

Cwp No. 10437 of 1997 Vs. Cwp No. 10437 of 1997

Cwp No. 10437 of 1997 Vs. Cwp No. 10437 of 1997

SooperKanoon Citation : sooperkanoon.com/1069388

Court : Punjab and Haryana

Decided On : May-17-2013

Appellant : Cwp No. 10437 of 1997

Respondent : Cwp No. 10437 of 1997

Judgement :

CWP No.10437 o

1. IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CWP No.10437 of 1997 Date of Decision:- May 17, 2013 Mrs. Manju Sharma and othersPETITIONER(S) vs. State of Punjab and othersRESPONDENT(S) CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA Present:- Mr. G.C. Dhuriwala, Advocate, for the petitioners. Mr. Aman Bahri, Addl. A.G., Punjab for respondents No.1 and 2. Mr. Sapan Dhir, Advocate, for respondents No.3 and 4.

1. To be referred to the Reporters or not?.

2. Whether the judgment should be reported in the Digest?. G.S. SANDHAWALIA, J.

1. The present writ petition has been filed for setting aside the order dated 09.04.1997 (Annexure P-1) wherein, the Managing Committee-respondent No.3 of the New Senior Secondary School, Sangat Road, Civil Lines, Ludhiana decided to relieve petitioner No.1 from services. Similar orders dated 11.04.1997 (Annexures P-2 to P-6) were passed in respect of petitioners No.2 to 6. Accordingly, the said

orders are challenged alongwith the prayer that a writ of mandamus be issued to the respondents to re-instate the petitioners from the date of their termination.

2. The case set up by the petitioners in the petition is that they were working as teachers in various fields for the last more than 12 years and had been illegally terminated by respondent No.3-Managing Committee of the school. The service conditions of the petitioners were governed by the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979 (for short 'the 1979 Act'). There were no complaints against any of the petitioners and CWP No.10437 o

2. the impugned orders had been passed without issuing any show cause notice to the petitioners. An appeal had also been filed before respondent No.2-The Director, Public Instructions (Schools), Punjab which had been rejected on the ground that the school was unaided and no appeal lay before him. Accordingly, it was pleaded that the management was performing public duty even being the unaided body and, therefore, services of the petitioners could not have been terminated without due process of law. Reference was made to Section 4 of the

197. Act. to plead that no employee shall be dismissed except with the prior approval of the Director and in the present case, no prior approval of the Director was obtained. Accordingly, the writ petition was filed challenging the said termination orders.

3. In the written statement filed by the State, it was pleaded that the school was a purely private one and the State has no control over its functioning and there is no interest of the State involved in the present writ petition since it was not a Government aided school. The dispute is between the employer and the petitioners.

4. In view of the written statement filed by the School and the Managing Committee, it was pleaded that the petitioners had mislead this Court since the respondent-school was totally private school and was not getting any grant-in-aid from the Government. The

197. Act. was not applicable and, therefore, the writ petition itself was not maintainable against the school. The Director (Education) himself had, vide letter dated 26.06.1997 mentioned that the school was unaided. The details regarding the petitioners who had worked for various periods from 1971 in one case to 1992 in the other case were given. It was pleaded that in order to improve its performance, the services of the petitioners were terminated and no illegality could be alleged. Petitioner No.6 was an untrained and unqualified teacher and could not be retained in the school as a Teacher. There were complaints against the petitioners regarding teaching work, checking of home work, indiscipline in the classes, misconduct and ill manner and CWP No.10437 o

3. accordingly, the services were dispensed with. There was no ill will or mala fide. Accordingly, the maintainability of the writ petition itself was contested.

5. Counsel for the petitioner has submitted that the orders terminating the services of the petitioners were arbitrary and no show cause notice had been issued to the petitioners and neither the consent of the Director had been taken for dispensing the service and some of them had worked from 1971 onwards, which would be clear from Annexure R-3/1. Accordingly, it is contended that under Section 4 of the

197. Act., services could not be terminated except with the prior approval of the Director. It is submitted that as per the Constitution of the school, the school is to follow the rules and regulations set up by the Punjab Education Department from time to time and that the school was imparting public duty by imparting education and, therefore, the writ petition was maintainable. Reliance has been placed upon a Full Bench judgment of this Court in *Ravneet Kaur vs. The Christian Medical College, Ludhiana*, 1997 (2) PLR 32.regarding the maintainability and on the ground that no show cause notice being issued. Reliance was being placed upon *M/s. Akon Electronics India Pvt. Ltd. vs. State of Haryana and others*, 1998 (1) PLJ 3.*M/s. Tirupati Industries vs. Punjab State Electricity Board and others*, 2000 (2) Civil Court Cases 377; *Tarsem Singh vs. Punjab State Electricity Board*, 2002 (2) Civil Court Cases 584 and *Jatinder Sood vs. Haryana Urban Development Authority and another*, 2000 (3) PLR 73.to plead that the orders were not speaking orders.

