
(2002) 07 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2799 of 1998

V.N. Pradhan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2003) 2 WLN 648

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 19.8.1998 against the respondents with the prayers that by an appropriate writ, order or direction.

(1) it be declared that the proposed closure/closure of academic activities of Mohta Ayurveda College, Sadulpur (respondent No. 5) is illegal.

(2) alternatively and without prejudice respondent-State be directed to either take over Mohta Ayurveda College, Sadulpur (respondent No. 5) or to appoint an Administrator to run the College.

(3) alternatively, the respondent No. 6 Bhaskar Educational Society be directed to fulfill its undertaking of making finances available for the purpose of running the College.

(4) the notice dated 21st July, 1998 (Annex. 1) informing the petitioner that his services stand terminated at the end of three months be declared to be invalid and be quashed and the respondents No. 4 and 5 be restrained from terminating services of the petitioner at the end of three months period as given in the notice dated 21.7.1998 (Annex. 1).

(5) if for any reason the termination is brought about the same be declared to be

invalid and be quashed.

(6) alternatively the respondent-State be directed to absorb the petitioner to the service of the respondent-State in terms of the Rajasthan Absorption of Surplus Personnel Service Rules.

2. The case of the petitioner as put forward by him in this writ petition is as follows:

The petitioner was appointed as Lecturer in Botany in the Mohta Ayurveda College, Sadulpur (respondent No. 5) (for short "respondent-College") on probation vide order dated 22nd May, 1982, a copy of which is marked as Annex.2.

It was submitted by the petitioner that the respondent-College is being run by the respondent No. 4 Mohta Ayurveda Mahavidyalaya Prabandh Samiti, Sadulpur (for short "the respondent-Prabandh Samiti"), a society registered under the Rajasthan Societies Registration Act.

The case of the petitioner is that the respondent-College was granted temporary affiliation from the University of Rajasthan upto the year 1997 and thereafter, the respondent-Prabandh Samiti did not choose to make application for extension of the affiliation. But, so far as the respondent No. 3 University of Rajasthan is concerned, it has taken the position that affiliation would stand till the students granted admission during the period of affiliation go out of the said College and, therefore, it can safely be said that the affiliation continues. Therefore, the condition of services will be those provided for teachers of affiliated College in Part IV of Ordinance 67, and/or in 67-A, 67-B, 68 and 68-A of the Ordinances of the University. It was for this reason that after the appointment was given to the petitioner, the approval of the University of Rajasthan was sought and was given vide letter dated 21.7.1982, a copy which is marked as Annex. 4.

The further case of the petitioner is that the respondent-Prabandh Samiti has been mis-managing the respondent-College for quite some time and in that process, services of teachers were terminated and such termination orders were challenged by S. B. Civil Writ Petition No. 4035/97 Shambhu Dayal Sharma and Ors. v. State of Rajasthan and Ors. which is pending before Jaipur Bench of this Court. Apart from this, a lot of litigations have transpired between the teachers and the respondent-Prabandh Samiti.

The further case of the petitioner is that running of a College is not a private affair and it is not open to those who opened the College to close the college whenever they may choose to do so obviously for the reason that it involves lives of several persons i.e. teachers and the students.

The petitioner has placed reliance on Clause (8) of Statute 26 of the Statutes of the University of Rajasthan and the same is quoted here:

Affiliated College Management:

26(8) Every college not maintained by a Government shall satisfy the Syndicate that adequate financial provision is available for its efficient maintenance, either in the form of an endowment or by an undertaking given by the person or body maintaining it, and that the college is established on a permanent basis. If at any time the Governing Body of a college may be unable to run the College, it shall inform the Syndicate at least one full academic year in advance and shall give a notice of a similar duration, viz., one full academic year to the employees of the institution for termination of their services:

Provided that the closure of an Institution shall be in gradual stages in respect of each course of study for which it is affiliated, starting from the first year of the course.

The petitioner has also placed reliance on Rules 17 and 11-M of the Rajasthan Ayurveda Grant-in-aid Rules, 1972 (hereinafter referred to as "the Rules of 1972") and the same are quoted below:

17] laLFkk dks cUn djuk %&

dkbZ Hkh laLFkk ,d o"kZ dk uksfVI IHkh IEcfU/kr O;fDr;ks dks fn;s fcuk cUn ugh dh tk;sxh A

11&,e ?x? ikB;dze dk pykuk cUn djuk] fcuk funs"kdks dh Lohd`fr ds dksbZ Hkh uohu ikB;dze ,oa d{kk ugh pyok;h tk;sxh ArFkk dksbZ Hkh ikB;dze ,oa d{kk funs"kd dh fcuk iwoZ Lohd`fr ds cUn ugh dh tk;sxh A

In this writ petition, the petitioner has challenged the impugned notice Annex. 1 dated 21.7.1998 on various grounds and by that notice Annex. 1, the services of the petitioner were ordered to be dispensed with after expiry of three months of that notice and according to the petitioner, the impugned notice Annex. 1 is wholly illegal being contrary to statutory provisions made in Clause (8) of Statute 26 of the Statutes of the University of Rajasthan.

