

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).NO. 18172 OF 2015 (V)

PETITIONER(S) :

1. BINCY RAJ D.R. AGED 31 YEARS
W/O.EDWIN SINGH, SAM NIVAS, UNDANCODE
ELLUVILA PO, TRIVANDRUM, PIN-695 504.
2. SHYLAJA D. AGED 46 YEARS
W/O.PRAVEEN, NEAR G.H.S.MATHANPALA, PALUKAL PO
TRIVANDRUM DISTRICT.
3. GRACY M.C. AGED 50 YEARS
W/O.C.BABU, ELANKATHU MAVILA VEEDU, EBENEZER HOUSE
MALAYADI PO, TRIVANDRUM.
4. SHEELA JASMINE A. AGED 43 YEARS
W/O.GNANADAS N., ASISHAM, PERUMBOTTUKONAM
NADOORKOLLA, AMARAVILA PO, TRIVANDRUM DISTRICT
PIN-695 122.
5. VIJAYAKUMARI R., AGED 50 YEARS
W/O.MADHAVAN PILLAI, KALIYILVILA, RAMAVARMANCHIRA PO
TRIVANDRUM DISTRICT.
6. SYAMALA T.S. AGED 46 YEARS
W/O.SELVARAJ, S.S.NIVAS, PULLAVILA
VATTAVILA PO, TRIVANDRUM DISTRICT, PIN-695 132.

BY ADVS.SRI.P.RADHAKRISHNAN (1)
SRI.MADHU RADHAKRISHNAN
SRI.NELSON JOSEPH
SRI.M.D.JOSEPH

RESPONDENT(S) :

1. CENTRAL BOARD OF SECONDARY EDUCATION
SHIKSHA KENDRA, 2, COMMUNITY CENTRE
PREET VIHAR, NEW DELHI-110 092
REPRESENTED BY ITS SECRETARY.
2. REGIONAL OFFICER
CENTRAL BOARD OF SECONDARY EDUCATION
CBSE REGIONAL OFFICE, PATTOM, TRIVANDRUM-695 004.
3. CSI WF CENTRAL SCHOOL, KARAKKONAM
KARAKKONAM PO, TRIVANDRUM-695 504
REPRESENTED BY ITS MANAGER.
4. PRINCIPAL
CSI WF CENTRAL SCHOOL (CBSE), KARAKKONAM
TRIVANDRUM-695 504.

R3&4 BY ADV. SRI.P.C.SASIDHARAN
BY SRI.DEVAN RAMACHANDRAN, SC, CBSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON 07.07.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : TRUE COPY OF LETTER DATED 20-2-2015 WRITTEN BY THE STAFF OF THE 3RD RESPONDENT INCLUDING THE PETITIONERS TO THE 2ND RESPONDENT.

P2 : TRUE COPY OF LETTER DATED 2-5-2015 WRITTEN BY THE STAFF OF THE 3RD RESPONDENT INCLUDING THE PETITIONERS TO THE 1ST RESPONDENT.

P3 : TRUE COPY OF LETTER DATED 2-5-2015 (EXT P2) WRITTEN BY THE STAFF OF THE 3RD RESPONDENT INCLUDING THE PETITIONERS TO THE 2ND RESPONDENT.

P4 (A) : TRUE COPY OF NEWS PAPER REPORT IN MADHYAMAM.

P4 (B) : TRUE COPY OF NEWS PAPER REPORT IN CHANDRIKA

P4 (C) : TRUE COPY OF NEWS PAPER REPORT IN VEEKSHANAM

P4 (D) : TRUE COPY OF NEWS PAPER REPORT IN JANAYUGAM

P5 : TRUE COPY OF THE INTERIM ORDER DATED 2-6-2015 PASSED BY THIS HON'BLE COURT.

P6 (A) , P6 (B) , P6 (C) , P6 (D) , P6 (E) , P6 (F) : TRUE COPY OF THE SUSPENSION ORDERS ISSUED BY THE 3RD RESPONDENT TO THE PETITIONERS.

