

Jarnail Singh, Science Master and ors. Vs. Khalsa High School and ors.

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Court : Punjab and Haryana

Decided On : Jul-20-2005

Reported in : (2005)141PLR438

Judge : S.S. Nijjar and; Nirmal Yadav, JJ.

Acts : [Societies Registration Act, 1860](#); [Indian Medical Council Act, 1956](#);
[Constitution of India](#) - Articles 12, 14, 16, 21, 21A, 32, 43, 225 and 226

Appeal No. : Civil Writ Petition Nos. 16772 of 2000, 16557 and 18108 of 2001

Appellant : Jarnail Singh, Science Master and ors.

Respondent : Khalsa High School and ors.

Advocate for Def. : H.S. Gill, Sr. Adv. and; Ramesh Kumar Dhiman, Adv.

Advocate for Pet/Ap. : S.P. Laler,; Y.S. Turka and; Deepak Arora, Adv.;

Disposition : Petition allowed

Judgement :

S.S. Nijjar, J.

1. We have heard the learned Counsel for the parties at length and perused the record of the case.

2. This judgment of ours will dispose of the aforesaid writ petitions as the facts and law points in all the writ petitions are common.

3. The petitioners had joined on various posts with respondent No. 1-School i.e. Khalsa High School, Ambala City, Haryana. For some time now, they have not been paid their salary on one pretext or the other. Initially, the school was aided. However, the Managing Committee of the School had passed a resolution on 02.09.2000, the relevant portion of the same is as follows:

'After considering it, Sardar Surged Singh proposed that receipt of grant in future may be stopped and the land which is adjoining the school may be given on rent and many tenants would be available to construct the shops at their own expenses. It was also proposed that school fee may be suitably increased and staff may be reduced and expenses may be curtailed and receipt of grant from the Government in future may be stopped.'

4. The aforesaid resolution was communicated to the District Education Officer, Ambala City, on 04.09.2000 in the following terms:

'Telephone No. 530574

KHALSA HIGH SCHOOL

HISAR ROAD, AMBALA CITY (HARYANA).

Ref. No. Dated: 4.9.2000 To

The D.E.O.

Ambala City.

Subject: Information regarding non-claiming grant-in-aid for Khalsa High School, Ambala City.

Sir,

The Managing Committee held an emergent meeting on 2.9.2000 at Ambala City and resolved that grant-in-aid of Khalsa High School will not be received in future

and that the school should be run by its own resources and measures. In this connection, you are being informed and a copy of resolution of the Managing Committee dated 2.9.2000 regarding stopping of receipt of grant is being sent herewith. It may kindly be noted that the grant-in-aid papers which had been sent by the school may be returned and information in this regard is being communicated on 2.9.2000 itself.

Thanking you,

Sd/- Vijender Singh, Manager,

Khalsa High School, Ambala City'.

5. Relying on the aforesaid documents, Mr. Gill, learned Senior Counsel appearing for the School, submits that at the time when the petition was filed, the school was no longer an aided institution. The present writ petition was filed on 25.11.2000.

6. Mr. Rameshwar Malik, appearing for the Slate of Haryana, has stated that the grant-in-aid has been stopped on the basis of the aforesaid communication and the school was no longer an aided institution at the time when the petition was filed.

7. Relying on the aforesaid facts, learned Senior counsel appearing for the school, submits that the present writ petition would not be maintainable as the school did not fall within the definition of 'State' or 'Authority' contained in Article 12, of the [Constitution of India](#). In support of the aforesaid submission, learned Counsel has placed reliance on a Division Bench judgment of this Court in the case of Yash Pal Dalal v. Governing Body of Jat Education Society (Regd.), Rohtak, (2000-3) 126 Punjab Law Reporter 228, wherein it has been held that the writ petition would not be maintainable against the Jat Education Society as it did not fall within the ambit of Article 12 of the [Constitution of India](#). In coming to the aforesaid conclusion, the Division Bench has relied on the following observations made by the Supreme Court in the case of G. Bassi Reddy etc. etc. v. International Crops Research Instt. and Anr., : (2003)IILLJ 1123 SC :

25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed. The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT unless ICRISAT were a 'state' or authority within the meaning of Article 12. The tests for determining whether an organisation is either, (sic) has been recently considered by a Constitution Bench of this Court in *Pardeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.* : [2002]3SCR100 in which we said:

'The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise it would not serve to make the body a State.'

