

(2003) 01 MP CK 0004

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1830 of 2000

Serbjeet Bhatia

APPELLANT

Vs

GOC-in-C, Hq Central Command, Lucknow (UP) and others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Army Welfare Education Society Rules, 1997 — Rule 129(b)
Constitution of India, 1950 — Article 14, 19, 226, 227

Citation : (2004) 2 MPLJ 125

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Shobha Menon, with P. Pillai, for the Appellant; I.B. Shastri, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing the order dated 20-10-1999 (Annexure P-13) by which the services of the petitioner have been terminated and for a direction to the respondents to reinstate her in service.

It is not in dispute that the petitioner was appointed as a Primary teacher on 20-7-1995 in the Army School, Bhopal which is being run by "Army Welfare Education Society", a Society registered under the Societies Registration Act, 1860 on 1-4-1983. She was teaching Mathematics. She was served with a show cause notice dated 16-6-1999 (Annexure P-2) stating that the result of the School in this subject was very poor. It is further stated: "All these reflect very poorly on your teaching abilities and also a lack of interest and sincerity in teaching the students. Earlier, too, on many occasions you have been verbally counselled to improve your performance. However in the final Board exam results there has been no improvement. You are hereby directed to show cause why your services should not be terminated on the above account". The

petitioner submitted her reply dated 29-6-1999 (Annexure P-3). The Principal of the School by letter dated 8-7-1999 (Annexure P/4) wrote to the petitioner: "Contents of your reply are not convincing. You are hereby counselled and directed to bring about a substantial improvement in your teaching and handling of the students. Your teaching would henceforth be under close scrutiny by the management. It has also been observed that your personal conduct too needs to be much improved. The management expects a marked improvement in you both in teaching and also in your personal conduct, failing which your service would be terminated". Again by letter dated 17-7-1999 (Annexure P-5A) the petitioner was informed that she is disobeying the orders of the Chairman. She was served with a show cause notice dated 16-8-1999 (Annexure P-7) stating therein that an investigation has revealed that there were four instances of "insubordinate and undesirable behaviour" on the part of the petitioner. It was also stated that the inquiry report was placed before the Management and according to its directions the show cause notice was being issued to the petitioner to explain why her services should not be terminated. The petitioner by her letter dated 19-8-1999 requested the Principal to furnish a copy of this report but it was not supplied to her. She was given an opportunity to peruse the report and the enquiry proceeding in the office of the Vice-Chairman. By the impugned order dated 20-10-1999 (Annexure P-13) the services of the petitioner were terminated as per Article 129(b) and (e) of the Army Welfare Education Society Rules, 1997 and as per letter dated 5-10-1999 of the Headquarters, Central Command, Lucknow. The petitioner has been paid salary for three months as per Article 129(b).

The petitioner's case is that no domestic inquiry consistent with the principles of natural justice was held against her. There was no charge-sheet. She was not given any list of witnesses or list of documents. The witnesses were not examined in her presence and she was not given any opportunity to cross-examine them. The inquiry report was not supplied to her and therefore the termination order is illegal. The inquiry was also not in conformity with Article 123. According to the petitioner Article 129(b) was not attracted in case of termination on the ground of "breach of discipline".

The respondents' case is that the School is being run by the Army Welfare Education Society which is a non-statutory body and the rules framed by it are also non-statutory in character and therefore no direction can be given to the respondents to reinstate the petitioner in service. There was no need to hold a regular domestic inquiry. The requirement of issuing show cause notice was complied with as per Article 129(b). The show-cause notice was issued as per resolution dated 9-8-1999 of the Managing Committee. The meeting of the Committee again took place on 31-8-1999 and after consideration it was unanimously decided to terminate the services of the petitioner. The matter was referred to the Headquarter, Central Command and the action to be taken against the petitioner was approved. Accordingly, the services of the petitioner were terminated as per Article 129(b).

