**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

CWP No. 6333/2010

Decided On: 05.05.2011

Appellants: **Sushma Rana**
**Vs.**
Respondent: **State of Himachal Pradesh and Ors.**

**Hon'ble Judges/Coram:**
Rajiv Sharma, J.

**JUDGMENT**

**Rajiv Sharma, J.**

1. Petitioner was appointed as Assistant Librarian in Government Senior Secondary School, Chauntra by Respondent No. 3. She was terminated on the basis of resolution passed by Respondent No. 3 on 1.11.2008. Petitioner has assailed her termination by Respondent No. 3.

2. Mr. Vikram Thakur has strenuously argued that the Petitioner was not served with any show cause notice before terminating her services on 1.11.2008 by Respondent No. 3. According to him, the action of Respondent No. 3 of terminating the services of the Petitioner was illegal and arbitrary, thus, violative of Articles 14 and 16 of the Constitution of India. He also contended that since Respondent No. 3 is discharging duty of great public importance, it is amenable to the writ jurisdiction of this Court.

3. Mr. R.P. Singh, learned Assistant Advocate General appearing on behalf of Respondents No. 1, 2 & 4 has vehemently argued that only the teachers could be appointed by the Parent Teachers Association and the appointment of the Petitioner by Respondent No. 3, as Assistant Librarian, was illegal. He also contended that Respondent No. 3 is not amenable to the writ jurisdiction of this Court.

4. Respondent No. 3 was issued notice by the Court, but neither the President of Respondent No. 3 nor any Advocate has put in appearance on its behalf.

5. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

6. It is not in dispute that the Petitioner was appointed as Assistant Librarian by the Parent Teacher Association in the Government Senior Secondary School, Chauntra. Her services have been terminated on 1.11.2008 on the basis of resolution passed by Respondent No. 3. Petitioner has not been put to notice before terminating her services on the basis of resolution dated 1.11.2008. The Petitioner has suffered civil and evil consequences. She was required to be served with a notice before an extreme action of terminating her services was taken by Respondent No. 3.

7. It is no more res integra that principles of natural justice form integral part of Article 14 of the Constitution of India and it also amounts to right to fair treatment. In the case in hand, the Petitioner has been deprived of her livelihood by Respondent No. 3 in violation of principles of natural justice. The expressions ‘civil and evil consequences’ and ‘rules of natural justice’ have succinctly been explained by their Lordships of the Hon’ble Supreme Court in Sahara Indian (Firm) Lucknow v. Commissioner of Income Tax Central-I and Anr.  : (2008) 14 SCC 151. Their Lordships have held as under:

15. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly, i.e. fair play in action. As observed by this Court in A.K. Kraipak and Ors. v. Union of India and Ors. the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. Also see: Income Tax Officer and Ors. v. Madnani Engineering Works Ltd., Calcutta.

17. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in State of Orissa v. Binapani Dei and Ors. the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

29. In Rajesh Kumar (supra) it has been held that in view of Section 136 of the Act, proceedings before an Assessing Officer are deemed to be judicial proceedings. Section 136 of the Act, stipulates that any proceeding before an Income Tax Authority shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of Indian Penal Code, 1860 and also for the purpose of Section 196 of I.P.C. and every Income Tax Authority is a court for the purpose of Section 195 of Code of Criminal Procedure, 1973. Though having regard to the language of the provision, we have some reservations on the said view expressed in Rajesh Kumar's case (supra), but having held that when civil consequences ensue, no distinction between quasi judicial and administrative order survives, we deem it unnecessary to dilate on the scope of Section 136 of the Act. It is the civil consequence which obliterates the distinction between quasi judicial and administrative function. Moreover, with the growth of the administrative law, the old distinction between a judicial act and an administrative act has withered away. Therefore, it hardly needs reiteration that even a purely administrative order which entails civil consequences, must be consistent with the rules of natural justice. Also see: Maneka Gandhi v. Union of India and Anr. and S.L. Kapoor v. Jagmohan and Ors.