8. In view of the above, it would be apparent that the Management of the respondent-school would not fall within the definition of 'State' or 'other authority' i.e. statutory authority under Article 12 of the [Constitution of India](#). This, in our opinion, would not act as a complete embargo on the powers of this Court to issue necessary directions to the respondent-school to compel it to act in accordance with mandate of Article 21 of the [Constitution of India](#).

9. During the course of hearing of the petition, we had also requested Mr. Rajiv Atma Ram, learned Senior Counsel, as to whether he could be of any assistance on the legal proposition. Learned Senior Counsel has made a reference to a judgment of the learned Single Judge in the case of *K. Naqvi v. State of Punjab and Ors.* 2004(3) R.S.J. 136. After considering the whole gamut of cases, the learned Single Judge (Surya Kant, J.) has also come to the conclusion that a writ petition would not be maintainable against a purely private body for enforcement of purely private rights. But a writ petition would be maintainable even against an individual for performance of constitutional duties. We may make a reference to the observations made by Surya Kant, J. in paragraphs 20, 21 and 22 of the judgment, which are as follows:

20. It appears to me from the above quoted case laws that power to issue a writ under Article 226 of the Constitution is no longer confined to the restricted arena of statutory authorities or instrumentalities of the State. Even a person or body performing public duty can also be commanded with an appropriate writ. If it is found that the right to perform public duty has been conferred upon a private body either by the State or by its instrumentalities or by some statutory authority, such private body can always be commanded to adhere to the philosophy of Article 14 of the [Constitution of India](#). The Statutory Authorities like a University, Medical Council of India or AICTE which are empowered to recognise and/or affiliate a private institution can also be commanded to ensure that such private body recognised and/or affiliated with them, does not act in violation of Article 14 of the [Constitution of India](#). Similarly, if it is found that the institution has failed to carry out an obligation under the Constitution or the Rules/Regulations framed by the affiliating Statutory Authority, it can always be compelled to perform the public duty through an appropriate writ. If an interest has been created by the Government in a private institute imparting education either by prescribing the service conditions of employees of such institute or by providing financial assistance in terms of grant-in-aid, the teachers who impart education get an element of public interest in the performance of their duties and such an element of public interest requires that the conditions of their service are properly regulated. The Government aided institutions without any exception discharge public functions by way of imparting education and they being subject to the rules and Regulations of the affiliated University, employment in such institutions is not devoid of any public character. If the Government or its authorities or a statutory body recognising such private Government aided educational institutions, takes a decision to regulate the service conditions of employees of such private institutions, the relationship of Master and Servant between the employees of such private institutions would not remain purely of a private character. The protection granted to such relationship by enacting Rules/Regulations would be sufficient to command the Management(s) through a writ of mandamus, if so required. However, if an office/post is essentially of a private character, neither a writ in the nature of certiorari to quash the order of termination nor a mandamus to order reinstatement would lie to secure the performance of obligations by a body towards its employees or to resolve a private

dispute. Similarly, if the relationship between the employer and the employee is based on contract and was purely one of Master and Servant, the relief of reinstatement can not be granted as it would amount to granting specific performance of contract of service which is prohibited in law. Still further, a private institution even if recognised or affiliated with a statutory body like University, though purely private in character being a society registered under the [Societies Registration Act, 1860](#), no declaration of continuation in service can be granted in favour of its employee even if the termination of employment is found to be unlawful though in such & case, the affiliating statutory authority like University might be entitled to disaffiliate the institution but the relief of rein-statement of an employee service has not been recognised.

