

(2005) 06 KAR CK 0077

In the Karnataka High Court

Case No : Writ Appeal No's. 2807 and 2808 of 2002

Vidyavardhaka Sangha and Another

APPELLANT

Vs

S.K. Joshi and Others

RESPONDENT

Date of Decision : 15-06-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 372

General Clauses Act, 1897 — Section 2 (42)

Karnataka Education Act, 1983 — Section 131

Citation : (2005) 5 KarLJ 402 : (2005) 3 KCCR 2064

Hon'ble Judges : V. Jagannathan, J; S.R. Nayak, J

Bench : Division Bench

Advocate : T.N. Raghupathy, for the Appellant; Prabhuling K. Navadgi, for Caveator-Respondent-1 and S. Prakash Shetty, Government Advocate for Respondents-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Vidyavardhaka Sangha and Another Vs. Y.D. Deshpande and Others, (2006) 111 FLR 397 : (2006) 9 SCALE 641 : (2006) 12 SCC 482 : (2007) 2 SCC(L&S) 320 : (2006) 7 SCR 470 Supp : (2007) 2 SLJ 234

S.R. Nayak, J.—These two writ appeals arise out of the common judgment of the learned Single Judge in S.K. Joshi and Another Vs. Vidyavardhaka Sangh, Bijapur and Others, . Hence, both the writ appeals were clubbed and heard together and they are being disposed of by this common judgment. These writ appeals are preferred by the management of the Vidyavardhaka Sangha, a society registered under the Societies Registration Act, 1860 and it runs several educational institutions in different parts of the State. The respondents in these two writ appeals, namely, M/s. Y.D. Deshpande and S.K. Joshi were appointed as Assistant Teachers to serve in the V.B. Darbar Pre-University College situate in Station Road, Bijapur in the years 1991 and 1992 respectively on purely

temporary basis and subject to the approval of the Government. V.B. Darbar Pre-University College is an aided educational institution. The management sent up a proposal to the concerned governmental authorities on 20-8-1992 to accord permission to the appointment of these two teachers and to extend grant-in-aid to the post held by them. Quite curiously, the concerned governmental authority sat on the proposal sent up by the management for a long period and only on 1-3-1996, it rejected the proposal. Notwithstanding the refusal of the governmental authority to accord permission sought by the management and to extend grant-in-aid to the post held by these two teachers, their services were continued. Then came the impugned order dated 31-1-2001 terminating their services on the ground that their services are no longer required in the institution. Being aggrieved by the order passed by the management terminating their services, Writ Petition Nos. 5761 and 5763 of 2001 were filed in this Court. In the writ petitions, it was contended that the action of the management was not bona fide but mala fide. In support of that plea, it was averred that the writ petitioners were paid consolidated monthly salary of Rs. 500/-initially which was enhanced to Rs. 1,000/- subsequently, though they have been discharging similar duties and functions attached to the post of regular teachers and, therefore, they made repeated representations and requests to the management to regularise their services and to pay them on par with the regular teachers. Since, there was no positive response from the management, they were constrained to issue legal notice dated 1st January, 2001 and irked by that action, the management terminated their services with mala fide intention. The writ petitions were opposed by the management by filing statement of objections. At the threshold, it was contended by the management that the writ petitions are not maintainable and that the writ petitioners have alternative remedy u/s 131 of the Karnataka Education Act, 1983 (for short, "the Act"). It was also contended that the impugned orders are termination simpliciter and such a course was adopted by the management for the reason that the Government refused to accord permission to the appointments of the writ petitioners and to extend grant-in-aid to the posts held by them. Learned Single Judge in the premise of the pleadings and the case-law referred to by him came to the conclusion that though the impugned orders looked like termination simpliciter, they are actually passed by way of punishment, since the writ petitioners were demanding the management to regularise their services and to pay salary on par with the regularly employed teachers. The learned Single Judge has also opined that the termination of the services of the writ petitioners is even otherwise violative of principles of natural justice. So opining, the learned Judge has allowed the writ petitions and quashed the impugned orders dated 31-1-2001 passed by the management terminating the services of the writ petitioners and issued a direction to the management to reinstate the writ petitioners into service forthwith. The learned Judge has also held that the writ petitioners are entitled to monetary benefits from the date of termination of their services till the date of their reinstatement into service. While so holding and directing, the learned Judge, however, has reserved liberty to the management,

if it so desires, to terminate the services of the writ petitioners in accordance with law. Hence, these writ appeals by the aggrieved management.

