Vidya Dhar Pande

Vs

Vidyut Grih Siksha and Others

Civil Appeal No. 1697 of 1973

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

10.10.1988

JUDGMENT

RAY, J.-

1. This appeal by special leave is against the judgment and order dated January 22, 1972 rendered by the High Court of Madhya Pradesh at Jabalpur in Miscellaneous Petition No. 358 of 1971 dismissing the writ petition holding that the Regulations framed by the Board of Secondary Education, Madhya Pradesh under Section 28(2)(d) of the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 have no statutory force and as such termination of service in violation of Regulations 71 and 79 does not entitle the appellant to a declaration that the termination was illegal and for a direction for his reinstatement in service.

2. The matrix of the case in short, is that the appellant was appointed as Head Master by the Managing Committee of Vidyut Grih Shiksha Samiti, Korba on probation for a period of one year on a pay scale of Rs 250-10-290-15-350-EB-20-450 with effect from July 3, 1968. Meanwhile, the High School became a Higher Secondary School and as such on September 1, 1969 the Managing Committee appointed the appellant as Principal temporarily on a pay scale of Rs 275-25-300-15-405-EB-20-550-25-700 with effect from July 3, 1968. The above scale was made applicable to him with retrospective effect i.e. from July 3, 1968 FN, the date of his appointment. The appointment letter further states as follows :

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The appointment will be governed by the rules and regulations laid down by the Education Department of Madhya Pradesh State Government for the recognised schools in the State unless and otherwise specified from time to time.

The appointment can be terminated on one month's notice or pay thereof on either side.

This School was established by Vidyut Grih Shiksha Samiti, Korba, a body registered under the M. P. Non-trading Corporation Act, 1962. The society under its bye-laws has a Foundation Committee which is its Governing Body and an Executive Committee, i. e. Managing Committee. On June 23, 1971 the Managing Committee dispensed with the services of the appellant with immediate effect by giving him one month's salary in lieu of notice. The appellant made a representation against this order to the Divisional Superintendent of Education who by his letter dated June 24, 1971 directed the Secretary of the School to rescind the order of termination of the services of the appellant and to hand over charge of the school will be withdrawn. This letter was written on the ground that the

termination of the appellant was wrongful being in breach of Regulation 79. However, the appellant was not reinstated pursuant to the said letter. The appellant, therefore, moved a writ petition before the High Court of Madhya Pradesh at Jabalpur. This was registered as Miscellaneous Petition No. 358 of 1971. The writ petition was heard by a Division Bench of the said High Court and it was held that Regulation 71 as well as Regulation 79 framed by the Board of Secondary Education under Section 28 92) (d) of Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 have no statutory force following the decision of this Court in the case of Dr. Ram Pal Chaturvedi v. State of Rajasthan and as such the termination of service of the appellant in violation of the procedure prescribed in Regulations 71 and 79 of the said Regulations would not render the impugned order null and void. It could at best be a wrongful dismissal from service by the master and the appellant's in consequence of the breach of the master and servant contract. It was also held that the school in question was run by a private body and as such no writ of mandamus could be issued. The court further held that an order cannot be made against the society compelling the reinstatement of the appellant as it is in the realm of contractual rights and obligations. The writ petition was thus dismissed. Against this judgment and order the instant appeal has been filed on special leave before this Court.

3. In order to effectively consider the question whether these regulations have got statutory force or not it is necessary to set out hereinbelow the relevant regulations:

> 61. No Educational Institution shall be recognised, or continued to be recognised unless it complies with the following requirements, namely :
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> (1) that the Educational Institution shall comply with the conditions laid down in Chapter XII of these Regulations;
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> (2) that there shall be a Managing Committee as defined under the Adhiniyam consisting of not more than 10 members of which two shall be the Head of the Institution and a nominee of the Educational Officer concerned and that the Governing Body of Managing Committee shall be registered under the Societies Registration Act.
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> 71. All Principals, Head Masters, Lecturers, and Teachers, except those appointed temporarily for a period of less than one year, shall be on probation for a term of one year which may be extended to two years. If after two years service any incumbent is continued in his appointment, he shall, unless the appointing authority, for reasons to be recorded in writing, otherwise directs, be deemed to have been confirmed in that appointment. On being confirmed the incumbent shall sign a contract of service in the form one or two (appended to these Regulations) as the case may be, as soon as practicable.
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> 79(1) The Managing Committee shall not terminate the services and reduce the pay of Principal or head Master appointed on written contract without first obtaining Director's sanction for holding a full enquiry into the charges against him. The incumbent shall be given in writing a statement of the charges against him, and also be afforded and opportunity of defending himself. High previous services and character with reference to this incidential file and service book shall also be taken into consideration before arriving at a decision.

