Bholanath Mukherjee & Ors vs R.K.Mission V.Centenary College & Ors on 18 April, 2011

Equivalent citations: 2011 AIR SCW 2960, 2011 (5) SCC 464, 2011 LAB. I. C. 2540, AIR 2011 SC (SUPP) 769, (2011) 3 SERVLR 348, (2011) 8 ADJ 58 (SC), (2011) 4 CALLT 31, (2011) 4 SCALE 862, (2011) 3 ESC 523, (2011) 3 SCT 147

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Bench: Surinder Singh Nijjar, B.Sudershan Reddy

REPORTABL

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2457 OF 2006

Bholanath Mukherjee & Ors. .. Appellants

VERSUS

R.K. mission V. Centenary

College & Ors. ..Respondents

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. This appeal is directed against the final judgment and order of the Calcutta High Court dated 21st September, 2004 in M.A.T. No. 476 of 2004 arising out of Writ Petition No. 29805(W) of 1997 vide

which the order of the learned Single Judge of the High Court was set aside.

2. We may notice the essential facts, which would have a bearing on the determination of the issues raised in this appeal. Admittedly, there has been a controversy with regard to the special status enjoyed by the Ramakrishna Mission Vivekananda Centenary College at Rahara (hereinafter referred to as `respondent No.1') for a long period of time. The College was initially established in the year 1961 with a grant of Rs.2 lakhs given by the Government of West Bengal in the Education Department. The additional cost for establishing the College had been borne by the State Government.

Subsequently on 25th April, 2002, the Government of West Bengal, in order to advance collegiate education and with a view to reduce the overcrowding in good colleges in Calcutta decided to set up a three year degree college at Rahara. Such college was to be set up on the recommendations of the University Grants Commission (for short `UGC'). The college was duly established and granted affiliation to Calcutta University on 13th May, 1963. It is a fully aided college; being sponsored and financed by the State Government.

3. The controversy herein relates to the appointment of the Principal of the College.

The post of Principal is included in the definition of Teacher, as contained in Section 2 Clause 9 of the aforesaid Act. The aforesaid Clause defines the term Teacher to include a Professor, Assistant Professor, Lecturer, Tutor, Demonstrator, Physical Instructor or any other person holding a teaching post of a college recognised by the University to which such college is affiliated and appointed as such by such college and includes its Principal and Vice-Principal.

Section 3 of the Act provides "appointment to the post of a Teacher shall be made by the Governing Body on the recommendations of the University and College Service Commission to be constituted by the State Government in the manner prescribed". The appointment on the post of Teachers of a college is governed by the College Service Commission established under the West Bengal College Service Commission Act, 1978. Section 3 of the aforesaid Act is as under:-

> "(1) The State Government shall, with effect from such date as may by notification, appoint, constitute Commission by the name of the West Bengal College Service Commission consisting of five members of whom one shall be the Chairman.
>
> (2) Of the members one shall be person who, not being an educationist, occupies or has occupied in the opinion of the State Government, a position of eminence in public life or in Judicial or administrative service and the other shall have teaching experience either as a Professor of a University or as a Principal for a period of not less than ten years or as a teacher, other than Principal of a College, for a period of not less than fifteen years."

Section 7(1) and Proviso (ii) are as under:-

"Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Commission to select persons for appointment to the post of Teachers of a College:

Provided that-

(i)..

(ii) For selection of a person for appointment to the post of Principal, the Commission shall be aided by the vice-Chancellor of the University to which such college is affiliated or his nominee and a nominee of the Chancellor of such University."

4. Section 15 provides that "nothing contained in the Act shall apply in relation to any college not receiving any aid from the State Government or any college established and administered by a minority, whether based on religion or language." The State Government issued Memo No. 752-Edn (CS) to revise the existing pattern for the composition of the governing bodies of the Government sponsored colleges excepting in cases where the college has a special constitution on the basis of Trust Deeds or where the colleges are run by Missionary Societies on the basis of agreement with the respective missions. The academic qualification prescribed for appointment on the post of Principal by the Government of West Bengal vide a G.O. No. 149-Edn(CP) dated 22nd February, 1994.

5. It appears that earlier the controversy with regard to the appointment on the post of Principal was subject matter of the decision rendered by this Court in the case of Bramchari Sidheswar Shai & Ors. Vs. State of W.B. & Ors.1 . In deciding the controversy raised in the aforesaid case, this Court has extensively traced the history with regard to the setting up of three year degree colleges under the auspicious of Ramakrishna Mission Boy's Home at Rahara. Therefore, it is not necessary for us to recapitulate the entire sequence of events in the present proceedings.