2. We have heard Sri T.N. Raghupathy, learned Counsel for the management, Sri Prabhuling K. Navadgi, learned Counsel for the respondent-teachers and Sri P. Prakash Shetty, learned Government Advocate. Sri Raghupathy, learned Counsel, would reiterate the very same contentions which were advanced before the learned Single Judge on behalf of the management. In addition, Sri Raghupathy, would draw our attention to the finding recorded by the learned Single Judge in paragraph 32 of the judgment that the termination of the services of the writ petitioners is not bona fide and would contend that such a factual finding is recorded by the learned Single Judge as if this Court is a fact-finding body and that too without giving any opportunity to the management to have its say in the matter. Per contra, Sri Prabhuling K Navadgi would support the order of the learned Single Judge and submit that the order of the learned Single Judge is unexceptionable in the facts and circumstances of the case.

3. Having heard the learned Counsels for the parties, the following two questions arise for our consideration and decision:

(i) Whether the writ petitions filed by the contesting respondents herein are maintainable under Article 226 of the Constitution? and

(ii) Whether any ground is made out by the management for us to step in and correct the judgment of the learned Single Judge?

4. Point No. (i).--It is trite that the educational institution in which the writ petitioners are appointed as Assistant Teachers is admittedly a recognised as well as an aided educational institution. The said educational institution and its activities vis-a-vis its employees, teaching and ministerial, curriculum and other affairs are governed by the provisions of the Act which is a species of public law. It is well-settled that an educational institution which is established to impart secular education to the public at large and which seeks recognition from the State and State authorities is bound by the postulates of Article 14, viz., reasonableness, fairness and non-arbitrariness. It is well-settled that Article 14 postulates do encompass principles of natural justice too. We do not wish to burden our judgment with case-law. Suffice it to state that M. Rama Jois, J., as he then was, speaking for the Bench of this Court, in Tejaswini Patil and etc. Vs. Bangalore University and others, , dealing with similar contention and after referring to the earlier judgment of this Court in the case of R.K. Seth Vs. CBCI Society for Medical Education and Another, and that of the Supreme Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, opined thus:

"29. We are also of the view that there is no substance in the contention of the respondent-Medical Colleges that they are private bodies not amenable to the writ jurisdiction of this Court. If an educational institution is established by a private individual or private body, which is not affiliated to University and is not

recognised by any public law or by the State Government to impart instruction which entitles the students to appear for a public examination leading to the conferment of any Certificate, Diploma or Degree by the Government or a statutory University, it may be that such private educational institutions may be purely a private body not amenable to writ jurisdiction. But an educational institution, though established by a private body, once it secures recognition from the Government of an affiliation to a University established under a public law, namely, the Universities Act and is admitted to the privileges of the University, in that it acquires the privilege of imparting instruction to the students so as to enable them to take the public examination conducted by a Government Department or by the University leading to conferment of certificates, Diplomas or Degrees by the Government or the University concerned, such an institution cannot be regarded as purely a private body. The recognition or affiliation constitutes the very life breath of such educational institution, without which it cannot exist. If recognition or affiliation is not granted or once granted is withdrawn, no student will get admitted to such an institution. This aspect has been considered by this Court in the case of *R.K. Seth Vs. CBCI Society for Medical Education and Another*, by one of us (Rama Jois, J.) and it was held that a writ will issue to an affiliated college for enforcement of a statutory duty. The relevant portion of the judgment reads:

