
(1960) 04 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1800 of 1959

Suraj Prasad Saxena

APPELLANT

Vs

Manager Abbie Rich Higher Secondary School, Shahjahanpur
and Others

RESPONDENT

Date of Decision : 14-04-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1961 All 282

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : S.B. Choudhary, for the Appellant; S.N. Kacker and A. Ralla Ram, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is a writ petition under Article 226 of the Constitution filed by Suraj Prasad Saxena who was employed as an assistant teacher in the Abbie Rich Higher Secondary School, Shahjahanpur. He was appointed on 8-7-1951. He worked there till 1957 when he was transferred to the Messmore Intermediate College, Pauri as a Lecturer. The petitioner requested the authorities not to transfer him, because his wife was suffering from rheumatic pains, and his transfer was cancelled in July 1957.

In February 1958 the petitioner wanted two months' leave because his wife was not keeping well. That leave was not granted, upon which he submitted his resignation to the Principal on 28th February 1958. According to the petitioner, his resignation was not accepted. In the meantime the condition of his wife improved and, therefore, on 10-4-58 he sent another application to the Principal stating that he wished to withdraw his resignation as the condition of his wife had improved.

On 22-4-58 the Manager of the School wrote a letter to the petitioner saying that

he was likely to be transferred to some other college. The petitioner applied for one year's leave without pay with effect from July 8, 1958 to July 7, 1959. He was granted that leave. Thereafter it is said that though he had withdrawn his resignation, that resignation was accepted on 9th May 1958 and though he wanted to resume duty after the period of leave he was not allowed to resume and hence this writ petition.

2. Among the opposite parties are the Manager Abbie Rich Higher Secondary School, Shahjahanpur, the Principal and the Secretary of the School; and the Inspector of Schools, Shahjahanpur district has also been made a party though no order passed by him is being asked to be quashed. In the prayer a writ of mandamus has been asked for calling upon the opposite parties to treat the petitioner in service and further calling upon them to permit the petitioner to rejoin the institution. Further, a writ of certiorari is asked for against the opposite parties quashing the orders dated 16th July 1958, 9th May 1958 and 12th June 1959.

3. The order of 9th May 1958 is the order accepting the resignation of the petitioner, while that of the 16th July is a resolution of the Managing Committee approving the action taken by the Secretary and accepting the resignation of the petitioner. The order dated 12th June 1959 is the order refusing the petitioner's claim to join, on the ground that his resignation had already been accepted and, therefore, he was no longer in service of the school.

4. Besides some of the facts which have been controverted in the counter affidavit, there are two preliminary grounds which have been taken on behalf of the opposite parties. The first ground is that the school is a private school and, therefore, a writ of mandamus cannot issue against it or its officers. It is only against a statutory body or a person who is under the law bound to act in accordance with law, that a writ of mandamus can issue. The second writ, a writ of certiorari, which has been asked for, can also not issue because the order of the Manager and the Managing Committee accepting the resignation of the petitioner cannot be called a quasi-judicial or a judicial order.

5. The second objection is that the petitioner has an alternate remedy by way of suit, and as there are controversial questions of fact in which this Court cannot go in a writ petition, the petitioner should have availed of the alternate remedy.

6. On the first ground learned counsel for the petitioner has placed reliance on certain authorities to the effect that it is not that mandamus can only issue against public bodies or officers, but that it could also be issued against individuals. Reliance was placed on *Triloki Nath Tripathi Vs. Allahabad Divisional Branch of All India Postal Workers Union Class III and Others*, where a learned single Judge of this Court had held:

"This Article (Art. 226) is not confined to the enforcement of public right and there is no bar under Article 226 of the Constitution to the High Court enforcing a private right by means of a writ of mandamus or certiorari or any direction

suitable to the circumstances of the case."

In that case it was an individual right which was being enforced. But the order sought for was against a statutory body, i.e., All India Postal Workers Union. That is a body constituted under the Trade Unions Act and it is bound to act in accordance with the provisions of the Trade Unions Act and the rules framed thereunder. Therefore, in my opinion, this authority is not directly in point in the present case.

