

(1990) 01 AHC CK 0036
In the Allahabad High Court
Case No : Writ Petition No. 1185 of 1983

Syed Ali Ahmad Ashraf

APPELLANT

Vs

Committee of Management, Forbes Intermediate College,
Faizabad and another

RESPONDENT

Date of Decision : 03-01-1990

Acts Referred:

Citation : (1990) 01 AHC CK 0036

Hon'ble Judges : S.H.A.Raza, J and U.C.Srivastava, J

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.

1. The fate of this writ petition hinges on the question as to whether Forbes Intermediate College, Faizabad is a minority institution. If the answer is in affirmative then the order of suspension and dismissal passed against the petitioner without obtaining the approval of the District Inspector of Schools, as contemplated under Section 16Gha be quashed but if the answer is in negative then the order of suspension and dismissal passed against the petitioner may be held to be perfectly valid.

2. This question was raised by the management of the institution in the case of Zafarullah Khan Vs. IVth Addl. District Judge, Faizabad, 1984 AWC 600, by way of the amendment in the written statement in the first appeal. In the aforesaid case of Zafarullah Khan who was a teacher in Forbes Higher Secondary School (now Intermediate College) filed a suit in the Civil Court, assailing the order of termination dated 25.4.75 passed against him. The plea that the said institution was a minority institution was not taken by the management committee of the said institution which contested the suit on several other grounds. The suit was decreed. Thereafter the management preferred an appeal before the District Judge, Faizabad. After obtaining several adjournments in the said appeal the Management Committee of the said institution sought to incorporate certain amendments into the written statement. The main plea was that the defendant

College being a minority institution the provisions of U.P. Intermediate Education Act would not govern the employment of the petitioner and as such his termination could not be held to be void. The Additional District Judge rejected the other amendments prayed for but so far as the amendment relating to the ? institution being a minority institution? was concerned, it was allowed. Aggrieved against the said order Zafarullah Khan preferred writ petition bearing No. 3714 of 1982.

3. One amongst us (Hon.ble Mr. Justice U.C. Srivastava) in the case of Zafarullah Khan (supra) indicated as under :

?..It appears that the defendants wanted to take the plea though they have not taken in so many words that this institution was established by Muslims and was a minority institution. U. P. Intermediate Act also makes certain safeguards in respect of the institutions said to be minority institutions in respect of which there was no foundation even in the written statement. Thus a plea of law was sought to be taken without any necessary averments or details in this behalf. No word was said that the institution was established only by the Muslims and that it was established in the interest of that community or was giving religious teaching or imparting religious education and that it was administered by the members of that community only. During the course of arguments learned counsel for the opposite parties stated that the society was started by few prominent Muslims and one Hindu citizen of Faizabad in the name of an English man. Thus it was not established by members of Muslim community alone. Learned counsel further stated that it would not be possible to state that the same was for the benefit of Muslims and for advancing religious teaching. No notice of these oral submissions can be taken which may not support the case of opposite parties. Rights and protection conferred under Article 30 of the Constitution of India are available only to those institutions which have not only been established by minority as understood in that article, but are also administered by the said minority community itself as has been held in *Azeez Basha v. Union of India*, AIR 1968 SC 662.?

On 20th February, 1978 one Amrullah Khan, a lecturer of the same institution, preferred a writ petition bearing No. 467 of 78 before this Court challenging the order of termination passed against him and also assailing the order dated 15th February, 1978 passed by the Manager to the effect that the Management Committee of the institution is competent to take disciplinary action against any teacher and in this respect the approval of the District Inspector of Schools would not be necessary, in view of the decision of Deputy Director of Education, Faizabad Region, dated 6th January, 1978. The said teacher also challenged the order dated 4th September, 1976 passed by the Director of Education, U. P. declaring the said institution as minority institution as the same was established and administered by minority in accordance with Article 30(1) of the Constitution of India. The D. O. letter dated 7th November, 1977 was also challenged, by means of which the earlier order dated 14th September, 1977 (by means of

which the Institution was not accorded recognition as minority institution) was cancelled and the order dated 4th September, 76 was restored.

