Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust And Others

Vs

V. R. Rudani and Others

Civil Appeals Nos. 2704-06 of 1979

(G. L. Oza, K. Jagannatha Shetty JJ)

21.04.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. These appeals, by certificate, are from a common judgment of the Gujarat High Court giving some monetary benefits to the respondents.

2. The fact of the case can be quite shortly stated :

> Appellant 1 is a public trust and other appellants are its trustees. The trust was running a science college at Ahmedabad. The college initially had temporary affiliation to the Gujarat University under the Gujarat University Act, 1949. From June 15, 1973 onwards, the college had permanent affiliation under the said Act as amended by Gujarat Act 6 of 1973. The University teachers and those employed in the affiliated colleges were paid in the pay scale recommended by the University Grants Commission. At one stage, there was some dispute between the University Area Teachers' Association and the University about the implementation of certain pay scales. That dispute, by agreement of parties, was referred to the Chancellor of the University for decision. On June 12, 1970, the Chancellor gave his award in the following terms :
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> (1) That the revised pay scales as applicable to teachers who joined before April 1, 1966, should similarly be applicable to those who joined after April 1, 1966 and they be continued even after April 1, 1971.
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> (2) That these pay scales by exclusive of dearness allowance. Therefore, fixing the pay of the teachers who joined after April 1 1966, no portion of existing dearness allowance would be merged. However, with effect from April 1, 1971 in respect of both the categories of teachers i.e. pre - 1966 and post - 1966 teachers, dearness allowance was to be merged with the salary.
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> (3) That arrears for the period from April 1, 1966 to March 31, 1970 accruing due under the award were to be paid (without interest) in ten equal instalments beginning from April 1, 1971.
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> (4) The award was to be given effect to from April 1, 1970. There are other

provisions also. But we are not concerned with those provisions for our purpose.

3. This award of the Chancellor was accepted by the State Government as well as by the University. The latter issued direction to all affiliated colleges to pay their teachers in terms of thereof. The appellants instead of implementing the award served noticed of termination upon 11 teachers on the ground that they were surplus and approached the University for permission to remove them. But the Vice-Chancellor did not accede to their request. He refused the permission sought for. There then the management-we mean the trust - took a suicidal decision. The decision was to close down the college to the detriment of teachers and students. The affiliation of the college was surrendered and the University was informed that the management did not purpose to admit any student from the academic year 1975-76. It was again a unilateral decision without approval of the University. The college was closed with effect from June 15, 1975 with the termination of services of all the academic staff.

4. The academic staff under law were entitled to terminal benefits. In fairness, that ought to have been paid simultaneously while being removed. But the management did not do that. The teachers waited with repeated representations only to get a negative reply and ultimately, they moved the High Court with writ petitions for following reliefs :

> To issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction or order directing the respondent trust and its trustees respondents to pay to the petitioners their due salary and allowance, the provident fund and gratuity dues in accordance with the Rules framed by the University and pay them compensation that would be payable to them under Ordinance 120-E and they may be further directed to pay the difference of pay payable to them on the implementation of the UGC pay scales in accordance with Government Resolution as clarified by the award passed by the Chancellor.

5. As is obvious from these reliefs, the retrenched persons were not agitating for their continuance in the service. They seem to have made a trust with the destiny and accepted the closure of the college. They demanded only the arrears of salary, provident fund, gratuity and the closure compensation which are legitimately due to them.

6. The trust, however, revised the writ petition on every conceivable ground. The objections raised by the trust may be summarised as follows : (i) The trust is not a statutory body and is not subject to the writ jurisdiction of the High Court; (ii) the Resolution of the University directing payment to teachers in the revised pay scales is not binding on the trust; (iii) the University has no power to burden the trust with additional financial liability by retrospectively revising the pay scales; (iv) the claim for gratuity by retrenched teachers is untenable. It is payable only to teachers retiring, resigning, or dying and not to those removed on account of closure of the college; and (v) Ordinance 120-E prescribing closure compensation is ultra vires the powers of the syndicate. It is at any rate not binding on the trust, since it was enacted prior to affiliation of the college.

7. The High Court rejected all these submissions, and accepted the writ petitions by delivering a lengthy judgment. The High Court thus directed the trust to make payments in the following terms :

> (1) Amount of the remaining six instalments as per Chancellor's award in respect of arrears from April 1, 1966 to March 31, 1970 as detailed category No. 1 above,

(2) Salary for the period from April 1, 1975 to June 14, 1975 as per revised pay scales,

(3) Compensation as per sub-clauses (a) and (b) of clause (vii) of Ordinance 120-E,

(4) Provident fund dues as per the approved scheme.

8. The trust by obtaining certificate has appealed to this Court.

9. Counsel for the appellants mercifully concedes the just right of the teachers to get salary for the period of two and a half months from April 1, 1974 to June 14, 1974. He has also no objection to pay provident fund dues. He, however, says that they trust is entitled to get reimbursement from the government and that question must be determined in these appeals. As regards the arrears of salary payable under the Chancellor's award, the counsel contend that it is the liability of the government and not of the management of the college. As regards the closure compensation payable under the Ordinance, he repeals the contention taken before the High Court. He also maintains that the trust is a private body and is not subject to the writ jurisdiction under Article 226.

