as irrelevant. The mere engagement of a government counsel is no ultimate proof of deep and pervasive control of the Central Government. If the Society and the institution have chosen to instruct the government counsel we see no bar in doing so and even otherwise the same is no ground to substantiate the plea of deep and pervasive control.

30. In view of that we find no error in the conclusions drawn by the learned single Judge nor are we persuaded to refer the matter to a larger Bench as suggested by the learned counsel for the appellant.

31. The appeal fails and is hereby dismissed.