

Francis John

Vs

Director of Education and Others

Civil Appeal No. 3586 of 1988

(CJI E. S. Venkataramiah, K. N. Singh, N. M. Kasliwal JJ)

23.11.1989

JUDGMENT

VENKATARAMIAH, C.J. –

1. The appellant was appointed as a Head master of a school which was being run by the Calangute Don Bosco Educational and Welfare Foundation in 1974 in the State of Goa (which was at the relevant time a Union territory). Disciplinary proceedings were started against him in accordance with the Grant-in-aid Code which was in force at that time, since the school was a recipient of the grant as per the Code. The findings of the Dispute Settlement Committee were approved by the Director of Education of the Government of Goa by his order dated July 12, 1984 who permitted the termination of the services of the appellant. The Principal of the Don Bosco High School, therefore, terminated the services of the appellant as Headmaster by his letter dated July 26, 1984 and the said order of termination was challenged by the appellant before the High Court of Bombay, Panaji Bench, Goa in writ Petition No. 92 of 1986. The petition was dismissed by the High Court on the ground that the petition was not maintainable under Article 226 of the Constitution of India against the management of the school, which was a private body. Aggrieved by the decision of the High Court the appellant has filed this appeal by special leave.

2. The school in question was a private school and was recipient of the grant-in-aid under the Grant-in-aid Code issued by the Government in exercise of its executive power. The relevant rule of the Grant-in-aid Code, i.e. Rule 74.2 on which the management relied read thus :

"74.2. (i) The services of an employee appointed to a permanent post shall not be terminated except in accordance with the procedure prescribed hereinunder. No order of termination, dismissal or imposition of any other penalty shall be passed against such employee unless he has been informed in writing of the grounds on which action is proposed to be taken and has been given an adequate opportunity to defend himself. The grounds on which the action is proposed to be taken shall be reduced to a form of a specific charge/charges which shall be communicated to the employee together with statement of allegation on which each charge is based.

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(iii) Management shall refer the case to the Director of Education in writing, stating the date of the effect of the intended termination with a copy endorsed to the employee concerned for his acknowledgment. The letter endorsed to the employee shall enclose a copy of allegation with complete substantiating evidence and other

documents relevant to the case. The letter be issued to the employee at least one calendar month prior to the date of effect of intended termination. The issue of the letter shall be subject to Rule 74.1(3).

(v) The Director shall refer the case to the Disputes Settlement Committee within seven days of the receipt of the letter in the Directorate of Education. The Disputes Settlement Committee shall give a hearing to both the parties and also consider the written statements, if any, submitted by either or both the parties, and give its decision within fifteen days from the date of reference. In case any party fails to present the case, the Disputes Settlement Committee shall take an ex parte decision.

(vi) The decision of the Disputes Settlement Committee shall be final and binding on both the parties provided that it shall be open to either party to prefer an appeal to the Administrative Tribunal established under the Goa, Daman and Diu Administrative Tribunal Act, 1965 within thirty days of the date of receipt of the decision of the Disputes Settlement Committee."

3. Rule 74.2 provides that the service of an employee appointed to a permanent post shall not be terminated except in accordance with the procedure prescribed thereunder and no order of termination, dismissal or imposition of any other penalty shall be passed against such employee unless he has been informed in writing of the grounds on which action is proposed to be taken and has been given an adequate opportunity to defend himself. The grounds on which the action is proposed to be taken shall be reduced to a form of a specific charge/charges which shall be communicated to the employee together with statement of allegation on which each charge is based. Then the management is required to refer the case to the Director of Education in writing, stating the date of the effect of the intended termination with a copy endorsed to the employee shall enclose a copy of allegation with complete substantiating evidence and other documents relevant to the case. The letter shall be issued to the employee at least one calendar month prior to the date of effect of intended termination. The issue of the letter shall be subject to Rule 74.1(3). The Director is then required to refer the case to the Disputes Settlement Committee within seven days of the receipt of the letter in the Director of Education. The Disputes Settlement Committee shall give a hearing to both the parties and also consider the written statements, if any, submitted by either or both the parties, and give its decision within fifteen days from the date of reference. In case any party fails to present the case, the Disputes Settlement Committee shall take an ex parte decision. The decision of the Disputes Settlement Committee shall be final and binding on the parties. The Disputes Settlement Committee acquires the jurisdiction to hear the case only on a reference made to it by the Director of Education. The order passed in this case by the Director of Education on July 12, 1984 :

"No. DE/Acad. I/BEZ. Bo/40/DBHS/Term. Serv. HM/Vol. III/82. Government of Goa, Daman and Diu, Directorate of Education, Panaji - Goa. Dated : July 12, 1984
Read : 1. This office order No. DE/Acad. I/BEZ-Bo/40/DBHS/PC15/Term. Serv. HM/Vol. III/82 3610, dt. September 3, 1982.##

2. Letter No. 171-5-82-AE/1115 dated March 26, 1983 from the Convenor of the Disputes Settlement Committee and Asstt. Director of Education.

