
(1987) 07 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4785 of 1985

Smt. Manju Devi

APPELLANT

Vs

District Superintendent of Education, Bhagalpur and Others

RESPONDENT

Date of Decision : 23-07-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1988 Patna 1 : (1987) 35 BLJR 823

Hon'ble Judges : S.S. Sandhawalia, C.J.; Ram Nandan Prasad, J.; Lalit Mohan Sharma, J

Bench : Full Bench

Advocate : Tarkeshwar Dayal, Lala Sachindra Kumar and Nirmalendu Kumar Lal, for the Appellant; Satyanarayan Sharma, Rajeeva Sharma and Bindeshwari Prasad, J.N.P. Sinha, Government Advocate, Anjani Kumar Sinha and Subodh Prasad, J. Cs. to G.A., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—Whether a teacher in a privately managed school (though aided financially by the State) can maintain a writ petition against the termination of his services by such a school, has come to be the focal issue in this reference to the Full Bench.

2. Since this writ petition must founder on the bed-rock of the fatal objection to its very maintainability, it is unnecessary and indeed would be wasteful to delve into its facts too deeply. It suffices to notice the salient features pertaining to the maintainability of the writ petition which has been strenuously objected to by both the contesting State and the private respondent.

3. From the somewhat voluminous pleadings it emerges that the respondent Marwari Kanya Pathshala, Bhagalpur, is a middle school, purely private in character, and run by a managing committee of its own. It is common ground that the said school has not been taken over under the Bihar Non-Government Elementary (Taking Over of Control) Act, 1976. At the material time the

Headmistress of the said school was one Shrimati Mohini Tiwari who admittedly is the maternal aunt of the present petitioner, Shrimati Manju Devi. The Headmistress purported to appoint the petitioner on the 18th Jan., 1981 as a teacher in the school on a paltry honorarium of Rs. 55/- only. However, even this honorarium was discontinued by the managing committee (vide Resolution No. 7 of its meeting held on the 3rd June, 1983). The petitioner was, however, charitably allowed to work without any payment whatsoever to enable her to be recommended for training by the District Superintendent of Education and this was also done on the request of the then Headmistress who, as noticed, was closely related to her.

4. On behalf of respondent 2 it has been categorically averred in his counter-affidavit that the Headmistress aforesaid conveyed false and fraudulent information about the petitioner to both the managing committee and the education authorities and even went to the extent of interpolating the letters and correspondence of the school in this context. When the facts came to the knowledge of the authorities the approval given to the continuance of the petitioner in the school was peremptorily recalled (vide Annexure-3). It has been categorically averred that respondent 1, the District Superintendent of Education, Bhagalpur, having come to know about the securing of his approval to the petitioner's appointment by the Headmistress on the basis of false and fraudulent representation, had issued notice as per Memo No. 11578, dt. 12th July, 1985, directing her to show cause why she should not be suspended and proceeded against. However, the Headmistress in reply chose to tender her resignation on the 27th July, 1985, which was accepted by the managing committee with effect from the 1st Aug., 1985.

5. Apparently aggrieved by the refusal of the authorities to even recommend the petitioner's name for training classes, the petitioner had earlier preferred Civil Writ Jurisdiction Case No. 2195 of 1985. However, even at the threshold stage she chose not to press the same and the application was permitted to be withdrawn on the 24th May, 1985 with the following observation in the order:

"Therefore, he will be well advised to recommend her name for training well within time.

With the aforesaid observation and direction the application is permitted to be withdrawn."

However, two months later on the 29th July, 1985 (vide Annexure B to the counter-affidavit of respondent 2) the managing committee in express terms terminated her services whilst noticing that she had been earlier permitted to work on a paltry honorarium which was later withdrawn altogether and that she was serving the school intermittently. The petitioner thereafter filed a title suit in the Court of the Munsif, Bhagalpur, which, however, was rejected under Order VII, Rule 11(c) of the Civil P. C. by the learned Munsif on the 28th of August, 1985 (vide Annexure-12 to the writ petition). The present writ petition has been

preferred thereafter.

6. It is manifest and indeed patent from the pleadings themselves that the primal relief claimed herein is that the petitioner be treated as continuing in service and be given all her benefits therefore including a claim to salary and the right to teach in the school without any break. On behalf of the private respondent as also the respondent State the threshold objection to the very maintainability of the writ petition has been strenuously pressed on the ground that the Marwari Kanya Pathshala, Bhagalpur, being a purely private school, run by its own committee, is not amenable to writ jurisdiction and no relief can be given to her in this forum.

