

Managing Committee, Khalsa Middle ... vs Mohinder Kaur (Smt) And Anr. on 13 August, 1993

Equivalent citations: JT1993(4)SC604, 1993(3)SCALE465, 1993SUPP(4)SCC26

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Bench: S.C. Agrawal, R.M. Sahai

JUDGMENT

S.C. Agrawal, J.

1. This appeal is directed against the judgement dated May 7, 1980 of the High Court of Delhi whereby Civil Writ Petition No. 316 of 1980 filed by Smt. Mohinder Kaur, the respondent herein, was allowed and the disciplinary proceedings and the order dated December 31, 1979 terminating the services of the respondent as well as her suspension were quashed and it was declared that the respondent is a regular trained graduate teacher in the Khalsa Middle School.

2. On May 1, 1961, Khalsa Educational Society (hereinafter referred to as 'the Society') was formed by the members of the Sikh community of Sarojini Nagar, New Delhi. The Society established a primary school known as Khalsa Primary School which was later on upgraded as Khalsa Middle School, Sarojini Nagar. The Society was registered under the Societies Registration Act on February 7, 1962. According to the Memorandum of Association of the Society the aims and the objects of the Society are (a) to provide educational facilities for the children of Sikh community; and (b) to promote the cause of education in general, and Punjabi in particular, by opening the educational and literary institutions, libraries, reading rooms or other things deemed suitable by the Society. Under the Rules and Regulations the Society comprises of (a) The Education Committee and (b) the Managing Committee. Rule 5 of the Rules and Regulations (as originally framed in 1962) prescribed that only a person who is a Sikh as defined in the Sikh Gurudwara Act of 1925 could be a member of the Education Committee. Under Rule 6 the same condition was applicable for membership of the Society. Rule 21 provided that the Education Committee is the supreme authority of the Society. The functions of the Education Committee are, inter alia, to elect ten members including the office bearers of the Managing Committee, to pass the financial budget of the Society, and to amend the rules, if and when necessary. The Managing Committee of the Society consists of seventeen members out of whom three are to be nominated by the Executive Committee of Shri Guru Singh Sabha (Regd.) Sarojini Nagar, New Delhi from among themselves, ten members are elected by the Education Committee, two members are nominated by the Education Department of Delhi Administration, the Headmistress/Headmaster of Khalsa School, who is ex-officio member of the

Society, and one member who shall be representative of the school staff. The Managing Committee is vested with the immediate management of the institutions under the Society.

3. On July 25, 1963 the Rules and Regulations of the Society were amended and in Rule 5 relying to the eligibility of the members of the Education Committee, the words "any person shall be eligible for membership of the Education Committee provided he/ she" were substituted by the words "any person irrespective of religion, caste or creed shall be eligible for the membership of the Education Committee provided he/she" and Clause (a) of Rule 5 which required that the person be "a Sikh as defined in the Sikh Gurudwara Act of 1925" was deleted. The appellants have stated that this was done in order to bring the Rules of the Society in conformity with the requirements of the Delhi Administration/ Delhi Development Authority to obtain allotment of land for the school building. On April 9, 1973. the Delhi School Education Act, 1973 (hereinafter referred to as "the Education Act") came into force and the Khalsa Middle School was granted recognition under the said Act. By resolution dated July 1, 1979, the Rules and regulations of the Society were again amended. Rule 4(i) of the amended Rules in the following terms:

4. Education Committee

(i) ELIGIBILITY:

Any person belonging to the Sikh Community as defined in the Sikh Gurdwara Act of 1925 shall be eligible for the membership of the Education Committee provided he/she:-

- a) is attained the age of 21 years;
- b) is literate and knows Punjabi in Gurumukhi Script; and
- c) approved by the Managing Committee.

4. The amended Rules and Regulations were registered with the Registrar, Firms & Societies, Delhi on March 13, 1980.

5. The respondent is a Trained Graduate Teacher. She joined the school as a teacher in 1961. It appears that in 1970 a complaint was received from the Superintendent of Police, Anti-Corruption Branch against respondent for tampering with and forging the school records. Thereupon disciplinary proceedings were initiated against the respondent and an enquiry committee was constituted by the Managing Committee. After the coming into force of the Education Act the Disciplinary Authority was reconstituted in accordance with the Delhi School Education Rules, 1973, (hereinafter referred to as 'the Education Rules') framed under the Education Act. Ultimately the Managing Committee of the Society passed an order on December 31, 1979, terminating the services of the respondent. Feeling aggrieved by the said order for termination of her services the respondent filed a Writ Petition under Article 226 of the Constitution in the Delhi High Court wherein she challenged the order terminating her services dated December 31, 1979. The case of the respondent

in the writ petition was that in view of Sub-section (2) of Section 8 of the Education Act, the services of the respondent could be terminated only after obtaining the approval of the Director of Education and that the order for termination of services was violative of the provisions of the Education Act and the Rule 120 of the Education Rules. The said writ petition was contested by the appellants on the ground that the Khalsa Middle School is a minority institution since it was established by the Sikh community of Sarojini Nagar and is being administered by that community and the alleged non-compliance of Section 8 of the Education Act and Rule 120 of the Education Rules would have no effect on the disciplinary action taken against the respondent.

