
(1995) 07 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule Nos. 74 (SH) of 1993 and 11 (SH) of 1994

S.R.Wanswett

APPELLANT

Vs

Governing Body of Sohra College and Ors.

RESPONDENT

Date of Decision : 21-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1996) 1 GLJ 371

Hon'ble Judges : H.K.Sema, J

Bench : Single Bench

Advocate : K.B.Paul, N.K.Deb , Advocates appearing for Parties

Judgement

1. These two Civil Rules are interlinked, and as such they are being disposed by this common judgment.

2. Heard Mr. NK Deb, learned counsel for the petitioner as well as Mr. KB Paul, learned counsel for the respondents.

3. Petitioner was appointed as Principal of the Sohra College by the Secretary of the Governing Body purportedly on the recommendation of the Interview Committee by an order dated 15th June, 1989, and the petitioner joined the post on 16th June, 1989. Petitioner was placed under suspension in contemplation of disciplinary proceeding by an order dated 30th June, 1993 by the Governing Body of the college. The order of suspension is the subject matter of Civil Rule No.74 (SH) of 1993. The impugned order of suspension has been assailed on the ground that the term of Governing Body expired on 31.7.1990 and as such, the order suspending the petitioner passed by the Governing B6dy on 30th June, 1993 is without jurisdiction and illegal.

4. During the pendency of the Civil Rule No.74 (SH) of 1993, the service of the petitioner as Principal was terminated by the Governing Body of the college in a meeting of the members of the Governing Body held on 14.2.94, purportedly on the findings of the Board of Enquiry constituted to go into various charges drawn

against the petitioner. The order of termination is the subject matter of Civil Rule No.11 (SH) of 1994. The impugned order of termination has been assailed on the ground that no copy of enquiry report was given to the petitioner nor the petitioner has been heard in course of enquiry. No witnesses was also examined to arrive at a conclusion during the proceeding.

5. Counter on behalf of the respondent No. 1 has been filed. The case of the respondent is that, the college is a private college, and the impugned orders have been passed by the Governing Body of the college, and as such, the orders passed by the Governing Body are not amenable to writ jurisdiction.

6. The precise question that arises for determination in the case in hand is, whether the impugned orders passed by the Governing Body of a private college are amenable to writ jurisdiction ?

7. It is contended by Mr. NK Deb that the college though; (1) a private college is receiving grantinaid from the Government and the management of the college is being governed by the statutes of North Eastern Hill University (NEHU), and as such, the Governing Body is the instrumentalities of the State, and the action taken by the Governing Body are amenable to writ jurisdiction.

(2) Next, it is further contended by Mr. NK Deb that the impugned orders are in violation of the provision of Rule 4 (iv) of the Assam Aided College Employees Rules, 1960 (hereinafter the Rules) adopted by the Government of Meghalaya by its notification dated 9.3.1984.

8. With regard to the first point, admittedly, the college is a private college and it is not the creation of any statutes, and the impugned orders were passed by Governing Body of the college. The Apex Court had occasioned to deal with the situation exactly similar to the case in hand.

9. In *Dipak Kumar Biswas vs. Director of Public Instruction & others*, AIR 1987 SC 1422, the Apex Court had occasioned to consider the issues, whether the Lady Keane.Girls College govern by the statute of the University and receiving grantinaid from the Government was a statutory body or not. The Apex Court after referring to the earlier decision had held in para 12 of its judgment as under:

"The law enunciated in these decisions stand fully attracted to this case also. Even though the Lady Keane Girls College may be governed by the statutes of the University and the Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the Government it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provision."