4. Another writ petition bearing No. 920 of 1978 Prakash Chandra Dube vs. State of U.P. and others, was filed by four practising lawyers of Faizabad as well as one Sanskrit Lecturer of the said institution and the U.P. Madhyamik Sikshak Singh, praying for quashing the order dated 4th September, 1976 passed by the Director of Education as well as the order of the State Government contained in letter dated 7th November, 1977, declaring the said school to be a Muslim Minority Institution. In both the writ petitions, the decisions of the Director of Education as well as the State Government was challenged on the ground that the said institution is not a Muslim Minority Institution and both the writ petitions were disposed of by means of a common judgment on December 18, 1986 ,by a Division Bench of this Court. The operative portion of the judgment reads as under:

?Writ Petition No. 467 of 1978 is allowed. The orders contained in Annexure1 dated 6178, Annexure2, dated 15278, Annexure10, dated 4976 and Annexure12 dated 71177 are quashed. Petitioner Amrullah Khan shall be treated to have continued in the service of the School as a teacher and may withdraw his salary deposited in this Court from time to time on a proper application made for the purpose, he shall be permitted to continue to work as a teacher according to law.

Writ Petition No. 920 of 1978 is allowed and the order contained in Annexure10 dated 4976 and Annexure14 dated 71177 are quashed. The Managing Committee, the opposite party No. 5 shall reexamine all cases of appointments of teachers to the school on or after 71177 on the basis that the provisions of Article 30(1) of the Constitution of India do not apply to the school and shall deal with all those appointees, within three months from today, in accordance with law.

Parties in both the writ petitions shall bear their costs.?

5. In the present writ petition more or less the same questions have been raised. The petitioner has assailed the order dated 7th November, 1977 contained in Annexure4 declaring the said institution as minority institution by the State Government and prayed for quashing the order of termination of his services as well as the proceeding of the disciplinary inquiry on the ground that before suspending and dismissing him, the Management did not obtain the approval of the District Inspector of Schools as contemplated under Section 16G of U.P. Intermediate Education Act. It has been admitted in the counter affidavit filed on behalf of the Committee of Management of the said institution that these facts (the controversy as to whether the institution is a minority institution or not) were considered by this Court in Writ Petition No. 467 and 920 of 1978, decided on 18th December, 1986, against which a Special Leave Petition was filed in the Hon'ble Supreme Court. The leave was granted by the Hon'ble Supreme Court and the appeal against the judgment passed by this Court is pending before

Hon"ble the Supreme Court. It was further averred that the issue regarding character of the institution is pending in the Hon"ble Supreme Court and it is maintained that the institution in question was established and was being maintained by the Muslim Minority and as such it was liable to be treated as minority institution within the meaning of Article 30 of the Constitution of India but this Court was pleased to hold otherwise and as such the provisions applicable to general institutions are being sought to be applied to Forbes Intermediate College also on account of the judgment of this Court dated 18th December, 1986. It is admitted that Hon"ble Supreme Court till now has not passed any order staying the operation of the order passed by this Court.

6. In view of this admission in the counter affidavit that the provisions applicable to general institutions were being sought to be applied to Forbes Intermediate College also on account of the judgment of this Court dated 18th December, 1986 there exists no ground as to why the petitioner be denied the benefits available to him under Sections 16D, 16E, 16EE, 16F and 16G of the U.P. Intermediate Education Act, Section 16HG(3)(a) of Intermediate Education Act reads as under :

?16G(3)(a). No Principal, Headmaster or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated within the period to be prescribed by regulations.?

Section 16G (5) reads as under:

?16G(5). No Head of Institution or teacher shall be suspended by the management, unless in the opinion of the management

(a) the charge against him are serious enough to merit his dismissal, removal or reduction in rank ; or,

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him ; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.?

7. As admittedly no approval from the District Inspector of Schools was obtained prior to suspension and dismissal of the petitioner as contemplated uadcr the aforesaid provisions, the suspension and the order of termination or dismissal of the petitioner from service are totally vitiated as the same have been passed in utter violation of the provisions of the U. P. Intermediate Education Act.

8. In view of what has been indicated hereinabove, this writ petition is allowed and the order of dismissal contained in letter dated 5th August, 1985 (annexure A10 to the counter affidavit) and the resolution of the Management Committee of the institution dated 4th August, 1985 (contained in annexureA 11 to the counter

affidavit) are quashed. The opposite parties are directed to put back the petitioner in service with all consequential benefits i. e. back wages and payment of salary etc., within one month from the date of production of a certified copy of this order by the petitioner to the opposite parties. A writ in the nature of certiorari is also issued quashing the order dated 7th November, 1977 contained in Annexure4 passed by the State Government declaring Forbes Intermediate College, Faizabad, as minority institution.