8. Their Lordships of the Supreme Court in Rajasthan State Road Transport Corporation and Anr. v. Bal Mukund Bairwa (2),   : (2009) 4 SCC 299 have held that arbitrary or unreasonable State action and gross violation of principles of natural justice violates Article 14 of the Constitution of India. Their Lordships have further held that the purpose of the principles of natural justice is prevention of miscarriage of justice and hence, the observance thereof is the pragmatic requirement of fair play in action. Their Lordships have finally concluded that the action taken without complying the principles of natural justice is a nullity.

34. Appellant, as noticed hereinbefore, is a State within the meaning of Article 12 of the Constitution of India. If an act on its part is found to be wholly unreasonable or arbitrary, the same would be violative of Article 14 of the Constitution of India. In certain situations, even gross violation of the principles of natural justice has been held to come within the ambit of Article 14. See also Satyavir Singh and Ors. v. Union of India and Ors.  : (1985) 4 SCC 252, Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors.   : 1991 Supp (1) SCC 600, Union of India and Anr. v. Tulsiram Patel   : (1985) 3 SCC 398, Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr.  : (1986) 3 SCC 156.

35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R. Antulay (supra), this Court held:

No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity.

47. The purpose of principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement of fair play in action. See Sawai Singh v. State of Rajasthan   : (1986) 3 SCC 454, Narinder Mohan Arya v. United India Insurance Co. Ltd. and Ors.   : (2006) 4 SCC 713.

9. Their Lordships of the Hon’ble Supreme Court in Managing Director ECIL Hyderabad and Ors. v. Karunakar and Ors.   : (1993) 4 SCC 727 have held that supplying the copy of the inquiry report to the employee by the employer is the requirement of the principle of natural justice. Their Lordships have further applied these principles to establishments, government, non-government and private sector undertakings.

10. Now the Court will advert to: whether the writ would lie against Respondent No. 3 or not. The Respondent-State has framed Education Code called “Himachal Pradesh Education Code” (hereinafter referred to as ‘Code’ for brevity sake). It has come into force w.e.f. 26.7.2001. The regulations contained in this Code apply to all the Government, Government aided, the Educational Institutions affiliated to the Himachal Pradesh Board of School Education and those institutions recognized (prior to 15.7.1996) by the State Government. Clause 2.33 of the Code provides for Constitution of a non-political body for better co-ordination and interaction between parents and teachers for improvement of academic standards and infrastructural facilities in the schools. Clause 2.33.1 provides for objectives of Parent Teacher Association. It reads thus:

1. To receive the relationship between the parents and teachers.

2. To create the healthy education environment in schools.

3. To arrange time to time discussions with the elder persons of the society and to incorporate their suggestions for the improvement of the educational standard in the schools.

4. To suggest ways so that the students education is promoted.

5. To make a collective efforts to improve the conduct of the students and also to restrict the entry of anti-social elements in school campus.

6. To inform the parents/guardians about the performance of their wards from time to time, and to make arrangements for the parents to meet the concerned staff once in a quarter.

7. To make arrangement for teachers, etc., when there is shortage of staff in the institution as a temporary measure.

8. To make the parents aware of various schemes of the Govt. in the area of education and also to give information about various activities and programmes of the department at school, district and state level.

9. To make the collective effort for the overall development of the organization and students, by arranging at least one meeting of P.T.A. executive quarterly and that of its general house once in a year, giving topmost priority to students’ welfare.