6. The High Court has held that at the time when the impugned order was passed, the Rules and Regulations of the Society, as amended in 1963, were in force where under membership of the Education Committee was thrown open to all irrespective of religion, caste or creed. According to the High Court the effect of the said amendment in Rule 5 was that the Education Committee ceased to have a minority community character. The High Court further observed that the retention of the definition of the term 'literate' as being one who can at least read and write Punjabi in Gurmukhi Script cannot be read as still amounting to retaining minority character in the Society or its Education Committee or Managing Committee because knowledge of a language is not the preserve of any one community and the Punjabi language and the Gurmukhi script cannot be regarded as a preserve of the Sikh community because it is a language which is commonly spoken, read and written by most persons in Punjab and in many other places in The country. The High Court, therefore, held that though the School was established by the minority community known as Sikhs, the administration of the institution ceased to be the preserve of the minority community by the amendment of 1963 in the Rules of the Society, On that view of the matter, the High Court held that the school ceased to be a minority institution within the meaning of the Education Act and the Education Rules and was bound to observe the provisions of the Education Act and the Education Rules as any other non-minority institution and that the suspension of the respondent was contrary to the provisions of Section 8 of the Education Act. The High Court while holding that a Society registered under the Societies Registration Act is neither state nor authority within the meaning of Article 12 or Article 226 of the Constitution observed that the Director of Education is a party and mandamus could be issued to him to see that a recognised aided school which is not a minority institution complies with the provisions of the Education Act and the Education Rules. The High Court issued a writ quashing the disciplinary proceedings and the order dated December 31, 1979 as well as the suspension of the respondent and also gave a declaration that the respondent is a regular Trained Graduate Teacher.

7. Shri Tarkunde, the learned senior counsel appearing for the appellants, has made a two-fold submission. In the first place, he has urged that the school was a minority institution at its inception, and it continued to be so even after the amendment of the rules and regulations of the Society in 1963 and the High Court was in error in holding that the school ceased to be a minority institution after the said amendment. The second submission of Shri Tarkunde was that even if it be held that the school had ceased to be a minority institution on account of the amendment made in the rules and regulations of the Society in 1963, the minority status of the School was restored as a result of the amendments made on July 1, 1979 whereby the provisions which were contained in Rule 5 of the original rules were reincorporated in Rule 4 of the amended Rules. It was urged that

the impugned order of termination was passed on December 31, 1979 after the amendment had been made in rules and regulations on July 1, 1979 and the said order could not be said to be bad on the ground that it was passed in violation of Section 8 of the Education Act and Rule 120 of the Education Rules.

8. We do not find merit in the first contention urged by Shri Tarkunde. The object of the amendments that were introduced in the rules and regulations of the Society in 1963 was to change the minority status of the institution so that it could be allotted land by the Delhi Development Authority. The Society also proceeded on the basis that it had ceased to be a minority institution after 1963 because after the enactment of the Education Act in 1973 the Society functioned as a non-minority institution and was complying with the provisions of the Education Act and the Education Rules. It is the case of the appellants that the disciplinary proceedings that were continued against the respondent were conducted in accordance with the provisions of the Education Act and the Education Rules and the Disciplinary Committee was constituted from time to time in accordance with the said provisions as per the directions of the Education Department of the Delhi Administration. We are, therefore, unable to hold that the school had not ceased to be a minority institution as a result of the amendment of the rules and regulations of the Society in 1963.

9. As regards the second submission of Shri Tarkunde with regard to restoration of the minority status of the institution after the amendment of the rules and regulations of the Society by resolution dated July 1, 1979, the submission of Shri Mehta, the learned counsel appearing for the respondent, is that the rules and regulations as amended by the resolution dated July 1, 1979 were registered with the Registrar, Firms and Societies, Delhi on March 13, 1980 and therefore, the amended rules and regulations came into effect only on the date of such registration and the said amended rules were not in force on December 31, 1979, the date of passing of the impugned order of removal of the respondent and on December 31, 1970, the school was a non-minority institution governed by the provisions of the Education Act and the Education Rules. In view of the said submission, the question which needs to be considered is, what is the date of the coming into force of the rules and regulations, which were amended by resolution dated July 1, 1979?