6. Suffice it to say that the aforesaid controversy had arisen in the context of a challenge made in Writ Petition being C.O.No. 12837(W) of 1 (1995) 4 SCC 646 1980 to the appointment of Swami Shivamayananda, who was till then Head of Ramakrishna Mission, Vidya Mandir, Bellur Math, as the Principal of Ramakrishna Mission College. The petitioners had claimed that Shivamayananda did not have the requisite qualifications for being appointed as the Principal and that he had not been appointed by a duly constituted Governing Body. The prayers in the writ petition were for the issue of (i) a writ in the nature of mandamus commanding the Government of West Bengal to reconstitute the Governing Body of the Ramakrishna Mission College according to standard pattern for Governing Bodies of sponsored colleges as per Government Memo No. 752-Edn (CS)/C. S. 30-3/77 dated 18th April, 1978; (ii) a writ declaring that the Ramakrishna Mission College is governed by West Bengal Act of 1975 and West Bengal Act of 1978; (iii) a writ in the nature of quo warranto restraining Swami Shivamayananda as Principal of Ramakrishna Mission College and other incidental writs.

7. During the pendency of this writ petition, the University of Calcutta issued three notices to the Ramakrishna Mission to reconstitute the Governing Bodies of the Ramakrishna Mission Residential College, Narendrapur, Ramakrishna Mission Shiksha Mandir, Howrah and Ramakrishna Mission Vidya Mandir, Howrah. The legality of these notices was challenged by the Ramakrishna Mission by filing an Interlocutory Application in the writ petition. The writ petition was resisted by the Ramakrishna Mission on the ground that being a minority based on religion, the institutions established by it would be protected under Article 30(1) of the Constitution. Therefore, the West Bengal Act of 1975 and West Bengal Act of 1978 would not be applicable. The Ramakrishna Mission had also claimed its right to establish and maintain institutions for religious and charitable purposes and to manage its own religious affairs; to own and acquire movable and immoveable property; and to administer such property in accordance with the law.

The aforesaid rights were claimed under Article 26 of the Constitution of India. The writ petition was dismissed by the learned Single Judge. It was held that institutions established by Ramakrishna Mission were protected under Article 30(1) of the Constitution of India. It was also held that the West Bengal Act of 1975 and West Bengal Act of 1978 would not be applicable. It quashed the three notices issued by the Calcutta University. It, however, rejected the claim of Ramakrishna Mission under Article 26(a) of the Constitution of India. The aforesaid judgment was carried in appeal before the Division Bench by the writ petitioners as well as the State of West Bengal and Calcutta University. The Division Bench heard all the appeals together, and by a common judgment dismissed all the appeals. The Division Bench upheld the conclusion of the learned Single Judge that Ramakrishna Mission being a minority based on religion was protected under Article 30(1) of the Constitution of India. It further held that the Ramakrishna Mission had the right to establish educational institutions as religious denomination under Article 26(a) of the Constitution of India. It further held that both the West Bengal Act of 1975 and West Bengal Act of 1978 would not be applicable as these enactments did not contain any express provision indicating their application to educational institutions established and maintained by the Ramakrishna Mission. It further observed that to hold otherwise would lead to infringement of the rights enjoyed by the Ramakrishna Mission under Article 26(a) and 26(b) of the Constitution. However, it left open the question of legality or otherwise of the direction contained in the notices issued by the Calcutta University to the Ramakrishna Mission for reconstitution of Governing Bodies of the Ramakrishna Mission Residential College, Narendrapur, Ramakrishna Mission Shiksha Mandir, Howrah and Ramakrishna Mission Vidya Mandir, Howrah.

8. The aforesaid judgment of the Division Bench was challenged before this Court in a number of appeals, which has been noticed above.

These appeals were decided by this Court by a common judgment dated 2nd July, 1995 in the case of Bramchari Sidheswar Shai (supra).

9. This Court formulated six points arising for consideration in the appeals, which were as follows:-

> "1. Can the citizens of India residing in the State of West Bengal who are professing, practising or propagating the religious doctrines and teachings of Ramakrishna and

have become his followers, claim to belong to a minority based on Ramakrishna religion which was distinct and different from Hindu religion and as such entitled to the fundamental right under Article 30(1) of the Constitution of India, of establishing and administering educational institutions of their choice through Ramakrishna Mission or its branches in that State ?

2. Do persons belonging to or owing allegiance to Ramakrishna Mission belong to a religious denomination or any section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India ?

