

Moinul Hoque Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Jun-27-2008

Judge : H. Baruah, J.

Appellant : Moinul Hoque

Respondent : State of Assam and ors.

Advocate for Def. : Mr. J. Abedin

Disposition : Petition dismissed

Judgement :

H. Baruah, J.

1. The challenge made in this writ petition by the petitioner is approval and appointment of private respondent No. 6 herein as Assistant Teacher in Manulla Para High School, District-Dhubri by the Managing Committee of the said school vide resolution Nos. 2 and 3 of the committee dated 31.3.2007 and provisional approval thereof vide order dated 8.5.2007 by the Inspector of School, Dhubri Circle, District-Dhubri.

2. The Headmaster/Secretary of Manulla Para High School invited applications from eligible candidates for filling up a post of Assistant Teacher (Science) in Manulla Para High School, Dhubri vide advertisement dated 27.2.2007 resolved

vide resolution No. 3 of the Managing Committee of the said school (Annexure-4). In the said advertisement the number of post, name of the post, requisite qualification and age have been incorporated. Pursuant to the said advertisement, the writ petitioner having requisite qualification applied for the post and his application was received by the school authority vide annexure-5 dated 20.3.2007. Altogether four numbers of applications were received by the concerned authority of the said school including the writ petitioner. But the respondent Nos. 4 and 5 without conducting any interview arbitrarily appointed private respondent No. 6 in the post which was sought to be approved by the respondent No. 3 as Assistant Teacher (Science) of the said school. The writ petitioner having had the knowledge of such move of the Managing Committee filed a writ petition being WP (C) No. 2223 of 2007 before this Court seeking setting aside the impugned appointment of the respondent No. 6 and for restraint of approval by the respondent No. 3. This Hon'ble Court after hearing the parties issued an interim order dated 11.5.2007 with a direction to respondent No. 3 not to approve the appointment of respondent No. 6 until returnable date on 25.5.2007, if in the meantime the approval was not accorded.

3. Respondent No. 3 even after receipt of the order dated 11.5.2007 approved the appointment of the respondent No. 6 by putting a back date in the approval letter which constrained the writ petitioner to withdraw the writ petition No. 2223 of 2007 with a liberty to file afresh in view of change of circumstances or in other words subsequent development.

4. The Manulla Para High School, Dhubri was recognized by the competent authority in the year 1993 and since thereafter the school had/has been receiving all types of Government grants-in-aid from time to time. It is contended that the respondent authorities acted in a malafide and arbitrary manner and inducted their own interested person without following the procedure established and deprived the petitioner and others from his/their legitimate expectation. Since the Managing Committee of the said school is discharging public function even though not a 'State' within the meaning of Article 12 of the Constitution is amenable to writ jurisdiction and in the same way selection, appointment of teachers are also conducted for discharging public function and as such the appointment of

respondent No. 6 as Assistant Teacher of the said school approved by respondent No. 3 is illegal, unjust, unfair which is liable to be set aside and quashed. The acts and omission on the part of the Managing Committee of the said school in appointing the respondent No. 6 as Assistant Teacher (Science) in the Manulla Para High School without holding any interview of the candidates whose candidatures were obtained through advertisement are illegal and not in accordance with rules.

5. Respondent Nos. 2, 4 and 5 filed affidavit-in-opposition. Respondent No. 2 in paragraph six of the affidavit-in-opposition has contended inter alia that Manulla Para High School is an adhoc school and the Managing Committee of the said school is responsible and competent authority in regard to appointment of teaching and non-teaching staff. Any decision taken by the Managing Committee in respect of appointment of teaching and non-teaching staff of the un-provincialised school is, however, subject to approval of the Inspector of Schools. Respondent Nos. 4 and 5 in para 4 of the affidavit-in-opposition contended that Manulla Para High School, Dhubri is not amenable to writ jurisdiction inasmuch as the school is receiving only F.C. grant and all matters relating to appointment, management fall within the exclusive jurisdiction of the Managing Committee and the Government control is only a formal one. That apart the post advertised is not sanctioned post and the appointment was only on honorary basis carrying remuneration of Rs. 200/- per month and as such the Managing Committee of the school is best judge to see as to the suitability of the teaching staff. The respondent denied all other allegations brought in by the writ petition.

6. I have heard Mr. M.U. Mahmud, learned senior counsel for the writ petitioner as well as Mr. H.R.A. Choudhury, learned senior counsel for the respondent Nos. 4 and 5, Mr. J. Abedin, learned Counsel for respondent No. 6 and Mrs. M. Gogoi Medhi, learned standing counsel Education Department.

7. During the course of argument, the learned Counsel for the respondents relying on the decisions reported in 2008 (J) GLT 615 (Mubarak Hussain and Anr. v. State of Assam and Ors.) and 1994 (1) GLR 202 (The Managing Committee, Silchar Collegiate School (represented by its Secretary Ram Krishna Mission Road,

Silchar, District Cachar, Assam v. 1. Debipada Bhattacharjee, 2. The State of Assam, 3. The Inspector of Schools, Cachar District Circle, Silchar, 4. The Principal, Silchar Collegiate School) submitted that Manulla Para High School, Dhubri is not amenable to writ jurisdiction and, therefore, this present writ petition is not maintainable. It was submitted by the counsel for the respondents that the Manulla Para High School being a private educational institution only the received/receives F.C. grant from the Government and all matters relating to appointment, management etc. are within the exclusive jurisdiction of the Managing Committee of the said school. It was further submitted that the private institutions whether or not it received grants-in-aid, perform or discharge public duty in so far as it concern in imparting education. It does not discharge public duty in other matters. The Manulla Para High School being a private institution and the Managing Committee of the said school is also a private body. It was further argued that the right of the employees of the school is purely of private character, the management performs no public duty in this regard, therefore, the appointment of the respondent No. 6 so made by the Managing Committee as per its resolution is private in nature, the Managing Committee being a private body and in that situation the appointment so made and approval so obtained cannot be challenged by a writ petition. A writ of mandamus is prohibited against such private institution.

