
(2002) 05 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5718 of 1994

Shri R.D. Sharma

APPELLANT

Vs

St. John's High School and Others

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 05 P&H CK 0049

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : M.S. Kang and Satbir Rathore, for the Appellant; M.L. Sarin, Senior Advocate, Hemant Sarin, A.K. Chopra, Senior Advocate and N.D. Kalra, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Shri R.D. Sharma is the petitioner of this case and he has filed the present writ petition under Articles 226/227 of the Constitution of India against St. John's High School, its management, Provincial Head and Central Board of Secondary Education and it has been prayed that a writ in the nature of certiorari be issued and order dated 29.3.1994 (Annexure P-6) vide which his services were terminated with immediate effect, be quashed as the said order is illegal and has been passed without following any procedure. It was also prayed by the petitioner that a writ in the nature of mandamus be issued against the respondents calling upon them to reinstate him into service with all consequential benefits. Yet another prayer was made by the petitioner that a writ in the nature of certiorari be issued and Clause (e) of the General Rules for the Administration of Charistian Brothers School, Institution of the C.C.B. In India, be quashed.

2. The case set up by the petitioner is that the respondent institute is performing the duties of the State. It is performing an important public function coupled with the fact that its activity is closely inter-twined with the governmental activities.

Its action is like a State action. Respondent No. 1 is affiliated with Central Board of Secondary Education and it performs its duties as per the guidelines issued to it. As per Unni Krishan's case, respondents No. 1 and 2 is an instrumentality of the State, therefore, a writ of mandamus be issued against it. It is further pleaded by the petitioner that he was appointed as Teacher against a permanent vacancy in St. John's School vide order dated 4.4.1989. It was specifically provided in the letter of appointment that he will be on probation for a period of one year which can be extended in the discretion of the management for further period of not more than one year and on the successful completion of the probation he shall be confirmed in the post. On completion of one year of probation he was ordered to be confirmed vide order dated 4.4.1990. In the letter it was also stated that under the agreement he is to give three-month notice if he intends to resign from the post and vice-versa the management can terminate his services with the prior notice of three months however, no separate agreement/contract of service was entered into between the parties. In the month of July, 1990, the Principal of the School was transferred and one Shri D'Souza became the Principal. The said gentleman became inimical against the petitioner for the reasons best known to him and he started harassing the petitioner for one reason or the other. So, much so, Shri D'Souza issued a letter on 18.7.1991 to the petitioner and gave him the warning that he should complete the Teachers' Training by April, 1993 failing which his services will be automatically terminated. Along with this letter the petitioner was reduced in the scale of a Primary School Teacher from the Trained Graduate Teacher. Yet another warning in the shape of letter dated 3.9.1992 was given and it was alleged that the behaviour of the petitioner in the school is not proper towards the student and in case the petitioner does not improve, his services will be terminated. The petitioner gave a detailed reply to the show cause notice. He denied the allegations of his alleged changed behaviour. On the contrary, he made a mention in the reply that in the interest of the students he had to become strict for maintaining the discipline. In the month of February, 1993, Mr. D'Souza proceeded on leave for a period of five months and another incumbent Mr. Molygan assumed the office of Principal, who perused the record of the petitioner and released the scale of Trained Graduate Teacher of Rs. 1400-2600/-. This shows that Mr. D'Souza was highly inimical. On return Mr. D'Souza again started harassing the petitioner and when he realised that a higher grade has been released to the petitioner, he all of a sudden ordered for the termination of the services of the petitioner on 29.3.1994 without assigning any reason and without asking for any explanation. The petitioner filed an appeal to the Provincial Head on 18.4.1994 against the illegal action of the Principal, but no action was taken. The grievance of the petitioner is that the action of respondent No. 1 in terminating his services is wholly illegal, arbitrary and against the provisions prescribed by the affiliation bye-laws of C.B.S.E. and against the principles of natural justice.

