

Court No. - 18

Case :- WRIT - A No. - 6488 of 2024

Petitioner :- Prof. (Dr.) Sartaj Shabbar Rizvi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Higher Education Lko. And 5 Others

Counsel for Petitioner :- Amrendra Nath Tripathi, Ranjeet Kumar Pal

Counsel for Respondent :- C.S.C., Anurag Kumar Singh

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner, learned State Counsel for opposite party no.1 and Mr. Dharmendra Pratap Singh, Advocate holding brief on behalf of Mr. Anurag Kumar Singh, learned counsel for opposite party no.2 and Mr. Apoorva Tiwari, learned counsel for opposite parties 3 to 5, whose power filed today is taken on record. In view of order being passed, notice to opposite party no.6 stands dispensed with.

2. Petition has been filed challenging order dated 01.07.2024 whereby petitioner has been divested of his powers to perform duties of the post of In-charge of Arts Faculty in the Shia Post Graduate College, Lucknow while appointing opposite party no.6 to act in the said capacity.

3. Learned counsel for opposite parties 3 to 5 has raised a preliminary objection regarding maintainability of this petition in view of the fact that there is no statutory or subordinate legislation with regard to appointment as an In-charge of Arts Faculty in the College concerned. It is submitted that aforesaid aspect comes within the realm of a private contract between petitioner and the College and therefore there is no public element involved due to which the present petition would not be maintainable. It is further submitted that the aspect of College being under grant-in-aid would be completely immaterial in view of fact that there is no right vested in the petitioner statutorily for appointment or continuance as In-charge of Arts Faculty. He has placed reliance on judgments rendered by

Hon'ble the Supreme Court in **St. Mary's Education Society and another v. Rajendra Prasad Bhargava and others** reported in (2023) 4 SCC 498 and **Shri Vidya Ram Misra v. Managing Committee, Shri Jai Narain College** reported in (1972) 1 SCC 623 as well as judgment rendered by a Full Bench of this Court in **Aley Ahmad Abidi v. Dist. Inspector of Schools, Allahabad and others** reported in AIR 1977 All 539 (FB) and a Division Bench decision of this Court in **Dr. S.N. Tripathi v. State of U.P.** reported in 2010 SCC OnLine All 1965 to buttress his submissions.

4. Per contra, learned counsel appearing for petitioner has refuted the submissions advanced by learned counsel for petitioner with the submission that in terms of Section 35(2) of the U.P. State Universities Act, 1973 (hereinafter referred to as the Act of 1973), every decision of the Management of such college to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner shall before it is communicated to him, be reported to the Vice-Chancellor and shall not take effect until and unless it has been approved by the Vice-Chancellor. It is submitted that the words 'such college' is referred to in Section 35(1) of the Act of 1973 to an affiliated or associated college. He has also placed reliance on proviso to Section 35(2) of the Act particularly with regard to colleges established and administered by minority as referred to in Article 30(1) of the Constitution of India.

5. He has also placed reliance on Section 35(5) of the Act to submit that conditions of service of teachers of such colleges shall be as may be prescribed. Learned counsel has thereafter referred to Section 49(d) (o) of the Act of 1973 pertaining to Statutes, Ordinances and Regulations to submit that the classification and recruitment including minimum qualifications

and experience of Principals and other teachers of the University and of affiliated and associated colleges, as well as other service conditions would be regulated by the First Statutes of the University.

6. It is therefore submitted that in terms of aforesaid provisions of the Act of 1973, the conditions of service of Teachers of Associated and affiliated Colleges of a particular university would have statutory backing and therefore petitioner's term as an In-charge would consequently also have statutory backing and would not be in the realm of merely a private contract. He has placed reliance of a Division Bench judgment of this Court in **C/M Pratibha Inter College, Barabanki and another v. State of U.P. and others**, Special Appeal No.115 of 2024 to submit that the judgment rendered by Hon'ble the Supreme Court in **St. Mary's Education Society**(supra) has been distinguished where service conditions are bound by statutory or other regulations having statutory force.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is quite evident that by means of impugned order, opposite party no.6 has been given the status of In-charge of Arts Department in the College thereby impliedly divesting petitioner of aforesaid responsibilities.

