

Governing Body, St. Anthony's College, Shillong and Others

Vs

Rev. Fr. Paul Petta of Shillong East Khasi Hills

Civil Appeal No. 3717 of 1986

(M. P. Thakkar, B. C. Ray JJ)

18.08.1988

JUDGMENT

RAY, J. -

1. The respondent, Rev. Fr. Paul Petta was appointed as Principal of St. Anthony's College by Salesian Provincial on April 16, 1982 and on the recommendation of the Governing Body of the College, the Director of Public Instruction, Meghalaya, Shillong accorded approval to his appointment with effect from May 1, 1982. St. Anthony's college was established by Salesian Congregation, a Catholic Religious Society for imparting general education. It is a religious minority institution under Article 30 of the Constitution of India and it is receiving government grants-in-aid to colleges was introduced by the Government of Assam in 1959. After creation of Meghalaya it has been receiving grants-in-aid under the same system as adopted by the Government of Meghalaya. By Memo No. EDN 75/74/280 dated November 4, 1976, the Government of Meghalaya, Education Department conveyed to the Director of Public Instruction, the sanction of the Governor of Meghalaya to the implementation of the UGC scales of pay, as indicated thereunder to all the deficit college teachers including the Principals, Professors in the State with effect from April 1, 1975. By Memo No. EDN 75/74/51 dated December 7, 1979 the Government of Meghalaya laid down the procedure for appointment of Principals, Vice-Principals and Lecturers and other staff in Religious Minority Colleges in the State with reference to Article 30 of the Constitution. Paragraph 1 which is relevant is quoted below :

In the matter of appointment of Principals and Vice-Principals in the colleges belonging to the religious minorities, the Governing Body of the College concerned shall select a Principal and Vice-Principal from a panel of names submitted by the sponsoring Church Organisation concerned, subject to the condition that the educational qualifications of the persons selected shall be in accordance with the conditions laid down in the Government's letter No. EDN/75/74/280 dated November 4, 1976. Other conditions in respect of age of superannuation etc. shall be as prescribed by the State Government from time to time.

2. The respondent after his appointment had been working as Principal of the College. While working as such, differences arose between him and the church authorities more particularly the appellants 2, 3 and 4 i.e. the President and the members of the Governing Body of the College regarding certain matters relating to the management of the College.

3. On December 14, 1985, Fr. John Kalapura, SDB, appellant 2, President, Governing Body of St. Anthony's College and Salesian Provincial sent a letter to the respondent intimating him of his

transfer from the post of Principal of the College. The letter states :

After due consultation with the Provincial Council I am transferring you from the post of Principal of St. Anthony's College, Shilling and am appointing Rev. Fr. J. Kenny as Acting Principal of the same College with effect from December 21, 1985.

Kindly hand over the charge to Rev. Fr. J. Kenny by December 21, 1985.

4. On receiving the said letter the respondent on that very day sent a letter to appellant 2 stating that he had no authority to appoint or dismiss or transfer the Principal of the College as the Principals and Vice-Principals in the College belonging to the minorities are to be selected by the Governing Body and to be approved by the Director of Public Instruction in accordance with government instruction mentioned in its letter dated December 7, 1979. The respondent sent a letter to the Director of Public Instruction (in short DPI) intimating that he had been removed from the Principalship of St. Anthony's College by appellant 2, the Salesian Provincial of Gauhati Province and Rev. Fr. Kenny had been appointed as the Acting Principal and requested him to intimate if the government has given any power to Sponsoring Authority for St. Anthony's College in contravention of the Memo dated December 7, 1979. The DPI has informed the respondent by his letter dated December 23, 1985 that "this office is not aware of any such power given to the Church Authority concerned". The Salesian Provincial by its letter dated March 7, 1986 proposed the name of Fr. Stephen Mavelly as Principal of the said College. The Governing Body at its meeting held on March 17, 1986 resolved that Fr. Stephen Mavelly be appointed Principal-cum-Secretary of St. Anthony's College with effect from March 10, 1986. The said appointment was approved by DPI, Meghalaya with effect from March 10, 1986.