10. In the *Managing Committee, Silchar Collegiate School vs. Debipada Bhattacharjee & others*, (1994) 1GLR 202 [1993 (2) GLJ 312], the Division Bench of this Court had occasioned to deal with similar case arid the Court after referring various decisions of the Apex Court including *Dipak Kumar* (supra) had

held in para 12 of its judgment as under:

"Although a private educational institution performs public duty in so far 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 employees in this school is purely of a private character, the management performs no public duty in this regard. The petitioner is an employee of a private body. He is not a civil servant nor a workman under the industrial law. This being the position, if the petitioner is directed to be reinstated in service it would be against the preponderant judicial pronouncement of the Court that a service contract cannot be specifically enforced. Therefore, the alleged right of the petitioner in this case is of a private character, and no Mandamus can issue and no petition for Mandamus will lie."

11. In *Governing Body, the Women's College, Laitumkhrah, Shillong, Meghalaya vs. Smti Alpana Shyam*, (1994) 1 GHC 273, the Division Bench of this Court after referring various decisions of the Apex Court as well as by this Court had held in para 6 of its judgment as under:

"in the above view of the matter, the service of the petitioner cannot be reinstated as the petitioner is not a civil servant; nor is a workman under the industrial laws, nor is an employee or officer under any statutory body governed by the statute."

12. In the instant case, the service of the petitioner is neither a civil servant nor a workman under industrial laws nor the service of the petitioner is under statutory body governed by the statute.

13. With regard to the second point, that the impugned orders have been made in violation of Rule 4 (iv) of the Assam Aided College Employees Rules, 1960, has also no substance. Rule 4 (iv) of the rules reads :

"(iv) The Governing Body shall make appointments after necessary verification and with prior approval of the Director of Public Instruction, Assam."

14. In *State of Assam & another vs. Ajit Kumar Sarma & others*, AIR 1965 SC 1196, the Apex Court had occasioned to consider whether Assam Aided College Employees Rules is a statutory rules and had held that the rules is in the nature of administrative instruction without any statutory force, and violation of rules would not be amenable to writ jurisdiction under Article 226 of the Constitution. The Apex Court observed in para 11 of its judgment as under:

"The rules for the purpose of grantinaid being as in this case merely executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a Mandamus asking for the enforcement or nonenforcement of the rules, even if indirectly there may be some effect on them because of the grantinaid being withheld in whole or in part. Such mere administrative instructions even though called rules are only a matter between the Governing

Body and the State through the Director and cannot in our opinion form the basis of a petition of writ under Article 226 by a teacher."

15. Mr. NK Deb has invited my attention to the decision of the Apex Court in *Francis John vs. The Director of Education & others*, AIR 1990 SC 423, where the Apex Court had held that, the termination of service of teacher in a school receiving grant-in-aid writ petition is maintainable against such termination. The ratio of the aforesaid decision is not applicable as the facts of that case is different from the facts of the case in hand. In that case, a dispute between the management of the school and the Headmaster was referred to Dispute Settlement Committee by the Director of Education in exercise of the power conferred on him by the grant-in-aid issued by the Government. The Director of Education also gave his approval to the decision of the Dispute Settlement Committee before it was communicated to the school. It is on the basis of the approval of the Director of Education, the service of the Headmaster of the school receiving grant-in-aid was terminated. In that context, the Apex Court had held that, while granting his approval to the decision, the Director of Education was discharging a Governmental function as an authority constituted for the said purpose by the Government and on the basis of such approval, the management of the school terminated the service of the Headmaster. Therefore, the Apex Court held that in such situation it could not be said that the decision was that a just private management governed by private law.

16. In the case in hand, admittedly, the petitioner was placed under suspension by a Governing Body of a private college, in contemplating of disciplinary proceeding. Disciplinary proceeding was initiated against the petitioner by the Governing Body and on the basis of the Enquiry Report, the petitioner was terminated from service by the Governing Body of the college. Therefore, the decision referred to by Mr. NK Deb is of no assistance to the petitioner's case.

17. In view of the aforesaid cited decision of the Apex Court as well as by this Court, the law on the point is well settled, that the service contract cannot be enforced in a writ jurisdiction and as such, there is no merit in this writ petitions and they are accordingly dismissed.

In the facts and circumstances of the case parties are asked to bear their own costs.