8. This Court, while deciding the case between the Mubarak Hussain and Anr. v. State of Assam and Ors. reported in 2008 (1) GLT 615 considered the ratio laid down in the case between Andi Mukta Sadguru v. V.R. Rudani : (1989)1ILLJ324SC & K. Krishnamacharyulu v. Sri Venkateswara Hindu College : [1997]2SCR368 . In a present case the school Managing Committee is not governed by any statutory rules, nor the appointment of the teaching and non-teaching staff requires any approval from the Government. Thus, the decision of the Managing Committee not to hold the interview of the candidates who applied for the post is not guided by any statutory rules. The Managing Committee being an independent non-statutory body is free to act for the benefit of the institution. Thus, the appointment of the private respondent No. 6 as Assistant Teacher of the institution without holding/adhering the selection process of the candidates who put their candidature is not governed by statutory rules, in other words the action on the part of the Managing Committee is not subject to any approval from the Government.

9. A writ of mandamus is confined only to public authorities to compel performances of public duty. The 'public authority' means every body, which is created by statute whose powers and duties are defined by the statute. The Government department, local authorities, police authorities etc. are all public authorities but a Managing Committee of a private school which receives only F.C. grant is not a public authority created by statute. The learned Counsel for the respondents, therefore, taking the ratio of the case law reported in 2008 (1) GLT 615 and 1994 (1) GLR 202 submitted that the Managing Committee of the Manulla Para High School being a private body with no public duty attached is not amenable to writ jurisdiction under Article 226 of Constitution of India. The learned Counsel for the respondents, therefore, urged this Court to dismiss the writ petition as not maintainable.

10. Per contra to the submission advanced by the learned Counsel for the respondents, Mr. M.U. Mahmud, learned senior counsel for the petitioner relying in the case laws reported in (1989) 2 SCC 691, (1997) 3 SCC 571 and (2002) 10 SCC 487 submitted that the Manulla Para High School being in receipt of Govt. Assistance is amenable to writ jurisdiction since it has been discharging public duty in the nature of imparting education and any acts and omission of the Managing Committee fall within the purview of 'public duty', and, therefore, this present writ petition is maintainable under Article 226 of the Constitution of India. Mr. M.U. Mahmud in support of this contention referred paragraph 15 of the judgment which reads follows:

15. If the right 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. Public money 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. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. 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 has 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.

Though the Manulla Para High School receives E.C. grant and has been imparting education to the students, there is nothing in the record to show that its activities are closely supervised by the Government in the matters of running the affairs of the school, appointments of teaching and non-teaching staff etc. All activities of the school authority including activities of the Managing Committee are purely of private character having no control of the Government. If the rights are purely of a private character no mandamus can be issued and in the same way if the Managing Committee of the School is of that character without being attached to public duty, mandamus will not apply. Emphasis added by referring paragraph 15 of the judgment by Mr. M.U. Mahmud, learned senior counsel for the writ petitioner, to my humble view, is not acceptable in view of the facts situation.

11. Mr. Mahmud, learned senior counsel for the petitioner also relied on the decision, reported in : [1997]2SCR368 (K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Anr.) in support of his contention on the question of maintainability of the instant writ petition. It was argued by him that when Manulla Para High School imparts or has been imparting education to the students, a fundamental right to the citizens, the teachers who impart education, get an element of public interest in the performance of their duties. Even if the said school being not in receipt of any grants-in-aid. In the K. Krishnamacharyulu (supra) the Apex Court having found that the claim for parity of pay scales was based on Government structure held that the employees of non-aided institutions had an enforceable right. In this writ petition we have not come across such fact by which this Court can be asked to hold the view in favour of the writ petitioner that the writ petition is maintainable. In the case between Ramdeo

Baba Kamala Nehru Engineering College and Ors. v. Sanjay Kumar and Ors. : (2002)10SCC487 Hon'ble Supreme Court did not interfere with the order of the High Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution on the ground of technical plea although the appellants pleaded that the High Court should not have entertained the writ petition under Article 226 of the Constitution as the appellant is not amenable to writ jurisdiction of the High Court. Emphasis put on the ratio laid down by the Apex Court by Mr. M.U. Mahmud, in view of the facts and circumstances of the case is not required to be taken care of.

12. In view of the law laid down by the Apex Court and this Hon'ble High Court in regard to the maintainability of a writ petition under Article 226 of the Constitution this Court is of view that the Manulla Para High School being a private institution and its Managing Committee being a private body in the management of the affairs of said school, it is not amenable to writ jurisdiction under Article 226 of the Constitution. Under the aforesaid findings this Court does not like to continue to the merit of the writ petition, which if adhered would turn to a futile exercise by this Court.

In the result, this writ petition is dismissed. There is no order as to cost.

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