Anne Besant National Girls High School

Vs

Deputy Director of Public Instructions and Others

Civil Appeal No. 113 (N) of 1974

(V. Chandrachyd, V. D. Tulzapurkar JJ)

16.12.1982

JUDGMENT

TULZAPURKAR, J. :-

1. This appeal by special leave is directed against the judgment and decree passed by Mysore High Court at Bangalore on 25th June, 1973 in Second Appeal No. 674 of 1971.

2. The appellant-plaintiff is a Girls' High School run by a registered Educational Society. The school has been recognised and is receiving aid under the Grant-in-Aid Code framed by the Mysore Government. One Smt. Radha L. Rao, permanent Headmistress, went on leave from 1st June, 1963; in this leave vacancy Smt. Jalajakshi (3rd respondent) was appointed as temporary acting Headmistress; her tenure was continued until further orders as Smt. Radha Rao extended her leave due to serious illness of her husband at Bombay. Since her method of work was found to be unsatisfactory the Management by its order dated 22nd July, 1964 relieved 3rd respondent of her duties as temporary acting Headmistress and she was directed to hand over charge to Smt. Manorama Rao who was appointed to officiate as temporary Headmistress until further orders. Accordingly, the 3rd respondent handed over charge to Smt. Manorama Rao and the Management intimated this change and sought approval thereto from the Deputy Director of Public Instructions (1st respondent) under Rule 9(vii) of the Grant-in-Aid Code. The 3rd respondent submitted an appeal to the DDPI (1st respondent) against her reversion from the post of Headmistress. The 1st defendant instead of approving the change effected by the Management called upon the Management to explain why the 3rd respondent who was senior to Smt. Manorama was reverted without giving her an opportunity to defend her position; the Management sent a reply explaining its case. By his order dated 24th November, 1964, the 1st respondent (DDPI) did not approve the change effected by the Management and further directed the management to reinstate the 3rd respondent to her original position as Acting Headmistress till the permanent Headmistress rejoined duty after leave. The Management preferred an appeal to the 2nd respondent (Director of Public Instructions) against that order. The 2nd respondent dismissed the appeal on February 3, 1965.

3. The appellant-plaintiff filed a suit being O. S. No. 50 of 1966 in the Court of the Additional Munsif, Mangalore, for a declaration that the orders dated November 24, 1964 and February 3, 1965 passed by respondents Nos. 1 and 2 directing the reinstatement of the 3rd respondent were illegal, wrongful, ultra vires and without jurisdiction and for unjunction restraining them from enforcing the said Orders against the Management and also restraining the 3rd respondent from claiming any rights thereunder. The appellant-plaintiff's case was that the reinstatement of Smt. Jalajakshi as directed by the impugned orders was beyond the scope and purview of Rule 9(vii) of the Grant-in-Aid Code and that even the non-approval of Smt. Manorama Bai Rao's appointment as officiating

Headmistress was not warranted by the terms of the said Rule and that while dealing with the Management's application seeking approval of the change the DDPI (1st respondent) has assumed appellate powers over the action of the Management which he did not possess and illegally directed the reinstatement of Smt. Jalajakshi. The suit was resisted by respondent No. 1 and 2 who contended that the impugned orders were legal and valid and in any case though the order of reinstatement may appear to be outside the ambit of Rule 9(vii) they had the power of withholding the approval for the change effected by the Management and as such the Court should not interfere with their orders. Respondent No. 3, apart from supporting the impugned orders, raised a further contention that the order of reversion was violative of Art. 311(2) of the Constitution and that the suit to challenge the impugned orders was not maintainable in a civil court.

4. The trial court on merits held that the impugned orders were not in conformity with the Grant-in-Aid Code nor in conformity with the terms of the agreement of service of the 3rd respondent with the appellant-plaintiff and since neither Rule 9(vii) of the Grant-in-Aid Code nor the terms of agreement of service empowered the two respondents to direct reinstatement, the impugned orders were without jurisdiction, but dismissed the suit on the ground that the suit was not maintainable in respect of anything done pursuant to the provisions of Grant-in-Aid Code which merely contained administrative or departmental instructions. The appellant-plaintiff preferred an appeal being regular Appeal No. 80 of 1970 which was allowed partly by the Appellate Court by its judgment dated January 12, 1971. It confirmed the Trial Court's finding that the impugned orders passed by the first two respondents, being contrary to the Rules of Grant-in-Aid Code as well as the terms of agreement of service, were ultra vires and on the question of Court's jurisdiction it took the view that though the civil court may not entertain a suit to decide whether the actions or decisions of the authorities (like respondents 1 and 2) were right or wrong on merits, it had jurisdiction to examine whether those actions or decisions were not in compliance with or we contrary to the rules or laws under which the authorities had acted; in other words, the Appellate Court held that the civil court had jurisdiction to examine whether the authorities had acted within their power or outside it. After holding in favour of the appellant-plaintiff on both these points, the Appellate Court gave the declaration sought by the appellant-plaintiff that the impugned orders were ultra vires and beyond the jurisdiction and authority of respondents Nos. 1 and 2, but felt that there was no need to grant any consequential relief of injunction as the declaration was sufficient to appraise the officers of their duty not to act upon the impugned Orders. Curiously enough, no further appeal was preferred by respondents Nos. 1 and 2, but respondent No. 3 (Smt. Jalajakshi) preferred second appeal No. 674 of 1971 to the High Court challenging the decree of the First Appellate Court and the High Court disposed of the appeal only on the question of civil court's jurisdiction to entertain the suit and taking the view that the provisions of the Grant-in-Aid Code under which the impugned Orders had been passed were only in the nature of administrative instructions, no suit lay either for their enforcement or for their non-enforcement and relying upon a decision of this Court in Kumari Regina v. St. Aloysius Higher Elementary School it held that the suit instituted by the appellant-plaintiff was not maintainability with the result that it dismissed the suit on June 25, 1973. It is this judgment and decree of the High Court that have been challenged by the appellant-plaintiff in the instant appeal before us.

