

(2011) 07 DEL CK 0475

In the Delhi High Court

Case No : Writ Petition (C) 236, 5365 and 5992 of 2010

Satpal Singh

APPELLANT

Vs

Delhi Sikh Gurdwara Management Committee and Another

 Surinder Kaur Vs Sri Guru Tegh Bahadur Industrial
Training Centre and Another
 Rajinder Singh Vs Delhi
Sikh Gurdwara Management Committee and Others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Sikh Gurdwaras Act, 1971 — Section 24, 3(1), 31, 32, 33
Limitation Act, 1963 — Section 12, 5
Penal Code, 1860 (IPC) — Section 21

Citation : (2011) 181 DLT 455 : (2011) 6 ILR Delhi 462

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Raj Kumar Sherawat, in W.P. C 236 and 5365/2010, Baljit Singh and Ajai Kumar, in W.P. C 5992/2010, for the Appellant; Manpreet Kaur Bhasin, for DSGMC, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The very maintainability of the writ petitions is for adjudication.

2. The Petitioner in W.P.(C) No. 236/2010 claims to have been employed as Office Superintendent with the Respondent No. 2 Sri Guru Tegh Bahadur Industrial Training Centre; he claims that he was issued a letter dated 13th August, 2009 relieving him from the Respondent No. 2 Centre and directing him to report to the General Manager of the Respondent No. 1 Delhi Sikh Gurdwara Management Committee (DSGMC); that though he reported to the General Manager of the Respondent No. 1 but was neither given any duty nor has been paid any wages thereafter. The writ petition has been filed impugning the order dated 13th August, 2009 and seeking mandamus for reinstatement and for

payment of wages etc. Notice of the petition was issued and the pleadings got completed. The Respondent No. 2 Centre in its counter affidavit has stated that since the Respondent No. 2 Centre was being closed down, the process of transferring its employees to various Institutes / Centres run by the Respondent No. 1 DSGMC according to their respective qualifications and available vacancies was commenced; that the Petitioner herein is surplus and could not be adjusted anywhere inspite of attempt; that the Petitioner has also been absenting himself since 6th July, 2009 without any intimation whatsoever and did not even report for duty as directed and is habituated to unauthorized absence and is also guilty of serious misconduct. Rejoinder has been filed by the Petitioner to the said counter affidavit. No counter affidavit has been filed by the Respondent No. 1 DSGMC. Though the parties were referred to the Mediation Cell of this Court but without any success.

3. The Petitioner in W.P.(C) No. 5365/2010 claims to have been employed with the Respondent No. 1 Sri Guru Tegh Bahadur Industrial Training Centre as a "Sewadarini" and her grievance also is that though she was vide letter dated 13th August, 2009 relieved from the Respondent No. 1 Centre and asked to report to the Respondent No. 2 DSGMC but inspite of reporting to Respondent No. 2 DSGMC, has not been given any duty. She seeks mandamus to the Respondents to give her posting and to pay her arrears of salary etc. Notice of the writ petition was issued. No counter affidavit has been filed by the Respondents till the question of maintainability of the writ petition was suo moto raised by the Court.

4. The Petitioner in W.P.(C) No. 5992/2010 claims to have been employed as a "Granthi" with the Respondent No. 1 DSGMC and claims that on 25th November, 2009 he was suspended for alleged misbehaviour with saints but neither any inquiry was conducted against him nor any subsistence allowance being paid to him. He has filed this writ petition impugning the order of his suspension and also impugning the order dated 12th July, 2010 ordering inquiry into the charges against him. He also seeks mandamus for reinstatement. Notice of the petition was issued. The Respondents have filed a counter affidavit pleading that the Petitioner is a habitual offender and has a chequered history and justifying the order of suspension and inquiry into the charges against the Petitioner.

5. The counsels for the Petitioners were asked to address on the maintainability of the writ petitions and have addressed their arguments. They have contended that the DSGMC, of which each of the Petitioners is an employee, is a statutory body having been constituted vide Section 3(1) of the Delhi Sikh Gurdwaras Act, 1971 (Gurdwaras Act). Attention is invited to Section 24 of the said Act whereunder the control, direction and general superintendence over all the Gurdwaras and Gurdwara property in Delhi has been vested in the DSGMC and DSGMC has also been empowered to manage educational and other institutions. Attention is also invited to Section 36 of the Act deeming inter alia the members of DSGMC, the Executive Board or any other Sub-Committee and every other

officer and employee of the DSGMC to be public servants within the meaning of Section 21 of the Indian Penal Code. Attention is also invited to Section 40(2)(f) of the Act whereunder the terms and conditions of service of employees of DSGMC are stated to have statutory force. The counsels for the Petitioners have also referred to several writ petitions entertained by this Court against DSGMC. However, they agree that the question of maintainability was neither raised nor adjudicated in any of the said petitions. The counsels for the Petitioners however referred to the judgment dated 22nd July, 2010 of this Court in WP(C) No. 720/2010 titled DSGMC v. Mohinder Singh Matharu holding that DSGMC is a Body made by law and is a public authority within the meaning of Section 2(h) of the RTI Act. Reference is also made to judgment dated 18th January, 2011 of this Court in W.P.(C) No. 5093/1998 titled All India Garment Exporters Common Cause Guild v. Union of India holding that Apparels Export Promotion Council exercising public functions is amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India. Attention is yet further invited to:

(a) K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering 1997 SCC (L&S) 841 laying down that when there is an interest created by the Government in an institution to impart education, the teachers who impart the education get an element of public interest in the performance of their duties and are entitled to invoke the writ jurisdiction.