3. If persons belonging to or owing allegiance to Ramakrishna Mission is a religious denomination or a section thereof, have they the fundamental right of establishing and maintaining institutions for a charitable purpose under Article 26(a) of the Constitution of India?

4. If Ramakrishna Mission as a religious denomination or a section thereof establishes and maintains educational institutions, can such institutions be regarded as institutions established and maintained for charitable purpose within the meaning of Article 26(a) of the Constitution of India ?

5. Is Ramakrishna Mission College at Rahara established and maintained by Ramakrishna Mission and if so, will the constitution of its governing body by the Government of West Bengal amount to infringement of Ramakrishna Mission's fundamental right to establish and maintain an educational institution under Article 26(a) of the Constitution of India?

6. Can the court direct the West Bengal Government because of W.B. Act 1975 and W.B. Act 1978, to constitute governing body on a "standard pattern" of sponsored college envisaged under its Memo dated 18-4-1978 in respect of Ramakrishna Mission College when that memo itself says that colleges established and maintained by Missions on the basis of agreements cannot be treated as sponsored colleges for the purpose of constituting governing bodies for them on a "standard pattern" ?"

10. Upon consideration of the entire matter, the conclusions recorded were as under :-

Point 1

(i) For the foregoing reasons, we hold that the citizens of India residing in the State of West Bengal, who are professing, practising or propagating the religious doctrines and teachings of Ramakrishna and have become his followers, cannot claim to belong to a minority based on Ramakrishna religion which was distinct and different from Hindu religion and as such are not entitled to the fundamental right under Article 30(1) of the Constitution of India, of establishing and administering educational

institutions of their choice through Ramakrishna Mission or its branches in that State and answer Point 1 accordingly, in the negative.

Point 2

(ii) For the said reasons, we hold that persons belonging to or owing their allegiance to Ramakrishna Mission or Ramakrishna Math belong to a religious denomination within Hindu religion or a section thereof as would entitle them to claim the fundamental rights conferred on either of them under Article 26 of the Constitution of India and answer Point 2, accordingly, in the affirmative.

Point 3

(iii) Since we have held while dealing with Point 2 which arose for our consideration that the persons belonging to or owing allegiance to Ramakrishna Mission or Ramakrishna Math as followers of Ramakrishna, form a religious denomination in Hindu religion, as a necessary concomitant thereof, we have to hold that they have a fundamental right of establishing and maintaining institutions for a charitable purpose under Article 26(a) of the Constitution of India, subject, of course, to public order, morality and health envisaged in that very article. Point 3 is, accordingly answered, in the affirmative.

(iv) On Point Nos. 4 & 5, it was observed as follows:-

> "We think that the learned Judges of the High Court should not have decided on the general question whether educational institutions established and maintained by religious denomination including those established and maintained by Ramakrishna Mission for general education get the protection of Article 26(a) of the Constitution when that question in a general form, was not really at issue before them. Therefore, the views expressed on the question shall, according to us, ought to be treated as non est and the question is left open to be decided in proper case, where such question really arises and all the parties who might be concerned with it are afforded adequate opportunity to have their say in the matter."

(v) On Point No. 6, it was observed as follows:-

> "67. As stated above, the State Government has excepted the Ramakrishna Mission College at Rahra in the matter of constituting a Governing Body on a standard pattern for the obvious reason that constituting such a governing body for a college like Ramakrishna Mission College which was all through allowed to have a governing body constituted by Ramakrishna Mission, which had built the College on its land conceding to the request made in that behalf by the State Government itself on the initiation of the Central Government, may not be just. Thus when Ramakrishna Mission College had come to be built, established and managed by the Ramakrishna Mission, it is difficult for us to think that the learned Judges of the Division Bench of the High Court were not right in holding that the Government should not be directed

by issue of a mandamus, to constitute a governing body for the Ramakrishna Mission College on a standard pattern taking recourse to the W.B. Act of 1975 and the W.B. Act of 1978, although for its own reasons. Therefore, in the peculiar facts and circumstances in which Ramakrishna Mission College at Rahra was established on Ramakrishna Mission's land and allowed to be administered by the Ramakrishna Mission through its own governing body, we feel that interests of justice may suffer by directing the State Government to constitute its own governing body on a standard pattern of the usual sponsored colleges, as prayed for by the writ petitioners. However, the view we have expressed in the matter shall not come in the way of the State Government to change their earlier arrangement with the Ramakrishna Mission in the matter of governance of the Ramakrishna Mission College, if on objective considerations such change becomes necessary in the larger interests of students, teachers and other employees of that College and is so permitted by law.

