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A. Joan of Arc Vs. the Managing Trustees of Thiruvalluvar Manram's Charitable Trust and Ors.

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Court : Mumbai

Decided On : Sep-06-2000

Reported in : 2001(1)BomCR379

Judge : D.Y. Chandrachud, J.

Acts : Bombay Municipal Corporation Act, 1888 - Sections 61

Appeal No. : Writ Petition No. 1819 of 1997

Appellant : A. Joan of Arc

Respondent : The Managing Trustees of Thiruvalluvar Manram's Charitable Trust and Ors.

Advocate for Def. : B.H. Vyas, Adv. for respondent Nos. 1 and 2

Advocate for Pet/Ap. : A.J. Bhor, Adv. for Bombay Municipal Corporation;A. Shareefammel, Adv.

Judgement :

D.Y. Chandrachud, J.

1. Leave to amend the petition to make the State of Maharashtra and Director of Education as a party. Amendment to be carried out within one week.

2. The petitioner has been employed with respondent No. 2 as a clerk since 9-3-1984. The grievance of the petitioner was that no appointment letter was given to her even after 13 years of service. Respondent No. 2 was at the material time recognised by the Municipal Corporation of Greater Bombay under the provisions of the Grant-in-Aid-Code, as a primary school. The grievance of the petitioner is that though one of the conditions of recognition under Rule 5(6) of the Grant-in-Aid-Code is that the pay scales and other conditions of service should be such as laid down by the Education Department, the petitioner was not allowed the benefit of the pay scales which had been thus fixed.

3. This petition came to be filed on 23-10-1997 in which the principal relief sought was that respondent No. 1 should be directed to pay to the petitioner her salary at par with the pay scales of the Bombay Municipal Corporation as prescribed for primary schools in Greater Mumbai. During the pendency of the petition, the services of the petitioner were terminated by an order dated 8-12-1997. The petitioner challenged the order of termination in the Labour Court and proceedings arising out of the order passed by the Labour Court are, I am informed, pending before this Court.

4. In so far as the prayer for the grant of salary in accordance with the pay scales fixed by the Bombay Municipal Corporation is concerned, it is common ground that the primary school wherein the petitioner was serving came to be derecognised with effect from 1-6-1996. My attention has been drawn to orders passed by two Division Benches of this Court on 3-10-1995 and 9-10-1996 in Appeal No. 590 of 1995 in Writ Petition No. 825 of 1995 which came to be filed, inter alia, against respondent No. 1 herein. The order of the Division Bench dated 3-10-1995 records that in pursuance of the directions of the Court, the Municipal Corporation had given a show-cause notice to the management of respondent No. 1 on 21-9-1995 asking it to explain why the school should not be derecognised on the ground that the teachers had not been paid their salary in accordance with the scale prescribed by the Municipal Corporation. Thereafter on 9-10-1996, when the

appeal came up before the Division Bench, this Court directed the Education Officer of the Municipal Corporation to determine the arrears of salary which were payable to the appellant before the Court who was a teacher. In the present case, as already stated earlier, the school came to be derecognised by the Municipal Corporation, inter alia, as a result of the non-payment of the salaries to the teachers in accordance with the pay scales of the Corporation.

5. Article 45 of the Constitution provides that the State shall endeavour to provide within a period of 10 years from the commencement of the Constitution free and compulsory education for all children until they complete the age of 14 years. The duty of providing free and compulsory primary education is thus, one of inalienable obligations of the State under the Constitution. The provisions of the Bombay Municipal Corporation Act, 1888 laid down in section 61, the obligatory duties of the Municipal Corporation. These obligations in Clause (q) of section 61 includes maintaining, aiding and suitably accommodating schools for primary education by the State Government in accordance with the Government Grant-in-Aid-Code for the time being in force. Since the obligation to provide for primary education is that of the State and its authorities such as Local Bodies, the performance of such a function by private institutions is part of the obligation of the State which to a certain extent is assumed by private institutions to supplement the efforts of the State. In its decision in Unnikrishnan v. State of Andhra Pradesh, reported in : [1993]1SCR594 , the Supreme Court held that an obligation which attaches to the primary function of imparting education when it is performed by the State, must necessarily attach to the performance of the same obligation when it is discharged by private educational institutions which supplement the role and effort of the State. Private educational institutions which seek to carry on activities in areas such as primary education must, therefore, be subject to the same conditions and obligations which attach to the State itself when it performs those activities.

6. Provisions such as the Grant-in-Aid-Code regulate the activities of the primary educational institutions in so far as the requirements inter alia of recognition, the conditions of recognition and withdrawal of recognition is concerned. Rule 17 of the Grant-in-Aid-Code expressly provides that no school management shall conduct or allow others to conduct in their school premises unrecognised classes

either of the pre-primary, primary or secondary department. The Grant-in-Aid-Code besides providing for recognition, makes comprehensive provisions in regard to recognised schools.

7. Respondent No. 1 has admittedly now been derecognised. The claim of the petitioner is for the payment of the salary due and payable to her during the period when the school was recognised. Despite the provisions of Rule 17 of the Grant-in-Aid-Code, the school continues to exist, though it is clearly provided in Rule 17 that no school management shall conduct unrecognised classes, inter alia, of the primary department anywhere within the limits of Greater Bombay. The Municipal Corporation and the State Government seem to have turned a blind eye to the existence of such institutions with the result that though the payment of the salaries of the teachers and others staff has not been made in accordance with the pay scales prescribed by the Municipal Corporation, the school continues to run albeit without recognition.

8. The attitude of the school is that since the school is not recognised, it is neither required to fulfill those obligations which it would be required to discharge as a recognised school nor indeed to pay the prescribed salaries for the period during which it was recognised under the Grant-in-Aid-Code. In my view, no school which continues to function as a primary school can be heard to say that in the absence of recognition, its activities can be carried out unregulated by the State or its agencies in any manner whatsoever. To permit such activities would be to strike at the very root of the concept of primary education which is part of the fundamental and basic obligations of the State under Article 46 of the constitution. The obligation of the State is in implementation of the fundamental right under Article 21 of the Constitution to receive primary education.

9. The primary school which was being conducted by the management of respondent No. 1 came to be derecognised. However, respondent No. 1 continues to run a secondary school, higher secondary school as well as a Junior College which continue to have recognition by the State. The manner in which respondent No. 1 has declined to pay the prescribed pay scales to the teachers and other members of the staff such as the petitioner, must warrant a serious scrutiny by the

State for the purpose of determining whether the recognition which has been granted to respondent No. 1 in respect of its other branches is deserving of being continued.

10. In the circumstances, the Deputy Director of Education is directed to depute an officer who shall personally compute the arrears of salary which are payable to the petitioner in respect of the services which were rendered by her during her tenure with the second respondent school. The Deputy Director shall, upon the computation being made, ensure that the payment of the arrears of salary is duly made and, if respondent No. 1 and 2 fail to pay such arrears, if any, it would be open to the Deputy Director to take necessary steps in accordance with law. The learned Counsel appearing on behalf of respondent Nos. 1 and 2 has agreed to the computation as aforesaid being entrusted to the Deputy Director of Education.

11. In so far as the issue of the termination of service of the petitioner is concerned, it is clarified that there has been no occasion for me to go into the correctness or the validity thereof particularly in the light of the fact that the petitioner has already sought an alternative remedy against the order of termination.

12. The computation which will be carried out in pursuance of this order, will be arrived at within a period of four weeks. It would be open to the officer who will be nominated by the Deputy Director of Education to determine the appropriate scale in accordance with which the salary is liable be paid.

The petition is accordingly disposed of. There shall be no order as to costs.

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