P7 : TRUE COPY OF THE COUNTER AFFIDAVIT (WITHOUT EXHIBITS) FILED BY THE 3RD RESPONDENT IN WPC.15591/2015

RESPONDENT(S) ' EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.18172 of 2015

.....
Dated this the 7th day of July, 2015

J U D G M E N T

Petitioners 1 to 4 in the writ petition are working as teachers, and petitioners 5 and 6 as staff, of the 3rd respondent School. The said School is affiliated to the Central Board of Secondary Education (CBSE), New Delhi. In the writ petition, the petitioners are aggrieved by Ext.P6 series of suspension orders that have been issued to them. It is the case of the petitioners that, while they have been working in the School for a number of years, without any break in service, they were not being paid basic salary by the 3rd respondent School in accordance with the affiliation bye-laws of the CBSE. Further, while the 3rd respondent was deducting various amounts, from the remuneration payable to them, towards Provident Fund, the said amounts were not paid by the 3rd respondent to the statutory authorities under the Employees Provident Fund Act. The petitioners, therefore, took up the matter with the statutory authority as also with the 1st respondent Board. It is the specific case of the petitioners in the writ petition that, it was as a retaliatory measure for making complaints against the management of the 3rd respondent that the latter initially prevented the petitioners from entering the School for

discharging their duties, and thereafter, by Ext.P6 series of suspension orders, placed the petitioners under suspension. The petitioners also contend that, while they had approached this Court through W.P.(C).No.15591 of 2015 at a time when they were denied work by the 3rd respondent's School, this Court had initially through an interim order dated 02.06.2015, directed the 3rd respondent to permit the petitioners to continue to discharge their duties with all benefits in the School. When the petitioners approached the 3rd respondent with the said order, however, they were served with Ext.P6 series of suspension orders, all dated 01.06.2015, a day prior to the date of the interim order passed by this Court. The suspension orders are impugned in the writ petition, inter alia, on the ground that (i) they have been issued without any bonafides, and as a retaliatory measure to wreak vengeance against the petitioners for having made complaints against the 3rd respondent School, (ii) that the suspension orders contain allegations against the petitioners which are not borne out by any material available with the 3rd respondent, and (iii) that the suspension orders were signed by the Principal of the School, who had no authority, in accordance with the affiliation bye-laws of the CBSE, to issue suspension orders against the petitioners. The prayer in the

writ petition is to quash Ext.P6 series of suspension orders that have been passed against the petitioners.

2. A counter affidavit has been filed by respondents 3 and 4 wherein it is stated that the management of the 3rd respondent School had decided to initiate disciplinary proceedings against the petitioners, and it was as a first step in the initiation of disciplinary proceedings that the suspension orders were issued to the petitioners. It is stated that, the conduct of the petitioners was not such as was to be expected from the teaching and non-teaching staff of the 3rd respondent's School. It is the specific case of the respondents that the performance of duties by the petitioners was not at all satisfactory and it had even resulted in the deterioration of the standard of education imparted in the School. The averments in the writ petition, that, the suspension orders were issued as a retaliatory measure, is vehemently denied by the 3rd respondent, and further, it is clarified that the Provident Fund amounts which had to be remitted to the statutory authority has since been remitted by the respondents. It is also the case of the 3rd respondent that, the petitioners cannot challenge the suspension orders issued to them in proceedings under

Article 226 of the Constitution of India. According to the respondents, the School in question is an unaided School that is affiliated to the CBSE but does not receive any grants from the Central Government. In that view of the matter, it is contended that, the 3rd respondent will not come within the ambit of the term “authority” either for the purposes of Article 12 of the Constitution of India or for the purposes of Article 226 of the Constitution of India. In the reply affidavit preferred by the petitioners, to the counter affidavit filed by the respondents, the sequence of events which led to the suspension orders is once again reiterated, and reference is made to the decisions of the Supreme Court that touch upon the aspect of maintainability of the writ petition against the 3rd respondent.