5. The respondent filed a suit being T.S. No. 1(T) of 1986 in the Court of the Assistant District Commissioner with a prayer for temporary injunction. An interim order of maintaining status quo was obtained. But as in the meantime the office of the Principal was opened and taken possession of, the suit was withdrawn and a writ petition being Civil Rule No. 428 of 1986 was filed challenging that Salesian Provincial has no power to transfer the respondent, viz. the Principal of the College to Don Bosco Technical School, Maligaon, Gauhati. The respondent was appointed as Principal of the said College by the Governing Body of the College with the approval of DPI and so only the Governing Body with the approval of DPI can transfer him under the statutory rules. It was also contended that the respondent acquired a statutory right to hold the post of Principal till his attaining the age of superannuation. The purported order of transfer is illegal and without jurisdiction. It has also been contended that the purported order of transfer tantamounts to removal of the respondent from the post of Principal and the said order being issued without recording any reason and without giving any opportunity to show cause to him is arbitrary, illegal and mala fide. The purported order of transfer is thus violative of principles of natural justice and as such it is liable to be quashed.

6. An affidavit in opposition was filed on behalf of appellants 2, 3 and 4 denying that the administration and management of the said College including the appointment, discipline etc. are governed by the Assam Aided College Management Rules, 1965, Assam Aided College Employees' Rules, 1960 for appointment of Principals and Vice-Principals and conditions of grants-in-aid to aided colleges in 1956. It has been stated that St. Anthony's College is a minority institution and the Salesian Provincial is the only competent authority to make any appointment to the rank of Principal in the said College and no advertisement before making any appointment is necessary. This relaxation of restriction in regard to Minority College availing of deficit grants-in-aid has been

made by Memo dated December 7, 1979. The petitioner is a member of the Salesian of Don Bosco and his appointment to the said post of Principal could never have been permanent. As a priest he is transferable from time to time to different institutions of the Society. The Constitution of the Salesians of Don Bosco provides that such transfer is binding on the petitioner as a priest and a member of the Salesian Don Bosco. The transfer of the petitioner and other priests are matters of normal routine as members of Salesian Society. It has also been stated that any money drawn by a priest has to be given to the order of Salesian of Don Bosco and no priest maintains any private fund. It is the responsibility of the Salesian Society to look after the needs and requirements of any member of the community and is responsible for the upkeep of such members. The petitioner has taken a vow of obedience when he was ordained as a priest and was admitted as a member of Don Bosco. The petition is liable to be dismissed as no statutory right of the petitioner has been violated.

7. After hearing the learned counsel for the parties as well as considering the facts and circumstances the High Court held that the Governing Body of the College was not a statutory body. The court further held that :

To our mind there is violation of the principles of natural justice in dislogging the petitioner from his post of Principal without hearing him.

8. The High Court further held that :

So long as the members of the Salesian Body obeyed the rules and regulation of the body, accepted transfers in good spirit this Court would have nothing to do. But if the petitioner having been appointed as Principal feels aggrieved that his transfer is not in accordance with the rules of the body and comes to the court, this Court has to look and listen to him.

By appointing the petitioner as Principal of the College, the organisation has exposed the petitioner to the judicial gaze of the court and if the petitioner makes grievances, it is for the court to redress it.

..... The petitioner was appointed by the Governing Body and that was subject to the approval of the DPI. There is no reason as to why his removal from the post of the Principal should not have been made by the Governing Body and subject to the approval of the DPI. However, the College Governing Body has got no control over the school whereto the petitioner has been transferred.