11. Clause 2.33.2 provides that there will be a general body of Parent Teacher Association of which all the parents, guardian of the students studying in the school and teachers of the school will be the members. Only two persons with technical expertise and know how and of integrity are to be co-opted members of Parent Teacher Association. The general body meetings have to be called either on Sunday or a Gazetted holiday. The first meeting is to take place under the Chairmanship of the Head of the Institution and once the Executive Council is elected, the general meeting is to be headed by the President every time. Clause 2.33.3 deals with general house, including a right to vote in the General House, quorum of the General House, General House meeting and rights of General House. Clause 2.33.4 provides for the constitution of the Executive Council. It is stipulated therein that the Executive Council is to be elected in the General House meeting by the majority vote. Its term is one year. The members and the office bearers of the Executive Council are elected by General House unanimously or by majority vote. The Executive Council is responsible for the working of the Association and also to take the help of those members who have been registered during the general session of the Parent Teacher Association. Clause 2.33.5 provides that membership fees, donations, grants and aids from Government and other organizations will be the source of income of Parent Teacher Association.

12. The State Government has also framed the rules called Grant-in-Aid to P.T.A. Rules, 2006 (hereinafter after referred to as the ‘Rules’ for brevity sake). Rule 5 provides that in case a Parent Teacher Association, with the prior approval of the Principal, makes available teachers for the regular day-to-day teachings of students in an educational institution, it may submit an application for grant-in-aid in form-I. Character/antecedents of such teachers verified by a Gazetted Government officer are required to be enclosed with the application. Further, the request for grant in respect of teachers is to be accompanied by a certificate from the Principal of the Educational Institution to the effect that the work and conduct of the teachers is satisfactory. According to Rule 6, the number of teachers in a subject in respect of whom grant may be given shall not exceed the number of posts in the subject which are vacant in an educational institution. Rule 8 lays down quantum of grant-in-aid. The grant-in-aid is to be made admissible only in respect of such teachers made available by the Parent Teacher Association, whose work is found satisfactory by the Principal of the Educational Institution as per Rule 12. The grant-in-aid is to be sanctioned by the Director or other Officer authorized by him/her on the recommendation of the Principal of an Educational Institution. The grant-in-aid is to be released at intervals and the Director may order the Disbursing Officer from time to time. Rule 14 enables the State Government to relax any provisions of these rules, if it is of the opinion that it is necessary or expedient to do so. The State Government has also issued necessary clarifications/instructions on the Rules on 28.6.2006, 2.8.2006 and 19.10.2006.

13. It is thus evident from the reading of the various Clauses of the Himachal Education Code and the Grant-in-Aid to P.T.A. Rules, 2006 that Parent Teacher Association is discharging important public duties/functions. According to Clause 2.33.1, it is one of the objectives of the Parent Teacher Association to make arrangement to teachers etc., when there is shortage of staff in the Institution, as a temporary measure.

14. Mr. R.P. Singh has strenuously argued that only teachers could be appointed by the P.T.A. It is evident from the bare perusal of Clause 2.33.1(7) that it is open to the Parent Teacher Association to appoint teachers and supporting staff. In these circumstances, the appointment of the Petitioner could be made by the Parent Teacher Association as Assistant Librarian. The post of Assistant Librarian is important to impart education to the children in the schools. The Librarians are now required to pass Diploma/degree in Library Science. It is also evident from the combined reading of the Education Code, as discussed hereinabove and Grant-in-aid Rules, 2006 that the Principal of the school is a very important person for the implementation of the Rules. He has to verify the educational qualification and conduct of the candidate before the grant-in-aid is released to the Parent Teacher Association. It is in these circumstances, he is required to distance himself, as per letter dated 2.8.2006 from the selection process. The selection of the candidate is to be made by the Committee comprising of President, P.T.A. (Parent), Secretary, P.T.A. (Teacher) and subject specialist/expert. It is required on the basis of instructions dated 29.10.2006 that the Parent Teacher Association should display the vacancy position and venue/date of interview in the notice board of the concerned school, the Parent Teacher Association’s office and notice board of the Gram Panchayat concerned as well as adjoining Panchayats. In case, Parent Teacher Associations have sufficient funds, they may even consider publicity through press. The candidates are required to be given sufficient time. The date of interview is to be decided in advance. The Parent Teacher Associations are advised that the candidates should be selected on basis of merit by adopting an objective competitive basis.