68. In the said view we have taken in the matter of constituting a Governing Body by the Government of West Bengal in respect of the Ramakrishna Mission College at Rahra, there is no need to go into the question that there has been infringement by the Government of Ramakrishna Mission's fundamental rights to establish and maintain educational institutions under Article 26(a) of the Constitution of India inasmuch as such a question does not arise, in view of the answer already given by us on Point 3 above. So also, question of directing the West Bengal Government because of the W.B. Act of 1975 and the W.B. Act of 1978, to constitute governing body on "standard pattern" of sponsored college envisaged under its Memo dated 18-4-1978 in respect of Ramakrishna Mission College, cannot arise.

69. Points 4 to 6 are accordingly answered."

11. After the decision in the aforesaid case, again Writ Petition No.29805(W) of 1997 was filed in the Calcutta High Court challenging initially the appointment of Swami Shivamayananda (Respondent No.16 herein) and Swami Divyananda (respondent No.17 herein) as Principal and Honorary Vice-Principal respectively. It was alleged that appointment of both the respondents had been made without following the provisions of the West Bengal Act of 1975 and West Bengal Act of 1978.

However, both the persons during the pendency of the writ petition before the High Court went on open ended leave from their respective posts. Thereafter on 14th May, 1999, by an Office Order No.RKMVCC/21/99, the college authorities elevated Swami Sukadevananda (respondent No. 3 herein) Vice-Principal of the college to the post of Acting Principal with immediate effect, again without following the West Bengal Act of 1975 and West Bengal Act of 1978. He was designated as the Principal of the College on 20th March, 2001 vide Office Order No.3/RKMVCC/21/2001. The appointment of Swami Sukhadevananda, as Principal of the College led to the amendment of the writ petition incorporating a challenge to his appointment.

12. It is the case of the appellants, that the respondent No. 3 was only First class M.Sc. in Biochemistry from Karnataka University and had worked as Scientific Officer in Bhabha Atomic

Research Centre, Bombay for about four years. As far as teaching experience in the college is concerned, he had only six years of such experience. Thus, according to the appellants, he did not possess the requisite qualifications for the post of Principal as laid down in the above mentioned Government order dated 22nd February, 1994. The learned Single Judge by his judgment dated 29th September, 2003 allowed the writ petition and it was observed as under;

> "Therefore, I hold that as regard management, administration and maintenance of this Institution the State government at present has denuded itself its authority or right to interfere with. But the provisions of the Acts namely West Bengal College Teachers (Security of Service) Act, 1975, West Bengal College Service Commission Act, 1978 and the Calcutta University First Statute, 1979 will have application unless these laws by themselves exempt these organizations from being applicable. I do not find any such exception."

The appointment of the Principal was declared not to have been made under the provisions of the West Bengal Act of 1975, West Bengal Act of 1978 and the Calcutta University First Statute, 1979. A direction was issued to the Governing Body of the College to take steps to fill the post either temporarily or permanently in accordance with laws in force. Aggrieved, the Ramakrishna Mission College went in appeal before the Division Bench. In order to consider the entire matter, the Division Bench analyzed the judgment of this Court in Bramchari Sidheswar Shai's case (supra) extensively. It noticed the conclusions recorded by this Court as extracted by us above. The Division Bench concluded as under:-

> "Thus, from the questions raised by the Hon'ble Court and the answers given to each of them by the Hon'ble Court as indicated above, we are fully convinced that although the Hon'ble Court declined to give protection of Article 30(1) or protection under Section 26(a) of the Constitution to the Ramakrishna Mission and the college established by it, the Court certainly decided in a most assertive manner that having regard to the background of the establishment of the college and having regard to the stand taken by the Government of West Bengal since inception of the college in the matter of its governance and management with special reference to office memo dated 18th April, 1978, there is no need to ask for implementation of the provisions of the Act of 1975 or the Act of 1978."

