Dr. Vandana Vahistha vs State Of U.P. And 4 Others on 20 March, 2018

Bench: Pankaj Mithal, Saral Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

Reserved on:--5.03.2018

Delivered on:-20.03.2018

Case :- WRIT - A No. - 32088 of 2017

Petitioner :- Dr. Vandana Vahistha

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Man Mohan Singh

Counsel for Respondent :- C.S.C.,Arvind Kumar,Avneesh Tripathi

Hon'ble Pankaj Mithal,J.

Hon'ble Saral Srivastava,J.

S.S.V. (Post Graduate) College, Hapur is a recognised Institution affiliated to Chaudhary Charan Singh University, Meerut which is governed by the provisions of U.P. State Universities Act, 1973 (hereinafter referred to as the Act).

The aforesaid College is on grant-in-aid of the State Government and the salary of its teaching and non-teaching staff is paid out of the funds made available by the State Government.

The aforesaid College apart from the other courses is running a B.Ed. Course under the

self-financing scheme. The Committee of Management of the College on 31.01.2008 issued an advertisement inviting applications inter alia for appointment of seven Lecturers for the B.Ed. course run under the self-financing scheme.

The petitioner, who possessed the requisite qualifications, applied for being appointed as Lecturer and after successful in the selection was appointed as Lecturer B.Ed. in the College vide letter of appointment dated 25.03.2008. She joined duties w.e.f. 01.05.2009 after her selection was duly approved on 27.03.2008 by the Vice Chancellor of the University. The approval granted by the Vice Chancellor was extended for a further period of three years vide order dated 20.10.2015. The petitioner is continuing to function as Lecturer B.Ed. at the Institution under the self-financing scheme eversince her initial appointment.

The respondent No.5, the Secretary of the Committee of Management of the College on 05.07.2017 passed an order terminating the services of the petitioner on the ground of mis-conduct with immediate effect.

On the basis of the aforesaid order of the Secretary, the Principal of the College issued an office order dated 06.07.2017 notifying on the notice board that in accordance with the letter of the Secretary the services of the petitioner stands determined.

The petitioner has preferred this writ petition challenging the above two orders dated 05.07.2017 and 06.07.2017 terminating his services as Lecturer B.Ed. with immediate effect and has prayed for a direction commanding the respondents not to interfere in his functioning on the said post and for payment of continues salary.

We have heard Sri Manmohan Singh, learned counsel for the petitioner and learned Standing Counsel for the State of U.P., Sri Avneesh Tripathi, learned counsel for the University and Sri Arvind Kumar, learned counsel appearing for the contesting respondents No.3, 4 & 5.

The counter and rejoinder affidavits exchanged between the parties have also been perused.

Sri Manmohan Singh, learned counsel for the petitioner argued that the Secretary of the Committee of Management of the College in his personal capacity has no authority in law to terminate the services of the petitioner as the impugned order of the Secretary is not backed by any resolution of the Committee of Management.

Secondly, the order terminating the services of the petitioner is by way of punishment without holding any inquiry or giving any notice or opportunity of hearing to the petitioner.

Lastly, the services of the petitioner are not liable to be terminated without the approval of the Vice Chancellor which is not there.

In response to the above arguments, Sri Arvind Kumar submitted that as the petitioner was appointed under the self-financing scheme, the provisions of the Act or the First Statues of the

University would not apply and that the Management is free to determine the services of the staff appointed under the self financeing scheme at any time without the approval of the Vice-Chancellor.

Apart from addressing the court on the merits as above, he had also raised an objection as to the maintainability of the writ petition on the ground that the Committee of Management is a private body and its actions are not amenable to writ jurisdiction.

There is no dispute to the fact that the College is receiving grant-in-aid and is affiliated to the University established under the Act. The mere fact that the B.Ed. course is being imparted by the College under the self-financing scheme does not mean that the college is outside the purview of the aforesaid Act or that the Act would not apply to the staff of the B.Ed. course.

The only difference between the various departments of the College or its staff receiving salary out of grant-in-aid vis-a-vis the staff of the course run by the College under the self-financing scheme is that the salary of the teachers and the staff of such a course run under the self-financing scheme is generated and paid by the department itself and not by the State Government. In all other respects, the College remains to be one affiliated to the University and governed by the provisions of the Act. It is not that the staff of such a course under the self financing scheme is appointed by following a different procedure other than that prescribed under the Act. The terms and conditions of the service of both kinds of departments remain the same. At least no distinction was established.