7. Apparently faced with the uphill task of crossing the hurdle to its very maintainability, the learned counsel for the writ petitioner, Mr. Tarkeshwar Dayal, had attempted an ingenious flanking movement. A tenuous attempt was made to place reliance on Section 5 of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act (hereinafter referred to as "the Act") which provides for the creation of the District Education Fund and Municipal Education Fund. On that shaky basis it was contended that there were corresponding rights and obligations of a financial nature between the individual teachers of even privately managed schools and the State which provide some aid to them and, therefore, the present writ petition was maintainable both against the official and the private respondents. It was projected that the tenuous thread of the supposedly financial obligations inter se buttress and uphold the maintainability of "the present writ petition.

8. In order to appreciate the aforesaid contention reference may first be made to the relevant parts of Sections 3 and 5 of the Act which are in the following terms :

"3. Taking over of Non-Government Elementary Schools by State Government.-

(1) Elementary Schools managed by the District Board, Zila Parishad, the Municipal Board, and the Patna Municipal Corporation, and those opened under the Expansion and Improvement Scheme shall be deemed to have been taken over by the State government with effect from the 1st day of January, 1971.

(2) Aided Elementary Schools, the Managing Committees of which have handed over voluntarily the control of the school to the Government, shall be taken over by the State Government with effect from the date which shall be determined by the District Committee referred to in Sub-section (4) for this purpose.

(3) Elementary Schools administered by any public or private undertakings shall be taken over by the State Government by publication of a notification in the official gazette with effect from the date to be specified therein.

xx xx xx

"5. District Education Fund and Municipal Education Fund.-- (1) There shall be

created a District Education Fund and a Municipal Education Fund for the rural and urban areas of the district respectively wherein all Government grants and allotments for elementary Education shall be credited and necessary expenditure shall be incurred out of the said Funds.

(2) For the Patna Municipal Corporation area, there shall be a separate Fund, called the Patna Municipal Corporation Education Fund.

(3) The State Government may if it thinks fit by publication of a notification to that effect in the Official Gazette create only one Fund for the district, after unifying the District Education Fund, the Municipal Education Fund and Patna Municipal Corporation Education Fund.

(4) The State Government may by a notification published in the Official Gazette abolish or supersede the District Education Fund, the Municipal Education Fund or the Patna Municipal Corporation Education Fund and may lay down some other procedure for incurring expenditure under different heads of Elementary Education.

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9. Now when the provisions of Section 5 aforesaid are read with the preceding provisions of Section 3, it is somewhat plain that the contention raised on behalf of the petitioner must be rejected out of hand. A plain reading of Section 3 would indicate that it has visualised three distinct classes of non-Government elementary schools which may be taken over under the Act. Those covered by Sub-section (1) thereof are automatically deemed to have been taken over by the State Government with effect from the 1st Jan., 1971. However, the schools coming within the ambit of Sub-section (2) are to be taken over with effect from the date so determined by the District Committee created under Sub-section (4), for this purpose. The residue category if and when taken over would take effect from the publication of a notification in the official gazette from the date to be specified therein. Now significantly it is the undisputed position that the respondent school has not at all been taken over under the provisions of Section 3. This being so, even any implied application of Section 5 in the situation is wholly precluded. It is somewhat plain that the education funds visualised in Section 5 are to be created in the wake of the take over of the schools u/s 3. So far as schools which have not been taken over at all are concerned, the question of the applicability of Section 5 and my nexus therewith can hardly arise.

10. Lastly, in the peculiar context of the present case any such claim on behalf of the petitioner of financial privity becomes wholly farcical. On the admitted facts the petitioner had been working in the respondent school on a purely honorary basis without any financial remuneration whatsoever. Therefore, one fails to see how any question of financial liability either by the school or by a remote chain by the State can possibly arise herein. The somewhat ingenious submission

raised on behalf of the petitioner on this score must, therefore, be rejected.

