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Farooq Ahmed Vs Union Territory Of J&K And Others

Writ Petition (C) No. 10 Of 2021, CM No. 53 Of 2021

Court: Jammu And Kashmir High Court

Date of Decision: March 31, 2021

Acts Referred:
Right Of Children to Free And Compulsory Education Act, 2009 â€" Section 2(f), 28#Jammu And Kashmir Government Employees (Conduct) Rules 1971 â€" Rule 10

Hon'ble Judges: Sanjeev Kumar, J

Bench: Single Bench

Advocate: F.S.Butt, Suneel Malhotra

Final Decision: Disposed Of

Judgement

1. The petitioner claiming to be the father of two children studying in 10th & 12 class feels aggrieved of circular bearing

No.CEO/K/Monitoring/20/14887-967 dated 21.11.2020, whereby all the DDOâ€Ÿs/Controlling Officers working in the District have been called upon to

issue strict instructions to all Teaching officials (Lecturers/Masters/ Teachers) working under their control not to indulge in private practice of giving

luxury education at private coaching institutions. The impugned circular is purported to have been issued under Section 28 of the Right of Children to

Free and Compulsory Education Act, 2009, which has become applicable to the Union Territory of Jammu & Kashmir in terms of the Jammu &

Kashmir Reorganization Act, 2019.

2. With a view to appreciate the grounds of challenge urged by the petitioner, it is necessary to first set out relevant facts:

Vide Government Order No.435-Edu of 2010 dated 30.04.2010, the Government promulgated the Jammu & Kashmir Regulation of Private Tuition

Centre Rules, 2010 (Ã¢â‚¬Å“Tuition Centre Rules, 2010Ã¢â‚¬). The Tuition Centre Rules, 2010 were primarily aimed at regulating establishment of private

centres, fee by such centres, infrastructure and facilities required for running these centres. The Rules do not touch upon the issue of government

teachers providing private tuition in these coaching centres. In most of the private tuition/coaching centres, the Government teachers were engaged

and were imparting private tuition for consideration.

It was in the year 2017, the department of School Education issued circular No.1-Edu of 2017 of 2017 dated 04.01.2017 imposing complete ban on

teaching faculty of school education department to take up any activity/assignment including teaching in a private institution or coaching centre. The

circular dated 04.01.2017 was issued in the backdrop of a Public Interest Litigation filed by Vichar Kranti Manch International before this Court

challenging therein a circular of the school education department bearing No.Edu/PS/C/S/11/05 dated 11.08.2005, whereby the officials of the school

education department were debarred from undertaking any activity/assignment including teaching in private tuition/coaching centres unless permission

was obtained from the competent authority providing further that no such permission would be available two hours before opening of the school and

two hours after school gets closed.

A Division Bench of this Court vide its judgment dated 18.11.2011 passed in the aforesaid PIL No.6/2011 set aside the part of instructions contained

in the circular dated 11.08.2005, granting general permission to the officials of the education department to engage in private coaching two hours

before opening of the school and two hours after closing of the school. The judgment dated 18.11.2011 was assailed by the State Government before

the Supreme court in SLP(Civil) No.16885/2012, which was disposed of on 21.10.2016 and the judgment of the High Court to the extent of quashing

general permission granted to the teachers of the school education department to engage in self employment by imparting private coaching was

upheld. It is in compliance to the judgment of this Court, as upheld by the Supreme Court and in supersession of the circular dated 11.08.2005, circular

No.01-Edu of 2017 was issued and a total ban was imposed on the teaching faculty of the school education department for taking up

activity/assignment including teaching in private tuition/coaching centres. This circular became subject matter of challenge in OWP No.306/2017. This

petition was filed by the parents of the students, who claimed a writ of mandamus to be issued to the school education department to allow the

government teachers to undertake private tuitions prior to and after working hours, so that the children of the writ petitioners and other citizens of the

State are fully prepared to compete in their annual examinations and excel in their academic career. The writ petition was allowed by a Bench of this

Court vide judgment dated 29.05.2017 and the impugned circular of 2017 was quashed.