13. The Division Bench negated the contentions of the learned counsel for the writ petitioners/ appellants that in view of the provisions contained in the West Bengal Act of 1975, West Bengal Act of 1978 and the Calcutta University First Statute, 1979, the college could not be allowed to have the Monk as Principal. It is observed that the Government was very much aware of the fact that in the matter of this college, the general procedure for selection of a Principal through the College Service Commission shall not be made applicable. It is further observed that natural consequence of the aforesaid conclusion was that there would be no application under the provisions of the Calcutta University First Statute, 1979, aimed at filling up of temporary vacancy of the post of Principal like other Government sponsored colleges. In the concluding paragraphs, the Division Bench observed as follows:-

"After close examination of the judgment of the Apex Court rendered in the case of Bramchari Sidheswar Shai's (supra), we are seriously contemplating whether the present writ petition at all was maintainable before the learned Single Judge as the parties of the present writ petition are almost identical of the previous writ petition and almost same issues as raised in the present petition were matter of consideration before the Apex court and further we are of the view that following the long established principle of judicial discipline and binding precedent, it was not at all permissible to make any departure from the conclusion reached by the Apex court which has a binding effect upon the writ petitioners who were parties to the earlier adjudication and that apart, the present writ petition is also barred under the principle of res judicata. Thus, having regard to the submissions of contesting parties and on examination of the materials placed before us, we are of firm view that following the judgment of the Apex Court rendered in the case of Bramchari Sidheswar Shai's (supra) and in view of the recent office memo of the Government of West Bengal dated 30th April, 2004, it was not permissible to reopen the issue once again and to issue any writ dishonouring the mandate of the Apex Court when admittedly the State Government has not deviated form its earlier stand relating to the special status accorded to the college. We, therefore, find sufficient merit in the present appeal and in the stay petition and we are inclined to allow the both.

Accordingly, both the appeal and the stay petition are allowed resulting in dismissal of the writ petition and setting aside the judgment and order of the learned Single Judge delivered in connection with Writ Petition No. 29805(W) of 1997. We, however, make no order as to costs considering the fact and circumstances of the case."

14. This judgment is the subject matter of the present appeal. We have heard the learned counsel for parties.

15. Mr. Prashant Bhushan, learned counsel appearing for the appellants submitted that even if the College established by the Ramakrishna Mission enjoys a special status, the appointment on the post of Principal would still has to be made in conformity with the qualifications prescribed by the Government of West Bengal in its Order dated 22nd February, 1994. Respondent No.3 does not even possess the qualifications prescribed by the University Grants Commission. Moreover, respondent No.3 has not cleared the eligibility test N.E.T./S.L.E.T. for Lecturer as required by the UGC. His initial appointment as Acting Principal and thereafter his appointment as permanent Principal was null and void having been made without following the provisions contained in the West Bengal Act of 1975 and West Bengal Act of 1978. Learned counsel submits that the qualifications prescribed under the Government Order dated 22nd February, 1994 were in fact amended by the subsequent G.O.s being G.O. No. 625-Edn (CS) dated 16th June, 1999 read with G.O. No.1047-Edn (CS) dated 20th August, 2002. These qualifications were duly published through advertisement No. 2 of 2004. For the post of Principal, the qualifications prescribed are as under:-

"I. For General Degree Colleges:

(A) Academic qualifications:

(a) Master degree in Arts/Science/ Commerce/Music/Fine Arts with at least 55% marks or its equivalent grade and good academic record; Ph.D. Degree or evidence of its equivalent published work of high standard and teaching/research experience in an affiliated degree college or University/Other Institutions of Higher Education for at least 15 (fifteen) years preferably with administrative experience. Or

(b) Serving as reader in any affiliated degree College or University/research Institute with total teaching experience of not less than 15 years. Or

(c) Serving as Selection Grade Lecturer in any affiliated degree college with at least 55% marks at the Master's level and good academic record with teaching experience not less than 15 years in any academic Institution with authenticated administrative experience of at least five years and further having published work equivalent to Ph.D. degree, the equivalence be evaluated by the University/Selection Committee consisting of the subject experts who in turn will have to mainly look in to the following aspects:-

1. Number of research paper published,

2. Quality of research paper,

3. Relevance of the topic,

4. Journals where these have been published."

16. It is submitted that respondent No.3 does not possess the Ph.D, degree. He also did not possess fifteen years administrative experience at the time of his appointment. Learned counsel further submitted that respondent No.3 has been appointed on the said post merely because he is a monk at the Ramakrishna Mission. The very purpose of prescribing minimum qualifications and method of selection for an important post like Principal of an educational institution has been defeated. Learned counsel further submitted that the Division Bench has wrongly relied on the judgment of Bramchari Sidheswar Shai's case (supra). The aforesaid judgment had no relevance to the issue which has been raised in the present proceedings.

17. On the other hand, Mr. L.N. Rao, learned senior counsel appearing for the respondent Nos.1, 2 and 3 submits that the litigation in this case does not survive as the appellants have retired. He further submits that the appellants have not sought a writ of quo warranto rather the relief sought is that one of the senior teachers should be appointed as Principal. The writ petition was based on individual grievances. The relief claimed is also for the redressal of individual grievances. All the appellants had made a claim based on their seniority and qualifications. Since all the appellants have retired in the mean time, the issue has become academic.

