

WP(C) 6010/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI

JUDGMENT & ORDER
(CAV)

Both the writ petitions having raised certain common questions of law were heard together and are being disposed of by this common order.

2. The petitioner, Sri Susanta Chakraborty, is an Assistant Teacher in the Little Stars Senior Secondary School, Digboi (hereinafter referred to as 'the school'). He had joined in the said school in the year 1991 and was confirmed in the year 1993. The school in question is a purely private school and affiliated to the Central Board of Secondary Education (hereinafter referred to as 'the CBSE'). The school in question is not in receipt of any grants either from the State Government or the Central Government.

3. WP(C) No. 6010/2007 has been filed seeking a direction for payment of salary to the petitioner at the rate applicable to the teachers of Government schools as per ROP Rules, 1999. The implementation of the State Government's Office Memorandum dated 20.12.2005 for conversion of 50% of the Dearness Allowance into Dearness Pay is the additional relief claimed in the said writ petition. On the other hand, in WP(C) No. 1409/2008, the writ petitioner has prayed for interference of the Court with an order dated 29.3.2008 by which his service has been terminated.

4. A preliminary objection has been raised on behalf of the School Management regarding the maintainability of the writ petitions. It is contended that the respondent School being a purely private institution and not in receipt of Government grants and also being free from any kind of pervasive control of the State authorities, both the writ petitions should be held to be not maintainable and, instead, the petitioner should be left to exhaust his remedies in the realm of private law. In this regard, reliance has been placed by the learned counsel for the respondents, inter alia, on an unreported judgment of this Court delivered on 27.8.2008 in a proceeding registered and numbered as WP(C) No. 2451/2000, perhaps, because of the catalogue of the earlier cases on the point contained therein.

5. To meet the arguments raised on behalf of the School Management with regard to the maintainability of the writ petitions, the petitioner, appearing in person, has relied on the decision of the Apex Court in T.M.A. Pai Foundation & Ors. -vs- State of Karnataka & Ors., (2002) 8 SCC 481. Another decision of the Apex Court in Zee Telefilms Ltd. & Anr. -vs- Union of India & Ors, (2005) 4 SCC 649 has also been relied upon. Sri Chakraborty, who has argued his own case, has submitted that under the Affiliation Bye-Laws framed by the CBSE, there is an obligation on the part of the Management of an affiliated school to pay salary and allowances to the teaching as well as the non-teaching staff of such a school which is not below those applicable to the schools under the control of the State Government. It is further contended by the petitioner that the bye-laws having provided a distinct and well laid down procedure for imposing a penalty, the impugned order of termination dated 29.3.2008 is not tenable in law as the laid down procedure has not been followed in the case of the petitioner.

6. In the unreported judgment of this Court passed in WP(C) 2451/2000, the law with regard to maintainability of writ petitions against orders/ actions of 'other authorities' including the managements of private schools had been elaborately considered by this Court. In the said judgment it was noticed that the issue would be governed by the principles laid down by the Constitution Ben

ch of the Apex Court in Pradeep Kumar Biswas -vs- Indian Institute of Chemical Biology & Ors., (2002) 5 SCC 111 wherein the core of the tests laid down in Ajay Hasia & Ors. -vs- Khalid Mujib Sehravardi & Ors., (1981) 1 SCC 722 has been reiterated, though with a little elaboration.

7. In the aforesaid unreported judgment, this Court has also noticed two other judgments of the Apex Court in Shri Anadi Mukta Sadguru Shree Muktajee Vadasjismwami Suvarna Jayanti Mahotsav Smarak Trust & Ors. -vs- V.R. Rudani & Ors., reported in AIR 1989 SC 1607 and U.P. State Cooperative Land Development Bank Ltd. -vs- Chandra Bhan Dubey & Ors., reported in (1999) 1 SCC 741. In the aforesaid judgments the Apex Court had noticed the fact that the expression 'authority' used in Article 12 would be relevant in situations where enforcement of fundamental rights is involved and further that the similar expression appearing in Article 226 must be understood in a broader light to include even non-statutory authorities performing public duties which would make such bodies amenable to the writ jurisdiction of the High Court even for enforcement of non-fundamental rights under Article 226. However, in U.P. State Co-operative Land Development Bank (supra), the Apex Court had dealt with the possible fall out of consequential enlargement of jurisdiction by cautioning that the power of the High Court under Article 226, though vast, is governed by certain well settled and self-imposed limitations and that the High Court does not act like a proverbial bull in a China shop while exercising jurisdiction under Article 226. What would logically emanate from the above discussion is that though theoretically there are no limitations or restraint on exercise of power by the High Court under Article 226, as a matter of prudence, the High Court will not exercise its high prerogative jurisdiction on the mere asking. Such exercise of power will be made in situations where actions of a Body entrusted with public duties and public functions are alleged to be in breach, either of the statutory provisions or the elementary principles of law. In the last resort, whether jurisdiction is to be exercised or not is a matter of discretion of the High Court; such discretion naturally will be guided by well settled principles of law as already noticed above.

