WP-108-2017

(DR. PUSHKAR GUPTA Vs ***THE STATE OF MADHYA PRADESH)***

31-01-2017

Shri Pankaj Dubey, learned counsel for the petitioner.

Smt. Sonali Shrivastava, learned Panel Lawyer for the respondent No.1/State.

Shri Veer Vikrant Singh, learned counsel for the respondent No.2.

Shri Arpan Pawar, learned counsel for the Director, Hitkarni Dental College and Hitkarni Sabha.

None for the respondent No.5.

Parties are heard on I.A. No.981/17 whereby the preliminary objection is raised by the employer about the maintainability of this petition.

Shri Pankaj Dubey, learned counsel for the petitioner submits that the petitioner was initially appointed as a Lecturer in 2007. Rani Durgawati Vishwa Vidyalaya granted him status of Reader in 2011 as per recommendations of a duly constituted committee under Clause 28 of the College Code. Thereafter, the petitioner became Professor. The main grievance of the petitioner is that without subjecting him to any disciplinary proceedings or without placing him under suspension, abruptly w.e.f. 01-12-2016, the respondents restrained the petitioner to put his signature on the attendance register. In addition, the petitioner was deprived by the institution to perform his lawful duties. Thus, the petitioner has prayed for issuance of writ of mandamus to permit him to perform his duties.

Shri Dubey further submits that although the

respondent- institution is an unaided private institution, it is discharging a public function being an educational institution. The service conditions of the petitioner are governed by statutory provision of the College Code. The College Code prescribes the method by which an employee can be placed under suspension. It also provides the method regarding initiation and completion of disciplinary action. The respondents have not followed the statutory mandate of the College Code and orally issued directions pursuant to which the petitioner is deprived to perform his duties. By placing reliance on the judgment of Supreme Court reported in ***(2015) 16 SCC 530 (Janet Jeyapaul vs. SRM University & Ors.)***, it is urged that the respondents are imparting education in higher studies to the students at large and, therefore, they are discharging â□□public functionâ□□. Thus, they are amenable to the writ jurisdiction of this Court. He further submits that once statutory provision is infringed, the form or body of the institution does not make any difference. Reliance is placed on ***(1989) 2 SCC 691 (Andi Mukta Sadguru Shree Muktajee Vandas Swami Surarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors.)***. He also placed reliance on the orders passed by this Court in ***WP. No.13989/16 (Dr. Smt. Indu Thakur vs. State of M.P. & Ors.)*** wherein the termination order was set aside by this Court which was found to be in violation of Clause 28 of the College Code. Shri Dubey also placed reliance on the order passed in ***WP. No.12587/16 (R.S. Jaswal vs. State of M.P. & Ors.)***, it is urged that in the said case also the respondent-institution

took similar objection about the maintainability of the petition. Despite the said objection, interim order is passed by this Court in favour of the petitioner therein.

Per contra, Shri Arpan Pawar, learned counsel for the respondent No. 4 and 6 submits that the respondent-institution is an unaided private institution. The dispute between the petitioner and the institution is purely a private dispute. As per Shri Pawar, neither the respondent-institution is amenable to writ jurisdiction of this Court nor the subject matter of dispute falls within the four corners of a dispute, which has any â□□public law elementâ□□ in it. In support of this contention, he placed reliance on the judgments of Supreme Court reported in ***(2015) 4 SCC 670 (K.K. Saxena vs. International Commission on Irrigation and Drainage & Ors.) and (2003) 10 SCC 733 (Federal Bank Ltd. vs. Sagar Thomas & Ors.)***. In addition, he placed reliance on the orders of this Court reported in ***2008 (4) MPLJ 611 (Yashwant Singh vs. Teresian Carmel Educational Society) and 2010 SCC Online MP 659 (Mrs. Kavita Bapat vs. State of M.P. & Ors.)***.

Shri Veer Vikrant Singh, learned counsel for the respondent No.1 and Smt. Sonali Shrivastava, learned Panel Lawyer for the respondent No.1/State submit that the aspect of preliminary objection is between the petitioner and the respondent-institution and at this stage they do not want to argue on this aspect.

I have heard the parties at length and perused the record.

This is not in dispute between the parties that service conditions of teachers of even an unaided institution admitted to the privilege of university are governed by College Code. The College Code prescribes the manner and method by which an employee can be placed under suspension. It further provides the methodology of taking disciplinary action against an employee. So far as the preliminary objection is concerned, the core issues are (i) whether the respondent-institution being an unaided private institution is amenable to the writ jurisdiction of this Court and (ii) whether the nature of dispute is such which can be subject matter of adjudication in writ jurisdiction.

The legal position is settled in this regard. After considering various judgments, the Apex Court in ***Janet Jeyapaul (supra)*** opined that when the institution is engaged in imparting education in higher studies to the students at large, it is amenable to the writ jurisdiction under Article 226 of the Constitution. Considering the aforesaid, I am unable to hold that the respondent-institution is not amenable to the writ jurisdiction of this court.