3. Notice of the writ petition was given to the respondents. A joint written

statement was filed on behalf of respondents No, 1 to 3 and a preliminary objection was taken that the present writ under Articles 226/227 of the Constitution of India is not maintainable against the respondents as these provisions can only be invoked against State or other authority within the meaning of Article 12 of the Constitution of India. Respondents No. 1 to 3 are neither a State nor other authority and, therefore, the writ petition is wholly unmaintainable. It was also maintained that respondent No. 1 is an unaided minority institution. It is being maintained under the overall charge of the Christian Brothers Society and thus the institution is protected under the provisions of Articles 29 and 30 contained in part-III of the Constitution of India. Article 30 of the Constitution of India specifically provides that all minorities based on religion shall have a right to establish and administer educational institution of their choice. The management and administration of the respondent- institution includes the appointment and termination of its staff. The aforesaid managerial activities cannot be interfered in view of the fundamental rights vested in respondents. Further it was maintained that the appointment of the petitioner in the respondent-institute is not a matter of status but it is merely a matter of contract. The relationship of master and servant arises. While passing the order of termination, the conditions of employment were complied with. In the alternative, it was pleaded that even if for the sake of arguments it is presumed that there has been violation of the contractual obligations between the petitioner and the respondents, the petitioner is only entitled to sue for damages in the competent court of jurisdiction. The respondents submitted that the behaviour of the petitioner was not good. He on one occasion gave severe beating to a student namely Ashish Chopra. The matter was resolved by acting Principal Mr. Mulligan and the parents of the aggrieved student were pacified. The infliction of corporal punishment was unheard in the respondent-institute, consequently a warning was issued to the petitioner. The petitioner was also informed of his conduct in severely beating the student. He was asked to appear before the Managing Committee. Before the Managing Committee the petitioner did not deny the factum that he gave, beating to Ashish Chopra. The behaviour of the petitioner qua the students was not good. He used to show his different behaviour qua the students who refused to take private tuitions from him. In September, 1992, the students of 10th class refused to attend their class as the behaviour of the petitioner was not tolerable. Some written complaints were also received by the management against the petitioner and the management issued letters of warning to the petitioner by giving instances of bad behaviour of the petitioner. Keeping in view the future career prospects of the students the petitioner was given a chance to tender his resignation. On the contrary, the petitioner sought extension from time to time to decide for himself what course he wished to adopt. Since the session came to an end and the petitioner did not tender his resignation, the answering respondents in their capacity as disciplinary authority issued the impugned order vide which the services of the petitioner were terminated. With this defence the respondents have prayed for the dismissal of the writ petition.

4. The petitioner filed a re-joinder to the written statement of respondents No. 1 to 3 in which he denied the averments of the written statement.

5. I have heard Mr. M.S. Kang, Advocate assisted by Mr. Satbir Rathore, Advocate on behalf of the petitioner, Mr. M.L. Sarin, Sr. Advocate, assisted by Mr. Hemant Sarin, Advocate, Mr. A.K. Chopra, Sr. Advocate, assisted by Mr. N.K. Kalra, Advocate, on behalf of respondents No. 1 to 3 and with their assistance have gone through the record of the case.

6. As I have stated above, a preliminary objection has been taken by the respondents that the writ is not maintainable against St. John's High School for the reason that neither it is a State nor its instrumentality. It is purely a private institution which is not even aided by the Government, but it is only affiliated with C.B.S.E. Therefore, this Court has no jurisdiction to entertain the writ petition, muchness to issue a mandate to the respondents for the reinstatement of the petitioner into service. It is also the stand of the respondents that the respondent-institute is a minority institution and there is a protection to it under Articles 29 and 30 of the Constitution of India.

7. The learned counsel for the petitioner has relied upon some judgments and vehemently submitted that the respondent institute is performing the public duties when it is providing educational facilities to the public at large. Therefore, it is a "State or instrumentality of the State under Article 12 of the Constitution of India. The judgments relied upon by the learned counsel for the petitioner can be quoted as follows: *Ravneet Kaur v. The Christian Medical College, Ludhiana*, 1997(3) S.C.T. 210, wherein it was held as under:-

"Though private educational institutions receiving aid from the State funds may not be a State as defined under Article 12, yet Article 29(2) confers a fundamental right on all citizens not to be discriminated against in the matters of admissions to such institutions. In such a situation, the aggrieved person can seek a writ for enforcement of his rights under Article 32 or 226 of the Constitution of India."