In compliance to the judgment dated 29.05.2017, the department of school education issued another circular bearing No.Edu/L/J/Misc/131/2017 dated

25.09.2017, which was in supersession of all previous circulars issued on the subject. In terms of this circular, it was provided that henceforth no

teaching faculty shall undertake any activity/assignment, including teaching in private educational institutions or coaching centre unless he/she obtains

previous sanction from the competent authority.

While this circular was in-vogue and the private tuitions by the government teachers except with the prior sanction of the competent authority were

banned, a complaint was received by the Chief Education officer, Kishtwar from the Postgraduate unemployed youth of district Kishtwar alleging that

the teachers of the school education department were imparting private tuition at private coaching centres. They requested the Chief Education

Officer, Kishtwar to issue clear cut directions to restrain the government employees from engaging themselves in private tuition. The Chief Education

Officer concerned after verifying the contents of the complaint, issued the impugned circular banning completely the engagement of teaching officials

(Lecturers/Masters/Teachers) in private practice of giving luxury education at private coaching centres. As is apparent from the impugned circular,

the same has been issued purportedly under Section 28 of the Right of Children to free and Compulsory Education Act of 2009.

3. In the backdrop of aforesaid fact situation narrated above, the petitioner has challenged the impugned circular inter alia on the following grounds:-

i) That the impugned circular, which is purportedly issued under Section 28 of the Act of 2009 is without any competence and authority of law, for,

Section 28 of the Act of 2009 is only applicable to the Teachers engaged in imparting elementary education. The elementary education, in terms of

Section 2(f) of the Act of 2009 means the education from first class to eighth class.

ii) That the impugned circular imposes complete ban on private tuitions whereas the circular dated 25.09.2017 issued by the school education

department permits private tuition by the teaching faculty of the department with previous sanction from the competent authority. The impugned

circular, therefore, runs contrary to the circular issued by the administrative department.

iii) That the impugned circular is also in violation of the judgment passed by learned Single Bench of this Court in the case of Rakesh Kumar Sharma

and others v. State of J&K and another (OWP No.306/2017).

4. On being put on notice, Mr. Suneel Malhotra, learned GA has entered appearance on behalf of the respondents. He has opposed the maintainability

of the writ petition primarily on the ground that the impugned circular has been issued by the Chief Education Officer concerned under Section 28 of

the Act of 2009, which unequivocally provides that no teacher shall engage himself/herself in private tuition or private teaching activity. It is submitted

that in terms of circular dated 25.09.2017 issued by the Secretary to Government, School Education Department, no member of teaching faculty can

engage in teaching occupation in private tuition/coaching centres without prior permission of the competent authority. It is submitted that since nobody

has the requisite permission/sanction from the competent authority, as such, the Chief Education Officer, Kishtwar has rightly debarred the teaching

faculty of the school education department from engaging themselves in private teaching occupation in private tuition/coaching centres. He, thus,

supports the circular issued by the Chief Education Department.

5. Having heard learned counsel for the parties and perused the record, it is seen that the impugned circular has been issued by the Chief Education

Officer, Kishtwar to debar the teachers (Lecturers/Masters/Teachers) from engaging in private practice of giving tuition at private tuition/coaching

centres. The Chief Education Officer has purportedly derived the power to issue such circular under Section 28 of the Act of 2009, which became

applicable to the Union Territory of J&K with the promulgation of J&K Reorganization Act, 2019. As is rightly contended by Mr. F.S.Butt,

government teachers imparting education to the higher classes other than elementary education do not fall within the purview of the Act of 2009. The

word Ã¢â‚¬Å“teacherÃ¢â‚¬ used in Section 28 of the Act of 2009 cannot be picked up in isolation and has to be read with the other provisions of the Act. The

Act of 2009 has been enacted to provide for free and compulsory education to all children of the age of six to fourteen years. The definition of

Ã¢â‚¬Å¾elementary educationâ€Ÿ given in Section 2(f) of the Act of 2009 and definition of Ã¢â‚¬Å¾Schoolâ€Ÿ given in Section 2(n), when read with Section 28 would

leave no manner of doubt that the term Ã¢â‚¬Å“teacherÃ¢â‚¬ used in Section 28 is referable to teacher of schools imparting education from first class to

eighth class and to the children of the age of six to fourteen years. The teachers serving in the institutions where classes higher than the eighth class

are taught do not fall within the purview of the Act of 2009. Section 28, thus, imposes complete ban on the government teachers, who are involved in

imparting elementary education from engaging themselves in private tuition or private teaching activity.