6. The petitioner, in order to challenge the orders Annexures P-1 to P- 6, would have firstly get over the maintainability hurdle of the writ petition itself. Admittedly, the school is unaided and, therefore, the submission that Section 4 of the 1979 Act would be applicable and there was a violation is without any force since the definition of an employee under Section 2(c) of the 1979 Act itself shows that employee means any person employed on an aided post in a privately managed recognized school. Section 2(c) reads as under:- CWP No.10437 o

4. 2. Definitions. - In this Act, unless the context otherwise requires,- xxx xxx xxx xxx (c)employee. means any person employed on an aided post in any privately managed recognised school for hire or reward (whether the terms of employment be express or implied) and for the purposes of any proceedings under this Act in relation to any employment dispute includes the person dismissed or removed from service but does not include a part-time employee;.

7. The statement of objects and reasons also provides that it is for the employees of privately aided schools who have been pressing for parity of pay scales and protection of service thus, it would be clear that where a school is not receiving any aid, the provisions of the 1979 Act itself would not be applicable, as contended by the counsel for the State. Reliance upon Ravneet Kaur's case (supra) would be of not much help to the petitioners since in that case, the dispute was pertaining to the admission to be granted to the MBBS course at the Christian Medical College, Ludhiana. Since the admission had been denied, the writ petition was filed in which issue was raised that the writ petition was not maintainable. Accordingly, it was held that the control over the college under the Indian Medical Council Act, 1956, the Panjab University Act, 1947 was virtually all pervasive and even the recruitment of the staff and facilities for providing education and conditions of service were regulated. Accordingly, it was held that a writ petition, in such circumstances, would be maintainable since the college was also doing public duty. The relevant portion reads as under:-

15. A combined reading of the provisions of the Indian Medical Council Act, 1956, the Panjab University Act, 1947 and the regulations/rules framed thereunder indicates a CWP No.10437 o

5. significant degree of control over the Institution by the Central Government, the Medical Council of India and the University. This control is virtually all pervasive. Every field of activity viz. the course of study, the recruitment of the staff, the facilities for providing education and training and even the conditions of service of the members of the staff are regulated.

16. Another fact which may be mentioned here is that during the later part of this century, there have been rapid advances in Biotechnology. Sophisticated equipment is not available for diagnosis as well as treatment. The parts of the body which were hitherto considered as blind lanes can not be seen and probed with the help of endoscopes. Facilities of computerised tomography and ultra sound equipment enable the medical men to see almost every part of the body. Magnetic Resonance Imaging gives an accurate picture of virtually the entire body. Most of this sophisticated equipment has to be imported from abroad. The Government not only allows the import but sometimes, it may even give exemption from payment of customs duty to the medical colleges and hospitals. If calculated in terms of money, it can amount to substantial aid by the State. It is not surprising that the respondent-colleges has acknowledged in its prospectus that the Government of India and Punjab have continued their interest and support in the work and development of the College and its hospital."

17. The building and equipment are the body frame of the Institution. The affiliation to the University is the soul which CWP No.10437 o

6. gives it life. It gains recognition. It becomes entitled to train personnel who would be qualified to take care of the health of the community. The Institution becomes a partner with the State in performing a public duty. Should it still be treated as an isolated island which is immune from the intervention of the Courts in spite of the wide language of Article 226 of the Constitution?..

8. However, in the present case, admittedly, the school is not performing any public duty in pursuance of any Statute and the Act is not applicable to an unaided institute. The termination of the petitioners who were employees of the school was in the nature of a relationship which was in the nature of a master and a servant relationship and thus, no writ can be issued for quashing the order of the

termination not can the respondent-school be commanded by way of a writ of mandamus to reinstate the petitioners in service. In similar circumstances, in order to challenge order of termination by a missionary school, an employee had challenged the said order wherein, preliminary objection was raised that a writ was not maintainable as the school was neither State or its instrumentality and being a private institution, was not even aided by the Government. Similarly, reliance upon Ravneet Kaur's case (supra) was repelled and it was held that though imparting of education by private institution is a duty but for a dispute regarding service matter and pertaining to service conditions, the High Court would not issue a writ under Article 226 of the Constitution of India. Accordingly, it was held that the remedy lay on the civil side in a competent Court of jurisdiction or to file a suit for damages. The relevant portion in R.D. Sharma vs. St. John's High School & others, 2002 (3) PLR 4.reads as under:-

