Ramesh Ahluwalia vs State Of Punjab & Ors on 13 September, 2012

Author: H.L. Gokhale

Bench: H.L. Gokhale

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6634 OF 2012
(Arising out of SLP(C) No.7232/2011)

RAMESH AHLUWALIA Appellant(s)

:VERSUS:

STATE OF PUNJAB & ORS. Respondent(s)

O R D E R

Leave granted.

We have heard the learned counsel for the parties at length and also perused the entire records.

The Appellant Ramesh Ahluwalia was working as an Administrative Officer in the DAV Public School, Lawrence Road, Amritsar. He has been serving in that institution since 1st April, 1983. At the relevant time, the Appellant was working as an Administrative Officer, to which post he was promoted by order dated 1st August, 2005. It appears that one lady official Smt. Jaswinder Kaur made a complaint to the Principal of the School on 28th November, 2006 about the alleged misconduct of the Appellant on 17.11.2006. On the basis of the aforesaid misconduct, the Appellant was issued a warning letter by the Principal Smt. Neera Sharma on 9th December, 2006. On 21st December, 2006, Smt. Jaswinder Kaur made another written complaint addressed to the Manager.

The Appellant complains that without granting any opportunity of being heard, on 1st February, 2007 he was downgraded and transferred to another school to work as an Assistant. This order was also passed by Principal Smt. Neera Sharma. Again, on 8th February, 2007, Smt. Jaswinder Kaur

submitted a further affidavit regarding her complaint. Therefore, a Memorandum/ Charge-sheet dated 17th March, 2007 was served upon the Appellant under Bye-law 47 of the Central Board of Secondary Education Affiliation Bye-Laws. After obtaining the explanation of the Appellant, the Manager of the Managing Committee of the school, being the Disciplinary Authority, appointed an Inquiry Officer and a regular inquiry was held against the Appellant.

We may notice here that the Principal Smt. Neera Sharma appeared before the Inquiry Officer as Management Witness No.2. Ultimately, the charges were said to have been proved against the Appellant. Subsequently, the Inquiry Report was served on the Appellant and he was given an opportunity to make a representation against the same. The Appellant submitted his representation detailing his various contentions. Upon consideration of the entire matter, it appears that the Disciplinary Authority passed an order on 8th January, 2008 directing the Appellant to be removed from service.

Against the aforesaid order of removal, the Appellant submitted an appeal before the Disciplinary Committee under Bye-Law 49 of the CBSE Affiliation Bye-Laws. Bye-Law 49 of the said Bye-Laws provides as under:

> "49. Disciplinary Committee
>
> 1) In case the employee wishes to appeal against the order of the Disciplinary Authority, the appeal shall be referred to a Disciplinary Committee. The Disciplinary Committee shall consist of the following:
>
> (a) The Chairman of the School Managing Committee or in his absence any member of the Committee, nominated by him.
>
> (b) The Manager of the school, and where the disciplinary proceedings is against him/her any other person of the Committee nominated by the Chairman.
>
> (c) A nominee of the Board appropriate authority. H/she shall act as an adviser.
>
> (d) The Head of the school, except where the disciplinary proceeding is against him/her, the Head of any other school nominated by the CBSE or Director of Education in case the Act so provides.
>
> (e) One teacher who is a member of SMC of the school nominated by the Chairman of the Committee.
>
> 2) The Disciplinary Committee shall carefully examine the findings of the inquiry officer reasons for imposing penalty recored by the Disciplinary Authority and the representation by the employee and pass orders as it may deem fit." A perusal of the aforesaid Bye-Law clearly shows that an order of the Disciplinary Authority can be challenged before the Disciplinary Committee by way of filing an appeal. The

> constitution of the Disciplinary Committee includes, amongst others, Head of the school. In accordance with the aforesaid Bye-law, the Appellant duly submitted an appeal but the same was rejected by the Disciplinary Committee on 18th/19th of December, 2008.