8. The second judgment which has been relied upon by the learned counsel for the petitioner is *K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Ors.* AIR 1998 S.C. 295, where it was observed that while dealing the matter of equal pay for equal work, the employees of private educational institutions can come to the High Court under Article 226 of the Constitution of India when the executive instructions issued by the Government giving them right to claim pay scale at par with Government employees are violated. In this judgment it was also observed that the institute which caters the needs of the public by imparting education, against such institution the provisions of Article 226 of the Constitution of India are available and not under the Industrial Disputes Act. The third judgment which was relied upon by the learned counsel for the petitioner is *Rekha Sharma v State of Punjab* 1993(3) S.C.T. 709 where their Lordships were pleased to observe that a private

institution cannot get rid of its employees without following the procedure of regular enquiry and principles of natural justice. The High Court can issue a writ of mandamus in any case to any person to treat the injustice and a writ cannot be defeated merely on the ground that such institution does not receive any aid from the State. The Hon"ble Division Bench in this case relied upon the famous case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, . Incidentally, this very judgment has also been relied upon by the learned counsel for the respondents. Therefore, I will reproduce the relevant para of this judgment in the subsequent portion of this judgment to discuss the contentions of the parties. The next judgment which was relied upon by the learned counsel for the petitioner is Bhagirath Sharma v. Punjab Spinning & Weaving Mills Ltd and Ors. 2001(2) S.C.T. 717 where it was observed that the State Corporations like the Punjab Spinning & Weaving Mills Ltd. is a State within the meaning of Article 12 of the Constitution. Also it was observed in this very judgment that the permanent status conferred on an employee guarantees security of tenure. Reliance was also placed on Smt. Kamlesh Kumari v. State of Haryana 2001(3) S.C.T. 224 where it was held that if the termination is without giving opportunity of hearing, in such a situation the termination is bad in the eyes of law.

9. On the contrary, the learned counsel appearing on behalf of the respondents has relied upon VST Industries Ltd. Vs. VST Industries Workers" Union and Another, and my attention has been invited to para 8 of the judgment which runs as follows;-

"8. The High Court has relied very strongly on the decision of a learned Single Judge in T. Gattalah"s case wherein it was stated that writ may lie under Article 226 of the Constitution against a company incorporated under the Companies Act, 1956 as it is permissible to issue a writ against any person. Prima facie, therefore, a private person or an incorporated company cannot be taken out of the sweep and the contemplation of Article 226 of the Constitution. That decision does not take note of the fact as to the nature of the functions that a person or an incorporated company should be performing to attract judicial review under Article 226 of the Constitution. In Anadi Mukta"s case this Court examined the various aspects and the distinction between an authority and a person and after analysis of the decisions referred in that regard came to the conclusion that it is only in the circumstances when the authority or the person performs a public function or discharges a public duty Article 226 of the Constitution can be invoked. In the present case, the appellant is engaged in the manufacture and sale of cigarettes. Manufacture and sale of cigarettes will not involve " any public function. Incidental to that activity there is an obligation u/s 46 of the Act to set up a canteen when the establishment has more than 250 workmen that means, it is a condition of service in relation to a workman providing better facilities to workmen to discharge their duties properly and maintain their own health or welfare. In other words, it is only a labour welfare, device for the benefit of its work force unlike a provision where Pollution Control Act makes it obligatory

even on a private company not to discharge certain effluents. In such cases public duty is owed to the public, in general and not specific to any person or group of persons. Further the damage that would be caused in not observing them is immense. If merely what can be considered a part of the conditions of service of a workman is violated then we do not think there is any justification to hold that such activity will amount to public duty. Thus, we are of the view that the High Court fell into error that appellant is amenable to writ jurisdiction."

10. The second judgment relied upon by the learned counsel for the respondents is *Prabhu Nath Pandey and etc. v. Union of India and Ors.* 2001(5) S.L.R 221, wherein it was observed that if the services of temporary employees of Army Schools are terminated and such Army School is not a statutory body created by any statute, in the absence of any statutory requirement Court cannot grant specific enforcement of the contracts of service between the employees and the Army School. In this judgment the cases of *Anandi Mukta (supra)* and *Unnikrishnan (supra)* were taken note of by his Lordship, besides other judgments. From this judgment I would like to refer to the following observations :-

"Thus a Division Bench of this Court has held in the aforesaid case that if the rights of the employee in the School -is purely of a private character, the management performs no public duty in that regard and the employee of the school cannot be reinstated in service by direction of the Court as such reinstatement will amount to specific enforcement of a service contract."