10. Section 2 of the Societies Registration Act prescribes that a society will have a memorandum of association which will contain the name of the society, the objects of the society and the names and addresses and occupation of the governors, their council, directors, committee or the governing body to whom by the rule of the society, the management of its affairs is entrusted. The said Section also provides that in addition to memorandum of association, there would be rules and regulations of society which are also required to be filed with the memorandum of association for the purpose^ of registration of the society under Section 3 of the said Act. As regards alteration of the memorandum of association provision is made in Section 12 which prescribes the procedure for altering, extending Or abridging the purpose or purposes for which the society has been established. By Delhi Act 9 of 1954, certain amendments have been made in the Societies Registration Act as applicable in the Union Territory of Delhi and as a result Section 12-A has been inserted to make provision for registration of change of name etc. It reads as under-

12-A. REGISTRATION OF CHANGE OF NAME - (1) where a proposition for change of name has been agreed to and confirmed in the manner prescribed by Section 12, a copy of the proposition so agreed to and confirmed shall be forwarded to the Registrar for registering the change of name. If the proposed name is identical with that by which any other existing society has been registered, or in the opinion of the Register so nearly resembles such name as to be likely to deceive the public or the members of either society, the Registrar shall refuse to register the change of name.

(2) Save as provided in Sub-section (1), the Registrar shall, if he is satisfied that the provision of this Act in respect of change of name have been complied with, register the change of name and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be complete.

(3) The Registrar shall charge for any copy of a certificate issued under Sub-section (2) a fee of rupee one or such larger fee not exceeding rupees five as the State Government may, from time to time, direct; and all fees so paid shall form part of the Consolidated Fund of India.

11. Apart from the requirement contained in Section 12A for registration of the change of name of a Society, with the Registrar, there is no requirement in the Societies Registration Act which requires registration of any amendment in the memorandum of association or the rules and regulations of a society to be registered with the Registrar. Even in the Companies Act, 1956 a distinction is made in the manner of alteration of the memorandum of association and alteration of the articles of association. Under Section 18 of the Companies Act, it is necessary that the alteration of memorandum of association be registered with the Registrar of Companies within the prescribed period and the alteration makes effect from the date of its registration and under Section 19(1), it is provided that the alteration shall have effect only if it has been duly registered in accordance with the provisions of Section 18. There is no such requirement with regard to registration of the alteration in the articles of association of the company. Here we are concerned with the amendment in the rules and regulations of the Society. In the absence of any requirement in the Societies Registration Act that the alteration in the rules and regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. It is, therefore, not possible to accept the contention of Shri Mehta that the amendment which was made in the rules and regulations by resolution dated July 1, 1979 did not come into effect till March 13, 1980 when the amended rules and regulations were registered with the Registrar, Firms and Societies. The said amendment should be treated to have come into effect from the date on which the resolution making the said amendment was passed, i.e., July 1, 1979. As a result of the said amendment in the rules and regulations of the Society, the alterations made in the rules and regulations in 1963 were reversed and the position as it stood prior to the amendment of 1963 was restored. Consequently, the school which was a minority institution till the amendment of the Rules and Regulations in 1963 and had ceased to be a minority institution as a result of the amendment in 1963 regained its status on a minority institution after July 1, 1979, when the rules and regulations were amended and the original position was restored. In view of the restoration of the minority character of the institution the provisions of the Education Act and the Education Rules ceased to be applicable to the institution after July 1, 1979. The impugned order for termination of the services of the respondent was passed on December 31, 1979, i.e., after the school had become a minority

institution. The said order cannot, therefore, be held to be invalid on the ground that it was passed in contravention of Section 8 of the Education Act. The order passed by the Delhi High Court quashing the said order as well as the Disciplinary proceedings cannot, therefore, be upheld. The respondent was placed under suspension on August 11, 1972 and continued under suspension till April 9, 1973 on which date Education Act came into force. In other words she was under suspension at a time when the Education Act was not in force. The order of suspension cannot be judged on the basis of the provisions of the Education Act and the Education Rules. We are, therefore, unable to uphold the direction of the High Court quashing her order of suspension.

12. In the result, the appeal is allowed. The judgment of the Delhi High Court dated May 7, 1980 in Writ Petition No. 316 of 1980 is set aside and the said writ petition filed by the respondent is dismissed. It is, however, directed that the amount of Rs. 5000/- and the substance allowance that has been paid to the respondent in pursuance of the order dated July 16, 1980 of this Court shall be retained by her and she will not be required to refund the same. There is no order as to costs in the appeal.