The Act vide Section 2(19) defines a 'teacher' to mean a person employed in a University or in an institute or in a constituent or affiliated or associated college of a university for imparting instructions or guiding or conducting research in any subject or course approved by that University and includes a Principal or Director.

A reading of the above definition of the teacher makes it clear that it also makes no distinction between a teacher of the College appointed for imparting education to a course receiving grant-in-aid or to a course run under the self-financing scheme. A teacher of the affiliated college whether in the department receiving grant-in-aid or in a department run under the self-financing scheme remains a teacher for all practical purposes of the Act. Therefore, by necessary implication the procedure for appointment and termination of the teacher contemplated under the Act applicable to all teachers irrespective of receipt the nature and the department in which they are appointed.

In Shri Andi Mukta Sadguru Vs. V.R. Rudani and others AIR 1989 SC 1607 the question arose before the Supreme Court if a writ of mandamus can be issued at the instance of an employee of an educational institution run by a trust registered under the Bombay Trust Act, 1950 as the trust was not a statutory body and could not be subjected to the writ jurisdiction of the High Court.

The Apex Court after considering the decision of Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain and others AIR 1976 SC 888 and that of Deepak Kumar Biswas Vs. Director of Public Instructions, (1987) 2 SCC 252 on comparison of the expressions "any person or authority" used in Article 226 of the Constitution of India (Constitution) vis-a-vis the expression

"the State" used in Article 12 of the Constitution observed that the expression any person or authority used in Article 226 of the Constitution is much wider and cannot be confined only to statutory authorities or instrumentalities of the State. They may cover any other person or body if performing public duty. The nature of the duty imposed upon the body is the determining factor to subject it to writ jurisdiction of the High Court.

The aided institutions like Government Institutions discharge public function by way of imparting education to students. They are subjected to Rules and Regulations of the affiliating University. Their activities are closely supervised by the University. The employment in such institutions therefore, is not devoid of any public character.

The relationship of the institution with the University creates a legal duty and right between the staff and the management and when such a relationship exist mandamus cannot be refused to the aggrieved party and in case order of dismissal is in violation of the statutory obligation a mandamus can be issued for reinstatement.

In M/s Zee Tele Films Ltd. & another Vs. Union of India & others AIR 2005 SC 2677 following the ratio laid down in Shri Andi Mukta Sadguru (Supra), the Supreme Court observed that it is clear that when a private body exercises public function even if it is not a State, the aggrieved person has a remedy not only under ordinary law but also under the Constitution by way of a writ under Article 226 of the Constitution.

In BCCI Vs. Cricket Association of India 2015 Law Suit (SC) 51 to the decision of M/s Zee Tele Films Ltd. (Supra), it was held that rationalism lies in the nature of duties and functions cast upon the body and if the duties and functions are of the public nature, it cannot be said that such an authority is not answerable to judicial review under Article 226 of the Constitution even though such a body may not be a State under Article 226 of the Constitution.

In view of the above decisions of the Supreme Court the conclusion is that even if a body is not covered under Article 12 of the Constitution but is otherwise discharging functions of a public nature it would be amenable to the writ jurisdiction under Article 226 of the Constitution.

In other words the test as to whether the particular body could be subjected to the writ jurisdiction of the High Court depends upon the nature of duties and functions entrusted and performed by it.

In the instant case as has been discussed earlier the College is discharging functions of a public nature in imparting education to the students irrespective of receiving grant-in-aid or not and that the matter of employment of its staff is closely monitored and supervised by the University to which it is affiliated. The College in this way in imparting education is actually supplementing the government work to provide education to one and all. The service conditions of teachers of college including that employed under the self financing scheme are necessarily governed by the Act and the Statutes. Even the management is one that is recognised by the University under Section 2(13) of the Act. This makes the management liable to discharge functions in accordance with the Act and the Statutes.

In Fedral Bank Ltd. Vs. Sagar Thomas and others, 2003 (10) SCC 733 the Supreme Court has inter alia laid down that a person or a body liable to discharge statutory functions is amenable to writ jurisdiction.

Thus, there is no room to doubt that the College or its staff of the B.Ed. course run under the self financing scheme functions as a public body and discharges duties of a public and statutory nature subjecting it to the writ jurisdiction of the Court.

This brings us to the merits of case i.e. the validity of the impugned termination order.

Section 35 of the Act provides for the conditions of service of teachers of affiliated colleges.

Sub-Section (1) of Section 35 of the Act provides that every teacher of an affiliated college shall be appointed under a written contract which shall be lodged with the University.