9. The High Court therefore made the rule absolute to the extent indicated in the directions quoted below :

We accordingly keep the impugned order in abeyance forthwith and direct the Governing Body of the College to give the petitioner an opportunity to show cause as to why he should not be transferred as stated in the impugned transfer order dated December 14, 1985 (Annexure 10) and after hearing the petitioner on the cause shown, shall decide the matter of transfer within one month from receipt of this order, and act according to the decision so taken and in conformity with the government instructions (Annexure 8). If the impugned order is revoked, the petitioner shall automatically be reinstated in his post of Principal of the College, and shall be given all the emoluments and benefits thereof. Respondent 11 shall correspondingly cease to be Principal of the College, but shall not be disentitled to

the pay and allowances for the services already rendered by him to the College prior to this date. In case the Governing Body decides to give effect to the impugned transfer order it shall revive and the petitioner shall be free to pursue his remedies under the law. In the interest of fair hearing and reasonable opportunity, we direct the Governing Body to make available to the petitioner all the records which he may need for the purpose of his defence; the petitioner shall not, however function as Principal during the period of one month pending decision. The decision shall be taken within a month from today.

10. Aggrieved by the said order made in Civil Rule No. 428 of 1986, a special leave petition has been filed by the Governing Body and some of the members of the Governing Body of the College. After hearing the learned counsel for the parties special leave was granted.

11. The St. Anthony's College is admittedly a minority institution within the meaning of Article 30 of the Constitution and as such the Salesian Don Bosco Society is competent to administer the said College. This College is getting deficit grants-in-aid from the Government of Meghalaya and the instructions contained in Memo No. EDN. 75/74/51 issued by the Government of Meghalaya on December 7, 1979 laying down the procedure of appointment of Principal, Vice-Principal, Lecturers and other staff in religious minority collage in the State will apply to this Institution. The respondent who was a lecturer of St. Anthony's College was sponsored by Salesian Provincial, appellant 2 for appointment of Principal of the College and the Governing Body of the College recommended the same to the Director of Public Instruction, Meghalaya for approval as required under the above instructions. The DPI duly approved the appointment of the respondent, Rev. Fr. Paul Petta as Principal of the College with effect from May 1, 1982. The appellant worked as Principal of St. Anthony's College since the date of his appointment till the impugned order of transfer made by appellant 2 Rev. Fr. John Kalapura as Salesian Provincial from the post of Principal of the said College to the post of Teacher, Don Bosco Technical School, Maligaon, Gauhati on December 21, 1985 without asking him to show cause against the order of transfer and without giving him any opportunity of hearing. It has been urged that the respondent being ordained as a priest of the Society has taken vow of service to any post where he will be asked by the Society to work. As a priest he was sponsored by the Church Authority for appointment as Principal and the Governing Body of the College also recommended his appointment as made by Salesian provincial for approval. The petitioner cannot have any grievance against the order of transfer as he has no statutory right to remain as Principal of the College. It has also been contended by referring to certain articles of Constitution of the Society of St. Francis de Sales that the respondent being ordained as priest of the Society took the vow of service and the Salesian Provincial can transfer him to serve in any of the institutions of the Society as his service is transferable. It has also been submitted that as a priest the respondent cannot keep any money with him and whatever salary he gets will have to be given to the Society which will look after him and meet his needs. The respondent cannot question the order of transfer.

12. The respondent so long as he submits to the order of transfer and complies with it, the court has nothing to do. But if he does not comply with it and questions it before the court, the court will have to consider his grievances and to decide if the impugned order of transfer is legal and valid.