(2) No decision as to termination of service or reduction of a Principal or a Head Master shall be valid, unless passed at Special Meeting by a majority of two - thirds of members of the Managing Committee. No such resolution shall be valid, if passed at an adjourned meeting.

(3) The Principal or head Master have a right of appeal to the Director against decision of the Managing Committee. The decision of the Director shall be final.

4. These Regulations were framed under the provision of Section 28(2)(d) of the said Act which reads as follows :

28. Powers of board to make Regulations.-(1) The Board may make regulations for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Board may make regulations providing for all or any of the following matters, namely :

(d) the conditions of recognition of institutions for the purposes of admission to the privileges of the Board and framing of a School Code to ensure a minimum standard of efficient and uniform management of such schools.

5. It thus appears that Section 28(2)(d) confers power on the Board to make Regulations regarding the conditions of the institutions as well as for framing or "School Code" to ensure a minimum standard of efficient and uniform management of such schools. Regulation 71 clearly provides that Principals, Head Masters, Lecturers and Teachers when appointed shall be appointed on probation for a period of one year which may be extended to two years. It also provides that after two years of service if any incumbent is continued in his appointment he shall be deemed to have been confirmed to that appointment unless the Appointing Authority for reasons recorded in writing otherwise directs.

6. in this case the appellant has been appointed on probation as Principal with effect from July 3, 1968 and as he was allowed to continue for more than two years he shall be deemed to have been confirmed in the post of Principal of the said School. The Managing Committee of the School by its letter dated June 23, 1971 terminated the services of the appellant after giving him one month's salary in lieu of notice without serving on him any charges against him, without holding any enquiry and also without giving him any opportunity of hearing before making the order terminating his service as required under the provision of Regulation 79(1) of the said Regulations. The impugned resolution was also not passed at a special meeting by a majority of two - third of the members of the Managing Committee as provided in clause (2) of the said Regulation 79. The High Court though found that there is a violation of the provisions of Regulations 71 and 79 yet as these regulations have got no statutory force the appellant could not get the relief of a declaration that the order of termination of his service was illegal and invalid and also could not get an order for his reinstatement in service as his appointment was in the realm of a contract of master and servant and his only remedy was an action for wrongful termination from service.

7. Two questions therefore, fall for consideration namely whether the regulations framed pursuant to a statute can be said to have a statutory force the breach of which will entitle the aggrieved employee to get a declaration that the impugned order was invalid and illegal and the employee

should be allowed to continue in service or should be reinstated in service. The High Court has relied upon the decision of this Court in Dr. Ram Pal Chaturvedi v. State of Rajasthan as well as Indian Airlines Corporation v. Sukhdeo Rai. In the case of Dr. Ram Pal Chaturvedi v. State of Rajasthan the appointment of three respondents namely Dr. D. G. Ojha, Dr. P. D. Mathur and Dr. Rishi as Principals of Sr. Patel Medical College, Bikaner, Rabindra Nath Tagore Medical College, Udaipur and Medical College, Jodhpur respectively was challenged on the ground that though they fulfilled the qualifications prescribed by Rule 30(4) of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 they had not the requisite experience as provided in Ordinance 65 framed under the University of Rajasthan Act of 1946 and as such their appointments were not valid and legal. The Syndicate of the Rajasthan University constituted under Section 21 of the Act is empowered under Section 29 read with Section 30 to make ordinances, consistent with the Act and statutes, to provide for the matters include in Clause VI "emoluments and conditions and conditions of service of University teachers". The Syndicate made the ordinances pursuant to the provisions of this section. It was held that : (SCC p. 80, para 4)

The field of operation of this Ordinance appears to us to be restricted to the question of affiliation of the colleges concerned with the Rajasthan University. It is noteworthy that the University has not thought fit to object to these appointments. If there is any violation of a provision of this Ordinance then that may appropriately be taken account by the Rajasthan University for the purpose of withdrawing or refusing to continue affiliation of the colleges in question. But clearly that would not render the impugned appointments null and void a fortiorari that cannot confer any right on Dr. Ram Pal Chaturvedi to approach the High Court by means of petition for writ of quo warranto to challenge the appointments of these three persons.

8. This decision is not an authority for the proposition that Regulations framed pursuant to a statute do not have a statutory force. High Court was in error in holding otherwise. This question is, however, concluded in favour of the appellant by a decision of this Court rendered by a there Judge Bench.

