

MANMOHAN SINGH JAITLEA, ETC. ETC.

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v.

THE COMMISSIONER, UNION TERRITORY
CHANDIGARH AND ORS. ETC. ETC.

B

December 19, 1984

[D.A. DESAI AND V. KHALID, JJ.]

Punjab Aided Schools (Security of Service) Act, 1969—S. 3—Holding of inquiry before dismissing an employee of an aided school is mandatory—S. 3 is beneficial provision—On appointment teacher asked to enter into agreement with school management—Agreement in derogation of mandatory provision—Managing Committee terminated service of teacher without holding inquiry by invoking conditions of agreement—Whether amounts to colourable exercise of power—Whether order of termination of service bad and ab initio void.

C

Constitution of India Art. 227—Scope of writ jurisdiction—Expression 'Tribunal' in Art. 227 comprehends Deputy Commissioner and Commissioner which are statutory quasi-judicial authorities under the Punjab Aided Schools (Security of Service) Act, 1969—Deputy Commissioner and Commissioner are amenable to the writ jurisdiction.

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Interpretation—Any agreement not in consonance with the statutory provisions beneficial to a class in need of protection cannot be given effect to if it stands in derogation of the mandatory provisions of the statute.

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Section 3 of the Punjab Aided Schools (Security of Service) Act, 1969 ('1969 Act' for short) provides that no employee shall be dismissed or removed or reduced in rank except after an inquiry to be held in the manner prescribed therein. Sub-sec. (2) provides that no order of dismissal or removal or reduction in rank of an employee shall take effect unless it has been confirmed by the Deputy Commissioner who may refuse to do so, if in his opinion, the provisions of sub-sec. (1) have not been complied with. Sub-sec. (5) permits an aggrieved person to prefer an appeal against any decision or order of the Deputy Commissioner under the section to the Commissioner.

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The appellant in the civil appeal was appointed as Headmaster of an aided school which received 95 percent of its expenses as grant from the Government. As required by the conditions of his appointment, the appellant entered into an agreement with the management of the school. The appellant's appointment was confirmed by the concerned authority. The appellant was confirmed in his post as the Headmaster. The appellant was

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A awarded a certificate of honour by the Chandigarh administration in token of appreciation of the outstanding performance of the appellant. After the term of the Managing Committee which appointed the appellant expired and the new Managing Committee took over, the services of the appellant were terminated invoking the conditions of the agreement entered into by the appellant. The appellant's appeal to the Deputy Commissioner and the Commissioner were turned down. The appellant's writ petition was dismissed by the High Court *in limine*. The High Court observed that as the school cannot be said to be 'other authority' under Art. 12 of the Constitution, it was not amenable to the writ jurisdiction of the High Court. Hence this appeal by Special Leave.

C The petitioner in the writ petition was appointed as a Drawing Teacher in 1976. As required by the conditions of his appointment the petitioner entered into an agreement with the management. In 1983 the petitioner's services were terminated invoking the conditions of the agreement. The petitioner approached the Deputy Commissioner and the Commissioner without success. Thereupon he filed the present writ petition under Art. 32 of the Constitution.

D Allowing both the appeal and the writ petition,

E HELD : Any agreement not in consonance with the statutory provisions beneficial to a class in need of protection cannot be given effect to if it stands in derogation of the mandatory provisions of the statute. Section 3 of the 1969 Act makes it obligatory to hold a disciplinary inquiry before an employee of an aided school can be either dismissed removed or reduced in rank. In order to circumvent this mandatory provision, a resort to the provisions of the agreement in the context of the fact that an inquiry was commenced and given up clearly indicates the true nature of the order as well as colourable exercise of power. And this was done by the new Managing Committee which appeared to be keen to dispense with the service of persons appointed by the outgoing Managing Committee. This smacks of malafide. For these reasons the order of termination of service of the appellant is bad and *ab initio* void. [485E-G]

G The High Court declined to grant any relief on the ground that an aided school is not 'other authority' under Art. 12 of the Constitution and is therefore not amenable to the writ jurisdiction of the High Court. The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 1969, Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehended in the expression 'Tribunal' as used in Art. 227 of the Constitution which confers power of superintendence over all courts and tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review namely a writ of certiorari by the High Court under Art. 227 of the Constitution. The decision questioned before the High Court was of the Deputy Commissioner and the Commissioner exercising powers under Sec. 3 of the 1969 Act. And these statutory

authorities are certainly amenable to the writ jurisdiction of the High Court. [485G-H; 486A-C]

After the decision of the Constitution Bench of this Court in *Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors. etc.* the aided school receiving 95% of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who are subject to the regulations made by the Education Department of the Union Territory of Chandigarh as also the appointment of Headmaster to be valid must be approved by the Director of Public Instructions, would certainly be amenable to the writ jurisdiction of the High Court. [486C-D]

Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors. etc., [1981] 2 SCR 79, referred to.