This Court will, therefore, decline to examine the matter on merits. He relies on the judgment of this Court in the case of M.L. Binjolkar Vs. State of M.P. . On merits, the learned counsel submits that the grievances of the appellants were that the respondent No.3 lacked fifteen years of experience.

However, by now respondent No.3 possesses the 2 (2005) 6 SCC 224 required fifteen years experience. He also relies on certain observations made by this Court in the case of Ram Sarup Vs. Stat e of Haryana & Ors3 . The entire controversy has been rendered academic in the peculiar facts and circumstances of this case. In the alternative, the learned senior counsel submits that the writ petition would have to be treated as public interest litigation. It is, however, settled by this Court that public interest litigation would not be maintainable in service law cases. In support of this submission, he relies on the judgments of this Court in the cases of Dr. Duryodhan Sahu & Ors.

Vs. Jitendra Kumar Mishra & Ors4 and Gurpal Singh Vs. State of Punjab & Ors.5 . Therefore, again no relief can be granted to the writ petitioners/appellants.

18. We have considered the submissions made by the learned counsel for the parties. In our opinion, there is much substance in the submissions made 3 (1979) 1 SCC 168 4 (1998) 7 SCC 273 5 (2005) 5 SCC 136 by Mr. L.N. Rao, Mr. Dipankar P. Gupta and Mr. Bhaskar P. Gupta, learned senior counsel that at this stage, litigation in this case does not survive as the appellants have retired. Even if the writ petition is allowed and the appointment of respondent No.3 is declared null and void, none of the appellants could be appointed on the post of Principal. A perusal of the averments made in the writ petition before the High Court would show that the gravamen of the grievances of the writ petitioners/appellants was that they were all senior to Swami Sukhadevananda. It was further pointed out that he had only six years of teaching experience, while G.O. No. 149-Edn(CP) dated 22nd February, 1994 prescribes a minimum teaching experience of sixteen years with administrative experience. It was pointed out that on the one hand, respondent No.3 did not possess the necessary experience and was appointed as the Principal. On the other hand, the applications of the petitioner Nos. 1, 9 and 12 for the post of Principal made through appropriate channel were not at all considered at any stage by the appropriate authority, though they are more qualified and senior to Swami Sukhadevananda. It was further pointed out that petitioners are suffering irreparable loss in the form of deprivation from being promoted as a Teacher-in-Charge and compelled to serve under a junior in service and possessing lesser qualifications. Again in Paragraph 41, it is stated that Swami Divyananda is junior to all the petitioners. It was further pointed out that Dr. Biman Kumar Mukherjee, was the then petitioner No. 1 and the then senior most Teacher. He had put in more than three decades of lawful and approved service to the Institution. He was, therefore, lawful claimant to the post of Teacher-in-

Charge of the college. Therefore, it was a matter of great humiliation and injustice to all the petitioners to be forced to serve under an illegally appointed person, who is junior to them all. In Ground 3 of the writ petition, it is specially pleaded as follows:-

> "For that, it is incumbent upon the respondents to appoint the senior most teacher, as Teacher-in-Charge of the college in terms of the order contained in the letter No.C/31/Cir dated 1st January, 1995 and Statute 101B (as amended) and for such

> failure of the respondents to act in accordance with law the petitioners have been deprived of their rights to the post and have suffered demotion and financial loss."

From the above, it becomes evident that the grievances of the writ petitioners were that they have been compelled to work under a person, who was junior to them. The petitioners having retired from service, no relief could possibly be granted to them, even if the appointment of respondent No.3 is held to be illegal or void. In such circumstances, in our opinion, it would be an exercise in futility to examine the merits of the controversy raised in the appeal. By the retirement of all the appellants herein, the issues raised herein have been rendered academic.

In M.L. Binjolkar's case (supra), this Court was considering the legality of the orders passed by the Madhya Pradesh State Administrative Tribunal, Jabalpur, setting aside the orders of compulsory retirement passed against a number of employees by the State of Madhya Pradesh. The four employees were directed to be reinstated. The writ petition filed by the State of Madhya Pradesh was dismissed. The employees concerned were permitted to join back pursuant to the orders of reinstatement passed by the Administrative Tribunal. All the four employees, who were so reinstated, retired during the pendency of proceedings. The appeal filed by the State was dismissed by this Court with the following observations:-