So far as the nature of dispute is concerned, no doubt in the case of ***Federal Bank (supra)***, the Apex Court opined that a writ petition would not be maintainable against a private body merely because the said body is regulated by any statutory provision. In Para 33 of the judgment of Federal Bank, the Apex Court opined that a private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel

such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. A microscopic reading of this analysis by Supreme Court makes it clear that writ jurisdiction can be exercised in two clear eventualities namely; (i) where it is necessary to compel such body to enforce any statutory obligation; (ii) the mandamus can be issued where obligations are of public nature casting positive obligation upon it.

As per judgment of ***Federal Bank (supra)*** also, it is clear that if statutory mandate of Clause 28 of College Code is violated, the writ of mandamus can be issued for its enforcement. So far as the judgment of ***K.K. Saxena (supra)*** is concerned, in this case also the Apex Court held that before issuing any writ, particularly writ of mandamus, the Court has to satisfy that the action of such an authority which is challenged, is in the domain of public law as distinguished from private law.

The Apex Court in ***Ramesh Ahluwalia vs. State of Punjab & Ors. (2012) 12 SCC 331*** held as under:-

> â□□*12. We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (supra), there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State Authorities.*

13. In the aforesaid case, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under :

> *â□□20. The term â□□authorityâ□□ used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words â□□any person or authorityâ□□ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.*
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> *22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: â□□To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.â□□ We share this view. The judicial control over the fast*

expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available â□□to reach injustice wherever it is foundâ□□. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.â□□

The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgment in Unni Krishnan and Zee Telefilms Ltd.(supra), brought to our notice by the learned counsel for the Appellant Mr.Parikh.

14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent â□□ institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions, i.e. providing education to children in their institutions throughout India.â□□ (Emphasis supplied)

In ***Andi Mukta Sadguru (supra)***, the Apex Court held as under:-

â□□*20. The term â□□authorityâ□□ used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental*

rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words â□□any person or authorityâ□□ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.â□□ (Emphasis supplied)

A Constitution Bench of Supreme Court in ***(2005) 4 SCC 649 (Zee Telefilms Ltd. & Anr. vs. Union of India & Ors.)*** held as under:-

â□□*31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligations or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.*

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only

under the ordinary law but also under the Constitution, by way of a writ petition under Article 226.â

In the case of ***Janet Jeyapaul (supra)***, the Apex Court considered the view taken in the case of ***Andi Mukta Sadguru (supra)*** and ***Zee Telefilms Ltd.(supra***) and opined that the writ petition against a private unaided institution is maintainable. Pertinently, in the case of ***Ramesh Ahluwalia (supra)*** the writ petition was filed against an order dated 08-01-2008 whereby Shri Ramesh Ahluwalia was removed from service. Similarly, in ***Janet Jeyapaul (supra)*** the appellant therein challenged the notice dated 04-04-2012 whereby she was given one month's notice before removal from service. In this kind of dispute, the Apex Court held that writ is maintainable. Thus, following the *ratio decidendi* of these judgments, it cannot be said that the petition is not maintainable against the institution for the present grievance. In view of these Supreme Court judgments, the judgments of this Court cited by Shri Arpan Pawar are of no assistance to him.

As analyzed above, the preliminary objection raised by the employer cannot be upheld. The said objection is overruled.

With the consent, parties are heard on the question of interim relief.

Learned counsel for the institution is unable to rebut the contention of the petitioner that he can be deprived from his right to perform his duties only as per the procedure laid down in the College Code. There is no material/order on record which shows that the petitioner

was deprived to perform his duties by passing any lawful order. In ***AIR 1959 SC 93 (Sri Baru Ram vs. Shrimati Prasanni & Ors.) and (2001) 4 SCC 9 (Dhanajaya Reddy vs. State of Karnataka)***, it was held that when a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. This view is followed by this Court in ***2011 (2) MPLJ 690 (Satyanjay Tripathi and Another Vs. Banarsi Devi)***. Hence, in my view, the action against the petitioner can be taken only in consonance with the statutory provision of College Code. In absence of showing any enabling provision by the institution to deprive the petitioner from his right to perform his duties, I am inclined to grant interim relief, as prayed for, to the petitioner.

At this stage, Shri Arpan Pawar and other counsel for the parties contended that the only question involved in this case has already been dealt with and decided in this order and, therefore, in place of passing interim order, this matter may be treated as finally heard and this petition may be disposed of by passing necessary directions.

Prayer is reasonable and allowed.

Accordingly, with the consent of the parties, this matter is treated as finally heard. For the reasons stated above, the action of employer in not permitting the petitioner to perform his duties is disapproved. The respondents are directed to permit the petitioner to perform his lawful duties forthwith. However, this order will not come in the way of the respondents in passing lawful orders against the petitioner or taking appropriate action against

him in accordance with law.

With the aforesaid observations, this petition is disposed of.

C.C. as per rules.

(SUJOY PAUL)
JUDGE

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