

(2009) 12 SHI CK 0045
In the High Court Of Himachal Pradesh

Vidya Devi and Another

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 12 SHI CK 0045

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Judgement

Rajiv Sharma, J.—Petitioner No. 1 appeared in the interview for the post of Para Teacher (Primary) reserved for other backward classes (OBC) category and was selected. She joined her duties on 18.8.2005. Petitioner No. 2 was also interviewed for the post of Para Teacher (Primary) reserved for OBC category. She was selected and thereafter appointed on 18.8.2005. The petitioners were served with notices Annexures A-1 and A-2 dated 7.9.2005. They were informed that since they had married persons belonging to general category, they cannot get the benefit of the OBC certificates issued in their favour on the basis of their parentage. The petitioners filed the replies to the notices vide Annexures A-6 to A-8.

2. Mr. R.R. Rahi has vehemently argued that the issuance of Annexures A-1 and A-2 is contrary to law. He then submitted that respondents had already made up their mind to terminate the services of the petitioners and the issuance of notice was merely a formality.

3. Mr. R.K. Sharma, learned Senior Additional Advocate General has vehemently argued that the present petition is pre-mature since the Department till date has not taken any action in the matter and if any action is to be taken it would be after considering the replies filed by the petitioner.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. The petitioners were appointed as Para Teachers and they joined their duties on 18.8.2005. The notices were issued to them vide Annexures A-1 and A-2 dated 7.9.2005. They have submitted replies to the same. The petitioners without waiting for any decision, which was likely to be taken by the respondents after considering their replies, approached the Himachal Pradesh Administrative Tribunal. The learned Tribunal has granted the interim relief in favour of the petitioners. The Court is of the considered view that the present petition is premature. The petitioners should have waited for the decision to be taken by the employer after considering the replies furnished by them.

6. Their Lordships of the Hon"ble Supreme Court in Chanan Singh Vs. Registrar, Co-op. Societies, Punjab and Others, have held the petition to be premature filed against the issuance of show cause notice. Their Lordships have held as under:

4. The first point raised in objection by the second respondent is that the writ petition is premature since no action has been taken finally against the appellant, the disciplinary proceedings are still pending and the explanation of the appellant is under consideration. It is only in the event of the appellant being punished that any grievance can arise for him to be agitated in the proper forum.

5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us, but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.

6. We are satisfied that, enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score, we dismiss the appeal but, in the circumstances, without costs.

7. The Apex Court in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, has held that writ petition against a show cause notice is not maintainable. Their Lordships have held as under:

9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been

issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision -in the matter could be taken. Interference by the Court before that would be premature. The High Court in our opinion ought not to have interfered with the show cause notice.

8. In a similar case i.e. Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, where the petitioner instead of showing cause had straightway filed the writ petition in the High Court, their Lordships of the Hon"ble Supreme Court have held as under:

9. We heard counsel. It is common ground that Quarter No. M/11 (Old) Adityapur, near Jamshedpur, belongs to Board. "According to the Board and the 4th respondent the hire-purchase transaction is still in force, and the ownership of the building has not been finally transferred to the 4th respondent. The 1st respondent would say that the 4th respondent is the owner having purchased the building from the Board. The "basic" or fundamental fact is thus in dispute. the 3rd respondent is the competent authority notified by the State Government under the Bihar State Housing Board Act, 1982 to initiate summary proceedings for eviction against the subletting, unauthorised occupation by any person, of the premises, etc., belonging to the Board. Annexure Ext. P-4 notice, is the one so issued by the 3rd respondent. The appellant and the 4th respondent complained about the forcible or unauthorized occupation by the first respondent of the premises belonging to the Board. The 3rd respondent was competent to initiate the proceedings under the Act if the building still belongs to the Board and the ownership has not vested in the 4th respondent. It may be, that this basic fact is denied by the 1st respondent when he states that the 4th respondent is the owner having purchased the building from the Board and that he is a tenant under the 4th respondent. The basic facts, on the basis of which the jurisdiction of 3rd respondent to initiate/continue the proceedings, require investigation and adjudication. If, as pleaded by appellant and the 4th respondent, the Board is the owner and the 4th respondent is the hirer, it cannot admit of any doubt that the 3rd respondent has jurisdiction to initiate the proceedings as per Annexure Ext. P-4. If that basic fact is denied by the 1st respondent, that may require investigation of disputed facts and adjudication by the "competent authority" - the 3rd respondent. Without showing cause against Annexure Ext. P-4, notice, the 1st respondent straightway filed the Writ petition in the High Court and assailed Annexure Ext. P-4 and the eviction proceedings. The averments in this regard, contained in paragraph 13 (H) of the Special Leave Petition, are not denied in the detailed counter affidavit filed by the 1st respondent in this Court.

10. We are concerned in this case, with the entertainment of the writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory

provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression-that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

9. Similarly, their Lordships of the Hon''ble Supreme Court in Bhaji Vs. Sub Divisional Officer, Thandla and Others, have held the petition to be premature filed merely against the issuance of show cause notice. Their Lordships have held as under:

15. The petition filed by the writ petitioner before the High Court was entirely misconceived and, in a way, premature, The show cause notice issued by the sub-divisional officer cannot be said to be without jurisdiction. The appellant should have participated in the enquiry after showing cause. Instead he chose to rush post haste to the High Court. The High Court rightly turned down the writ petition.

10. A Division Bench of this Court in LPA No. 170 of 2009, titled Ramesh Chauhan v. State of Himachal Pradesh and Anr. decided on 26.11.2009 has treated the petition to be pre-mature against the issuance of notice.

11. In view of the definitive law laid down by their Lordships of the Hon''ble Supreme Court and this Court, it is held that the present petition is pre-mature. The petitioners could not presume that the respondents will take penal decision without considering their replies.

12. Accordingly, in view of the observations made hereinabove, there is no merit in the petition and the same is dismissed. Liberty is reserved to the respondents to proceed with the matter after taking into consideration the replies furnished by the petitioners to the notices Annexures A-1 and A-2 dated 7.9.2005. Interim order dated 4.10.2005 is vacated. No costs.