13. The respondent was appointed as Principal of St. Anthony's College by the Governing Body of the College and the same was duly approved by the Director of Public Instruction, Meghalaya in accordance with the procedure laid down in the Government's letter dated December 7, 1979. The impugned order of transfer purports to transfer the respondent from the post of Principal of the

College to the post of Teacher in the Don Bosco Technical School at Maligaon within the State of Gauhati over which the Governing Body of St. Anthony's College has no control. This order of transfer has prejudicially affected the status of the respondent as Principal of St. Anthony's College. The main question that arises for consideration in this appeal is whether the Salesian Provincial, appellant 2, is competent to transfer the petitioner who has been appointed as Principal of the College by the Governing Body of the College and approved by the DPI as per government instructions applicable to minority colleges. There is no dispute that the respondent is a member of Salesian Don Bosco Society as a priest. It is also not in dispute that as priest of the Society he was sponsored by the Church Authorities for the post of Principal of the College and the Governing Body of the College recommended to the DPI for approval of his appointment as Principal of the College. In such circumstances it is required to be considered whether the Salesian Provincial has power to transfer him from the post of Principal of the College to the post of Teacher in a Technical School of the Society. It is apparent from the aforesaid government instructions that the Principal whose appointment has been duly approved by the DPI can work as Principal in the minority college till he attains the age of superannuation as determined by the government. The impugned order of transfer in substance amounts to removal of the respondent from the post of Principal of the College. It has been held by the High Court that the respondent has been condemned unheard as he was not given any opportunity to show cause for the purported order of transfer which seriously prejudiced him. The principles of natural justice and fair play mandate that in administrative actions the audi alteram partem rule is applicable and the person affected by the order has to be given an opportunity of hearing against the purported order apart from the question whether the Assam Aided College Management Rules, 1965 and Assam Aided College Employees' Rules, 1960 are applicable to minority institutions. We do not consider it necessary for the purposes of this appeal to make any observations on the question whether the Assam Aided College Management Rules, 1965 and Assam Aided College Employee's Rules, 1960 are applicable to minority institutions or to consider the question whether the rules concerning the terms and conditions of appointment as well as prescribing qualifications for appointment to the post of lecturers and principals as well as prescribing conditions for service are regulatory in nature and they do not contravene the fundamental right guaranteed under Article 30 of the Constitution to the minority institutions as has been observed in the case of Frank Anthony Public School Employees' Association v. Union of India ((1986) 4 SCC 707 : (1987) 1 SCR 238 : (1987) 2 ATC 35). It has been contended on behalf of the learned counsel for the appellants that appellant 2, Salesian provincial is the appointing authority of the respondent and as such he has the right to make the impugned order of transfer though there is no express provision conferring such power. The case of Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhavi Amma (AIR 1950 (FC) 140 : 1949 FCR 667 has been cited at the bar for the proposition that the power to terminate flows naturally and as a necessary sequence from the power to create. This proposition is a well established proposition but the question is whether the Salesian Provincial is the appointing authority of the respondent or the Governing Body of the said College appointed the respondent and recommended his appointment for approval to the DPI. As stated earlier DPI pursuant to the recommendation of the Governing Body approved the appointment of the respondent as Principal of the said College. So this question has to be gone into and determined by the Governing Body as has been directed by the order of the High Court. It has been contended that the impugned order of transfer has seriously affected the status of the respondent as Principal of the College and this has been made by appellant 2, Salesian Provincial without giving him any opportunity of hearing. Now insofar as the respondent is transferred in his capacity as priest from one division of the religious order to another the matter pertains to the internal management of the religious order and it is not justiciable. However, insofar as the order of transfer has been made by the Governing Body of the St. Anthony's College

transferring the respondent from the post of Principal of the college to the post of Teacher of Don Bosco Technical School which is in another State the respondent can complain against it. Since the respondent has not been given any opportunity of hearing against the purported order of transfer outside the State which seriously affected his status, the High Court, in the facts and circumstances of the case has directed the Governing Body of the College to give the respondent an opportunity to show cause against the impugned order of transfer dated December 14, 1985 and to give him a hearing decide the transfer matter in accordance with law. The judgment and order passed by the High Court in the circumstances of the case cannot be faulted.

14. We therefore, uphold the order passed by the High Court and the appeal is dismissed with costs quantified at Rs. 5,000.

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