ORDER Whereas a Disputes Settlement Committee was constituted to enquire into the proposed case for termination of services of Shri Francis John, the Headmaster of Don Bosco High School, Calangute, Bardez, Goa, vide order referred to above;

And whereas the accused Shri F. John participated in the deliberations of the Disputes Settlement Committee along with his nominee for some time and thereafter remained absent from the deliberation of the Committee in spite of all reasonable opportunities given to him by the Convenor;

And whereas the said Committee, in majority, has decided that the termination of services of the said Shri F. John, Headmaster of Don Bosco High School, Calangute, is justifiable.

The undersigned is inclined to agree with the findings of the Disputes Settlement Committee and it is hereby ordered that the finding of the majority report of the Committee is accepted and the Principal of the School is permitted to terminate the service of Shri F. John, as per Rule 74 (amended) of the Grant-in-aid Code and the vacancy so caused be filled up as per Rules. The Principal is further directed to revoke the order of suspension forthwith under intimation to the undersigned.

Sd/- L. Khisngte Director of Education."##

4. It was on the basis of the approval given by the Director of Education, as stated above, the services of the appellant were terminated.

5. From a reading of the relevant rule of the Grant-in-aid Code which is a part of the public law of the land it becomes obvious that the reference of the dispute between the management of the school and the appellant to the Disputes Settlement Committee was made by the Director of Education in exercise of the powers conferred on him by the Grant-in-aid Code, which is issued by the government in exercise of its executive power, even though it may not have been done under a statute. The Director of Education who is a public functionary has given his approval to the decision of the Disputes Settlement Committee before it was communicated to the school. While granting his approval to the decision the Director of Education is discharging a governmental function as an authority constituted for the said purpose by the Government. It is obvious that the management, in the circumstances could not have terminated the services of the appellant without the communication received by it from the Director of Education. In such circumstances it cannot be said that the decision is that of just a private management governed by private law. It is the part of the process of the public law which affects public exchequer.

6. When the matter came up before the High Court a preliminary objection was taken by the management regarding the maintainability of the writ petition under Article 226 of the Constitution.

7. The appellant contended in the writ petition that the proceedings of the Disciplinary Committee are in contravention of the principle of natural justice and fair play and the approval given by the Director of Education was unsustainable. The appellant relied upon the decision of this Court in *Tikaram v. Mundikota Shikhan Prasarak Mandal* ((1984) 4 SCC 219 : 1984 (L&S) 694 : (1985) 1 SCR 339) and contended that he was not asking for any relief against the private body but he was challenging the order of the Director of Education who had granted approval to his removal on the basis of a report submitted to him by the Disputes Settlement Committee and hence the Director of Education, who was public authority and whose orders had been questioned before the court was amenable to the jurisdiction of the High Court under Article 226 of the Constitution. The High Court distinguished the above case by observing in para 11 of its judgment thus :

"... Mr. Kakodkar had placed reliance on *Tikaram v. Mundikota Shikshan Prasarak Mandal* ((1984) 4 SCC 219 : 1984 (L&S) 694 : (1985) 1 SCR 339) in support of his proposition that a writ petition would be maintainable in the case of a Headmaster of a private school who is dismissed by the management of a private school. In *Tikaram* case ((1984) 4 SCC 219 : 1984 (L&S) 694 : (1985) 1 SCR 339), the petitioner was not seeking any relief against the management on the basis of the clauses in the School's Code. But the court has observed : (SCC p. 221, para 3)

'In the instant case the appellant is seeking a relief not against a private body but against an officer of government who is always amenable to the jurisdiction of the court.'

Obviously, no decision of an officer of the government is being challenged in the present case and hence, *Tikaram's* case ((1984) 4 SCC 219 : 1984 (L&S) 694 : (1985) 1 SCR 339) is easily distinguishable."

8. With great respect to the High Court we should say that we do not find any substantial difference at all between the facts of this case and the facts involved in the *Tikaram* case ((1984) 4 SCC 219 : 1984 (L&S) 694 : (1985) 1 SCR 339). In *Tikaram* case ((1984) 4 SCC 219 : 1984 (L&S) 694 : (1985) 1 SCR 339). the facts were these.