Aggrieved by the aforesaid decision, the Appellant challenged the order of the Disciplinary Committee before the High Court by filing CWP No.11691/2009. The aforesaid writ petition has been dismissed by the learned Single Judge in limine, but by passing a speaking order. Relying on the judgment of this Court in Zee Telefilms Ltd. & Anr. vs. Union of India & Ors., (2005) 4 SCC 649, the Appellant had submitted that he was entitled to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India as the respondent school was performing public functions by providing education to young children. The aforesaid submission of the Appellant has been rejected by the learned Single Judge with the following observations:

> "After hearing counsel, for the Appellant, I do not find any force in the contention raised by him. The respondent school, being an unaided and a private school being managed by a Society, is not an instrumentality of the State, in my opinion, the Appellant has the efficacious remedy to challenge the impugned orders before the Civil Court. In the instant case, while challenging the impugned orders, the Appellant has raised certain disputed questions of facts. Thus, in the facts and circumstances of the case, I am not inclined to entertain this petition and the same is accordingly, dismissed with liberty to the Appellant to avail his alternative remedy." Against the order passed by the learned Single Judge, the Appellant filed Letters Patent Appeal No.368 of 2010 before the Division Bench of the High Court. The Division Bench, vide its order dated 25th October, 2010, dismissed the LPA filed by the Appellant by observing that there is no infirmity in the order passed by the learned Single Judge. Hence, the present special leave petition by the Appellant.
>
> Mr. Parikh, learned counsel appearing on behalf of the Appellant submitted that the judgment of the learned Single Judge as also of the Division Bench of the High Court are contrary to the law laid down by this Court in a catena of judgments. He has made a reference to the judgments of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. Vs. V.R. Rudani and Ors., (1989) 2 SCC 691, Unni Krishnan J.P. and Ors. Vs. State of Andhra Pradesh and Ors. (1993) 1 SCC 645 and Zee Telefilms Ltd. & Anr. Vs. Union of India & Ors. (2005) 4 SCC 649 and submitted that even though the respondent School would not fall within the definition of "State" or other authority/instrumentality of the State under Article 12 of the Constitution of India, yet the writ petition would be maintainable as the Managing Committee of the School is running schools throughout India and thus performing very important public functions.

On the other hand, Mr. S.S. Ray, learned counsel appearing on behalf of respondent Nos.2-4 submitted that no writ petition would be maintainable against the respondent - institution. In support of his submission, learned counsel has placed reliance in the case of Pradeep Kumar Biswas

Vs. Indian Institute of Chemical Biology & Ors., (2002) 5 SCC 111, particularly making reference to paragraph 40 of the aforesaid judgment. Paragraph 40 of the aforesaid judgment is extracted hereunder:

> "The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. 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." 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. 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 :
>
> "20. The term "authority" 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 "any person or authority" 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.
>
> 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: "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." 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 "to reach injustice wherever it is found". 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." 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.

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 – 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.

We must, however, notice that the learned Single Judge has dismissed the writ petition also on the ground that it involves disputed questions of fact. Mr.Ray, learned counsel appearing on behalf of the respondents has submitted that the appellant actually has not been able to contradict any of the proven facts. According to the learned counsel, the remedy of the appellant is to file a civil suit, if so advised. Therefore, the writ petition has been rightly dismissed by the High Court.

Mr. Parikh, learned counsel for the appellant, however, submits that civil suit would not be an alternative efficacious remedy in the facts of this case. In support of this submission, he brought to our notice certain observations made by a Constitution Bench of this Court in T.M.A. Rai Foundation and Ors. vs. State of Karnataka and Ors., (2002) 8 SCC 481. Learned counsel pointed out that, in the aforesaid case, this Court had directed that the Appellate Tribunal should be set up in each district of each State to hear appeals over the decisions taken by the Disciplinary Bodies of even purely private educational institutions. It was emphasised that speedy resolution of the disputes between the teachers and the management is in the interest of all, i.e. students, management as well as the concerned teachers. It appears that at the time when the appeal of the appellant was heard, such a tribunal had not been set up in the State of Punjab. The appeal filed before the Disciplinary Committee was also not referred to the District Judge by the Disciplinary Committee.