11. Reliance was, also placed upon *Bishan Chand v. Registrar Co-Op, Societies, Punjab* 1997(4) S.C.T. 146. In my opinion, the ratio of this judgment is off the track. My attention has also been invited to *Dr. G.S. Ojha, Lecturer and Ors. v. Vice Chancellor, Gure Nanak Dev University, Amritsar and Ors.* (1991)100 P.L.R. 545 in which it was observed that if a privately managed educational institution does not receive any grant from the Government institution or the University, such institution is not a State or other authority and no writ is maintainable against such privately managed educational institution. The learned counsel for the respondents have also invited my attention to a Division Bench judgment of this Court in *Ganesh Dutt and Ors. v. The State of Haryana and Ors.* ILR 2001 (P&H) 122 where it was observed that if it is established that a company does not perform a public duty, in such a situation such company cannot be held to be an instrumentality of the State or any authority for the purpose of Article 12 of the Constitution irrespective of the fact that Government holds 50% shares.

12. I have considered the rival contentions of the parties in the light of the various judgments which have been relied upon by the learned counsel for the parties. It has been observed in para No. 14 in *Anandi Mukta Sadguru's case (supra)*, which has been incidentally relied upon by the learned counsel for both the parties as follows:-

"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."

13. In para No. 19 of this very judgment, the following observations have been made which, in my opinion, are of very significance:-

"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 the 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."

14. In my opinion a writ of mandamus is maintainable against a private institute even though it does not get aid and its duty runs shoulder to shoulder with a duty which is performed by a public institution. To clarify this aspect of the case, if a dispute involved in a particular lis with regard to the admission or education or with regard to the pay of a member of the staff, in such a situation a writ under Article 226 is maintainable because imparting of education by a private institute is such a duty which is also being performed by the public institutions. In other words, mere label of a private institute will not oust the jurisdiction of the High Court under Article 226 of the Constitution. We have to see what is being agitated or claimed by the writ petitioner. If a writ petitioner complains with regard to the deprivation of the admission or equal pay for equal work or remuneration at par with the Government aided institution, in such a situation the High Court will entertain the petition. But if the controversy involved in a particular writ petition is purely a service matter pertaining to the service conditions for a private contract, in such a situation if there is any breach, the High Court will not issue a mandate under Article 226 of the Constitution. The distinction, in my opinion, is patent and clear. In the present case the alleged cause of action arose to the petitioner when his service had been terminated in an illegal manner without adopting the principles of natural justice. This is an alleged breach of contract or service on the part of St. John's High School which is a private institute not even aided by the government. In such eventually the remedy of the petitioner lies somewhere else either the general law or he may file a suit for damages in the competent court of jurisdiction. The Hon'ble Division Bench of Guhati High Court in Managing Committee, Silchar Medical College v. Debt Pada Bhattacharjee (1994) 1 G.L.R. 202 held in para No. 12

of the judgment as under:-

"Although a private educational institution performs public duty insofar as imparting of education is concerned, it may not discharge public duty in other matters. The present case is purely of a private institution, and the management of the school is also a private body. Therefore, if the right of the employee in this school is purely of a private character, the management performs no public duty in this regard."

15. Thus a clear distinction has been made out that even private institution may or may not discharge a public duty. It may discharge public duty when it imparts education. It may not discharge a public duty in a case of termination of the private contract.

16. Reverting to the facts of the present case the services of the petitioner have been terminated. It is his case that the termination is against the rules of natural justice and that no regular enquiry was conducted. On the contrary, the case of the respondents is that his services have been terminated as per contract. This point can only be adjudicated either by a competent court of jurisdiction on the civil side or the petitioner may adopt such other remedy like filing a suit for damages etc.

17. So, for as the present writ petition is concerned, it is not maintainable. The same is hereby dismissed, leaving the parties with no order as to costs.