The closure of the respondent-College is also challenged on the ground that before ordering closure of the respondent-College, a notice of one full academic year should have been given.

Similarly, the services of the employees of the College could have only be terminated by giving atleast a notice of one full academic year in advance and since such notice has not been given to the petitioner before terminating his services, therefore, the impugned notice/order Annex-1 dated 21.7.1998 is illegal and without jurisdiction and thus, it should be quashed and set aside.

It was further submitted by the petitioner that the requirement of giving of notice of one full academic year for closure of the Institution as well as for termination of services of the employee of the Institution is also contained in Clause (8) of Statute 26 of the Statutes of the University of Rajasthan as well as in Rule 17 of the Rules of 1972. Since it has been done in the instant case, therefore, closure of the respondent-College as well as termination of services of

the petitioner are illegal and cannot be sustained. Hence, this writ petition with the prayers as stated above.

A reply to the writ petition was first filed by the respondents No. 1 and 2, who are respectively State of Rajasthan and Director, Ayurveda Department, Ajmer and in that reply, it has been contended by them that the writ petition raises disputed questions of facts and such questions cannot be determined in writ jurisdiction under Article 226 of the Constitution of India and, therefore, from this point of view, the present writ petition should be dismissed.

The further case of the respondents No. 1 and 2 is that on 26.2.1997, the respondent-College was inspected by the Inspecting Committee consisting of Principal, Government Ayurved Nurse/Compounder Training Centre, Ajmer and Professor, Government Madanmohan Malviya Ayurved College, Udaipur in presence of the petitioner himself, who was working as Acting Principal on that day and the salient features of the inspection report (Annex. R/1) are as follows:

- (1) That in the respondent-College, no classes were being run.
- (2) That the Laboratory for preparing the medicines was found closed.
- (3) That at the time of inspection, no medicines or other things pertaining to medicines were found.
- (4) That in the preceding year, no classes were taken and in class rooms, dust was found, which shows that no classes had taken place.
- (5) That teachers and other employees informed the Inspecting Committee that the Prabandh Samiti of the respondent-College intended to close the College and no satisfactory answer in this respect was given by the petitioner, who was at that time Acting Principal, and thus, from the side of the Prabandh Samiti of the respondent-College, no interest for running the College was found by the Inspecting Committee.
- (6) That at the time of inspection, the petitioner was holding the charge of Principal and that was also found contrary to the Rules, as the petitioner was a teacher of Science.
- (7) That in the preceding year, no admission was given to the students and at that time, only students of one class were found and final examinations had already taken place.

Thus, in the above circumstances, the Inspecting Committee came to the conclusion that the respondent-College was not fit for grant of Government aid for running it.

Thus, it was submitted by the respondents No. 1 and 2 that because of the reason mentioned in the inspection report Annex. R/1, the aid was not given by the State Government to the respondent-College for running it and since at the time of inspection, the petitioner was present therefore, every thing was in his

knowledge. Hence, the writ petition filed by the petitioner be dismissed.

The respondents No. 4 and 5 have also submitted separate reply to the writ petition and it has been contended by them that the petitioner, as an employee of the respondent-College; is not entitled to insist for continuation of the College nor he can claim for taking over of the College by the State Government. So far as the termination of services of the petitioner is concerned, it was submitted by the respondents No. 4 and 5 that the the services of the petitioner were rightly terminated after giving notice. Since academic activities have been discontinued since long and the respondent-Prabandh Samiti had no funds to manage and maintain the respondent-College and the aid was not forthcoming from the State Government for various reasons, therefore, in these circumstances, there was no option left with the respondent-Prabandh Samiti except to close the respondent-College. In such circumstances, the respondents No. 4 and 5 also filed a writ petition before the Jaipur Bench of this Court being S. B. Civil Writ Petition No. 1961/96 with the prayer that adequate grants be allowed to the respondents No. 4 and 5 for the purposes of meeting out the recurring expenses etc. and besides this, other litigations are also pending in the Jaipur Bench of this Court. Apart from this, the petitioner was last person remaining as an employee and the notice/order dated 21.7.1998 (Annex. 1) was the natural consequence of the closure of the respondent-College. Thus, no question of deprivation of livelihood or violation of Article 21 of the Constitution of India arises. Hence, the writ petition filed by the petitioner be dismissed.

3. I have heard the leaned counsel appearing for the petitioner and the learned Counsel appearing for the respondents and gone through the materials available on record.

4. At the very outset, it may be stated here that the petitioner is not entitled to the reliefs that the respondent-College should be allowed to run and further, the Government be directed to take over the respondent-College or to appoint an Administrator to run the respondent-College, as such type of reliefs cannot be granted by this Court under extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

5. It may be stated here that before issuing any mandamus, there must be a legal duty and not a discretion in the authority. So, no mandamus can lie to compel Government to grant something to somebody.

