

Commissioner, Lucknow Division and Others

Vs

Kumari Prem Lata Mishra

Civil Appeal No. 343 of 1974

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

26.10.1976

JUDGMENT

GUPTA, J. -

1. Colvin Taluqdars' College in Lucknow, run by a society registered under the Societies Registration Act, imparts education at the following different stages :

- (i) Pre-basic i.e., nursery classes.
- (ii) Junior basic, called primary stage, from class I to V
- (iii) Senior basic i.e., junior high school stage - from class VI to VIII, and
- (iv) (a) Higher secondary stage, called high School stage - classes IX and X,
(b) Intermediate stage - classes XI and XII.

In the beginning the college had no pre-basic or junior basic classes and started with class VI; classes I to V and nursery classes were opened later. The respondent was appointed an assistant teacher in the basic section of the college in 1961. Following certain incidents involving her. She was suspended on or about August 20, 1970 and ultimately her services were terminated by the managing committee of the college sometime in October 1970. She filed a writ petition in the High Court at Allahabad (Lucknow Bench) alleging inter alia that the order terminating her services was mala fide and made in violation of the regulations framed under the (U.P.) Intermediate Education Act, 1921. She asked for a writ of certiorari quashing the order of suspension and the order terminating her services, and a writ of mandamus directing the opposite parties to pay the full salary and emoluments due to her. The president of the managing committee of the college, the principle, the headmistress of the basic Section and the committee of management were impleaded as opposite parties 1, 2, 3 and 4 respectively. The writ petition was dismissed by a single Judge of the High Court on a preliminary ground that none of the opposite parties was a public authority and the impugned orders suspending her and terminating her services were not made in the exercise of any statutory function. On appeal a Division Bench of the High Court took the view that the basic section of the college was an integral part of the college and held that the managing committee of the college was a statutory body constituted under the Intermediate Education Act and governed by the regulations framed thereunder. The Division Bench therefore found the writ petition maintainable and remanded the case to the single Judge to be decided on merits.

2. The Intermediate Education Act, 1921, as its long title shows, is an Act for the establishment of a Board of High School and Intermediate Education. The preamble says that it was enacted because it was expedient to establish a Board to take the place of the Allahabad University in regulating and supervising the system of High School and Intermediate education in the United Provinces, and to prescribe courses therefor. Section 2 of the Act defines, among other terms, Board, institution and recognition. Board means the Board of High School and Intermediate Education. Institution means the whole of an institution or a part thereof, as the case may be. Recognition means recognition for the purpose of preparing candidates for admission to the Board's examination. Admittedly, Colvin Taluqdars' College is a recognised institution. Section 7 which defines the powers of the Board, after enumerating certain specific powers, states that the Board will have the power to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education.

The powers mentioned in Section 7 all relate to High School and Intermediate classes. Section 16-A lays down that for every recognised institution there shall be a scheme of administration which must provide, among other matters, for the constitution of a committee of management. Section 16-B and Section 16-C deal with the preparation of the scheme of administration. Section 16-D authorises the Director of Education, Uttar Pradesh to cause inspection of a recognised institution from time to time and order the removal of any defect found on inspection. Sections 16-E 16-F and 16-G provide for the qualification and the conditions of service of the teachers of a recognized institution. Thus all these sections are confined in their application to recognized institutions only. Regulations have been framed under the Act in respect of matters covered by Sections 16-A to Section 16-G. Regulations 31 to 45 in Chapter III of the Regulations deal with the subject of punishment, enquiry and suspension of the employees of a recognized institution. It is said that the suspension and dismissal of the respondent was not in accordance with these regulations.

3. It seems clear from the provisions set out above that they all relate to recognized institutions; recognition is by the Board for the purpose of preparing candidates for admission to the Board's examination, and Board means the Board of High School and Intermediate Education. The basic section of a school cannot therefore be part of a recognized institution. We are unable to agree with the view taken by the Division Bench of the High Court that the basic section is an integral part of the institution and therefore must be governed by the provisions of the Intermediate Education Act, 1921. A school by extending its operation to fields beyond that covered by the Act cannot extend the ambit of the Act to include in its sweep these new fields of education which are outside its scope. The case of the appellants on this point appears from the counter affidavit filed by them in answer to the writ petition. It is said that the college is running the Basic Section independently and is neither registered by the Government or affiliated by any local body and neither any grant-in-aid is being taken by the department to run this section accordingly. The college has its own rules and regulations to conduct the Basic Section.

It is not correct to think that since the college has to have a committee of management as required by Section 16-A, a managing committee that looks after the affairs of the Basic Section of the college must also be functioning as a statutory body discharging duties under the Intermediate Education Act and governed by the regulations framed thereunder. The Division Bench sought support for the view it had taken from some provisions in the Educational Code of Uttar Pradesh but, as pointed out by the learned single Judge, the Code is only a compilation of the various administrative rules and orders relating to educational institutions in the State and has no statutory force. For the reasons stated above, it must be held that the appellants were not discharging any statutory function in making the impugned orders affecting the respondent. The appeal is

accordingly allowed, the judgment of the Division Bench is set aside and that of the single Judge restored. There will be no order as to costs.

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