6. Viewed thus, the impugned circular is valid in respect of teachers who are employed for imparting elementary education in the schools up to eighth

standard. The government teachers teaching in the higher secondary schools i.e. Lecturers and those working in the higher education department as

teaching faculty do not fall within the ambit of the Act of 2009 or Section 28 thereof.

7. I am in agreement with the learned counsel for the petitioner that the Chief Education Officer, Kishtwar was not correct in invoking Section 28 of

the Act of 2009 to impose complete ban even on Lecturers (10+2) and those teaching in the higher educational institutions i.e. Colleges and

Universities. The impugned circular insofar as it imposes ban on 10+2 Lecturers and those teaching in the higher education department cannot be

sustained on the ground that the activity of engaging in private practice by such teachers to give tuition in private tuition/coaching centres is not

prohibited under Section 28 of the Act of 2009.

8. Having said so and held thus, I am of the considered view that the teaching faculty of the school education department as well as higher education

department like other government employees is governed by the Jammu & Kashmir Government Employees (Conduct) Rules, 1971 [Ã¢â‚¬Å“Employees

Conduct RulesÃ¢â‚¬â€¹]. Rule 10 whereof is relevant for our purpose and is, thus, reproduced hereunder:-

Ã¢â‚¬Å“10. Private trade or employment. Ã¢â‚¬¬

(l) No Government employee, whether on leave or active service, shall except with the previous sanction of the Government engage directly or

indirectly in any trade or business or undertake any other employment:

Provided that a Government employee may, without such sanction, undertake honorary work of a social or charitable nature of occasional work of a

Literary, artistic or scientific character except in organisations or associations with which a Government employee is expressly debarred from

associating, subject to the condition that his official duties do not thereby suffer; but he shall not undertake or shall discontinue such work, if so,

directed by the Government.

Explanation. - (1) Canvassing by a Government employee in support of the business or insurance agency, commission agency, owned or managed by

his wife or any other member of his family shal1 be deemed to be a breach of this sub-rule.

Explanation. -(2) The Secretary-ship of a Club does not constitute employment in the sense of this rule; provided that it does not occupy so much of an

officer's time as to interfere with his public duties and that it is an honorary office. Any officer proposing to become the honorary Secretary of Club

should inform his immediate departmental superior who will decide with reference to this rule and explanation, whether the matter should be reported

for the orders of the Government.

Explanation. -(3) Government employees are prohibited under pain of dismissal from being pecuniarily interested in a Government contract, from

handling security for a contractor or acting as his agent or assistant in any way.

(2) Every Government employee shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an

insurance agency or commission agency.

(3) No government employee shall, without the previous sanction of the Government, except in the discharge of his official duties, take part in the

registration, promotion, or management of any bank or other company which is required to be registered under the Companies Act or any other law

for the time being in force or any co-operative society for commercial purposes:

Provided that a Government employee may take part in the registration, promotion or management of a co-operative society substantially for the

benefit Of Government employees registered under the Cooperative Societies Act, or any other law for the time being in force, or of a literary,

scientific or charitable society registered under the Societies Registration Act, or any corresponding law in force.