> "In view of the undisputed position that the four employees who were directed to be reinstated had, in fact, joined back service and have retired on reaching the age of superannuation, therefore, examination in their cases as to the correctness of the view expressed by the High Court would be an exercise in futility. Though, implementation of the Court's order does not render challenge to an order infructuous, yet the fact situation of the present case makes the issue academic. This Court did not grant stay on the High Court's order. The employees concerned, as noted above after reinstatement have retired. In these peculiar circumstances, we do not think it necessary to examine correctness of the High Court's order on merits. Therefore, the appeals filed by the State -- Civil Appeals Nos. 8695-97 of 2002 and 8663 of 2002 are dismissed. We make it clear that we have not expressed any opinion on the correctness of the High Court's judgment as we have dismissed the appeals only on the ground that the employees concerned have already retired and it would not be in the interest of anybody to go into the merits."

Similarly, in the case of Sumedico Corporation & Anr.

Vs. Regional Provident Fund Commr.6 , this Court declined to go into the vires of Section 7(a) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 as during the pendency of the appeal, the Legislature itself amended the provisions of the Act by inserting Section 7(d) providing for remedy of an appeal before the Appellate Tribunal. In view of this development, it was observed that the question of challenge to the vires of Section 7(a) on the ground that there was no appeal provided under the Act does not survive and it has become academic. In the case of State of Manipur & Ors. Vs. Chandam Manihar Singh7 , the respondent had been removed from the post of Chairman of the Manipur State Pollution Control Board by the Governor of Madhya Pradesh in exercise of the

powers under Section 5(3) read with Section 6(1)(g) of the Act by 6 (1998) 8 SCC 381 7 (1999) 7 SCC 503 the order dated 19th October, 1998. The respondent carried the matter in a writ petition before the High Court of Assam, Imphal Branch. The learned Single Judge, who heard this writ petition was pleased to allow the same on 30th April, 1999. It may be noted that the learned Single Judge had directed that the respondent has continued to hold the office of the Chairman as his removal was set aside and his tenure will end on 15th October, 1999 counting three years from 16th October, 1996 when he was appointed as the Chairman of the Board pursuant to earlier order. The State of Manipur unsuccessfully carried the matter in an appeal before the Division Bench. When the appeal filed by the State of Manipur came up for hearing before this Court, the learned counsel for the respondent submitted that pursuant to the orders of the High Court, the respondent has continued as a Chairman of the Board and his tenure is almost coming to end and he does not intend to continue as Chairman beyond 15th October, 1999. It was submitted by the learned counsel for the respondent that the issue raised by the State of Manipur has almost become academic as no interim relief was granted by this Court against the order of the High Court. Nor any interim relief had been granted pending appeal against the order of the learned Single Judge by the Division Bench of the High Court. In these circumstances, this Court observed as follows:-

> "Having given our anxious consideration to the rival contentions, we find that as the High Court's direction in favour of the respondent's tenure which is to expire on 15-10-1999 has almost worked itself out and less than a month remains for him to act as Chairman of the Board, the first grievance raised by learned Senior Counsel for the appellants in connection with the removal of the respondent by order dated 19-10-1998 has become of academic interest. We, therefore, did not permit learned Senior Counsel for the appellants to canvass this point any further before us. That takes us to the consideration of the second point."

In our opinion, the aforesaid observations of this Court would be clearly applicable in the facts and circumstances of this case.

19. There is another reason why no relief, at present could perhaps be granted to the appellants. Throughout the proceedings before the High Court as well as before this Court, no interim relief was granted by restraining respondent No.3 from performing the functions of a Principal. He has continued to function on the aforesaid basis since his appointment on 14th May, 1999 as Acting Principal and then on from 23rd March, 2001 onward as Principal. Even according to the appellants, at the time of his appointment, respondent No.3 had possessed the experience of only six years. Therefore, by now, he would have more than fifteen years of required experience for the post of Principal. Therefore, the ground that the respondent No.3 was not qualified as he did not possess the necessary experience would also no longer be available to the appellants.

20. In similar circumstances, this Court, in the case of Ram Sarup (supra), observed as follows:-

> "The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when

> the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of Labour Laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised. The appellant worked as Labour-cum-Conciliation Officer from January 1, 1968 and that being a post higher than that of Labour Inspector, or Deputy Chief Inspector of Shops or Wage Inspector, the experience gained by him in the working of Labour Laws in the post of Labour-cum-Conciliation Officer must be regarded as sufficient to constitute fulfilment of the requirement of five years' experience provided in clause (1) of Rule 4. The appointment of the appellant to the post of Labour-cum-Conciliation Officer, therefore, became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment became regular on the expiry of this period of five years on his fulfilling the requirements for appointment as Labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant, was, therefore, clearly illegal and it must be set aside."

