
(1984) 01 AHC CK 0040
In the Allahabad High Court
Case No : Writ petition No. 250 of 1984

Shree Niwas Upadhya

APPELLANT

Vs

Basic Shiksha Adhikari, Gonda

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Citation : (1984) 01 AHC CK 0040

Hon'ble Judges : K.N.Goyal, J and S.Saghir Ahmad, J

Final Decision : Allowed

Judgement

K. N. Goyal.

1. This writ petition is directed against an order of the Management of a recognised Junior High School terminating the services of the petitioner, who is Headmaster of that institution, without the previous approval of the Basic Shiksha Adhikari (for short, B. S. A.) as required by rule 15 of the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. No adverse order has been passed against the petitioner by the B. S. A. or any other officer of the Education Department, and no relief has been claimed" against them under the Payment of Salaries Act,, and only the act of the management is being challenged,

2. Assuming, as averred in the writ petition, that the institution is a recognised one and further assuming that the approval of B. S. A. was not obtained, it would, no doubt, follow that the impugned termination order Was void.

3. The question, however, arises as to whether such a writ petition is maintainable. It was held by a Division Bench,, of which one of us was a member, in Ram Bachan Gupta v. Principal, Sahyogi National Inter College, Faizabadi,

1980 Luck LJ 93, that any act of the management of a private institution in relation to the services of a teacher under its employment cannot be regarded as

an act of public nature and, therefore, even though the Management may have been guilty of violation of a statutory provision, a writ petition would not lie under Article 226 of the Constitution. In taking this view, the Division Bench relied on an earlier decision rendered by itself in writ petition No. 1106 of 1976 (Devendra Pratap District Cooperative Bank Ltd.) decided on September 12, 1979. It may be mentioned that this decision in Devendra Pratap related to an employee of a Gooperative Society who had complained of breach of statutory regulations by a Gooperative Society. Apparently there is no distinction in principle between a case of a Gooperative Society dealing with its employees in breach of statutory regulations and a society or committee of management running an educational institution dealing with its employees in breach of similar statutory regulations, assuming that neither such cooperative society nor such educational society or committee is an instrumentality of the State. That decision came up for consideration before a Full Bench in Radha Charan Shrama v. U.P. Cooperative Federation, 1982 AWC 64. but no clear view about its correctness or otherwise was expressed by the Full Bench

4. On the other hand, learned Counsel for the petitioner has placed" his reliance on Ravi Dutt Sharma v. Modern Vocational Intermediate College, 1981 ALJ 1132 decided by another Division Bench. In this decision it was held that if the Management terminated the services of a teacher in violation of the statutory provisions, then a writ petition could lie against the management. It was held that the resolution of the Management could also be quashed apart from the order of the Deputy Director. The Supreme Court decisions in Vaish Degree College v. Lakshmi Narain,. (1976) 2 SCC 58 and Arya Vidya Sabhav. Krishna Kumar, (1976) 2 SCC 83, followed in Smt. J, Tewariv. Jwala Devi Vidya Mandir, (1979) 4 SCC 160, were distinguished on the ground that they related to suits and not to writ petition. It is, however, to be noted that where the employment is of a public nature, even a declaratory suit is not barred by the Specific Relief Act. What then is the distinction between a suit and a Writ petition for similar relief ? Another decision relied on by the learned counsel for the petitioner is Tulsi Ram Misra v. Jai Narain Inter College, 1976 Lucknow L J 376, decided by another Division Bench in which it was assumed without discussion that because the Committee of Management was required to act in a certain manner by the statute, it implied that it was fulfilling public responsibilities in respect of which the writ petition could be maintained. In Devendra Pratap (Supra) on the other hand, it was said that statutory regulation of contractual relationships did not necessarily impose public responsibilities, e. g. the duties imposed by rent control legislation on landlord to carry out repairs etc.

5. A similar point was raised during arguments in City Montessori Schools v. District Inspector of Schools, 1983 UPLBEG 479 before another Division Bench, vide para 7 of the report. The point was, however, not decided as the writ petition in that case, which were filed by the Management of unaided high schools and junior high schools, were allowed on another ground, namely, that the District Inspector of Schools or the Basic Shiksha Adhikari had no statutory

power either to make a bare declaration of invalidity of the termination order or to direct the Management to reinstate the teachers, and that no such inherent power could be implied either. That decision was recently distinguished by us in writ Petition No. 228 of 1984 (Committee of Management of Shankaracharya Inter College v. District Inspector of Schools, decided on 6.1.1984, [1984 (2) LCD 59] in which it was held that the DIGS could nevertheless take note of the invalidity of such a termination order in order to exercise his statutory power of ordering the management of an aided institution to make payment of salary to the teacher concerned under the U. P. High Schools and Intermediate Colleges (Payment of Salaries to Teachers and other Employees) Act.

6. A Full Bench in Aley Ahmad Abidi v. District Inspector of Schools, AIR 1977 Allahabad 539; took the view that a Committee of Management was not a statutory body but on the principles laid down in Praga Tools Corporation v, C. V. Imanuel, AIR 1969 SC 1306, para 6, a writ petition could lie even against a private body in respect of discharge of its public functions. What these public functions, if any, were was not elaborated. This decision of the Full Bench was referred to but distinguished in Devendra Pratap (supra) and Ram Bachan Gupta (supra) on the ground that while a writ petition could no doubt lie against a nonstatutory body, the duty to be performed must be of a public nature and that the acts of the Management in relation to the services of its teachers cannot be regarded as acts of a public nature. In Devendra Pratap it was suggested that while a Principal admitting a student did discharge public functions as held in Kumkum Khanna v. Mother Aquinas, AIR 1976 Delhi 35, a management's dealings with its employees were not public functions.

7. Thus, the decisions do not appear to be uniform and as this question is being raised every other day, we are of the opinion that in order to obtain an authoritative decision on this important point of public importance, that matter should be referred to a larger Bench.

8. As this is the only point involved in the petition, it will be appropriate to refer the whole petition to a larger Bench and to give notice to the parties 2 to 4 indicating the same.

9. we, accordingly, direct that the papers shall be placed before the Hon'ble the Chief Justice for obtaining his lordship's order in regard to constitution of a larger Bench.

10. Notice on the application for interim relief shall also be issued and the application be placed before the Full Bench along with the writ petition. Till then the operation of the order of termination dated 8.2.84, annexure 4, shall remain suspended and the status quo be maintained.