The Deputy Commissioner and the Commissioner in terms held in both the cases that because of the terms of the agreement entered into by each of the teachers with the management of the school, it would not be open to them to go behind the order and to find out the true nature of the order. Now if the management of the school intends to circumvent the mandatory provisions of Sec. 3 of the 1969 Act, it has merely to terminate the service by giving one month's notice as provided in the agreement and the provisions controlling the arbitrary powers of the management to hire and fire can be rendered nugatory. The Deputy Commissioner cannot take an easy recourse becoming oblivious to his duties merely to pay lip sympathy to the order made by the management and decline even to examine the allegation of malafide as also the true nature and character of the impugned order. [484B-D]

CIVIL APPEAL JURISDICTION : Civil Appeal No. 2137 of 1984.

From the Judgment and Order dated 24.2.83 of the Punjab and Haryana High Court in Civil Writ No. 1086/83.

WITH

Writ Petition No. 11238 of 1983

Under Article 32 of the Constitution

K.G. Bhagat, Additional Solicitor General and Vimal Dave for the appellant in CA. No. 2137/84.

K.G. Bhagat, Additional Solicitor General and Ms. Asha Rani Jain for the petitioner in WP. No. 11238/83.

Prithvi Raj and R.C. Pathak for the respondents.

The Judgment of the Court was delivered by

A DESAI, J. Guru Nanak Khalsa High School ('School' for short) an aided school and hence governed by The Punjab Aided Schools (Security of Service) Act, 1969 ('1969 Act' for short) in its application to the Union territory of Chandigarh dispensed with the service of the Headmaster of the School, appellant Shri Manmohan Singh Jaitla, and the drawing teacher Amir Singh claiming to exercise power under an agreement executed by each of them with the management of the school. Admittedly, the school receives 95% of its expenses as grant from the Government and for contribution 5% of the expenses claims thoroughly arbitrary powers to be presently pointed out which appears to be anachronistic. The action of the Managing Committee of the school in dispensing with the services of both the aforementioned persons is questioned in these two matters on more or less identical grounds and therefore they were heard together and are being disposed of by this judgment.

In Re : C.A. No. 2137/84 :

D Pursuant to an advertisement inviting application for the post of Headmaster of the School, appellant—Shri Manmohan Singh Jaitla applied for the same. He was interviewed on March 28, 1976 and on the same day by the order of the same date, he was offered the post of Headmaster in the school in the prescribed scale with usual allowances sanctioned by the Education Department, Chandigarh Administration for grant-in-aid Schools. The order of appointment provided that the appointee will be on probation for a period of one year and that he will be required to enter into an agreement with the school. The appellant accepted the appointment order and joined service. As required by the regulations of the Education Department of Chandigarh Administration, his appointment was subject to confirmation by the Director of Public Instruction. The confirmation was granted as per the order dated August 11, 1976. By the resolution of the Managing Committee of the School dated June 2, 1977, the appellant was confirmed with effect from May 1, 1977 in his post as the Headmaster. In token of the appreciation of the outstanding performance of the appellant as Headmaster in the field of academic work/co-curricular activities and administration during the session 1980-81, he was awarded a certificate of honour by the Finance and Education Secretary, Union Territory of Chandigarh, on August 10, 1981. It appears that the term of the earlier Managing Committee expired and a new Managing Committee took over with effect from March 24, 1982. On January 31, 1983, the Education Managing Committee of the school informed the appellant that his

services were no longer required with effect from that very day i.e. January 31, 1983 and in terms of Condition No. (iii) of the agreement entered into by him, he would cease to be in the employment of the school and was directed to hand over charge to Mrs. Gurcharan Kaur. The appellants application for relief to the Deputy Commissioner under sub-sec. (2) of Sec. 3 of the 1969 Act was turned down. After an unsuccessful appeal to the Commissioner, the appellant approached the High Court of Punjab and Haryana at Chandigarh under Art. 227 of the Constitution. The High Court rejected the writ petition in limine but by a speaking order observing that as the school cannot be said to be 'other authority' under Art. 12 of the Constitution, it was not amenable to the writ jurisdiction of the High Court. Hence this appeal by special leave

In Re W. P. No. 11238/83:

Petitioner Amir Singh was appointed by the Managing Committee of the School on March 21, 1976 as a Drawing Teacher as per the appointment order No 1265 dated March 21, 1976. This appointment was made upon an application made by the petitioner and after he was interviewed by the concerned committee of the school. The appointment order spells out some of the conditions of appointment, one of them may be noticed. The appointee had to enter into an agreement with the management with the management of the school. The petitioner was informed by a letter dated February 28, 1983 that as per the resolution adopted by the Managing Committee of the school, it was resolved to terminate the service of the petitioner as no longer required with effect from the forenoon of March 4, 1983 in terms of first part of clause (6) of the agreement entered into between the petitioner and the Management. The petitioner approached the Deputy Commissioner and the Commissioner without success. Thereupon he filed present petition under Art. 32 of the Constitution.

It is not in dispute that the school is governed by the 1969 Act. It is an aided school receiving aid from the State Government to the tune of 95% of its expenses. Sec. 3 of the 1969 Act provides that no employee shall be dismissed or removed or reduced in rank except after an inquiry to be held in the manner prescribed therein. Sub-sec. (2) provides that no order of dismissal or removal or reduction in rank of an employee shall take effect unless it has been confirmed by the Deputy Commissioner who may refuse to do so, if in his opinion, the provisions of sub-sec. (1) have not been complied with. Sub-sec. (5) permits an aggrieved person to prefer an appeal

A against any decision or order of the Deputy Commissioner under the section within a period of thirty days to the Commissioner. Sub-sec. (6) provides that the order of the Commissioner shall be final and binding between the parties.

B The Deputy Commissioner and the Commissioner in terms held in both the cases that because of the terms of the agreement entered into by each of the teachers with the management of the school, it would not be open to them to go behind the order and to find out the true nature of the order. It was also submitted on behalf of the respondent that under the relevant regulations of the

C Education Department of the Chandigarh Administration every employee of an aided school has to enter into an agreement with the management of the school. Now if the management of the school intends to circumvent the mandatory provisions of Sec. 3 of the 1969 Act, it has merely to terminate the service by giving one month's notice as provided in the agreement and the provisions controlling the arbitrary powers of the management to hire and fire can be rendered nugatory. The Deputy Commissioner cannot take an easy recourse becoming oblivious to his duties merely to pay lip sympathy to the order made by the management and decline even to examine the allegation of malafide as also the true nature and character of the impugned order. In the garb of enforcing a term of the

D agreement what was sought to be done in this case was to impose the penalty of removal. And there is sufficient material on record to show that the action was malafide.

E Turning to the case of Manmohan Singh Jaitla, the Headmaster, the facts hereinabove narrated would affirmatively show that he was fully qualified and that he was appointed after interview and selection. He was confirmed. He received a certificate of merit from the Chandigarh Administration. The moment the Managing Committee changed exposing the inter-se squabbles amongst persons trying to usurp control of the management of the school, almost wholly financed by the public exchequer, to wreck vengeance against those who were appointed by the outgoing management which may have been defeated at the hustings, the agreement was invoked and the services terminated. Throwing out persons appointed by outgoing management is only one side of the coin. The moment the vacancy occurs, nepotism or corruption will have field day. Since the new management took, over quietly within a few months, service of the Headmaster was terminated on the ground that his service was no longer required. We repeatedly asked Mr. Prithvi Raj,

learned counsel for the respondent-school management as to how it would run a school without a Headmaster. We naggingly persisted with the question as to why it became necessary, obviously in the middle of the term or session on January 31, 1983, to dispense with the service of a Head Master and a Drawing teacher on the ground that they were no longer required. We waited for the answer in vain. Obviously, there could be none and that provides proof, if any was needed, to expose the chink in the cupboard revealing the malafides of the newly elected Managing Committee. We cannot efface the feeling that ignoring the meritorious service for a period of seven years the service of the appellant was dispensed with for a reason wholly untenable but only because he was appointed by the outgoing Managing Committee ignoring that his appointment was confirmed by the competent authority of the Chandigarh Administration. Coupled with this is the fact that a charge-sheet was served on the appellant on April 9, 1979 and a disciplinary enquiry was commenced by the school management. But the same was withdrawn and the power to terminate the service under the agreement was invoked and exercised. This gives a clear indication as to the punitive character of the order namely punishment for a possible misconduct and also colourable exercise of power by resorting to the agreement. Any agreement, not in consonance with the statutory provisions beneficial to a class in need of protection cannot be given effect to if it stands in derogation of the mandatory provisions of the statute. Sec. 3 makes it obligatory to hold a disciplinary enquiry before an employee of an aided school can be either dismissed, removed or reduced in rank. In order to circumvent this mandatory provision, a resort to the provisions of the agreement in the context of the fact that an enquiry was commenced and given up clearly indicates the true nature of the order as well as colourable exercise of power. And this was done by the new Managing Committee which appeared to be keen to dispense with the service of persons appointed by the outgoing Managing Committee. This smacks of malafide. For all these reasons the order of termination of service of the appellant is bad and *ab initio* void.