"27. Therefore, the real question for consideration is: Whether no writ petition is maintainable against an affiliated college for enforcement of a statutory provision. It should be pointed out in the first instance that a private college is not just like any private individual or establishment doing any business or carrying on any avocation. Education is an obligatory function of the State. Therefore, the State, in discharge of its constitutional obligation under Articles 41 and 48 read with Entry 25 of List III of Seventh Schedule of the Constitution provides for the establishment of educational institutions by the Government directly or through any University established under an Act of Legislature. It can also make provision in a law enacted on the topic of education for grant of affiliation to an educational institution established by private bodies or individuals. The affiliation secured by a private institution under such law constitutes the life breath of the institution. Without affiliation, institution has no real existence, for, no student desirous of securing University degree would join the institution. Therefore, the function of an educational institution which secured recognition or affiliation under public law, is quasi-public in nature and is not just like any private individual doing his business or avocation. Such an institution should conform to the law through which it secures that privilege. While the service rendered to the nation by the 3rd respondent through the college is laudable and has to be eulogized, it has to conform to the Universities Act and the statutes made thereunder, for the benefit of teachers, who form the backbone of the institution, which are not violative of Article 30. If it violates such statutory provisions it would be amenable to the writ jurisdiction of this Court to that extent. It is a separate matter if the claim made in a writ petition is

one not flowing from a provision having the force of law".

The above view gets approval from the decision of the Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, . The relevant portion of the judgment reads:

"10. Two questions, however, remain for consideration: (i) The liability of the appellants to pay compensation under Ordinance 120-E; and (ii) The maintainability of the writ petition for mandamus as against the management of the College.

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11. The essence of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the Management of the College being a trust registered under the Public Trusts Act is not amenable to the writ jurisdiction of the High Court. The contention in other words, is that the trust is a private institution against which no writ of mandamus can be issued.

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14. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the Rules and Regulations of the affiliating University. Their activities are closely, supervised by the University Authorities.

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19. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract". (Judicial Review of Administrative Act, 4th Ed. page 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition".

In view of this pronouncement by the Apex Court of this country, it can no longer be contended that the relief sought for in the petition against private Medical Colleges cannot be granted under Article 226 of the Constitution. The learned Counsel for the respondents tried to distinguish the aforesaid decision on the ground that the institution concerned in that case was receiving financial aid from the Government and the respondent-colleges are not receiving any financial aid. We are unable to agree. It is true that in paragraph 14 it is stated that the institution concerned in that case was receiving the financial aid from the Government; but that is not the sole ground on which the question of maintainability of a writ against a private educational institution was decided. As can be seen from the same paragraph, the Supreme Court, in support of the view that a private aided college was amenable to the writ jurisdiction under Article 226, stated that aided institutions like Government institutions discharge public function by way of imparting education to students and they are subject to Rules and Regulations of the affiliating Universities and their activities are closely supervised by the University concerned. Every one of the above criteria applies to an affiliated college irrespective of its receiving financial aid from the Government. Once we find that the activities of a private educational institutions is regulated by the provisions of the Act and the Universities Act, the mere fact that the institution is not receiving financial aid, makes no difference for the issue of a writ under Article 226, for the enforcement of public duty and/or the provisions of the Act. This position in law is clearly laid down by the Supreme Court in the case of Miss Raj Soni Vs. Air Officer in Charge Administration and another, . Relevant portion of the judgment reads:

"10. The recognised private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-Management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When any authority is required to act in a particular manner under a statute it has no

option but to follow the statute. The authority cannot defy the statute on the pretext that it is neither a State nor an "authority" under Article 12 of the Constitution of India".

In the present case not only the respondent-Medical Colleges are affiliated to a University established under the Universities Act, but also in the matter of admission of students into the Colleges their rights are regulated by the provisions of the Act. Therefore, once we come to the conclusion that the clear implications of the provisions of the Act is that the Managements of private Medical Colleges are under a duty to make selection according to merit, it follows that on their failure to do so, an appropriate writ will issue under Article 226 of the Constitution. It is also relevant to point out that in respect of each of the Medical Colleges, hospital facilities are given at Government Hospitals, without which the colleges cannot exist. It may be, the Government is collecting some agreed fee per student, as stated on behalf of M.R. Medical College, Gulbarga. But the fact remains that the colleges are depending on Government Hospitals. This is also an aid or assistance which the colleges are receiving from the Government".