8. So far as preliminary objection is concerned, it would be relevant to advert to paragraph 14 of the writ petition where it is has been admitted that there is no stipulation either in the Act of 1973 or in the First Statutes of the University pertaining to appointment or conferring powers as In-charge of any faculty and it is only as per the practice, that senior most Associate Professor or Professor, the petitioner in the present case, is assigned the duty of In-charge of a faculty.

9. It is admitted between learned counsel for the parties that the College in question receives grant in aid for purposes of payment of salary to its teaching and non-teaching staff. However, in the present case, the aspect involved is only with regard to right vested in petitioner to function as In-charge of the Art Faculty. The issue is not pertaining to his appointment, continuance or payment of salary and other remunerations on the post of Professor which remains undisputed.

10. So far as Section 35(2) of the Act of 1973 and the Proviso thereto is concerned, the same pertains to conditions of service of Teachers of affiliated or associated colleges other than those maintained by Government or local authority and particularly pertains to any major penalty imposed upon a Teacher and the manner in which it is to be enforced. Section 35(5) of the Act of 1973 stipulates that other conditions of service of teachers of such colleges shall be such as may be prescribed. Here, the terminology of 'such colleges' would pertain to an affiliated or associated college of a particular university.

11. Section 49 of the Act of 1973 pertains to Statutes, Ordinances and Regulations with clauses (d) (e) and (o) pertaining to the aspect of classification, recruitment, minimum qualifications, experience, emoluments, the age of superannuation and such other conditions of service to be indicated in the First Statutes of the University to which a particular college is affiliated.

12. In the present case, it is admitted between the parties that no such prescription has been made in the First Statutes of the Lucknow University to which the College in question is associated. Such an aspect has clearly been admitted in paragraph 14 of the writ petition.

13. It is therefore evident that with regard to appointment and continuance of a Teacher as In-charge of a particular faculty in the College concerned is thus not governed by any statutory or even subordinate legislation.

14. Aforesaid aspect has clearly been adverted to in **St. Mary's Education Society**(supra) in the following manner:-

"75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character."

15. Aforesaid aspect has also been dealt with by a Division Bench of this Court in **Dr. S.N. Tripathi**(supra) wherein it has been held that mere payment of salary by the State Government to the College receiving grant-in-aid does not mean that the Government has got deep and pervasive control over the College managed by the Society and was therefore not held to be 'State' within the meaning of Article 12 of the Constitution of India.

16. However, from a perusal of the Division Bench judgment in **C/M Pratibha Inter College, Barabanki**(supra), it is also evident that the judgments rendered by Hon'ble the Supreme Court in **St. Mary's Education Society**(supra) and **Marwari Balika Vidyalaya v. Asha Srivastava and others**, reported in 2020(14) SCC 449 have been distinguished primarily on ground that in the said cases, the conditions of service particularly with regard to termination was in terms of Regulations, 2000 notified by the State Government on 10.08.2001. Aforesaid fact was examined by the Division Bench and held that since aforesaid Regulations were framed under the provisions of Section 7AA(3) of the U.P. Intermediate Education Act, 1921 and particularly since Appeal against termination of service was provided to a State entity being the District Inspector of Schools with penal clauses indicated therein, such termination of service would be governed by statutory provisions and would not be completely within the realm of a private contract.

17. It is therefore, quite evident that aforesaid judgment is inapplicable in the present facts and circumstances where college concerned is a post-graduate degree college and not an intermediate college and there are no statutory provisions governing the appointment or continuance of a Teacher as In-charge of a particular faculty in the College. The said

appointment or conferring of powers upon a Teacher as In-charge of a particular faculty therefore falls completely within the realm of a private contract without backing of any statutory provisions nor even having any public law element.

18. Therefore, in the considered opinion of this Court, in view of discussions made herein above, the divesting of powers of petitioner as In-charge of Faculty not being supported by any statutory provisions, the petition thus would not be maintainable.

19. Accordingly, the petition fails on the aspect of maintainability and is **dismissed**. Parties to bear their own costs.

Order Date :- 23.8.2024

kvg/-