9. The question whether a regulation framed under power conferred by the provisions of a statute has got statutory power and whether an order made in breach of the said regulation will be rendered illegal and invalid, came up for consideration before the Constitution bench in the case of Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi. In this case it was held that : [SCC p. 438 : SCC (L&S) p. 118, para 23]

There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Oil and Industrial Finance Corporation are all required by the statute to frame regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violations of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory regulations in the cases under consideration give the employee a statutory status and impose restriction on the employer and the employee with no option to vary the conditions.

10. There is therefore, no escape from the conclusion that regulations have force of law. The order

of the High Court must therefore, be reversed on this point unhesitatingly.

11. In Indian Airlines Corporation v. Sukhdeo Rai the respondent who was an employee of the Indian Airlines Corporation was found guilty of certain charges and dismissed from service after an enquiry held in breach of the procedure laid down by the Regulations made by the appellant under Section 45 of the Air Corporation Act, 1953. A suit was filed by the respondent challenging the order of termination. It was decreed by the trial court holding that the dismissal was illegal and granted a declaration that he be continued to remain in service. The appellate court as well as the High Court confirmed the decree. On appeal this Court held that the relationship between the appellant, Indian Airlines Corporation and the respondent would in such cases be contractual i.e. as between a master and servant and the termination of that relationship would not entitle the servant to a declaration that his employment had not been validly determined. The termination though wrongful in breach of the three well recognised exceptions and therefore the respondent was only entitled to damages and not to a declaration that his dismissal was null and void. The respondent has sought support from this decision. We are afraid the contention is wholly untenable. The decision in Indian Airlines case has in terms been declared to be no longer good law and has in terms been overruled in Sukhdev Singh case by the Constitution Bench. Says Ray, C. J. speaking for the court : [SCC pp. 437-38 : SCC (L&S) pp. 117-18, paras 30 and 31]

In the Indian Airlines Corporation case this Court said that there being no obligation or restriction in the Act or the rules subject to which only the power to terminate the employment could be exercised the employee could not contend that he was entitled to a declaration that the termination of his employment was null and void. In the Indian Airlines Corporation case reliance was placed upon the decision of Kruse v. Johnson for the view that not all bye-laws have the force of law. This Court regarded regulation as the same thing as bye-laws. In Kruse v. Johnson the court was simply describing the effect that the county bye-laws have on the public. The observations of the court in Kruse v. Johnson that the bye-law "has the force of law within the sphere of its legitimate operation" are not qualified by the words that it is so

only when affecting the public or some section of the public... ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance.

In this view a regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the regulations and any other subordinate legislation. The regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent legislature.

In U. P. Warehousing Corporation and Indian Airlines Corporation case the terms of the regulations were treated as terms and conditions of relationship between the Corporation and its employees. That does not lead to the conclusion that they are of the same nature and quality as the terms and conditions laid down in the contract of employment. Those terms and conditions not being contractual are imposed by one kind of sub-ordinate legislation, viz. regulations made in exercise of the power conferred by the statute which constituted that Corporation. Terms of the regulations are not terms of contract. In the Indian Airlines Corporation case under Section 45 of the Air Corporations Act, 1953, the Corporation had the power to make regulations not inconsistent with the Act and the rules made by the Central Government thereunder. The Corporation had no power to alter or modify or rescind the provisions of these regulations at its discretion, which it could do in

respect of the terms of contract that it may wish to enter with its employees independent of these regulations. So far as the terms of the regulations are concerned, the actions of the Corporation are controlled by the Central Government. The decisions of this Court in U. P. Warehousing Corporation and Indian Airlines Corporation are in direct conflict with decision of this Court in Naraindas Barot case which was decided by the Constitution Bench.

12. Under the circumstances the plea of the respondents is meritless.

13. In Prabhakar Ramakrishna Jodh v. A. L. Pande a question arose whether the provisions of Ordinance 20 otherwise called the College Code framed by the University of Saugar under Section 32 and Section 6 (6) of the University of Saugar Act, 1946 embodying the terms and conditions of teachers of the college affiliated to the University, have the force of law. It was held that : (SCR p. 718)

The provisions of Ordinance 20 i.e. the "College Code" have got statutory force. In confers legal rights on the teachers of the affiliated colleges and it is not a correct proposition to say that the "College Code" merely regulates the legal relationship between the affiliated colleges and the University alone. We do not agree with the High Court hat the provisions of the "College Code" constitute power of management. On the contrary we are of the view that the provisions of the "College Code" relating to the pay scale of teachers and their security of tenure properly fall within the statutory power of affiliation granted to the University under the Act. It is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges shall be appointed on a written contract in the form prescribed in Schedule A but that does not mean that teachers have merely a contractual remedy against the Governing Body of the College. On the other hand, we are of opinion that the provisions of Clause 8 of the Ordinance relating to security of the tenure of teachers are part and parcel of the teachers' service conditions and, as we have already pointed out, the provisions of the "College Code" in this regard are validly made by the University in exercise of the statutory power and have, therefore, the force and effect of law. If follows, therefore, that the "College Code" creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous.

