

Yunus Ali Sha

Vs

Mohamed Abdul Kalam

Civil Appeal No. 2197 of 1999

(Sujata V. Manohar, R.C. Lahoti JJ)

09.04.1999

JUDGMENT

Sujata V. Manohar, J.

1. Leave granted.

2. The appellant, Madrasa Islamia Darululoom, Gope, District Puri, Orissa, is a minority educational institution set up to impart education upto standard eight in the State of Orissa. It is a Government aided institution. Aid is paid by the Government in lump sum to the institution to be distributed amongst the teachers and staff. The appellant's school is under the control of the Director of Education through the special officer for Mohammedan Education. Respondent No. 1 was the Head Master (head Maulbi) of the appellant's school and the second respondent was the Assistant Teacher of the appellant's school at the material time.

3. On 16.11.1986, a show cause notice was issued to respondents 1 and 2 in respect of various irregularities committed by respondents 1 and 2. Thereafter, the Managing Committee considered the conduct and activities of respondents 1 and 2 at its meetings held on 22.5.1987 and 27.9.1987. Ultimately on 14.10.1987, the Managing Committee resolved to remove the respondents from service. In the resolution, the committee also explained the reasons for removal. Accordingly, by an order dated 15.10.1987 issued by the Secretary of the said school, services of respondents 1 and 2 were terminated.

4. This termination was challenged by respondents 1 and 2 by filing a writ petition before the High Court. The High Court has found that no approval of the Director of Education was obtained prior to the order of termination as prescribed under Section 10-A of the Orissa Education Act, 1969. Hence the termination is bad in law. The High Court also directed reinstatement of respondents 1 and 2, and payment of a lump sum of Rs. 5,000/- to each of the respondents in lieu of back wages.

5. The appellant-school before us has pointed out that since the appellant's school is a minority educational institution, the Orissa Education Act, 1969, is not applicable to the school. The appellant has drawn our attention to Section 2 of the Orissa Education Act, 1969 which provides as follows :-

*"2. Act not to apply to certain institutions :- Nothing contained in this Act shall apply to educational institutions of their choice established and administered by minorities having the right under Clause (1) of Article 30 of the Constitution :*

Provided that the State Government may be notification apply or adapt to an educational institution established and administered by minorities, such of the provisions of the Act, so however that the rights under Article 30 of the Constitution are not infringed."

6. Section 10-A of the Orissa Education Act which requires prior approval of the Director before termination of the services of a teacher of an aided institution, therefore, has no application to a minority institution such as the appellant's institution. While the Directorate of Education, Orissa may have power to supervise the functioning of the said school in order to ensure that it does not mal-function or is not mal-administered, in view of Article 30(1) of the Constitution the Directorate has no control over the actual management of the school including hiring or termination of services of teachers. This is entirely within the control of the Managing Committee of the minority institution. In the case of *Bihar State Madarsa Education Board v. Anjuman Ahle-Hadees and Anr.*, 1994 Supp.(2) SCC 509, this Court struck down Sections 7(2)(n) and 24 of the Bihar State Madarsa Education Board Act as violative of Article 30(1). Section 24 provided, *inter alia*, that no teacher of a Madarsa shall be discharged or dismissed from service without the prior approval of the State Madarsa Education Board. This Court considered the provision as interfering with the management of the said school. In the *Ahmedabad St. Xaviers College Society and Anr. etc. v. State of Gujarat and Anr.*, AIR 1974 SC 1389 a provision requiring approval of the Vice-Chancellor for termination of a teacher's services was held as interfering with the minority institutions disciplinary control over the staff. (See also *Lilly Kurian v. Sr. Lewins and Ors.*, AIR 1979 SC 52).

7. Before us a counter-affidavit has been filed by the Inspecting Officer, Urdu Education, Directorate of Secondary Education, Bhubaneswar, Orissa on behalf of respondents 11 and 12 pointing out that the appellant's institution is a religious minority institution which is covered by Section 2 of the Orissa Education Act. In view thereof, it is stated in the affidavit that the State Government ordinarily does not interfere with the internal management of such an institution. The payment to the teachers of this institution is not made under the direct payment scheme but a grant is released in favour of the Secretary of the said school. The management of the appellant's institution is by an independent body with full control over the appointment, termination and disciplinary action against the employees. This can be done without obtaining prior approval of the Director or the Inspector of Schools unlike in the case of other aided educational institutions.

8. Looking to the minority status of the educational institution, the Managing Committee of the institution was entitled to terminate the services of respondents 1 and 2 without obtaining prior approval of the Director or Inspector of Schools since the management and discipline of such an institution is entirely under the control of the Managing Committee of the minority institution.

9. The appeal is, therefore, allowed and the impugned judgment and order of the High Court is set aside and the termination of respondents 1 and 2 is upheld. There will, however, be no order as to costs.

Appeal allowed.