5. At the outset counsel for the appellant-plaintiff informed us that none of the concerned teachers would be interested in this litigation, for, admittedly, Smt. Radha Rao, the permanent Headmistress never sought to join the school after she had gone on leave, presumably because on the death of her husband at Bombay she was no more interested in service, while both Smt. Jalajakshi as well as Smt. Manorama Rao have since retired on reaching the age of superannuation and the appellant-plaintiff is interested in the restoration of the declaration that had been granted in its favour by the

First Appellate Court, for, in the absence of the said declaration, the impugned Orders passed by respondents Nos. 1 and 2 would obstruct the receipt of any aid by the school under the Grant-in-Aid Code and hence counsel was pressing this appeal. He contended that the High Court's view on the maintainability of the suit was clearly erroneous and unsustainable. Counsel urged that though the Rule of the Grant-in-Aid Code would be administrative departmental instructions and, therefore, any Orders passed thereunder may not be enforceable in law, a suit to challenge such orders on the ground that they were ultra vires and without jurisdiction would be clearly maintainable, if such Orders passed there under may not be enforceable in law, a suit to challenge such orders on the ground that they were ultra vires and without jurisdiction would be clearly maintainable, if such Orders adversely affected the appellant-plaintiff's interests or prejudiced its right to receive aid under the Grant-in-Aid Code. Counsel further contended that the High Court's reliance on this Court's decision in Kumari Regina's case was entirely misplaced in the context of the type of suit that was filed by the appellant-plaintiff in this case, inasmuch as the decision is no authority for the proposition that even a suit to challenge the Orders passed under the provisions of the Grant-in-Aid Code as being ultra vires is not maintainable. We find considerable force in this contention urged by the counsel for the appellant-plaintiff.

6. In Kumari Regina's case appellant had been reduced to the position of an Assistant Teacher from her original post of Headmistress by the Management of the School against which she approached the Educational Authorities and the Divisional Inspector of Schools directed the Management to restore her to the position of Headmistress; when the Management did not do so the appellant filed a suit for the issue of mandatory injunction to the Management of the School and for damages. This Court held that the rules relating to the recognition and aid, under which the Divisional Inspector of School had issued his directions were only administrative instructions by the Government to its Educational Officers and not statutory rules which would give rise to a remedy enforceable at law at the instance of employees of the school aggrieved against the Management. The present case is not one where any specific performance of the orders issued by respondents Nos. 1 and 2 under the Grant-in-Aid Code is sought; on the contrary the appellant-plaintiff (Management) challenged the impugned Orders as being ultra vires and beyond the powers of respondents Nos. 1 and 2 since the impugned Order were likely to affect the appellant-plaintiff adversely it sought a declaration that the Orders were ultra vires. Such a suit, in our view, would be clearly maintainable and the First Appellate Court's view in this behalf was right. On merits, the High Court gave no finding whatsoever, but the Trial Court as well as the First Appellate Court came to the conclusion that the said orders were ultra vires and without jurisdiction. It may be stated that respondents Nos. 1 and 2 were not aggrieved by the finding which had been recorded against them. No appeal was carried by them to the High Court against it and hence they must be regarded as having acquiesced in it. Even otherwise we find that order directing the reinstatement of Smt. Jalajakshi and non-approval of Smt. Manorama Rao is unsustainable in law. We, therefore, confirm that finding.

7. In the result, we allow this appeal, set aside the High Court's judgment and decree and restore that of the First Appellate Court. There will be a declaration in appellant-plaintiffs favour that the impugned Orders dated November 24, 1964 and February 3, 1965 are ultra vires and without jurisdiction. There will be no order as to costs.

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