Sub-Section (2) of Section 35 of the Act provides that every decision of the Management of College to dismiss or remove a teacher or to punish him in any manner shall be reported to the Vice-Chancellor and shall not take effect unless it has been approved by the Vice-Chancellor.

A plain reading of the aforesaid provisions would reveal that the appointment of a teacher has to be under a written contract which has to be lodged with the University and that any decision of the Management to dismiss or remove him from service cannot take effect unless it has been approved by the Vice-Chancellor. It is only thereafter that it could be communicated to the teacher concerned.

Sri Arvind Kumar, submits that the appointment of the petitioner was not under a contract as no such contract was lodged with the University. Therefore, the appointment of the petitioner was not under Section 35 of the Act.

There is no dispute that the petitioner was appointed after due advertisement and facing the Selection Committee. The selection of the petitioner also had the approval by the Vice-Chancellor.

The University has not come up with the stand that the contract of appointment of the petitioner was not lodged with it. Moreover, it is duty of the Management to lodge the contract of appointment with the University and to give a copy of it to the teacher concerned. If the said procedure has not been followed and the contract is not supplied to the University, it is an irregularity on part of the Management which would not have any adverse impact upon the validity of the appointment of the petitioner so as to bring it out of the purview of Section 35 of the Act.

This apart the contesting respondents have also not stated anywhere in the counter filed on their behalf that the petitioner was not appointed under a written contract or that the contract was not lodged with the University rather the averment in the counter affidavit is that the petitioner was appointed with contractual status on ad hoc basis.

In view of the aforesaid the conclusion is clear that the appointment of the petitioner as Lecturer in the B.Ed. course of the College though under a self-financing scheme was according to the established procedure with the approval of the Vice-Chancellor meaning thereby that it was in conformity of the provisions of the Act. Therefore, the services of the petitioner could not have been determined by the Management without following the procedure prescribed in the Act.

It is not the case of the contesting respondents that the decision to terminate the services of the petitioner was reported to the Vice-Chancellor and that he had accorded any approval. Thus, the decision to terminate the services of the petitioner is clearly violative of Sub-Section(2) of Section 35 of the Act.

The petitioner has clearly averred that the decision to terminate her services was taken solely by the Secretary of the Committee of Management on his present accord and is not backed by any resolution of the Committee of Management. The contesting respondents have not denied these averments and have not come up with a case that any resolution was passed by the Committee of Management so as to terminate the services of the petitioner.

In this view of the matter also, the order of termination passed by the Secretary of the Committee of Management is not the decision of the Management rather that of one individual who is not authorised in law to take such a decision. Accordingly, the office order issued by the Principal on its basis is also not tenable.

A bare reading of the termination order reflects that the same is punitive in nature as the services of the petitioner have been terminated on the ground of mis-conduct.

The contesting respondents in the counter affidavit accept that the services of the petitioner have been terminated by way of punishment. It is stated that after the disciplinary proceedings were initiated against the petitioner the impugned order was passed on the basis of the inquiry report. However, there is no reply to the averment that no inquiry was conducted and the petitioner was not given any notice or opportunity of hearing before the impugned order.

It is well settled in law that the disciplinary inquiry is set into motion with the submission of the charge sheet. Thereafter, an inquiry is conducted by fixing a date for evidence of the parties. After that when the inquiry report is submitted a show cause notice is given along with the copy of the inquiry report and it is on consideration of the reply of the delinquent employee that the final order is passed by the disciplinary authority.

No such procedure was followed by the respondents before passing the impugned order. No date for inquiry was fixed and no evidence was recorded. At least it is not so alleged in the counter affidavit nor any material in that regard has been brought on record which was necessary when the petitioner had raised an objection regarding violation of principles of natural justice in conducting the inquiry. Thus, we find that the disciplinary proceedings if any were not conducted in accordance with law and that the impugned decision is in violation of the principles of natural justice.

In view of the aforesaid facts and circumstances, as the college concerned is obviously discharging functions for a public nature in the matter of imparting education and the employment to it is closely supervised by the University, its actions are amenable to the writ jurisdiction.

Since the order impugned is in breach of Section 35(2) of the Act and has not been passed by the Committee of Management of the College rather by the Secretary of the Committee of Management without therebeing any resolution to that effect as also in violation of the principles of natural justice, the same is unsustainable in law.

Accordingly, the impugned orders dated 05.07.2017 and 06.07.2017 are non est and are hereby quashed with liberty to the contesting respondents to take action if necessary, regarding termination of the services of the petitioner in accordance with law.

The Writ Petition is allowed.

Order Date :- 20.03.2018 piyush