Furthermore, what the Apex Court in paragraph 27 of the judgment in the case of U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , observed is apt to be noted in this regard. It reads as follows.--

"27. In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore, the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. It may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of Article 226, there does not appear to exist such a divide. To understand the explicit language of the Article, it is not necessary for us to rely on the decision of the English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including in appropriate cases, any Government. Under Clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals,

whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, as instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right. A party may not be allowed to bypass the normal channel of civil and criminal litigations. The High Court does not act like a proverbial "bull in china shop" in the exercise of its jurisdiction under Article 226".

5. The law with regard to the locus in the light of umpteen pronouncements of the Apex Court and the High Courts by and large has been crystallised. It is well-settled that the power of the High Court under Article 226 can be invoked by any person or any body to enforce a public law obligation against any person or body of persons who is under such public law obligation. The learned Judge having considered the provisions of Section 131 of the Act has rightly opined that the remedy provided under that provision by way of revision to the State Government could not be regarded as adequate and efficacious. Be that as it may, we are dealing with this question in the writ appeal. The services of the writ petitioners were terminated as far back as in the year 2001 and at this distance of time, it will be totally inappropriate and unjust to direct the writ petitioners to work out their legal remedies elsewhere either before the Educational Tribunal or before the jurisdictional Civil Court. In taking this opinion we are fortified by what is observed in paragraph 5 of the judgment of this Court in the case of Krishnegowda Vs. Karnataka State Co-operative Apex Bank Ltd., , relying upon the judgment of the Apex Court in Raj Soni's case. Therefore, the first contention of Sri Raghupathy is not acceptable to us and consequently, we answer the first point against the management.

6. Point No. (ii).--It is true that when the writ petitioners were appointed in the years 1991 and 1992, as could be seen from the appointment orders, their appointments were made purely on temporary basis and subject to the approval of the governmental authority. In the appointment order, it was also stipulated that their services could be terminated at any point of time without notice. It is the specific case of the management that in view of an extraordinary situation that obtained in the year 1992 in V.B. Darbar Pre-University College where they had started additional sections, writ petitioners were appointed as Assistant

Teachers on temporary basis to cope up with the additional work pending approval from the governmental authority to extend the grant-in-aid to the newly created posts. As already pointed out, though the proposal was sent up by the management of the college to the concerned governmental authority on 20th August, 1992, till 1996 there was no response from the governmental authority. It is also not forthcoming from the pleadings of the parties as to what the management did during these four years. Be that as it may, at least in the year 1996, admittedly, the management was aware that the Government refused to extend grant-in-aid to the posts held by the writ petitioners. Notwithstanding this clear understanding and its implication flowing therefrom, the management continued the services of the two teachers for a further period of 5 years without any demur and without telling the teachers at any point of time that their services were continued only on temporary basis and on stop-gap arrangement etc. The fact that these two writ petitioners-teachers were performing the same duties and functions attached to the post of regular teachers all these years is not seriously disputed before us. Article 14 frowns upon the "hire and fire" policy of the management of the college. The doctrine of fairness in action by which the appellant-management is undeniably bound would command that before taking drastic action of terminating the services of the petitioners, the principles of natural justice should have been complied with by the management by putting them on notice. Therefore, no exception could be taken to the opinion of the learned Judge that the termination of the services of the writ petitioners smacks of arbitrariness and it is also violative of principles of natural justice. However, we hasten to add that the learned Judge, with respect, is not justified in recording the finding with regard to the mala fide pleaded by the writ petitioners. Simply because the management terminated the services of the writ petitioners after they issued legal notice, the Court would not be justified in recording a factual finding that the action is mala fide. To that extent, we disagree with the learned Single Judge. Since the termination of the services of the writ petitioners is found to be in violation of the principles of natural justice and fair play in action, upsetting the writ issued by the learned Single Judge would not arise. We affirm the order of the learned Single Judge.

7. In the result, writ appeals are dismissed. No costs.

8. Sri S. Prakash Shetty, Government Advocate is permitted to file memo of appearance within four weeks