21. What, therefore, clearly emerges is that so far as the activities and functions of a private body or a person in relation to performance of public duty are concerned, the same are amenable to the writ jurisdiction notwithstanding the pure private character of such body and/or a person and they can always be commanded to perform such duties in consonance with Articles 14 and 21-A of the [Constitution of India](#) or other provisions of the Rules/Regulations. However, the functions and activities of such institutions relating to recruitment of their staff, governance of service conditions of such staff or other internal management related affairs are of purely private character and these are not relatable to the 'Public duty' which such institution/body or a person perform.

22. The employment of teachers or other staff on certain terms and conditions administration of such teachers/staff through a set of self evolved Rules, Regulations of the private body without any protective umbrella of State or Statute at the best confer rights which are purely of private character and any infringement or breach of such rights cannot be corrected through a writ of mandamus. I have, therefore, no doubt in my mind that if the dispute involved in a particular case relates to the 'public duty' performed by a private institute/body with petition under Article 226 of the Constitution is maintainable and it can always be commanded to perform the public duty in consonance with the [Constitution of India](#), Rules and Regulations as well as just and fair principles. Even if a private school does not receive any grant-in-aid from the state nor does its admissions are regulated by a

statute, yet it cannot be permitted to make admissions on the criterion like caste, race or sex etc. in violation of the mandate of our Constitution and any such action of the private body/institute can be declared illegal. However, the teachers or other employees of such private institute/ body can neither claim parity with their counter-parts in Government institutions nor a writ can be issued to such private body/institute for the purpose of regulating service conditions of such employees. The nature of relief sought in a petition under Article 225 of the Constitution, therefore, has material bearing to determine as to whether a private institute/body is amenable or not to the writ jurisdiction of the High Court. So long as the relief is confined to the performance of public duty, the writ shall always lie but once it crosses over to the field of such conditions of the teachers/employees of such institutions or into the internal affairs relating to the management of such institute/body, no relief under Article 226 of the Constitution can be granted receipt where there is some statute, Rules/Regulations framed under the statute or even an executive order of the State Government regulating such service conditions and/or affairs of the institute.

10. We agree with the observations of Surya Kant, J.

11. We are of the considered opinion that the present writ petition would be maintainable against this society, even though it would not be 'State' or 'other authority' under Article 12 of the [Constitution of India](#). We are constrained to reach this conclusion due to the blatant and subversive disregard of the constitutional mandate by the Management Committee of the School.

12. We notice with a deep sense of anguish the confrontationist attitude adopted by the society in deliberately not making payment of the salary to the teachers. The attitude of the school is wholly unjustifiable. Ostensibly, the school has been set up to impart education to young children. For that public purpose, the teachers have been employed. Article 43 of the [Constitution of India](#) specifically prohibits extracting work from any employee without payment. There is a long list of Statutes which cast a legal duty on the employers to make payment of living minimum wages. This institution has flagrantly disregarded the Directive Principles contained in Article 43 of the Constitution. The petitioners had been paid 75 per

cent of the salary up to April, 2003. Since then, even the aforesaid salary has not been paid to them. Taking into consideration the utter mis-management of the Managing Committee, the State of Haryana sought to take over the school by issuing appropriate orders. The school was issued a Show Cause Notice on 17.01.2003 as to why the same should not be taken over. This process is stayed due to interim orders issued by the Civil Court in Ambala.

13. Mr. Gill, learned Senior counsel informs the Court that the aforesaid Show Cause Notice has been challenged in the Civil Court on the ground that the School being a minority institution cannot be taken over. Be that as it may, we find that the action of the respondent-school in not making payment of salary to the teachers since April, 2003, is a clear infringement of Article 21 of the [Constitution of India](#). No authority or a private institution in India is permitted to extract work from any person or employee without making payment of living wages.

