

Cyril E. Fernandes

Vs

Sr. Maria Lydia and Others

Civil Appeal No. 831 of 1976

(A.C. Gupta, P.N. Shinghal JJ)

08.09.1977

JUDGMENT

GUPTA, J. -

1. The appellant was employed as a teacher in the Presentation Convent High School, Margao, Goa. The school is recognised by the Department of Education of the Government of the Union Territory of Goa, Daman and Diu, the fourth respondent herein, and as a condition precedent to such recognition the school is required to comply with the rules in the grant-in-aid code established by the Government for granting aid to educational institutions. The first respondent is the Principal and Manager of that school. Sometime in March 1974 on receiving a complaint from a girl student and after making an enquiry into the allegation herself, the first respondent wrote to the second respondent, Director of Education of the Government of Goa, Daman and Diu, seeking his approval for terminating the services of the appellant. Sub-rule (2) of Rule 74 of the grant-in-aid code requires the prior approval of the Deputy Director of Education for the termination of the services of a permanent employee, Rule 74(2) provides inter alia that the services of a permanent employee may be terminated by the management without assigning any reason on giving as compensation 12 months' salary to the employee if he or she has been in the service for 10 years or more, and 6 months' salary if he or she has been in the service for less than 10 years, but only after obtaining prior approval of the Deputy Director of Education for the action proposed. It appears that the Director of Education after examining three girl students who were produced before him gave his approval to the proposed termination of the services of the appellant. By a letter dated June 5, 1974 the first respondent informed the appellant that his services were "being terminated with effect from June 10, 1974". It is not disputed that the salary payable to the appellant under Rule 74(2) was duly paid.

2. The events took a turn in a different direction thereafter. On June 22, 1974 the first respondent received a telegram from the Director of Education asking her to "keep in abeyance" the proposed termination of the appellant's services. The telegram was followed by a letter dated July 25, 1974 addressed by an Under Secretary of the Government of Goa, Daman and Diu directing the management of the school to reinstate the appellant and conduct an enquiry in accordance with sub-rule (3) of Rule 74 of the grant-in-aid code as, according to him, the termination was "in reality" under Rule 74(3) for misconduct. Rule 74(3) provides inter alia that in all cases of termination of service of permanent employees except the cases mentioned in Rule 74(2), an enquiry shall be held through a properly constituted enquiry committee. It adds that "such an enquiry can be held only in the case of insubordination, neglect of duties or misconduct (in each case of a serious nature)". The first respondent wrote back stating that the services of the appellant had already been terminated and the vacancy filled and that she disagreed with the view that this was a case of termination Under

Rule 74(3). Then on October 8, 1974 the Director of Education informed the first respondent that as she had not "implemented the Government order" to reinstate the teacher and to hold an enquiry under Rule 74(3), "the maintenance grant other than that part of it that is meant for salary of staff, to be paid to your school has been stopped from today until further orders".

3. The first respondent moved the Court of the Judicial Commissioner for Goa, Daman and Diu at Panaji for a writ to quash the decision of the authorities contained in the two letters dated July 25, 1974 and October 8, 1974. The writ was asked for against the Director of Education, the Under-Secretary who wrote the letter of July 25, 1974, the Government of the Union Territory of Goa, Daman and Diu, the Union of India, and the Deputy Inspector of South Educational Zone, Margao, Goa. The present appellant was also impleaded as a respondent. The Judicial Commissioner held that the termination was under Rule 74(2) which did not require an enquiry as contemplated in Rule 74(3) and that the approval given by the Director of Education was valid and could not be subsequently superseded or revoked. It was further held that the direction to reinstate the teacher was without jurisdiction and not binding on the school and, therefore, the stoppage of the grant-in-aid on the ground that the management of the school had declined to comply with that direction was wrong and not authorised under the grant-in-aid code. On the question whether the code was enforceable by a writ, the Court held on the authority of a decision of the Gujarat High Court reported in AIR 1972 Gujarat 260 that though the code was not a statute but a set of administrative rules "regulating the relations between the management of a school and the Government", where, as in the present case, the management of the school acted upon the "promises" held out by the Government in the rules contained in the code and agreed to "bind themselves to act in future as per the said rules", as between the management and the Government such promises and assurances would be binding and enforceable. The authorities against whom relief was asked for and obtained have not preferred any appeal from this decision. The instant appeal is by the teacher whose services were terminated.

4. The main contention of Mr. R.K. Garg for the appellant has been that the Judicial Commissioner was in error in issuing a writ to enforce the provisions of the grant-in-aid code which have no statutory force. We do not think it is a question which can be raised in this appeal at the instance of the teacher. The writ petition questioned the validity of the direction on the management of the school to reinstate the teacher and the stoppage of the grant-in-aid as a penal measure when the management declined to comply with that direction. The authorities who were responsible for making the impugned orders and against whom the writ has gone, have not appealed. The dispute was between the management of the school and the Government relating to some of the rights and obligations they have against each other under the grant-in-aid code; the teacher, termination of whose services gave rise to this dispute, was impleaded as a proper party in the writ petition. The scope of the appeal is limited to what the judgment contains by which the appellant can be said to be aggrieved. A person can claim to be aggrieved if his legal rights are directly affected. In *State of Assam v. Ajit Kumar Sharma* [(1965) 1 SCR 890, 897 : AIR 1965 SC 1196 : (1966) 1 LLJ 451.] this Court observed :

Where such conditions of grant-in-aid are laid down by mere executive instructions, it is open to a private college to accept those instructions or not to accept them. If it decides not to accept the instructions it will naturally not get the grant-in-aid which is contingent on its accepting the conditions contained in the instructions. On the other hand, if the college accepts the conditions contained in the instructions, it receives the grant-in-aid. If however having accepted the instructions containing the conditions and terms, the college does not carry out the instructions, the Government

will naturally have the right to withhold the grant-in-aid. That is however a matter between the Government and the private college concerned. Such conditions and instructions as a grant-in-aid confer no right on the teachers of the private colleges and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced.

On the authority of State of Assam v. Ajit Kumar Sharma it is clear that the appellant is not directly concerned with the question whether the rules in the grant-in-aid code conferred on the management of the school an enforceable right against the Government which is entirely a matter between the management and the Government. The appellant who has no say in the matter cannot challenge the finding on the point. The question as to the enforceability of the grant-in-aid code does not thus arise in this appeal and we express no opinion on it. The scope of the appeal must therefore be limited to what directly concerns the appellant in the impugned judgment. The Judicial Commissioner has held that this was a case of termination of service under Rule 74(2) which does not require a regular enquiry as in a case to which Rule 74(3) is applicable. In spite of this finding, the judgment contains some remarks like "the behaviour of the fifth respondent was immodest and immoral" and that though an opportunity was given to him to answer the charges levelled against him, he did not avail of that opportunity. There has been no proper enquiry to find out the truth of the allegations against the appellant; indeed, there was no occasion for any such enquiry as the appellant's services were terminated by applying Rule 74(2) of the grant-in-aid code. We hold that these remarks on the conduct of the appellant are unjustified and should not have been made. Subject to this the appeal is dismissed. We express no opinion as to whether on the facts of the case the appellant has any legal claim against the management of the school; if he has, he is free to enforce it in an appropriate forum. In the circumstances of the case we make no order as to costs.

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