The learned counsel for both the sides have been heard. The points for determination are (a) whether the Army School run by the Army Welfare Education Society is a "State" within the meaning of Article 12 of the Constitution, (b) whether it was necessary to hold a regular domestic or departmental inquiry by issuing charge-sheet, examining the witnesses in the presence of the petitioner, giving her an opportunity to cross-examine them and furnish her a copy of the inquiry report before terminating her services, (c) whether the termination is in conformity with Article 129(b) and (d) whether the impugned order can be quashed and the respondents can be directed to reinstate the petitioner in service.

Point (a)

It is an admitted fact that the Army School is being run by the Army Education Society registered under the Societies Registration Act, 1860. It is not a Government School. It is not directly or indirectly controlled by the Union of India or funded by the Union of India. It does not come within the definition of "State" given in Article 12 of the Constitution of India. The rules framed by the Society are not of statutory character. The Army Welfare Education Society cannot be said to be an instrumentality of the State. This view has also been taken by a Division Bench of Jammu and Kashmir High Court in *Mrs. Asha Khosa vs. Chairman, Army Public School* (MLJ 1997 J&K 73). A photocopy of this judgment has been furnished by the learned counsel for the respondents and it is on record.

Points (b), (c) and (d):

The inquiry which has been conducted in the present case cannot be said to be consistent with the principles of natural justice. No regular charge-sheet was served on the petitioner. She was not supplied a list of witnesses or a list of documents. The witnesses were admittedly not examined in her presence and she was not given any opportunity to cross-examine them. A copy of the inquiry report was not supplied to her. These are the essential components of a departmental enquiry. The inquiry conducted in the present case cannot be said to be as per Article 123 of the Army Welfare Education Society Rules, 1997. In the present case the impugned order dated 20-10-1999 (Annexure P/13) by which the services of the petitioner have been terminated has been issued under Article 129(b) of the Army Welfare Education Society Rules, 1997. The petitioner has been given a cheque for Rs. 16822 = 50 as pay and allowances for three months duration as per Article 129(b) of the Army Welfare Education Society Rules, 1997. This Article reads as under:-

129(b) In cases of confirmed employees, the service could be terminated by giving 3 months notice or salary in lieu provided before terminating the services of a confirmed employee he or she shall be given a show cause notice explaining the reasons why his or her services were proposed to be terminated.

In the present case, the petitioner was given a show-cause notice stating the

reasons why her services were proposed to be terminated and she was also given salary for three months in lieu of notice. Thus, requirement of Article 129(b) of the Army Welfare Education Society Rules, 1997 has been satisfied. Before passing the impugned order prior concurrence from the Headquarter Central Command, Lucknow was also taken as required by Article 129(e).

Argument of the learned counsel for the petitioner is that the services of the petitioner have been terminated by casting a stigma on her in the impugned order. It is stated in this order that the services are being terminated after conducting a departmental enquiry against the "act of indiscipline" and the conduct of the petitioner has been found "blameworthy". It is contended that the impugned order of termination being stigmatic could not be passed under Article 129(b) and it was necessary to hold a departmental enquiry consistent with the principles of natural justice which was not done. On the other hand it has been argued that the impugned order cannot be said to be arbitrary or unreasonable. It is pointed out that inquiry was held by the employer to satisfy itself that the petitioner was not suitable to continue in service and therefore, the action has been taken under Rule 129(b). It is further argued that even if the termination order has been passed without holding a regular departmental enquiry, the petitioner cannot be reinstated in service as she does not enjoy any statutory protection and the termination order has been passed in bona fide exercise of the power given under rule 129(b) of the Army Welfare Education Society Rules, 1997.

After considering the respective arguments this Court is of the opinion that no regular departmental enquiry was necessary in the present case. The petitioner was not in the employment of the Government and therefore, Article 311 of the Constitution of India is not applicable. There is no statutory rule requiring the employer to hold any departmental enquiry before terminating the services of a teacher. The Society which is running the school has framed its own rules which are of non-statutory nature. The petitioner was employed in a private school. It is not governed by any statutory rule. There is no law casting an obligation on this private school to hold a departmental enquiry before terminating the services of its teachers. The only thing which is to be seen is that the action should not be arbitrary or whimsical. The management of the school has conducted some sort of inquiry to find out the suitability of the petitioner to continue in service and it was satisfied that it is not desirable to retain the petitioner in service and therefore, it resorted to rule 129(b) of the Army Welfare Education Society Rules, 1997 and it has complied with the essential requirement of this rule.

