

(2012) 08 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition No. (S/S) 1752 of 2001

Smt. Kishore Devi Uniyal and Another	APPELLANT
Vs	
The Committee of Management and Another	RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 21A, 226

Citation : (2012) 3 UC 1734

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

**Advocate : Sharad Sharma, Assisted by Mr. J.S. and Bisht, for the Appellant;
B.N. Molakhi, for the Respondent**

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.—This writ petition is only being argued on behalf of petitioner No. 1, as petitioner No. 2 has already been deleted from array of parties. Heard learned Senior Advocate Mr. Sharad Sharma assisted by Mr. J.S. Bisht Advocate for the petitioner No. 1 and Mr. B.N. Molakhi, Advocate for the respondents.

2. Petitioner No. 1 (hereinafter referred to as the "Petitioner") was appointed as Assistant Teacher in Primary Section of an Army School which is situated at Raiwala, Dehradun Uttarakhand. The school is being run by Committee of Management which is under the control of Army Welfare Education Society (hereinafter referred to as "AWES"). The services of the petitioner were terminated vide order dated 28.9.1998. Learned counsel for the respondents Mr. B.N. Molakhi has raised a preliminary objection that the AWES is neither State nor any instrumentality of the State, as contemplated under Article 12 of the Constitution of India nor an "Authority" so that the writ petition could be filed under Article 226 of the Constitution of India. It is undisputed that the AWES are imparting education to children which is a public function. Moreover, this fact now stands settled by the Division Bench of this Court in case of Km. Vimi Joshi Vs.

Chairman, School Managing Committee and others (Writ Petition (S/B) No. 398 of 2004) where the similar objection was raised by the respondents, which was rejected by the Division Bench of this Court. The relevant paragraph of the said order reads as under:-

9. It was contended on behalf of the Management Committee that the School is not amenable to the jurisdiction of Writ Court. It was contended that the Division Bench of another Court has held that it is not an Authority within the meaning of Article 12 of the Constitution of India. In paragraph-20 of the judgment of Hon"ble Supreme Court, referred above, the Hon"ble Supreme Court, in no uncertain terms, has held that the School is a "Public Enterprise". In view of such pronouncement of the Hon"ble Supreme Court, we hold that the School is an Authority within the meaning of Article 12 of the Constitution of India and, accordingly, is answerable for each of its actions, which is tainted.

3. Moreover, it is a clear view of this Court that after Right to Education Act being incorporated as a Fundamental Right under Article 21-A of the Constitution of India, the respondents' authority are imparting education to children and they are admittedly doing a public function. Therefore, in any case, they are amenable to writ jurisdiction of this Court. It is also admitted fact that the Society which is being run by an Ex Officio serving army officer and it is under a deep and pervasive control of the army authorities. Therefore they are amenable to writ jurisdiction under Article 226 of the Constitution of India and the preliminary objection raised by the respondents stands rejected.

4. Now it is an admitted case that petitioner was appointed as an Assistant Teacher to teach students of Primary Section which imparts education from Class I to Class V. She was given notice on 24.9.1998. In the said notice, a direction was also contained that the reply should be reached by 28 September 1998. The said notice reads as under:-

1. In view of the present financial deficit in the school income and the reduction in the strength of students per section warranting merger of sections. Please show cause as to why your services should not be terminated under the provisions of Section 29(2) of CBSE bye-laws.

2. Your reply should reach this office latest by 28 Sep 98.

5. Reply was given by the petitioner to the said notice, which read as under:-

To,

The Principal,

Army School,

Raiwala.

Sub: Show cause notice.

Sir,

With reference to your confidential letter no. nil dated 24th September 1998 I want to submit the following:

1. I have been serving in Army School Raiwala since 19th June 1992. After the completion of one year probate period I got permanent appointment.

2. Being senior most teacher in Primary Section termination is not justified as per rule.

3. I have not committed any kind of misconduct. Therefore I request your goodself that show cause notice dated 24th September 98 kindly be treated cancelled.

6. Counsel for the respondents was asked to place before this Court the relevant rules such as 129(b) of AWES Rules on which reliance has been placed while terminating the services of the petitioner. No rules such as Rule 129(b) of the AWES Rules which refers to termination of service, has been placed by the respondents before this Court. The rule which is applicable in terminating the service of the petitioner is Rule 135 of the AWES, which reads as under:

135. Termination of Service due to Abolition of Posts etc. The Managing Committee shall also be competent to terminate the services of a confirmed employee in case of abolition of a post due to closing down of school/institution, a class or reduction in the number of sections of a class or discontinuance of a teaching subject by giving three months notice in writing or three months salary including all allowances.

The aforesaid rule prescribes three months notice before termination of service.

7. Moreover, sub-section (2) of Section 29 of C.B.S.E. bye-laws on which reliance has been placed by the respondents although prescribes mandatory period of three months" notice. Sub-section (2) of Section 29 of C.B.S.E. bye-laws reads as under:-

12. That Section 29 Sub-section 2 of C.B.S.E. bye laws referred to above runs as follows:-

The Managing Committee will also be competent to terminate the services of a confirmed employee only in a case of abolition of post due to closing down of Schools/Classes or reduction in the Number of Section or Classes and discontinuing of a teaching subject by giving 3 months notice in writing or 3 months salary including all allowances.

The aforesaid section on which reliance has been placed by the respondents although prescribes a mandatory period of three months" notice before terminating the services.

8. Without going into the fact as to whether the termination itself was not justified, the admitted position remains that the mandatory period of three months" notice, as required by law, has not been given to the petitioner. The

show cause notice dated 24.9.1998 only gives four days time to reply and thereafter on 28.9.1998 a termination order has been passed. It is a clear violation of the Rules on which reliance has been placed by the respondents. Therefore the writ petition is allowed. Order of termination dated 28.9.1998 is quashed. The respondents are hereby directed to reinstate the petitioner in service along with 50 per cent back-wages within a period of three months from the date a certified copy of this order is produced before respondent No. 1. No order as to costs.