3. I have heard Sri.Madhu Radhakrishnan, the learned counsel for the petitioners and Sri.P.C.Sasidharan, the learned Standing counsel for the 3rd and 4th respondents as also the Standing counsel for the 1st and 2nd respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that inasmuch as the

3rd respondent has a specific case with regard to maintainability of the writ petition against the 3rd respondent, it would be apposite to first deal with the said issue. The writ petition has been filed invoking the provisions of Article 226 of the Constitution of India. It is not in dispute that, if the authority against whom a writ petition is filed is a “State” within the meaning of that term under Article 12 of the Constitution India, then its actions must be subject to the rigours of Part III of the Constitution of India and a writ petition would lie for enforcement of fundamental rights and other rights. If, however, the authority in question is not one that would fall within the ambit of the term “State” as defined under Article 12 of the Constitution of India, it has to be seen whether the body would come within the meaning of “other authority” for the purposes of Article 226 of the Constitution of India.

5. In **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, [(2002) 5 SCC 111]**, a seven Bench Judge of the Supreme Court laid down the guidelines to determine whether a body could be treated as a State for the purposes of Article 12 of the Constitution of India. It was observed as follows in the said case:

“(1) Principles laid down in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must *ex hypothesi*, be considered to be a State within the meaning of Article 12.

(2) The question in each case will have to be considered on the basis of facts available as to whether in the light of the cumulative facts as established, the body is financially, functionally, administratively dominated, by or under the control of the Government.

(3) Such control must be particular to the body in question and must be pervasive.

(4) Mere regulatory control whether under statute or otherwise would not serve to make a body a State.”

In the instant case, it is not the case of the petitioners that the 3rd respondent is a “State” for the purposes of Article 12. The issue to be examined, therefore, is whether the 3rd respondent would be a body against which a writ of mandamus could be issued in exercise of the powers under Article 226 of the Constitution of India. Here, it must be noticed that under Article 226 of the Constitution of India, the term “other authority” is of wider connotation and it would embrace those authorities which discharge public functions or public duties of

great magnitude. Further, the power under Article 226 is not limited to the enforcement of fundamental rights covered by Part III of the Constitution but also “for any other purpose”. It is a power that takes within its fold more authorities than stipulated in Article 12, and the subject matter that can be dealt with under Article 226 is also wider in its scope. This Court can issue a writ of mandamus to any authority that is performing a public duty. The form of the body concerned is not of much relevance. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of a positive obligations owned by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied (See **Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R.Rudani, [(1989) 2 SCC 691]**). The only two exceptions to the above proposition are (i) if the rights are purely of a private character and (ii) If the body in question is a purely private body with no public duty. In both the said instances, a writ of mandamus cannot be issued to the body in question. In **K.Krishnamacharyulu v. Sri.Venkateswara Hindu College of Engg.[(1997) 3 SCC 571]**, it was reiterated by the Supreme Court

that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizen, the teachers who impart education get an element of public interest in the performance of their duties. The issue of what would amount to a public duty is a vexed one that would have to be determined by analysing the nature of duties discharged by the body in question. If the functions are similar to or closely related to those performable by the State in its sovereign capacity, then that would be an indication that the function discharged by the body in question is a public function (See **G.Bassi Reddy v. International Crops Research [(2003) 4 SCC 225]**).

6. When examined in the light of the aforesaid principles, as also against the back drop of Article 21A of the Constitution that provides for a fundamental right to free and compulsory elementary education to children between the ages of 6 and 14, the duties owed by the 3rd respondent School to the children, teaching and non-teaching staff cannot but be viewed as public duties, that would bring the 3rd respondent School within the ambit of the term “other authority” for the purposes of maintaining a writ petition against it under Article

226 of the Constitution of India. The fact that the School in question is an unaided School may not be of much relevance as already adverted to by the Supreme Court in the case of **Ramesh Ahluwalia v. State of Punjab and Others [(2012) 12 SCC 331]**, wherein it was found that merely because the institution in question was a purely unaided private educational institution, it could not be said that a writ petition under Article 226 of Constitution of India would not be maintainable against it. I am therefore, of the view that the present writ petition is maintainable against the 3rd respondent School.