It must be remembered that it is not a case of removal of an employee from public service. It is not a case of a Government company, Corporation or a State instrumentality. The service regulations and rules of public corporation are tested on the touchstone of Articles 14, 19 and 21 of the Constitution of India as was done by the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor

Congress and Others, . The cases of private employment which are not governed by any statutory rules are not covered by the dictum of the Supreme Court in this case.

In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Supreme Court has held that "if the rights are purely of a private character no mandamus can issue, if the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. The law relating to mandamus has made the most spectacular advance. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226". Learned counsel for the petitioner has relied upon the decision of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, where in para 77 it has been held that the educational institutions "discharge a public duty". In *K. Krishnamacharyulu vs. Sri Venkateswara Hindu College of Engineering*, AIR 1998 SC 295 it has been held that a teacher duly appointed to a post in the private institution is entitled to seek enforcement of the orders issued by the Government. It has been further held that 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; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy.

In *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, it has been observed that "in the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of appointment, disciplinary powers, admission of students and the fees to be charged. It is in the interest of the general public that more good quality schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that". It has been further observed that in the case of a private institution, the relationship between the management and the employees is contractual in nature. It has been emphasised that a fair domestic enquiry should be conducted. The Supreme Court has recommended for establishment of Educational Tribunal.

In *VST Industries Ltd. vs. VST Industries Workers' Union*, (2001) 1 SCC 298 it has been observed that public duty is owed to the public in general and not specifically to any person or group of persons. If merely, what can be considered a part of the conditions of service of a workman is violated then there is no justification to hold that such activity will amount to public duty. Again in *G. Basi Reddy Vs. International Crops Research Instt. and Another*, it has been held that "a writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty (*The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, , *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and *VST Industries Ltd. vs. Workers' Union* (2001) 1 SCC 298). ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity. The primary activity of ICRISAT is to conduct research and training programmes in the sphere of agriculture purely on a voluntary basis. A service voluntarily undertaken cannot be said to be a public duty. In this case earlier decision of the Supreme Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*, has been referred for the proposition that an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute.

In view of the above legal position the termination of the services of the petitioner under Rule 129(b) of the Army Welfare Education Society Rules, 1997 cannot be said to be illegal. The requirements of this rule have been complied with. The show-cause notice was given to the petitioner and her reply was considered. She has been paid three months' salary by way of compensation. In case of public employment termination of the services of a permanent employee by giving three months notice has been held to be in violation of the constitutional provisions. But such a clause in a case of private employment does

not stand on the same footing unless there is statutory provision giving protection to the employees. Therefore, rule 129(b) of the Army Welfare Education Society Rules, 1997 cannot be said to be illegal. The termination being within the scope of this rule cannot amount to breach of public duty. The question whether the order is stigmatic or not assumes importance when the termination is in breach of any statutory rule or when the services of an employee of a State or State instrumentality are terminated. In case of private employee the termination of the services in pursuance of the rules forming part of the conditions of service cannot be said to be illegal when the management after considering all the aspects is satisfied that the employee is unfit or unsuitable to be retained in service. At private employer enjoys greater autonomy. Of course, its action should not be arbitrary or whimsical. There should be bona fide exercise of powers. In the present case the management has taken care to satisfy itself that the petitioner is not fit for retaining in service because of her poor performance and her conduct not being found upto the mark. The impugned action cannot be said to be arbitrary or unreasonable. Therefore, a mandamus cannot be issued against the private institution to reinstate the petitioner in service simply because there has not been a full-fledged inquiry to prove the alleged misconduct. The action taken under rule 129(b) of the Army Welfare Education Society Rules, 1997 is unassailable and is not liable to be interfered with by this Court.

The petition is dismissed.