(b) Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, laying down that to be enforceable by mandamus, a public duty does not necessarily have to be one imposed by statute and it is sufficient for the duty to have been imposed by charter, common law, custom or even contract. It was further held that the judicial review over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartments and technicalities should not come in the way of granting relief under Article 226 of the Constitution.

(c) judgment dated 4th October, 2004 of the Division Bench of this Court in Rahul Mehra v. Union of India holding Board of Control for Cricket in India (BCCI) to be amenable to writ jurisdiction.

(d) Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, holding that Bodies which are creature of statute are amenable to writ jurisdiction.

6. The counsel for the Respondent DSGMC on the contrary contended that the Petitioners ought to invoke the remedy of the Industrial Disputes Act and relies upon orders in two writ petitions preferred against DSGMC, withdrawing the writ petitions to pursue the remedy under the Industrial Disputes Act, 1947.

7. The counsels for the Petitioners rejoined by contending that it is not the case of the Petitioners that they are workmen.

8. The counsel for the Respondent DSGMC has also referred to the Employees Service Regulations, 1992 of DSGMC enacted in exercise of powers conferred u/s

40(2)(f) of the Gurdwaras Act and has drawn attention to the provisions of appeal, revision and review therein. A copy of the resolution dated 9th February, 2010 of DSGMC constituting Justice (Retd.) T.S. Doabia as the Appellate Authority has also been handed over.

9. Though as aforesaid, the question of maintainability of writ petitions against DSGMC was raised but on studying the Gurdwaras Act, I find that Part V. thereof deals with "Settlement of Election and Other Disputes" and Sections 32 & 33 under the said Part are as under:

32. The Court of the District Judge in Delhi shall also have jurisdiction in respect of the following matters, namely:

(c) Petitions regarding complaints, irregularities, breach of trust, mismanagement in any Gurdwara, educational or other institutions against any member, office-bearer or officer or other employee of the Committee.

(d) Petitions arising out of any type of disputes between the Committee and its employees including past employees.

(e) Applications regarding failure of publication of, or non-implementation or non-clearance of the objections raised in, any annual report of the auditors of the Committee.

33. (1) Any person aggrieved by an order passed by the District Judge may, within sixty days of the order, prefer an appeal to the High Court at Delhi and the orders of the High Court on such appeal shall be final and conclusive.

(2) The provisions of Section 5 and 12 of the Limitation Act, 1963, shall, so far as may be, apply to appeals under this Section.

10. It would thus be seen that the jurisdiction over disputes between DSGMC and its employees including past employees, as the disputes subject matter of the present petitions are, is first of the District Judge, Delhi and the Act also provides for a remedy to this Court against the orders of the District Judge.

11. The Act, on the basis of which writ remedy is invoked against the Respondent DSGMC, having itself provided a remedy for the disputes as subject matter of these writ petitions, in my view, the writ petitions would not be maintainable on this ground alone. The remedy of the Petitioners is before the District Judge. The Act having provided a complete machinery for adjudication of the disputes as raised by way of present writ petitions, the writ petitions would not be maintainable. It is the settled principle of law that this Court would ordinarily not exercise jurisdiction under Article 226 when alternative, efficacious remedy is available. The present petitions in any case raise disputed questions of fact and which can be appropriately adjudicated in proceedings before the District Judge rather than in the present jurisdiction. I have already in Sh. Gurdeep Singh Vs. President, Delhi Sikh Gurudwara Management Committee taken a view that owing to the said Section 32 of the Act, the writ remedy is barred.

12. Though I have not found any case law qua Sections 32 & 33 (supra) of the Gurdwaras Act but I find that the Division Bench of this Court in Gurdeep Singh Uua and Others Vs. Delhi Sikh Gurdwara Prabandhak Committee, in relation to Section 31 of the Act providing for the jurisdiction of the District Judge qua election disputes, held that ordinarily the writ remedy would not be available in the face of the alternative remedy having been provided in the Statute itself. The Supreme Court in Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others, in relation to Section 31 has also held that the appropriate remedy is to prefer an election petition and unless exceptional or extraordinary circumstances are disclosed justifying recourse to extraordinary remedy under Article 226, the same would not be maintainable.

13. I do not find any reason to take a contrary view qua Section 32.

14. I also find that the Employees Services Regulations (supra) of DSGMC provide for appeal against all penalties imposed. Thus the remedy of the Petitioners is first by preferring the departmental appeal provided for under the Employees Service Regulations and if still remain aggrieved, to approach the District Judge u/s 32 (supra) of the Act and not by way of these writ petitions.

15. The writ petitions are accordingly dismissed as not maintainable. However, having not found any earlier judgment on the aforesaid aspect, it is directed that subject to the Petitioners approaching the Departmental Appellate Authority within 30 days of today or if do not deem Departmental Appellate Authority to be appropriate, the District Judge within 45 days of today, the Departmental Appellate Authority and / or the District Judge, as the case may be, shall entertain the appeal / petition notwithstanding the same being barred by time / delay.

No order as to costs.