Smt. J. Tiwari

Vs

Smt. Jwala Devi Vidya Mandir and Others

Civil Appeals Nos. 1594-1595 of 1969

(CJI Y. V. Chandrachud, V. D. Tulzapurkar, A. P. Sen JJ)

10.01.1979

JUDGMENT

CHANDRACHUD, C.J. –

1. The appellant, Smt. J. Tiwari, was appointed as the Headmistress of the Jwala Devi Vidya Mandir, Kanpur (respondent 1 therein), which is a Society registered under the Societies Registrations Act of 1860. In 1949, the school was raised to the status of an Intermediate College, whereupon the appellant became its Principal. On December 21, 1951 the Working Committee of the Higher Secondary section of the Society passed a resolution suspending the appellant. On January 18, 1952 a charge-sheet was served upon the appellant and on the very next day she filed a suit in the court of the Munsif, challenging her suspension as void and inoperative. In May 1957 the High Court of Allahabad withdrew that suit for trial to itself and thereupon the suit was numbered as 2 of 1957. By a judgment dated April 2, 1958 a learned single Judge of the High Court decreed the suit, holding that the Committee which passed the resolution of suspension was not properly constituted and therefore it had no jurisdiction to suspend the appellant. Both the parties filed appeals against that judgment but those appeals were dismissed by a Division Bench of the High Court on April 17, 1962.

2. On May 24, 1958 the Executive Committee of the Society passed a resolution terminating the appellant's services with retrospective effect from the date of suspension. On August 28, 1958 the appellant filed Suit No. 42 of 1959 asking for a declaration that she continued in the service of respondent 1 and for setting aside the order terminating her services. The appellant claimed in her suit a decree in the sum of Rs. 37,657.40 by way of salary.

3. The suit was partly decreed by the learned 2nd Civil Judge Kanpur, who, upheld the appellant's contention that the termination of her services was bad and ineffective. The learned Judge passed a decree in her favour in the sum of Rs. 15,250 as arrears of pay for a period of three years from August 1, 1955 to July 31, 1958 with interest at 3% per annum and in a further sum of Rs. 465.31 as compensation in respect of her contribution towards the Provident Fund. Both the parties filed appeals against the judgment of the trial Court. First Appeal No. 323 of 1961 was filed by the College while First Appeal No. 332 of 1961 was filed by the appellant. A division Bench of the High Court on May 17, 1966 partly allowed the former appeal and dismissed the latter appeal wholly. The High Court had taken the view that though the appellant's dismissal was wrongful, she was entitled to a decree for damages only and not to a declaration that she still continued to be in the service of respondent 1 and to a consequent order of reinstatement. The High Court upheld the money decree passed by the trial Court but it did so on the ground that the amount awarded by the trial Court to the appellant by way of arrears of salary could justifiable be granted to her by way of

damages. The High Court has granted to the appellant a certificate to appeal to this Court under Article 133(1)(a) and (b) of the Constitution.

4. We are unable to accept the contention strenuously advanced before us by the appellant's learned counsel that respondent 1 is a public body or a statutory authority and therefore the appellant would be entitled to obtain a declaration that she continued to be in the service of respondent 1 since the order terminating her services has been found to be unlawful. The regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to respondent 1 and if the provisions thereof are violated by respondent 1, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the educational grant payable to the institution. That does not, however, mean that respondent 1 is a private institution which is registered under the Societies Registration Act, 1860. It was established by one Nand Lal, a retired Deputy Collector, who named it after his wife Smt. Jwala Devi. The Society was established for the purpose of managing the institution.

5. Exhibit 1 is an agreement dated January 1, 1953 between the appellant and respondent 1. Clause 10 of that agreement reads thus :

> When the Principal/Headmaster/Headmistress has been confirmed, neither the Principal/Headmaster/Headmistress nor the Committee subject to the provision of clause 7, shall terminate this agreement except by giving to the other three calendar months' notice in writing to take effect from the eighth day of the succeeding month, or by paying to the other a sum equivalent to three times the monthly salary which the Principal/Headmistress is then earning.
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> Clause 7 which is referred to in clause 10 confers power on the Committee of the institution to dismiss the Principal or the Headmistress on the ground of insubordination, deliberate neglect of duty, serious misconduct and the commission of an act which constitutes a criminal offence. It may be assumed for the purpose of argument that the resolution dated May 24, 1958 which was passed by the Executive Committee of respondent 1 terminating the services of the appellant is unlawful for want of three calendar months' notice as provided in clause 10 of the agreement. By the second paragraph of clause 10, which it is unnecessary to extract fully, it is provided that before giving a notice of termination to the Principal, the Society should consult the Inspectress of Schools, should give full reasons for discharging the Principal and that the notice of termination "should only be valid" if the Inspectress approves of it. We may further assume that since this procedure was not followed by the Society, the order terminating the appellant's service is unlawful. But the appellant is an employee of a private institution and their mutual rights and obligations are governed by the terms of the contract, Ex. 1, which was entered into by them in 1953. Since under those terms the appellant's services were liable to be terminated on three months' notice, all that she would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of her services she continued to be in service. The judgment of this Court in Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain ((1976) 2 SCC 58 : 1976 SCC (L&S) 176 : (1976) 2 SCR 1006) is a direct authority for this conclusion.

6. The trial Court was justified in passing a decree for three years' arrears of salary in favour of the

appellant because in the earlier suit filed by her for challenging the order of suspension, it was held that the order was without jurisdiction. Since the order of termination of the appellant's services was passed in May 1958 only, she had to be deemed to be in the service of respondent 1 until then. That is the conjoint effect of the invalidity of the order of suspension and the absence of any order of termination. The appellant claimed arrears of salary for a period of six years covered by the period of suspension from 1952 till 1958, but her claim was within limitation only for a period of three years before the institution of the suit. The claim from 1952 to 1955 was was obviously barred by limitation and could not be allowed in her favour.

7. The High Court had treated the claim for three years' arrears of salary as being payable to the appellant on account of damages. But that is not a right approach to the problem. The appellant is entitled three years' arrears of salary for the period of suspension since the order of suspension was without jurisdiction and until May 1958 no order of termination of her service was passed by the Society. In addition to the arrears of three years' salary, the appellant would be entitled to three months' salary as provided for by clause 10 of the agreement.

8. We would like to add that even if the appellant could be held to be entitled to a declaration that she continued to be in the service of respondent 1, this is not a proper case in which such a declaration should be granted to her. The appellant's claim according to her counsel would amount to over Rs. 2 lakhs. The appellant has admitted in her evidence that she did not make any attempt to mitigate the damages by trying to obtain an alternative employment during the last 20 years. The difficulty of obtaining employment is an argument which cannot be permitted to a person who, on her own showing, has made no effort to obtain any employment.

9. In the result we affirm the judgment of the High Court except with the modification that in addition to the sum awarded to the appellant by the High Court she would be entitled to a further sum equivalent to three months' salary.

10. There will be no order to costs.

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