9. The appellant in that case was also working as a Headmaster in a private school. On account of certain earlier events the management instituted a disciplinary enquiry against the appellant and on July 7, 1975, the appellant was informed by the management that it had imposed on him the punishment of reversion to the post of Assistant Teacher which according to the management was the substantive post held by him. Aggrieved by that order of reversion, the appellant filed an appeal before the Deputy Director of Education, Nagpur Division, contending that the enquiry had been vitiated on account of violation of principles of natural justice and that he had never held the post of an Assistant Teacher to which he had been reverted. After hearing both the parties, the Deputy Director of Education passed an order dated October 3, 1975 setting aside the decision of the management and remanding the case to the management for fresh decision on the ground that the enquiry had been vitiated on account of violation of principles of natural justice. Instead of filing an appeal against that order, the management filed a review petition before the Deputy Director himself on October 17, 1975. That was rejected by the Deputy Director by his order dated November 11, 1975 on the ground that no such review could be filed before him. Against that order the management filed an appeal before the Director of Education and that was dismissed on May 12, 1976 affirming the order of remand passed by the Deputy Director of Education to reconsider the case. The management again filed a petition before the Director of Education to reconsider the case. This petition for review was allowed by the Director of Education on November 26, 1976 and the order passed by the Deputy Director on October 3, 1975 remanding the case to the management for a fresh decision was set aside. Aggrieved by the said order dated November 26, 1976, the appellant filed a writ petition before the High Court of Bombay on the principal ground that the Director had no jurisdiction to review his earlier order dated May 12, 1976 by which he had dismissed the appeal against the order of the Deputy Director. The High Court dismissed that writ petition holding that the appellant could not file a writ petition under Article 226 of the Constitution against the order passed by the Director on the ground that the teachers working in private schools could not enforce their right under clause 77 and connected clauses of the School Code which were not statutory rules. It was against that order the appellant in that case had filed the appeal before the Supreme Court under Article 136 of the Constitution. Allowing the said appeal this Court observed thus : (SCC pp.

221-22, para 3)

In the writ petition the appellant was not seeking any relief directly against the management on the basis of the clauses in the School Code. If the management does not obey the order passed by the Deputy Director or the Director, it is open to the State Government to take such action under the School Code as may be permissible. In such an event, the recognition accorded to the school may be withdrawn or the grant-in-aid may be stopped. In the instant case the appellant is seeking a relief not against a private body but against an officer of government who is always amenable to the jurisdiction of the court. The appellant has merely sought the quashing of the impugned order dated November 26, 1976 passed by the Director on review setting aside the order of the Deputy Director. What consequences follow from the quashing of the abovesaid order insofar as the management is concerned is an entirely different issue. In the circumstances, the High Court was wrong in holding that a petition under Article 226 of the Constitution did not lie against the impugned order passed by the Director. We are aware of some of the decisions in which it is observed that no teacher could enforce a right under the School Code which is non-statutory in character against the management. But since this petition is principally directed against the order passed in a quasi-judicial proceeding by the Director, though in a case arising under the School Code and since the Director had assumed a jurisdiction to review his own orders not conferred on him, we hold that the appellant was entitled to maintain the petition under Article 226 of the Constitution."

10. In the instant case also we are concerned with the Grant-in-aid Code. The decision which was challenged before the High Court was the order of the Director of Education dated July 12, 1984 which is fully extracted above. It is further seen that a copy of the above order has been communicated by the Director of Education not merely to the management of the school but also to the Zonal Officer, North Educational Zone, Mapsa and the Grant-in-aid Section of the Directorate of Education. If the impugned orders of the Director of Education and of the Disputes Settlement Committee to which he had referred the case are set aside then the order of termination of service of the appellant, which is pursuant to them, would also have to fall. Any private school which receives aid from the Government under the Grant-in-aid Code, which is promulgated not merely for the benefit of the management but also for the benefit of the employees in the school for whose salary and allowances the Government was contributing from the public funds under the Grant-in-aid Code cannot escape from the consequences flowing from the breach of the Code and particularly where the Director of Education who is an instrumentality of the State is participating in the decision making process. Under these circumstances we find that the High Court was wrong in upholding that the orders of the Director of Education and of the Disputes Settlement Committee were not amenable to the jurisdiction of the High Court under Article 226 of the Constitution since the matter squarely falls within the principles laid down by this Court in *Tikaram case* ((1984) 4 SCC 219 : 1984 SCC (L&S) 694 : (1985) 1 SCR 339) .

11. We, therefore, set aside the judgment of the High Court holding that the writ petition was not maintainable before it. Since the High Court has not gone into the merits of the case we remand the case to the High Court and direct it to hear the writ petition on merits in accordance with law. The appeal is accordingly allowed, but there shall be no order as to costs.

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