14. Mr. Gill submits that the school has no funds. We, thereafter, inquired from Mr. Gill, learned Senior Counsel as to whether the services of any teacher has been terminated. He submitted that the management have refrained from terminating the services of any teacher due to the pendency of the present writ petition. We are wholly un-impressed with the submission made by the learned Senior Counsel. The present writ petition was seeking only a writ in the nature of Mandamus directing the respondent-School to make the payment of salary. There was no prayer made by the petitioners that they should be permitted to continue in service in the school. There were no interim directions issued by this Court. So, clearly the society has unashamedly exploited the unfortunate situation in which these teachers find themselves. We are unable to countenance such an attitude. Since there is a clear infringement of Article 21 of the [Constitution of India](#), the Court would be fully justified in issuing necessary directions to the respondent-school for making the payment of the salary to the teachers. This view of ours will find support from the judgment of the Supreme Court in the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Samarak Trust and Ors. v. V.R. Rudani and Ors., : (1989)IILLJ324SC .

15. We are further fortified in our view by a Full Bench judgment of the this Court in the case of Miss Ravneet Kaur v. The Christian Medical College, Ludhiana, 5 (1997-2)116 The Punjab Law Reporter 321, wherein the following proposition have been culled out in paragraph 59 of the judgment-'In view of the above, we hold that :

(i) Powers of the High Courts under Article 226 of the Constitution are wider than those of the Court of King's Bench in England.

(ii) The power of the High Courts is not confined to the issue of prerogative writs as initially understood in England. The procedural restrictions which had been imposed on the Courts in England do not bind the High Courts in this country. The High Courts are empowered to issue not only writs in the nature of certiorari, mandamus etc. but also orders and directions to enforce fundamental rights or for any other purpose.

(iii) The power under Article 226 of the Constitution is not confined to the enforcement of fundamental rights like the power under Article 32. Still further, the High Courts can issue writs, orders or directions even to any person or authority discharging a public duty for enforcement of the fundamental rights or for any other purpose.

(iv) The words 'any person or authority' used in Article 226 do not mean only State as defined in Article 12 or statutory authorities. These cover any person or body performing a public duty.

(v) In view of the importance of 'health' to the community, institution providing medical education form a distinct class. These institutions perform a public duty and supplement the State's effort. By their affiliation to a University or any other statutory examining body, they become partners with the State. They are, thus, subject to the restrictions contained in Part-III. They are bound to act in conformity with the provisions of the [Indian Medical Council Act, 1956](#) and the rules/regulations framed by the appropriate University/body. Whenever they act unfairly, arbitrarily or violate or prohibitions contained in Part-III of the Constitution or the rules and regulations framed by the University etc. their actions can be

corrected by issue of a writ of certiorari or any other appropriate writ, direction or order. Similarly, if it is found that an institution has failed to carry out an obligation under the Constitution or the rules/ regulations framed by an appropriate body, it can be compelled to perform its duty by the issue of a writ of mandamus. This principle shall, however, not be attracted in case of every private school or college.

(vi) The Full Bench decisions of this Court in *Pritam Singh v. State of Punjab and Ors.* (1982)84 P.L.R. 530 and *Gurpreet Singh Sidhu v. Panjab University, Chandigarh and Ors.* (1983)85 P.L.R. 46 (F.B.) do not contain a correct enunciation of law and are over-ruled.' 16. In our opinion, the inaction by the respondent-school is so grievous, we find no option but to issue a direction for payment of salary to the teachers.

17. At this stage, Mr. Gill, learned Senior Counsel appearing for the School submits that the respondent-school has an income of approximately Rs. 7000/- only. Therefore, it would be impossible to make payment to the teachers. We decline even to entertain this submission.

18. In view of the clearly violation of Article 21 of the [Constitution of India](#), we direct the respondent School to make payment of the entire salary due to the petitioners including 25 per cent of the salary i.e. School share upto April, 2003 and the entire salary from April, 2003 till payment. Let the amount be paid to the teachers within six months in six equal installments. The first installment to commence on or before 07.08.2005.

19. The writ petitions are allowed in the above terms. No cost.

20. A copy of this order be given dasti to the learned Counsel for the petitioners duly authenticated by the Special Secretary of this Court.