8. The extent of permissible Government control to regulate the affairs of a private educational institution laid down by the Hon'ble Apex Court in T M A Pai Foundation (supra), relied on by the petitioner, can explain the legal effect of the affiliation Bye laws framed by the C.B.S.E. The views contained in paragraphs 31 to 33 of the majority judgment in Zee Telefilms (supra) would also indicate the availability of the power under Article 226 for enforcement of a legal right even if the violation has been occasioned by the action of a private body exercising public functions.

9. In the present case the Respondent School, though a purely private institution, cannot be said to be wholly unconnected with the discharge of duties and functions which are of public nature. Its affiliation to the C.B.S.E. enjoins upon it certain duties by virtue of the bye-laws in force which have been framed to regulate the conduct of private schools which are affiliated to the Board. The eventual conclusion reached in the unreported decision in WP(c) No.2451 of 2000 can be explained by having regard to the reliefs sought in the said writ petition. In the above circumstances the better course of action, in the considered view of the Court, would be to deal with the merits of the contentions urged by the petitioner rather than to reject the writ petitions at the threshold.

10. In so far as the entitlement of the petitioner to salary at par with the salary payable to teachers of Government schools as well as for enforcement of the Office Memorandum dated 20.12.2005 is concerned, the Court has noticed that under Bye-Law 2.a.(i) contained in Chapter -V, failure of an affiliated school to pay salary and allowances at par with those prevailing in the schools under the State Government may be a ground for withdrawal of affiliation by the

CBSE. The context in which the question of payment of salary and allowances at par with the State Government schools has been dealt with by the bye-laws in force cannot establish a right in the petitioner to claim such salary. No right capable of enforcement in law has been vested in the petitioner as a teacher of an affiliated school to receive salary and allowances at par with the State Government schools. At best, any failure of the respondent School to pay such salary and allowances to the petitioner and other employees may be a ground for cancellation of the affiliation by the C.B.S.E. In this regard, the Court has also noticed from the affidavit filed by the School Management that though the school is a private school generating its income from its own resources, attempts are being made to place the salary and allowances of its employees at par with the State Government schools. In the above circumstances, it will be difficult for the Court to recognize any legal right in the petitioner to receive salary at the rate at which it has been claimed in WP(C) No. 6010/2007.

11. The termination of the petitioner from service by order dated 29.3.2008, however, would stand on a different footing. The bye-laws framed by the CBSE i.e. Bye-law 47 lays down an elaborate procedure for imposing a major penalty which conform to the basic requirements of the principles of natural justice. An educational body, even though it may be a private school, discharges some amount of public duties i.e. in spreading education and in setting right values in the field of education. If there are some Rules or procedure that such a body is enjoined to follow by virtue of its affiliation to the CBSE, surely, such Body can be held to be accountable in the domain of public law if its actions are not in conformity with the laid down requirements.

12. In the present case, the petitioner was furnished with a Charge Memo dated 10.1.2008 requiring him to show cause. The petitioner, as it appears, filed his reply to the said Memorandum of Charges after the last date fixed. The matter was placed before the Managing Committee of the school who decided that the reply of the petitioner should be ignored and an enquiry should be held in respect of the charges levelled against the petitioner. On the basis of the report of the Enquiry Committee, the Managing Committee by an order dated 29.3.2008 resolved to impose the major penalty of termination on the petitioner. The materials on record also indicate that a second Charge Memo dated 14.3.2008 was served on the petitioner to which the petitioner submitted his reply on 24.3.2008. What had happened to the aforesaid Charge Memo is not known; perhaps, it has not been pursued as by the order dated 29.3.2008 the service of the petitioner stood terminated. It is, however, evident from the materials available on record that prior to the termination of the petitioner by order dated 29.3.2008, he was neither heard nor any opportunity was given to him to appear before the Enquiry Committee. Even if it is assumed that the petitioner's reply to the Charge Memo dated 10.1.2008 was submitted after the stipulated date, surely, the petitioner should have been involved in the enquiry held against him. As the impugned order of termination has the effect of violating the provisions of the bye-laws framed by the CBSE which apply to the respondent School and the same are in breach of the principles of natural justice, the Court is of the view that the impugned order dated 29.3.2008 should stand interfered with. Accordingly, the said order is set aside with liberty, however, to the respondent School, if they are so advised and if they so desire, to proceed against the petitioner, but in accordance with the bye-laws and other provisions of law in force.

Consequently and in the light of the foregoing discussions, WP(C) No. 6010/2007 is dismissed whereas WP(C) No. 1409/2008 is allowed.