13. In my opinion a writ of mandamus is maintainable against a private institute even though it does not get aid and its duty runs shoulder to shoulder with a CWP No.10437 o

7. duty which is performed by a public institution. To clarify this aspect of the case, if a dispute involved in a particular lis with regard to the admission or education or with regard to the pay of a member of the staff, in such a situation a writ under Article 226 is maintainable because imparting of education by a private institute is such a duty which is also being performed by the public institutions. In other words, mere label of a private institute will not oust the jurisdiction of the High Court under Article 226 of the Constitution. We have to see what is being agitated or claimed by the writ petitioner. If a writ petitioner complains with regard to the deprivation of the admission or equal pay for equal work or remuneration at par with the Government aided institution, in such a situation the High Court will entertain the petition. But if the controversy involved in a particular writ petition is purely a service matter pertaining to the service conditions for a private contract, in such a situation if there is any breach, the High Court will not issue a mandate under Article 226 of the Constitution. The distinction, in my opinion, is patent and clear. In the present case the alleged cause of action arose to the petitioner when his service had been terminated in an illegal manner without adopting the

principles of natural justice. This is an alleged breach of contract of service on the part of St. John's High School which is a private institute not even aided by the government. In such eventually the remedy of the petitioner lies somewhere else either the general law or he may file a suit for damages in the competent court of jurisdiction. The CWP No.10437 o

8. Hon'ble Division Bench of Guhati High Court in Managing Committee, Silchar Medical Collegiate v. Debt Pada Bhattachar Jee, (1994)1 Gauhati L.R. 202 held in para No.12 of the judgment as under:- "Although a private educational institution performs public duty insofar as imparting of education is concerned, it may not discharge public duty in other matters. The present case is purely of a private institution, and the management of the school is also a private body. Therefore, if the right of the employee in this school is purely of a private character, the management performs no public duty in this regard."

Thus a clear distinction has been made out that even private institution may or may not discharge a public duty. It may discharge public duty when it imparts education. It may not discharge a public duty in a case of termination of the private contract.

14. Reverting to the facts of the present case the services of the petitioner have been terminated. It is his case that the termination is against the rules of natural justice and that no regular enquiry was conducted. On the contrary, the case of the respondents is that his services have been terminated as per contract. This point can only be adjudicated either by a competent court of jurisdiction on the civil side or the petitioner may adopt such other remedy like filing a suit for damages etc.

9. The said view was subsequently followed in Mrs. K. Naqvi vs. State of Punjab and others, 2004 (3) RSJ 13. wherein also, it was held that no writ could be issued against the school which was run by a society registered under the Societies Registration Act, 1860 and did not receive any grant-in-aid from the CWP No.10437 o

9. State Government pertaining to the terms and conditions of service of the employees. The relevant paragraph reads as under:-

23. Applying the aforementioned principles to the facts and circumstances of the present case, it is seen that Yadvindra Public School Association is a Society registered under the Societies Registration Act, 1860. The respondent-school run by the said society does not receive any grant in aid from the State Government. In fact, it has not been recognised by the Government of Punjab. The society manages its affairs from its own funds and has framed its own regulations to govern the service conditions of its employees. There is no statute or government order granting any direct or indirect protection to the employees including the teachers of the respondent-school. It is a private body and the relationship between the petitioner and the respondent-school is purely that of Master and Servant. In my view, the respondent-school shall certainly be amenable to the writ jurisdiction of this Court so far as its activities in relation to public duty of imparting education are confined. However, no writ can be issued to the respondent-school or its management in relation to the terms and conditions of service of the employees or any breach thereof. No writ, therefore, can be issued either to quash the order of termination dated 25.3.1996 (Annexure P-12) nor can the respondent-school be commanded by way of a writ of mandamus to reinstate the petitioner into service.

10. Accordingly, keeping in view the settled position of law, this Court CWP No.10437 o

10. is of the conclusion that the writ petition is not maintainable for laying challenge to the termination order which may be a violation of the breach of contract of service which is personal in nature and thus, the writ petition itself is liable to be dismissed on this ground alone without going into the merits of the controversy. Reference to the judgments cited by the petitioner pertaining to the lack of reasons and the violation of principles of natural justice would thus not be necessary in the present facts as the merits of the case is not under scanner. Accordingly, the writ petition is dismissed being not maintainable against respondents No.3 and 4. 17.05.2013 (G.S. Sandhawalia) shivani Judge CWP No.10437 o

1.