14. In the case of Manmohan Singh Jaitla v. Commissioner, U. T. of Chandigarh the appellant was appointed as Head Master of an aided School. He was later confirmed by the competent authority. A charge-sheet was served on the appellant and disciplinary enquiry was held against him under Section 3 of the Punjab Aided Schools (Security of Service) Act. The enquiry was however, withdrawn later on and his seven years' service was terminated by invoking the service agreement on ground that his service was no more required by the School. This order was challenged by a writ petition before the High Court which rejected the same in limine but by a speaking order observing that as the School cannot be said to be 'other authority under Article 12, it was not amenable to the writ jurisdiction of the High Court. The Supreme Court negatived the said finding of the high Court and held as follows : (SCC p. 546, para 8)

The matter can be viewed from a slightly different angle as well. After the decision of the Constitution Bench of this Court in Ajay Hasia v. Khalid Mujib Sehravardi the aided school receiving 95 per cent of expenses by way of grant from the public exchequer and whose employees have received the statutory protection under the 1969 Act and who is subject to the regulations made by the Education Department of the Union Territory of Chandigarh as also the appointment of Head Master to be valid must be approved by the Director of Public Instructions, would certainly be amenable to the writ jurisdiction of the High Court. The High Court unfortunately, did not even

refer to the decision of the Constitution bench in Ajay Hasia case rendered on November 13, 1980 while disposing of the writ petition in 1983. In Ajay Hasia case, Bhagwati, J. speaking for the Constitution Bench inter alia observed (SCC p. 737, para 9) that "where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character". Add to this "the existence of deep and pervasive State control may afford and indication that the corporation is a State agency or instrumentality". Substituting the words 'public trust' in place of the 'corporation' and the reasons will mutatis mutandis apply to the School. Therefore, also the High Court was in error in holding that the third respondent - School was not amenable to the writ jurisdiction of the High Court.

15. In Indra Pal Gupta v. Managing Committee, Model Inter College, Thora the appellant was appointed on probation for one year as Principal of Model Inter College, Thora, District Bullandshahr in accordance with the procedure prescribed by the Intermediate Education Act, 1921 (U. P. Act 2 of 1921) and the Regulations made thereunder. The period of probation was however, extended by the Managing Committee of the said Model Inter College for a further period of one year. On April 27, 1969 the Managing Committee adopted a resolution to terminate the services of the appellant in consideration of the report of the Manager of the College to the effect that due to his unsatisfactory services, it would not be in the interest of the institution to permit him to continue as probationer any longer. The service of the appellant was thus terminated without complying with the mandatory procedure laid down in Regulations 35 to 38 which provided for forming a sub-committee to enquire into the allegations against the Principal and to frame definite charges against the Principal and to give him opportunity of hearing. It was held that the order of termination made in breach of the provisions of the said regulation which were made in pursuance of the provisions of the said Act, is illegal and invalid and as such the same was quashed. The appellant was further declared to be in service of the College.

16. On a conspectus of these decisions the irresistible conclusion follows that the impugned order of termination of the appellant from the post of Principal of the High Secondary School in breach of the Regulation 79 framed under the said Act is illegal and as such the same is liable to be quashed as the Regulations have got statutory force. The appellant is liable to be reinstated in the service as Principal of the said College. We also hold that the High Secondary School in question though run by a private trusted received 100 per cent grant from the government as is evident from the affidavit sworn on behalf of the appellant and as such it is amenable to the writ jurisdiction for violation of the provisions of the said regulations in passing the impugned order of termination of service of the appellant. We therefore, set aside the order passed by the High Court which, in our opinion, is unsustainable and direct the respondents to reinstate the appellant in the service of the said College. Considering the facts and circumstances of the case we are of the respondents to pay to the appellant a sum equal to 50 per cent of the salaries and allowances from the date of termination till his reinstatement in service as it appears that the appellant was not in employment during this period. The appeal is, therefore, allowed with costs.

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