The High Court declined to grant any relief on the ground that an aided school is not 'other authority' under Art. 12 of the Constitution and is therefore not amenable to the writ jurisdiction of the High Court. The High Court clearly overlooked the point that Deputy Commissioner and Commissioner are statutory authorities operating under the 1969 Act. They are quasi-judicial authorities and that was not disputed. Therefore, they will be comprehen-

A ded in the expression 'Tribunal' as used in Art. 227 of the Constitution which confers power of superintendance over all courts and tribunals by the High Court throughout the territory in relation to which it exercises jurisdiction. Obviously, therefore, the decision of the statutory quasi-judicial authorities which can be appropriately described as tribunal will be subject to judicial review

B namely a writ of certiorari by the High Court under Art. 227 of the Constitution. The decision questioned before the High Court was of the Deputy Commissioner and the Commissioner exercising powers under Sec. 3 of the 1969 Act. And these statutory authorities are certainly amenable to the writ jurisdiction of the High Court.

C The matter can be viewed from a slightly different angle as well. After the decision of the Constitution Bench of this Court in *Ajay Hasia etc. v. Khalid Mujib Sehrawardi & Ors. etc.*⁽¹⁾ the aided school receiving 95% of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who is subject to the regulations made by the Education Department of the Union Territory of Chandigarh as also the appointment of Head Master to be valid must be approved by the Director of public Instructions, would certainly be amenable to the writ jurisdiction of the High Court. The High Court unfortunately, did not even refer to the decision of the Constitution Bench in *Ajay Hasia's case* rendered on November 13, 1980 while disposing of the writ petition in 1983. In *Ajay Hasia's case*, Bhagwati, J. speaking for the Constitution Bench inter alia observed that 'the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.' Add to this 'the existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.' Substituting the words 'public trust' in place of the 'corporation' and the reasons will *mutatis mutandis* apply to the school. Therefore, also the High Court was in error in holding that the third-respondent school was not amenable to the writ jurisdiction of the High Court.

G It would thus appear that the order of termination of service is unsustainable for more than one reason and therefore, the order of termination of service No. 58/83/20 dated January 31, 1983 is quashed and set aside and the appellant Manmohan Singh Jaitla is reinstated in service as the Headmaster of the school with continuity

in service and full backwages. If under the orders of this Court dated March 2, 1983, May 2, 1983 and subsequent orders, the appellant-Headmaster is paid his monthly salary, credit shall be taken for the same.

Amir Singh, the Drawing Teacher has met with the same fate. He was appointed pursuant to his application for a vacant post of a Drawing Teacher. Right from the inception, he was a confirmed hand in the sense that he was not put on probation. Suddenly, after the new Managing Committee got into saddle, his service was terminated with effect from March 4, 1983 on the ground that it was no longer required. No attempt was made before us to sustain the order on this untenable ground. Therefore, the only distinguishable feature of this case with the case of the Headmaster Manmohan Singh Jaitla is that no charge-sheet was served upon the petitioner-Drawing Teacher. Save and except this difference, all the reasons which weighed with us in quashing the order of termination of service of Headmaster-Mr. Jaitla would *mutatis mutandis* apply to the case of this Drawing Teacher. To restate these reasons would merely add to the length of this judgment. As a corollary, the rule will have to be made absolute after quashing and setting aside the order of termination of service dated February 28, 1983 and directing reinstatement of Drawing Teacher Amir Singh in service with continuity in service with full backwages.

Accordingly, C. A. No. 2137/84 is allowed and the order terminating the service of Headmaster Manmohan Singh Jaitla is quashed and set aside as also the decisions of the Deputy Commissioner and the Commissioner and the Judgment of the High Court are quashed and set aside. The appellant Headmaster Shri Manmohan Singh Jaitla is reinstated in service with continuity in service and full backwages subject to the fact that if backwages have been paid under the orders of this Court, credit may be given for the same.

Rule is made absolute in the writ petition filed by Drawing Teacher Amir Singh and the order terminating his service dated February 28, 1983 is quashed and set aside as also the orders of the Deputy Commissioner and Commissioner and he is reinstated in service with continuity in service with back-wages.

The respondent-School management shall pay the costs to both the employees separately quantified in each case at Rs 1, 500.