We are of the considered opinion that since the writ petition clearly involves disputed questions of fact, it is appropriate that the matter should be decided by an appropriate Tribunal/Court.

At this stage, we are informed that the State of Punjab has set up a tribunal, namely, Punjab School Education Tribunal, Mohali, which is empowered to entertain appeals even where orders have been passed by unaided private educational institutions. In that view of the matter, the remedy of appeal is clearly available to the appellant. It would, therefore, be appropriate for the appellant to avail the remedy of appeal before the aforementioned Education Tribunal.

Mr. Parikh, learned counsel for the appellant has pointed out that the appellant's appeal having already been decided under the Bye-Law 49, the observations made by the aforesaid Disciplinary Committee may not influence the proceedings before the Appellate Authority. In our opinion, such an eventuality will not arise.

In the petition before the High Court as well as the appeal before this Court, the appellant has submitted that the entire disciplinary proceedings are vitiated due to the participation of the Principal, who was biased against the appellant. In our opinion, the order passed by the Disciplinary Committee cannot be sustained on the short ground that Smt. Neera Sharma was a member of the aforesaid Disciplinary Committee. In our opinion, she was clearly disqualified from participating in any deliberations of the Disciplinary Committee as she had appeared as Management Witness No.2. It is well settled principle of law that no person can be a Judge in his own cause. Having supported the case of the management, it was not appropriate for Smt. Neera Sharma to participate in the proceedings of the Disciplinary Committee. Given the background of the allegations made by the appellant at all stages of the enquiry not only against the principle, but also the Manager of the School, it was necessary for her to disassociate from the proceedings, to nullify any plea of apprehended bias. Furthermore, when the appeal was being decided by the Disciplinary Committee with regard to the legality or otherwise of the order passed by the Disciplinary Authority, the decision of the Disciplinary Committee not only had to be fair but it also had to appear, to be fair. This is in conformity with the principle that justice must not only be done, but must also appear to be done. Actual and demonstrable fair play must be the hallmark of the proceedings and the decisions of the administrative and quasi judicial tribunals. In particular, when the decisions taken by these bodies are likely to cause adverse civil consequences to the persons against whom such decisions are taken. For the aforesaid reasons, the order dated 18th/19th December, 2008 passed by the Disciplinary Committee is hereby quashed and set aside.

At this stage, learned counsel appearing on behalf of the respondents submits that, in fact, the appeal filed by the appellant ought to be remitted back to the Disciplinary Committee which would not include Smt.Neera Sharma as a member of the said committee.

Having noticed the entire fact situation above and the time which have elapsed since the order of removal was passed, we are of the opinion that it would be inappropriate at this stage to relegate the appellant back to the Disciplinary Committee. In the interest of justice, we permit the appellant to challenge the order of the Disciplinary Authority dated 8th January, 2008 before Punjab School Education Tribunal, Mohali. The appeal shall be filed by the appellant within thirty days from today. Since the order of the Disciplinary Authority was passed on 8th January, 2008, the appeal may well be beyond limitation period.

Keeping in view the peculiar facts and circumstances of this case, we direct that the appeal filed by the appellant shall be decided by the aforesaid Education Tribunal on merits and the same shall not be rejected on the ground of limitation. If the appeal is filed by the appellant within the period stipulated above, the Education Tribunal shall take final decision thereon within a period of three months.

It is made clear that the Education Tribunal shall decide the appeal on the assumption that no opinion has been expressed by this Court on the merits or the controversy raised by the parties.

With the aforementioned observations and direction, the impugned judgments passed by the learned Single Judge as also the Division Bench of the High Court are set aside and the appeal is disposed of.

... ... J. (SURINDER SINGH NIJJAR)
.....J. (H.L. GOKHALE) New Delhi;

September 13, 2012.