10. Having heard the counsel for both parties, we are left with an impression that the appellants are really trying to side-track the issue and needlessly delaying the legitimate payments due to the respondents. The question whether the State is liable to recompense the appellants in respect of the amount payable to the respondents was not considered by the High Court and indeed could not have been examined since the State was not a party to the proceedings. However, by the persuasive powers of the counsel in this Court, the State has been impleaded as a party in these appeals. Perhaps, this Court wanted to find out the reaction of the State on the appellants' assertion for reimbursement. We heard counsel for the State. He disputes the appellants' claim. In fact, he challenges the claim on a number of grounds. He says that the State is under no obligation to pay the appellants as against the sum due to the respondents. We do not think that we need rule today on this controversy. It is indeed wholly outside the scope of these appeals. We are only concerned with the liability of the management of the college towards the employees. Under the relationship of master and servant, the management is primarily responsible to pay salary and other benefits to the employees. The management cannot say that unless and until the State Compensates, it will not make full payment to the staff. We cannot accept such a contention.

11. Two questions, however, remain for consideration : (i) The liability of the appellants to pay compensation under Ordinance 120-E and (ii) The maintainability of the writ petition for mandamus as against the management of the college. The first question presents no problem since we do not any sustainable argument. The power of the Syndicate to enact the Ordinance is not in doubt or dispute. What is however, argued is that the Ordinance is not binding on the management since it was enacted before the college was affiliated to the University. This appears to be a desperate contention overlooking the antecedent event. The counsel overlooks the fact that the college hand temporary affiliation even earlier to the Ordinance. That apart, the benefits under the Ordinance shall be given when the college is closed. The college in the instant cause was closed admittedly after the Ordinance was enacted. The appellants cannot, therefore, be heard to contend that they are not liable to pay compensation under the Ordinance.

12. The essence of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the management of the college being a trust registered under the Bombay Public Trust Act is not amenable to the writ jurisdiction of the High Court. The contention

in other words, is that the trust is a private institution against which no writ of mandamus can be issued. In support of the contention, the counsel relied upon two decisions of this Court : (a) Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain ((1976) 2 SCC 58 : (1976) 2 SCR 1006) and (b) Deepak Kumar Biswas v. Director of Public Instructions ((1987) 2 SCC 252). In the first of the two cases, the respondent institution was a Degree College managed by a registered co-operative society. A suit was filed against the college by the dismissed principal for reinstatement. It was contended that the Executive Committee of the college which was registered under the co-operative Societies Act and affiliated to the Agra University (and subsequently to Meerut University) was a statutory body. The importance of this contention lies in the fact that in such a case, reinstatement could be ordered if the dismissal is in violation of statutory obligation. But this Court refused to accept the contention. It was observed that the management of the college was not a statutory body since not created by or under a statute. It was emphasised that an institution which adopts certain statutory provisions will not become a statutory body and the dismissed employee cannot enforce a contract of personal service against a non-statutory body.

13. The decision in Vaish Degree College ((1976) 2 SCC 58 : (1976) 2 SCR 1006) was followed in Deepak Kumar Biswas case ((1987) 2 SCC 252). There again a dismissed lecturer of a private college was seeking reinstatement in service. The court refused to grant the relief although it was found that the dismissal was wrongful. This Court instead granted substantial monetary benefits to the lecturer. This appears to be the preponderant judicial opinion because of the common law principle that a service contract cannot be specifically enforced.

14. But here the facts are quite different and, therefore, we need no go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus ?

15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellant-trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character (See The Evolving Indian Administrative Law by M. P. Jain (1983), p. 226). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

16. The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to

review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure. "The Law Commission made their report in March 1976 (Law Commission Report No. 73). It was impleaded by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this "judicial review" :

At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to quality, the application had to get the leave of a judge.

The statute is phrased in flexible terms. It gives scopes for development. It uses the words "having regard to". Those word are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to 'have regard to' it. So the previous law as to who are - and who are not - public authorities, is not absolutely bindings. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing. (See The Closing Chapter by Rt. Hon. Lord Denning, p. 122)

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them mean every body which is created by statute - and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

18. Article 226 reads :

> 226. Power of High Courts to issue certain writs - (1) Not-withstanding anything in Article 32, every High Court shall have n power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
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19. The scope of this article has been explained by Subba Rao, J., in Dwarkanath v. ITO ((1965) 3 SCR 536) : (SCR pp. 540-41)

This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used for which and

the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the paratively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

21. In Praga Tools Corporation v. C. A. Imanual ((1969) 1 SCC 585 : (1969) 3 SCR 773), this Court said that a mandamus can issue against a person or body to carry out the duties placed on the them by the statutes even though they are not public officials or statutory body. It was observed : (SCC p. 589, para 6 : SCR p. 778)

It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them the statutes authorising their undertakings. A mandamus would also lie against a company constituted by statute for the purpose of fulfillings public responsibilities (Cf. Halsbury's Laws of England, 3rd Edn., Vol. II, p. 52 and onwards)

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. "We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

23. In the result, the appeal fail and are dismissed but with a direction to the appellants to pay all the amounts due the respondents as per the judgment of the High Court. The amount shall be paid with 12 per cent interest. The balance remaining shall be paid within two months from today. The

appellants shall also pay the costs of the respondents-teachers which we quantity at Rs. 20,000.

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