

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 1866/2020

Iqbal Islamia Mission High School Brane
through its Chairman:
Khazir Mohammad Mir (Aged: 66 years)
S/O: Gh. Mohudin Mir
R/O: Brein Nishat, Srinagar.

...Petitioner(s)

Through: Mr. Hashir Shafiq, Advocate.

Vs.

1. Union Territory of Jammu and Kashmir through its Commissioner Secretary (School Education Department) Civil Sectt. Srinagar/Jammu.
2. Director of School Education, Kashmir, S. P. College Lane M. A. Road, Srinagar.
3. Joint Directorate of School Education, Kashmir, S. P. College Lane M. A. Road, Srinagar.
4. Nazir Ahmad Bhat (Ex-Principal Iqbal Islamia Mission High School, Brane, Nishat, Srinagar)
S/O Gh. Rasool Bhat
R/O Brane Nishat, Srinagar.
5. Chief Education Officer, Abu Bakar, Colony Bemina, Srinagar.
6. Zonal Education Officer, Nishat.

...Respondent(s)

Through: Mr. Syed Musaib, Dy AG for R-1 to 3, 5 and 6.
Mr. M. M. Dar, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT (ORAL)

01. This is a petition wherein the petitioner prays for a Writ of Certiorari to quash an Order bearing No. DSEK/GS/573-77/2020 dated 12th November, 2020 (impugned order), passed by Respondent No. 3.

02. The impugned order is assailed by the petitioner primarily and essentially on the ground that the Respondent No. 3, Director School Education has no right, authority or jurisdiction to pass such an Order.

03. The official respondents have filed their objections and have taken a stand that the recognition of the Petitioner Educational Institution is governed by the Jammu and Kashmir School Education Act, 2002 (Act of 2002) and the Jammu and Kashmir School Education Rules, 2010 (Rules of 2010) framed thereunder. It is submitted that Section 12 of the Act of 2002 provides that only such educational institutions can function in the State of Jammu and Kashmir (now the Union Territory of Jammu and Kashmir) as are recognized under the Act. Reference is also invited to Sections 13, 19 and 20 of the Act of 2002 to justify the impugned Order. It is submitted that management of the private schools and the mode and manner in which these private schools function as also the maintenance of standards of school education, are the issues which fall within the domain of the Director School Education concerned. It is thus argued that the Director School Education in exercise of powers vested in him under the Act of 2002 and the rules framed thereunder, has appointed an Inquiry Officer to look into the mode and manner in which the Petitioner Educational Institution has terminated the services of some of its teachers.

04. Mr. Syed Musaib, learned Deputy Advocate General appearing on behalf of the Respondents 1 to 3 and 5 and 6 places reliance upon a judgment of this Court passed in case titled *“Satvinder Singh vs Presentation Convent Senior Secondary School”* [WP(C) No. 971/2020, decided on 4th August, 2020].

05. Mr. M. M. Dar, learned counsel for Respondent No. 4 submits that the since Petitioner Educational Institution had not constituted a Managing Committee in terms of Section 13 of the Act of 2002 and had not notified the terms and conditions of service of teaching/non-teaching staff, as was required under Section 20 of the Act, as such, termination of services of the Respondent No. 4 was not inconsonance with law. He further submits that since there was non-compliance on part of the Petitioner-Educational Institution to carry out the mandate of the Act of 2002 and the rules framed

thereunder, therefore, the action initiated by the Director School Education is in consonance with law.

06. Having heard the learned counsel for the parties and perused the material on record, I am of the considered view that the power exercised by the Director School Education to pass the impugned Order dated 12th November, 2020 is not traceable to any provision of the Act of 2002 and the Rules of 2010 framed thereunder. It is true that elementary school education in the School Education Department is governed and regulated by the Act of 2002 and the Rules of 2010 framed thereunder.

07. As per Section 4 of the Act of 2002, education for children up to the level of class eight, throughout the Territory of Jammu and Kashmir is free and compulsory and the duty to provide such free and compulsory education is enjoined on the Government. Section 5 of the Act empowers the Government to provide adequate facilities for school education and for achieving that purpose, establish and maintain schools; and permit any educational agency to establish and maintain private schools. Section 11 of the Act provides that no private school shall be established, run or maintained without permission in writing of the Government or the competent authority. It further authorizes the Government to prescribe the procedure to be followed for grant of permission to establish, run and maintain private schools. Section 12 of the Act deals with recognition of private schools. Section 13 of the Act deals with the management of a private school and lays down that no private school shall be managed and run by any person other than an educational agency. Here again the Government is empowered to prescribe the procedure for registration of educational agencies. Section 16 deals with de-recognition of the schools and provides that the private schools which are recognized under Section 12 of the Act, are liable to be de-recognized by the Government if it is of the opinion that such a school is not functioning in accordance with the provisions of the Act of 2002 and the Rules framed thereunder.

08. With a view to effectuate the provisions of the Act of 2002, the Government in exercise of powers conferred by Section 29 of the Act of 2002, has framed the Rules of 2010.

09. Rule 4 of the Rules of 2010 provides for registration of private schools. Rule 5 deals with the Managing Committee of the private schools. Rule 7 makes it obligatory on the part of the private schools seeking permission/ recognition to provide requisite infrastructure and facilities including physical facilities and teaching and other staff as per the details given in Rule 6. There is, however, no express or implied power given to any Authority under the Act of 2010, to interfere with the service disputes, if any, between the school management and its teaching/non-teaching staff.

10. It is true that in terms of Section 20 of the Act of 2002, all private schools are enjoined to frame and notify their own terms and conditions of service of teaching and non-teaching staff including the conditions relating to pay, gratuity, provident fund and age of retirement.

11. I am in agreement with the learned counsel for the respondents that the Competent Authority under the Act of 2002 is well within its powers to enforce provisions of Section 20 and ensure that all private schools recognized by the Government have in place notified terms and conditions of service of teaching and non-teaching staff. Needless to say that registration of private educational institutions and their recognition is governed strictly as per the provisions of the Act of 2002 and the Rules of 2010 and any infraction of the provisions of Act of 2002 or the rules framed thereunder, would attract action which may include de-recognition of the school.

12. While this Court recognizes the powers of the authorities under the Act of 2002 and the rules framed thereunder, to ensure that the provisions of the Act of 2002 and the rules framed thereunder are strictly complied with by the private institutions, yet this Court is of the view that the authorities under the Act are not empowered to act as an arbiter or an Appellate/ Supervisory Authority over the service disputes between the management of the private institution and its teaching/ non- teaching staff. The remedy of the parties in case of such dispute lies somewhere else.

13. Despite best efforts made by Mr. Syed Musaib, the learned Deputy Advocate General, he could point out any specific provision in the Act of 2002 and the rules framed thereunder, which confers upon the Director School Education any power to institute an inquiry into the action of a private institution, terminating the services of its teaching/ non-teaching staff.

14. For the reasons given above, I find merit in this petition and same is accordingly **allowed**. The impugned Order bearing No. DSEK/GS/573-77/2020 dated 12th November, 2020 is found without jurisdiction and is accordingly quashed. The disposal of this petition, however, would not come in the way of the authorities under the Act of 2002, to take action as may be warranted against the Petitioner Educational Institution for violation of any provisions of the Act of 2002 and the rules framed thereunder.

15. Writ Petition **disposed** of in the manner as indicated above.

SRINAGAR:
21.12.2023
“Hamid”