6. Apart from this, Universities and other statutory educational institutions are in the nature of domestic tribunals whose internal management cannot be interfered with by mandamus. These are autonomous bodies created by statutes and their decisions cannot be questioned except when such authorities act malafide or with bias or violate rules of natural justice in the proceedings and conclusions before them or exceed their jurisdiction under the statutes, rules and regulations regulating their duties and procedure.

7. In the present case, since the inspection report Annex. R/1, contents of which

had already been mentioned above, clearly reveals that in fact, there was no College in true sense and the whole College was closed, classes were not being held by the teachers and all employees of the College had gone except the petitioner, therefore, in such circumstances, the directions as sought for by the petitioner in this writ petition that the respondent-College should be allowed to run cannot be issued and the prayers of the petitioner in this respect are outrightly rejected.

8. The second aspect of the writ petition is that whether services of the petitioner through notice/order Annex. 1 dated 21.7.1998 were rightly terminated or not.

9. It may be stated here that in this case through Annex. 1 after giving three months notice, the services of the petitioner were dispensed with and in Annex. 1, the reasons why services of the petitioner were being terminated have been mentioned and most of them are such as are found in the inspection report Annex. R/1. Not only this, in Annex. 1, the petitioner was asked to collect his dues and he was further asked to hand over the charge of the papers etc. to one Shri B. M. Sharma, Assistant Secretary of the respondent-Prabandh Samiti.

10. Before proceeding further, legal position with respect to interference by the High Court under Article 226 of the Constitution with the action of the autonomous bodies like University/Educational Institution may further be referred to, especially while examining legality or propriety of Annex. 1 (termination order of petitioner).

11. A petition under Article 226 of the Constitution of India is normally entertained to enforce a civil liability arising out of a breach of contract or a tort. Apart from this, Courts do not grant specific performance of contracts of service.

12. In order to obtain a writ or order in the nature of mandamus, the petitioner must show that he has a legal right to the performance of a legal duty as distinguished from a discretion, by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition.

13. The Courts have generally set certain limitations and self-imposed restrictions on the exercise of their discretionary power under Article 226 qua the decisions of academic bodies; the Courts have consistently kept their hands off the high academic bodies unless flagrant violation of fair play based on bias or mala fides is established.

14. The Courts in exercise of their writ jurisdiction are reluctant to interfere in the exercise of discretion of the educational authorities in the absence of strong reasons like contravention of law or statutory regulations.

15. The High Court's power are limited when it is called upon to deal with the decisions of autonomous bodies like a University/educational institution; the questions that arise before them in the course of day-to-day or other functions are better left to their sole decision. The High Court is not a Court of appeal; its powers are confined only to seeing that the hedges of law are not over-stepped.

16. The decision of the Selection Committee in the matter of educational institution or college should not be interfered with unless it is shown that no reasonable person could have arrived at the conclusion reached by the Selection Committee.

17. Keeping in mind the above legal proposition of law settled from time to time by the Hon'ble Supreme Court, if the facts of the present case are examined in broad perspective, the petitioner has got no case at all to get any relief under Article 226 of the Constitution of India.

18. Looking to the entire facts and circumstances of the case and looking to the inspection report Annex. R/1 where it was specifically stated that no classes in the College were being held, dust was found in the class rooms; there was no laboratory, meaning thereby in real sense no College was existing, therefore, in these circumstances, if after giving three months notice, the services of the petitioner were terminated by the respondent Prabandh Samiti through Annex. 1, the respondent-Prabandh Samiti had committed no illegality in doing so and such action of the respondent Prabandh Samiti cannot be said to be illegal or arbitrary or tainted with bias and thus, no interference is called for with the action of the respondent-Prabandh Samiti in exercise of the power under Article 226 of the Constitution of India.

19. Apart from this, looking to the activities and affairs of the respondent-College, especially when the College in real sense was not in existence, if through Annex. 1 dated 21.7.1998 after giving three months notice, the services of the petitioner were terminated by the respondents. It cannot be said that they have violated the provisions of Clause (8) of Statute 26 of the Statutes of the University of Rajasthan and Rule 17 of the Rules of 1972 because it is not a case of continuation of College, but at that time when the order Annex. 1 was passed, there was no College in existence. Had classes of the College in question would have been running or the College would have been in existence, the position would have been different. It is made clear that Clause (8) of Statute 26 of the Statutes of the University of Rajasthan and Rule 17 of the Rules of 1972 would only be applicable when the Governing Body feels that it was not in a position to run the College, but in the present case, running of the College in question had already come to an end and thus, in the present case there was no violation of Clause (8) of Statute 26 of the Statutes of the University of Rajasthan and Rule 17 of the Rules of 1972 by the respondents. Thus, the impugned termination order Annex. 1 cannot be said to be illegal or without jurisdiction from this point of view also.

20. For the reasons stated above, there is no merit in this writ petition and the same is liable to be dismissed.

Accordingly this writ petition filed by the petitioner is dismissed. The stay order stands vacated.

No order as to costs.