15. It is duty cast upon the State, now after insertion of Article of 21-A of the Constitution of India, to provide free and compulsory education to all children of the age of 6 to 14 years in such manner, as the State may by law determine.

16. The role of Parent Teacher Association visualized under the Education Code is supplementary to the role played by the State Government. The Court can take judicial notice of the fact that at times it is difficult for the State Government to fill up all the vacancies in Education Department. It is in these circumstances, that Parent Teacher Associations are authorized to make appointments to ensure that there is no disruption to the studies of the children. The Parent Teacher Associations, as noticed hereinabove, discharge very important public duties/functions from time to time by making appointments to the posts of teachers and other supporting staff.

17. Their Lordships of the Hon’ble Supreme Court in Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Ors v. V.R. Rudani and Ors.   : AIR 1989 SC 1607 have held that the issuance of mandamus is not confined to statutory authorities and instrumentalities of the State, it can be issued to any other person or authority performing public duty. Their Lordships have further held that duties need not to be imposed by statute. Their Lordships have further held that:

14. 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 Appellants-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. 266). 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.

15. 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 commissions with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Com No. 73). It was implemented 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 qualify, the Applicant had to get the leave of a judge.

The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words 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 binding. Nor is the previous law as o the matters in respect of which relief may be ranted. This means that the judges can develop he public law as they think best. That they have one and are doing." (See - The Closing Chapter - by Rt. Hon Lord Denning p. 122).

16. There, however the prerogative writ of mandamus confined only to public authorities to compel performance of public duty. The 'public authority' for them means 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".

19. 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. 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." (Judicial Review of Administrative Act 4th Ed. p. 540). 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 water-tight 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.

18. What has definitively been laid down by their Lordships of the Hon’ble Supreme Court in the judgment cited hereinabove is that Article 226 of the Constitution of India confers wide powers in the High Courts to issue writs in the nature of prerogative writs. 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. Their Lordships have further held that expression “authority” employed in Article 226 of the Constitution of India must receive a liberal meaning unlike Article 12 of the Constitution of India. Their Lordships have further held that the words “any person or authority” used in Article 226 of the Constitution of India are, therefore, not to be confined only to statutory authorities and instrumentalities of the State and 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.

19. What is education has been succinctly explained by their Lordships of the Hon’ble Supreme Court in State of Orissa and Anr. v. Mamata Mohanty   : (2011) 3 SCC 436 as under:

29. Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.

We have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress.

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Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of 'learning with search for new knowledge with discipline all round must be maintained at all costs.

(Vide: The Sole Trustee Loka Shikshana Trust v. The Commissioner of Income Tax Mysore   : AIR 1976 SC 10; Frank Anthony Public School Employees Association v. Union of India and Ors.  : AIR 1987 SC 311; Osmania University Teachers Association v. State of Andhra Pradesh and Anr.   : AIR 1987 SC 2034; and Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition and Catering Technology, Chandigarh and Ors. v. Vaibhav Singh Chauhan, (2009) 1 SCC 59.

32. In Chandigarh Administration and Ors. v. Rajni Vali and Ors.   : AIR 2000 SC 634, this Court observed as under:

It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution.

33. In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.

34. Article 21A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State that while controlling the education it may impinge the standard of education. It is, in fact, for this reason that norms of admission in institutions have to be adhered to strictly. Admissions in mid academic sessions are not permitted to maintain the par excellence of education.

20. Consequently, in view of the observations and discussions made hereinabove and the definitive law laid down by their Lordships of the Hon’ble Supreme Court, it is held that Respondent No. 3, Parents Teacher Association is amenable to the writ jurisdiction of this Court, since it is performing public duties/functions and mandamus can be issued against it.

21. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. The action of the Respondents terminating the services of the Petitioner on 1.11.2008, without issuing her any show cause notice is quashed and set aside. Respondent No. 3 is directed to re-engage the Petitioner as Assistant Librarian within a period of four weeks, after the production of a certified copy of the judgment by the Petitioner. No costs.