11. Somewhat half-heartedly, Mr. Tarkeshwar Dayal had then attempted to contend that the writ petition would be maintainable against a wholly privately managed institution because it performed the functions of education and received some financial State aid. I am inclined to the view that herein the matter is conclusively concluded against the petitioner by binding precedent. On principle, however, what calls for prominent notice is the fact that when the State itself runs educational institutions, it is in an intrinsically different legal position from private individuals or collection of private persons owning and managing their own educational institutions. It is now well settled that any arbitrary, unguided or whimsical exercise of power by the State Government even in its administrative functions is correctible under our Constitution by way of a writ. However, private person or collection of private persons running charitable or profitable educational institutions do not seem to be under any such obligations which have been laid by the Constitution on the State alone and, therefore, are beyond the pale of writ jurisdiction. The distinction betwixt the limitations placed on State action by the fundamental rights and other provisions of the Constitution has to be kept sharply in mind because those considerations cannot mathematically apply to private persons or associations of private persons establishing and administering educational institutions.

12. Now apart from the above, this aspect is somewhat well settled within this jurisdiction and indeed Mr. Tarkeshwar Dayal after some attempted evasion was fair enough to concede the legal position. It, therefore, suffices to refer to the Division Bench's judgment in Smt. Radha Kumari Singh Vs. The Governing Body of Mahanth Mahadevanand Mahila Mahavidyalaya and Others, . Therein after an exhaustive discussion of principle and precedent and dissenting from the contrary view in Harijander Singh Vs. Selection Committee, Kakatiya Medical College, Warrangal and Another, , it was concluded by the Bench as under :

".....Therefore, unless there was an element of public employment or service, having support of any statute, or an office or status capable of protection, no writ can be issued against respondent No. 1 simply because it happened to be an affiliated college to the Magadh University.

For these reasons, it must be held that this writ application is misconceived and not maintainable....."

Equally the aforesaid view is supported by a long line of unbroken precedent in the higher Courts. Reference may be made to Ramesh Chandra Chaube Vs. Principal Bipin Behari Intermediate College, Jhansi, ; Kumari Asha Lata Vs. The Principal, Meerut College, Meerut, ; Vikaruddin v. Osmania University AIR 1954 Hyd 25; Anand Kumar Jain Vs. The Government of Madhya Pradesh and Others, ; Sardar Jaswant Singh Vs. Board of Secondary Education and Others, ; Dr. R. Narayana Swamy v. State of Mysore AIR 1968 Kar 189; Nookavarapu Kanakadurga Devi Vs. The Kakatiya Medical College and Others, and Gurpreet

Singh Sidhu and Others Vs. Punjab University, Chandigarh and Others, .

13. Almost as an argument of desperation, Mr. Tarkeshwar Dayal had then attempted to contend that herein he was seeking the implementation of what he ingeniously labelled as a direction given by this Court in Civil Writ Jurisdiction Case No. 2195 of 1985 (Smt. Manju Devi v. State of Bihar) vide Annexure-7. However, a reading of the short order passed by the Division Bench at the threshold stage of admission can leave no manner of doubt that it is indeed very far from being in any way a mandamus of binding nature. As has already been noticed, the petitioner had herself sought to withdraw the writ petition at the outset and was allowed to do so which was dismissed as such. The order shows that the learned counsel for the petitioner alone was heard and at that stage all that was said on the basis of the petitioner's own averment was that the District Superintendent of Education might be well advised to recommend the petitioner's name well within time. One cannot easily read an observation of that nature suggesting some action at the pre-admission stage of a writ which was withdrawn, as a binding mandamus on the parties. Even otherwise the situation had materially and irretrievably changed by fact of the petitioner being removed from the rolls of the school itself on the 29th July, 1985. Obviously enough, there could thereafter be no question of recommending the name of a person for training who was not even a teacher in any school whatsoever at the material time. This is so without going into the strenuously pressed stand of the private respondent, that the name of the petitioner on the school's roll was brought on the basis of false and fraudulent representations and on discovery the approval therefore was promptly withdrawn. I am, therefore, wholly unable to accept the somewhat strained submission sought to be rested on the basis of Annexure-7. The same is hereby rejected.

14. To sum up, the answer to the question put at the outset is rendered in the negative and it is held that a teacher in a privately managed school even though financially aided by State, cannot maintain a writ petition against the termination of his services by such a school. Consequently the present writ petition is dismissed, but there will be no-order as to costs-

Lalit Mohan Sharma, J.

15. I agree.

Ram Nandan Prasad, J.

16. I agree.