

(2022) 11 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2095 Of 2021, Contempt Petition(S) No. 170 Of 2022

Zahoor Ahmad Rather

APPELLANT

Vs

Union Territory Of JK & Ors

RESPONDENT

Date of Decision : 22-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 11 J&K CK 0042

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Sheikh Hilal, Sheikh Mushtaq, Q. R. Shamus

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The petitioner being aggrieved of the order of termination dated 29th February 2020 has impugned the same on the ground that the same has been passed in violation of the principles of natural justice as no enquiry was conducted by respondent Nos. 3 and 4 against the petitioner and that the termination order is stigmatic and punitive in nature.

2. Response stands filed by the contesting respondent Nos. 3 and 4 wherein it has been stated that show cause notice dated 13th February 2020 was served upon the petitioner through post and he replied the same and the writ petition is not maintainable against the un-aided minority educational institution.

3. In the response, it has been further stated that the petitioner was placed under suspension on account of various activities as mentioned in the response including the child abuse committed by the petitioner by corporal punishment, forcing the students to purchase books not prescribed by the school at higher price etc.

4. The response has also been filed by the respondent No. 2 wherein it is stated that the petitioner approached the authorities of the education department for redressal of his grievances and the Zonal Education Officer, Chadoora conducted the enquiry and submitted the detailed report dated 4th December 2020 wherein certain observations and recommendations were made.

5. Mr. Sheikh Hilal, learned counsel for the petitioner reiterated the submissions in the memo of petition.

6. Mr Q. R. Shamus, learned counsel submits that SMQ Islamic Secondary School is a Private Un-aided Educational Institution and, as such, is not amenable to the writ jurisdiction, more particularly, when there is service dispute between the petitioner and the School as claimed by the petitioner.

7. Heard and perused the records.

8. Admittedly, there is a service dispute between the petitioner and his employer i.e., School. The petitioner has not been able to refute the contention of contesting respondents that SMQ Islamic Secondary School is an Un-aided Minority Educational Institution.

9. The Hon'ble Apex Court in St. Mary's Education Society & Anr. vs. Rajendra Prasad Bhargava & Ors. 2022 SCC Online SC 1091 considered the following two issues:-

“(a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?

(b) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution? In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?”

10. After detailed discussion, the Hon'ble Apex Court held that the writ petition under Article 226 of the Constitution of India is not maintainable against a Private Un-aided Minority Educational Institution and further observed that in the service dispute, no public law element is involved, therefore, the writ petition under Article 226 of the Constitution is not maintainable.

11. In view of above, the present writ petition is found to be misconceived, the same is dismissed with liberty to the petitioner to avail appropriate remedy as available under law if so advised.

CCP(S) No. 170/2022

As the main writ petition stands dismissed, the contempt petition is also dismissed.