7. Moreover, though the learned Judge had made that observation, ultimately that writ petition of the petitioner was refused in that case on the ground that the rule about giving notice was not to be enforced with rigidity nor the rule was so inflexible that any violation of such a rule would render the entire proceeding ultra vires.

8. The second authority on which reliance has been placed is Sohanlal Vs. The Union of India (UOI), , where it was observed:

"Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual,"

It was contended that their Lordships of the Supreme Court have used the word "normally", which means that in some cases it is open to issue a writ against a private individual. Their Lordships themselves have later explained that a writ would issue against a private individual if the private individual was acting in collusion with, or the transaction had been merely a colourable one and had been entered into between an authority and an individual.

Then in that case it may be that though the individual was acting, yet since he was acting in collusion with some authority, a writ might issue against that individual also. This is not the case here. Often there are cases where an authority puts a third person in possession and if the order of that authority is quashed then in that case the possession of that third person is also to be deemed without jurisdiction and it may be that in that event a writ may also issue against an individual as has been held in Halsbury's Laws of England, Simonds Edition Vol. II page 84:

"A writ of mandamus is passed against a person directing him to do some particular thing specified in the order which appertains to his office and is in the nature of a public duty".

This cannot apply to a private individual and, therefore, in my opinion unless an individual is acting under some public authority no writ of mandamus can be issued against the private individual.

9. Reliance was further placed on a decision of Manipur Chief Court reported in Sudhindra Kumar Deb and Others Vs. The State of Assam and Others, where the learned Judicial Commissioner held a private educational body in the position of a domestic tribunal. I do not know whether the learned Judicial Commissioner

wanted to give such a tribunal all the qualifications of a domestic tribunal. The learned Judicial Commissioner himself came to the opinion that a domestic tribunal is not bound by law of evidence or any other procedure and in the circumstances, the writ petition in that case was dismissed.

10. In my opinion, when managers of private or aided institutions cannot be said to be acting in any official capacity, they cannot be directed to do a certain thing by means of a writ of mandamus. There is no order of the Inspector of Schools which is being challenged in this writ petition and under the circumstances he also cannot be directed to act in accordance with law. The writ petition therefore, fails on this ground.

11. There was also a writ petition No. 1832 of 1957 D/- 12-8-1957, Smt. Savitri Khauna v. Manager, Hindu Kanya Pathshala Intermediate College, Sitapur, decided by a learned single Judge of this Court. That was also a writ petition against an aided Institution on account of the dismissal of a teacher of that institution. That petition was dismissed by the learned Single Judge on the ground that it was a private dispute between private parties and no action of any public officer had been called into question. A second ground on which that writ petition was dismissed was that there was also a provision for arbitration, and that remedy not having been availed of the writ petition was not entertainable.

12. So far as a writ of certiorari is concerned, the acceptance of the resignation, whether rightly or wrongly, can never be called a judicial or quasi-judicial order and under the circumstances a writ of certiorari can also not be issued.

13. In this case there are several controversial matters of fact which have not been admitted by the opposite parties. On behalf of the petitioner it has been urged that though they have denied the facts, they can be established. In a writ petition if there are controversial questions of fact the proper jurisdiction is not by way of a writ petition but by way of a regular suit, as has been held in Union of India (UOI) Vs. T.R. Varma, by their Lordships of the Supreme Court:

"At the very outset, we have to observe that a writ petition under Article 226 is not the appropriate proceeding for adjudication of disputes like the present."

In that case also there was a question of a dismissal of a Government servant and there were questions of facts. Their Lordships further observed:

"Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action; the court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition."

They ultimately held that:

"It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit."

That case resembles on all the facts to the present case very much and in any event, therefore, I would not like to interfere in a writ petition. I do not propose to go into the merits of the case, because it might affect the rights of the parties if a regular suit is filed.

14. The petition is accordingly dismissed with costs to opposite parties Nos. 1 to 3.