

(2010) 02 CAL CK 0018
In the Calcutta High Court
Case No : W.P.S.T. No. 1692 of 2008

Vijay Shankar Dixit

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Citation : (2011) 1 CHN 174

Hon'ble Judges : Pranab Kumar Deb, J; Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : M.M. Verma, Punam Verma, Nilam Verma, Nidhi Verma and Abhishek Verma, for the Appellant; Sumit Panja, T.P. Haider for Birla High School, U.S. Menon, Rajeev Kumar Jain for Respondent No. 2 and Sima Sengupta, for State, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred assailing the judgment and order dated 17th November, 2009 passed by a learned Judge of this Court whereby and whereunder the said learned Judge dismissed the writ petition on the ground of maintainability.

2. The Appellant herein is an assistant teacher of the Birla High School which is undisputedly a private school run by the Managing Committee and is governed by the Service Rules framed by the Vidya Mandir Society, namely, "Vidya Mandir Society Service Rules". Appellant being aggrieved by the decision of the Managing Committee of the said school for initiation of the disciplinary proceedings by issuing a chargesheet, filed a writ petition which has been dismissed by the learned Single Bench by the judgment and order under appeal.

3. Birla High School, being managed by a private organization, a preliminary objection was raised with regard to the maintainability of the writ petition before the learned Single Judge. Learned Single Judge, upon considering the submissions of the learned Counsel of the respective parties, upheld the said

preliminary objection raised on behalf of the Respondents.

4. Mr. Verma, learned Counsel appearing on behalf of the Appellant, while assailing the judgment and order passed by the learned Single Judge has relied on the following Supreme Court decisions in support of his contention that the writ petition is maintainable in the facts and circumstances of the present case, although the Appellant herein is employed as an assistant teacher in a private institution:

(1) Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., (2) Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, (3) K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Anr., reported in AIR 1998 SC 295; (4) Francis John Vs. Director of Education and Others, (5) Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, (6) Unreported decision in the case of Avinash Mehrotra v. Union of India and Ors., reported in 2009 INSC 719 (13th April, 2009).

5. Mr. Verma has also relied on an unreported decision of the Division Bench of this Court in the case of Asha Srivastava v. State of West Bengal and Ors., arising out of W.P. 889 of 2001 (APO No. 273 of 2010).

6. The aforesaid decisions, in our view, cannot be of any help to the Appellant herein since in all the aforesaid decisions, public element was involved which was specifically taken into consideration by the Court while deciding the issue relating to maintainability of the writ application.

7. In the present case, Appellant herein is aggrieved by the departmental action initiated by the private employer namely the authorities of Birla High School which is a private school managed by a private trust. The Appellant herein is aggrieved by the acts and/or actions of the authorities of a private employer who has decided to take steps against the Petitioner by initiating departmental proceedings by issuing chargesheet. Authorities of the private school did not enter into any public domain nor interfered with any public interest. Decision of a private employer in relation to its employee can not be questioned before the High Court in its Constitutional writ jurisdiction specially when no public element is involved in such action. In the aforesaid circumstances, under no stretch of imagination it can be said that any public element or public interest is involved in the dispute raised by the Appellant/writ Petitioner herein.

8. In the case of Francis John (supra), disciplinary proceedings was initiated against the Headmaster of the concerned school which was receiving grant-in-aid and the findings of the Disputes Settlement Committee were also approved by the Director of Education of the concerned Government. Considering the aforesaid factors and the nature of order of termination issued and also the special facts involved in the said case, the Hon'ble Supreme Court held in the aforesaid decision that writ petition would be maintainable.

9. In the case of Unnikrishnan J.P. (supra) the Hon"ble Supreme Court specifically held as hereunder:

80. Applying these tests, we find it impossible to hold that a private educational institution either by recognition or affiliation to the University could ever be called an instrumentality of State....

10. In the case of Avinash Mehrotra (supra), the Hon"ble Supreme Court decided an important public interest litigation relating to a fire that had swayed through the school in question.

11. In the present case, no public interest is involved since the Appellant herein is aggrieved by the decision of the Managing Committee of a private school in relation to the terms of the employment of a teacher, which is governed by the Service Rules known as "Vidya Mandir Society Service Rules" applicable to the teachers of the said school.

12. In the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvana Jayanti Mohotsav Smarak Trust (supra) the Appellant trust was managing the affiliated college where public money is paid as Government Aid. Considering the aforesaid fact, Hon"ble Supreme Court observed that public money paid as Government Aid plays a major role in the control, maintenance and working of educational institutions. The facts of the aforesaid case are totally different than that of the present case. The Supreme Court, considering the public element involved in the said case, while considering the service condition of the academic staff, specifically observed that when the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It had super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

13. In the present case, the Appellant herein is not protected by any decision either of the University or any other statutory authority and the Management of the private school is entitled to take appropriate decision in relation to the service of the Appellant on the basis of the Service Rules, as are applicable in respect of the teachers of the said school.

14. The unreported decision of the Division Bench of this Court in the case of Asha Srivastava (supra) is also clearly distinguishable on facts. Concerned school in the aforesaid case was a Dearness Allowance getting school and the appointments of the teachers were also regulated by the Government Circulars and directions. In the said judgment, the Division Bench specifically recorded the aforesaid factual matrix which runs as under:

From the factual matrix of the case as detailed above it appears that the appointment of writ Petitioner though was given by the privately managed school

who is getting Government grant in the form of Dearness Allowance for teaching staff as accepted by filing an affidavit by the State Respondents, but such appointments were regulated by the Government Circulars and/or directions whereby there was a necessity to seek approval by the District Inspector of Schools concerned.

15. Mr. Verma, learned Counsel for the Appellant, also referred to Rule 28 of the Management Rules of the Recognised Non-Government Institutions. (Aided & Unaided) 1969. Birla High School where the Appellant is employed as an assistant teacher, is not governed by the aforesaid Management Rules. Therefore, no reliance can be placed on the aforesaid Rule 28 of the Management Rules for the purpose of deciding the issues raised in the present appeal.

16. Learned Single Judge, in our opinion, has rightly held that no public element is involved in the disputes raised by the Appellant. There is no dispute that the Appellant herein is working as an assistant teacher in Birla High School which is a private institution. In absence of public element, Writ Court cannot proceed to decide the validity or legality of any act and/or action of a private employer.

17. For the aforesaid reasons, we find no error in the findings of the learned Single Judge and therefore we refuse to interfere with the judgment and order under appeal, passed by the said learned Single Judge.

18. This appeal, therefore, stands dismissed as we do not find any merit in the same. In the facts of the present case, there will be however no order as to costs.

19. Urgent xerox certified copy, if applied for, be given to the parties on priority basis.