7. I must now deal with the main issue with regard to the legality of Ext.P6 series of orders issued to the petitioners suspending them from service. I note in this connection that, the orders of suspension contain on the face of it, averments that there have been complaints from parents of students against the petitioners, that the petitioners were acting against the directions issued by the Principal, and further, that they were not attending work from 01.04.2015 onwards. It is relevant to note that, in the counter affidavit filed by the 3rd respondent, there is no supporting material, produced or referred to, that would indicate the basis for making such averments

in the suspension orders issued to the petitioners. It is well settled that the power to suspend an employee is inherent in an employer but it is a power that cannot be exercised arbitrarily or with malafide motives. An order of suspension by its very nature does not put an end to the service of the employee in question. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension is that though the employee continues to be a member of the service, he is not permitted to work, and further, during the period of his suspension, he is paid only some allowance, generally called subsistence allowance, which is usually less than the pay and allowances he would have been entitled to if, he had not been suspended (See **Khem Chand v. Union of India [(1963) SC 687]**). An order of suspension thus visits an employee with civil consequences, and a deprivation of his proprietary right over the differential pay and allowances that he is entitled to get. It is, therefore, that an order of suspension cannot be viewed lightly and it becomes necessary, while exercising the powers of Judicial review, to examine whether the order of suspension suffers from the vice of arbitrariness or malafides. In the instant case, I find that the following factors, when cumulatively considered, vitiate the

suspension orders that have been issued to the petitioners:

(1) The timing of the suspension orders: It is not in dispute that the suspension orders were issued to the petitioners at a time when they had raised complaints, against the 3rd respondent, before the statutory authorities under Employees Provident fund Act as also with the CBSE. That apart, the petitioners had also approached this Court through W.P.(C).No.15591 of 2015 alleging denial of work to them, when the suspension orders were issued to them.

(2) The similarity in the wordings in the orders issued to the petitioners 1 to 4 as also in the orders issued to the petitioners 5 and 6: While it can be appreciated that where the same misconduct is committed by several people, the suspension orders issued to them can be similarly worded, in the instant case, the misconduct alleged in the suspension

orders, pertains to a deficiency in the discharge of teaching functions by the employee concerned. This has necessarily to be specific to the employee concerned and cannot be the same for petitioners 1 to 4.

(3) Non-compliance with the provisions of the Bye-laws: The suspension orders were not signed by the Manager and were therefore in contravention of bye-law 22 of the CBSE affiliation bye-laws.

7. I find, therefore, that this is a case where the orders of suspension issued to the petitioners, when examined in the light of the averments contained therein, appear to have been issued as a knee-jerk reaction to the complaints filed by the petitioners before various authorities, against the 3rd respondent School. The 3rd and 4th respondents have also not been able to point out any deficiency that was noticed in the discharge of teaching functions by petitioners 1 to 4, at any time before the issuance of the order of suspension. In the absence of any adverse entry in the confidential records of the

teaching staff, on which reliance could be placed by the 3rd and 4th respondents, the allegations in the suspension orders, pointing to a deficiency in the discharge of teaching functions, would have to be viewed as baseless. I therefore quash Ext.P6 series of suspension orders as arbitrary and legally unsustainable and direct the respondents to reinstate the petitioners in service forthwith. I also make it clear that, nothing in this judgment shall stand in the way of petitioners initiating, and pursuing, disciplinary proceedings against the petitioners, on the basis of materials which they have in their possession to justify such proceedings.

The writ petition is allowed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