A perusal of the above would show that the appellant therein did not possess the necessary experience of five years of the working of labour laws. It was held that his appointment was irregular since he did not possess the necessary experience. However, during the pendency of the proceedings, he had acquired the necessary experience and, therefore, the appointment must be regarded as having been regularised. The aforesaid ratio would be squarely applicable to the appointment of respondent No.3.

21. Mr. Prashant Bhushan, however, submitted that the appeal would not be rendered infructuous by the mere retirement of the appellants. Learned counsel submitted that all the appellants have been engaged in the field of education throughout their lives. Therefore, deeply interested in ensuring that the standards of education are maintained. They are deeply concerned that of appointment for the post of Principal shall be made in accordance with the statutory provisions. Therefore, the appellants would have the locus standi to continue the proceedings.

22. We are unable to accept the aforesaid submission made by the learned counsel. As noticed in the earlier part of the judgment, the entire pleadings in the writ petition are founded on the personal grievance of the writ petitioners/appellants. The writ petitioners have not come before this Court as educationists. Merely because they are senior most teachers in the same institution, would not necessarily give rise to the presumption, that they had filed the writ petition in public interest. In our opinion, a pure and simple service dispute is sought to be camouflaged as a public interest litigation. This Court on numerous occasions negated such efforts in disguising the personal grievances as public interest litigation. It is, however, not necessary to recapitulate the oft quoted caution, save and except the observations made by this Court in the case of Gurpal Singh (supra).

In paragraphs 10, 11 and 12 it is observed as follows :

> "10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity- seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.
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> 11. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA, 1976 as follows:
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> "Public interest law is the name that has recently been given to efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others." [See B. Singh (Dr.) v. Union of India7, SCC p. 373, para 13.]
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> 12. When a particular person is the object and target of a petition styled as PIL, the court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object. Since in service matters public interest litigation cannot be filed there is no scope for taking action for contempt, particularly, when the petition is itself not maintainable. In any event, by order dated 15-4-2002 this Court had stayed operation of the High Court's order."

The aforesaid observations have been reiterated by this Court in the case of P.Seshadri Vs. S.Mangati Gopal Reddy & Ors8 , in the following words:-

> "The High Court has committed a serious error in permitting respondent No.1 to pursue the writ petition as a public interest litigation. The parameters within which Public Interest Litigation can be entertained by this Court and the High Court, have been laid down and reiterated by this Court in a series of cases. By now it ought to be plain and obvious that this Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals, i.e., busybodies; having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. 8 2011 (4) SCALE 41 Otherwise the petition is liable to be dismissed at the threshold."

23. We are, therefore, unable to accept the aforesaid submission as it is tantamount to treating the writ petition as a public interest litigation.

As noticed above, the entire grievance of the writ petitioners/appellants was personal. They were all aggrieved and humiliated for being compelled to serve under a Principal junior to them in service. Therefore, it could not be treated as a public interest litigation. This Court has repeatedly disapproved the tendency of disgruntled employees disguising pure and simple service dispute as public interest litigation. The observations made by this Court in the case of Dr. B. Singh vs. Union of India & Ors.9 would be of some relevance and we may notice the same. In paragraph 16, it is observed as follows :

> "As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public 9 (2004) 4 SCC 363 interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra8 this Court held that in service matters PILs should not be entertained, the inflow of the so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision."

24. We are also unable to accept the submission of Mr. Prashant Bhushan that the writ petition can be treated as a writ in the nature of a quo warranto. It appears that the appellants had not claimed a writ of quo warranto either before the learned Single Judge or before the Division Bench of the High Court. Even in this Court, it appears to us that Mr. Prashant Bhushan has made the submission as a weapon of last resort. As noticed earlier, during the pendency of the proceedings, respondent No. 3 has acquired the experience of sixteen years. The requirement under Rules was of fifteen years experience, it would, therefore, not be appropriate to go into the question as to whether a writ of quo warranto would lie in the present case or not. In our opinion, it would be an exercise in futility. The

issue has become purely academic.

25. Before we part with this judgment, we make it clear that we have not expressed any opinion on the correctness of the High Court's judgment as we have dismissed the appeal only on the ground that the concerned appellants have already retired from service and it would not be in the interest of anybody to go into the merits.

26.In view of the above, the appeal is dismissed.

.....J. [B.Sudershan Reddy] .....J. [Surinder Singh Nijjar] New Delhi April 18, 2011.