(4) No Government employee may accept any fee for any work done by him for any public body or any private person without the sanction of the

prescribed authority.Ã¢â‚¬â€¹

9. From a bare reading of Rule 10, reproduced herein above, it is clear that no government employee, which would include teaching faculty of the

school and higher education department shall engage directly or indirectly in any trade or business or undertake any other employment except with

previous sanction of the government. The Proviso added to Rule 10(1) exempts a government employee from seeking prior sanction in a case where

he undertakes honorary work of a social or charitable nature or occasional work of a literary, artistic or scientific character except in organizations or

associations with which a Government employee is strictly debarred from association. This is, however, subject to the condition that his official duties

do not suffer thereby. It is, thus, clear that independently of the circular issued by the Chief Education Officer or the administrative department of

school education department, the teachers like other government employees are debarred from engaging directly or indirectly in any trade or business

without previous sanction of the Government. The Government may by policy decision decide not to give such sanction to all or any class of

employees, as it deems fit.

10. Looking to the nature of activity, government teachers are engaged in i.e. imparting education to children and building future of the nation, it would

always be fair and reasonable for the Government to take a policy decision not to allow teaching faculty of the Government at any level or at a

particular level to engage in private business of imparting tuition/coaching in the private tuition/coaching centres. The earlier circular issued by the

Government dated 11.08.2005 was set aside by a Division Bench of this Court in the case of Vichar Kranti Manch International on the ground that it

had granted blanket permission to all teachers to engage themselves by way of self employment in private tuition centres two hours before opening of

the schools and two hours after closing of the schools. The Court found the grant of general permission to the teaching faculty to engage in private

coaching bad in the eye of law. This made the Government to come up with Circular No.1-Edu of 2017 dated 04.01.2017, whereby a complete ban

was imposed on private tuition by the teaching faculty of the school education department. The circular was in consonance with Rule 10 of the

Employees Conduct Rules, but the same was made subject matter of challenge in a petition filed by the parents of the school going children.

11. From the nature of controversy raised by the petitioners in that writ petition, it is patently clear that it was a litigation filed for the benefit of

teaching faculty engaged in private tuition in private coaching centres.

12. Be that as it may, a Single Bench of this Court disposed of OWP No.306/2017 vide its judgment dated 29.05.2017 and held the circular of 2017

violative of judgment dated 18.11.2011 passed in WPPIL No.06/2011. The judgment of the learned Single Judge is per incuriam. It appears that

operative portion of the order was not brought to the notice of the learned Single Bench and the Court was persuaded to believe that earlier circular

issued in the year 2005 had been set aside by the Division Bench on the ground that it had imposed blanket ban on private tuition by teaching faculty of

the school education department, whereas the fact remains that only that part of the circular dated 18.08.2005 was set aside by the Division Bench,

which had the effect of granting general permission to all teachers to engage themselves in teaching activity in private coaching centres two hours

before opening of the school and two hours after closing of the schools. It is because of this oversight, learned Single Judge held the earlier circular

issued in the year 2017 in violation of the Division Bench Judgment which passed in WPPIL No.06/2011 titled Vichar Kranti Manch International v.

State of J&K.

13. Having held the judgment of the learned Single Judge per incuriam, the argument of Mr. F.S.Butt, learned counsel for the petitioner that the

impugned circular, too, violates the judgment of the Single Bench and the judgment passed by the Division Bench in WPPIL No.06/2011 is totally

meritless and without any substance.

14. Rule 10 of the Employees Conduct Rules, it may be observed, has only remained on papers and has not been implemented by the Government in

its letter and spirit so far. The attempts made by the Government on two earlier occasions have been aborted by the teaching faculty of the school

education department by putting up so called parents of the students and engaging the State in litigation.

15. Without sermonizing on the role of teachers in the national building, suffice it to say that teacher in our society is a role model and is given a pious

duty of making and moulding the career and character of the students. Teachers these days are paid hefty salary by the Government and there is no

pressing necessity for them to engage in private tuitions that, too, on many occasions at the cost of their students in the government institutions. It is

pity that the standard of education in the government institutions has gone down drastically, though the best teaching faculty is available in the

government run institutions.

16. The Government teachers are highly qualified and are imparted various trainings from time to time at the expense of government to equip them

with the latest teaching techniques and methodology. Instead of concentrating on their pious job and contribute to the nation building, the God has

chosen for them, for, they, moved by their insatiable greed, engage in activity of private tuition either at their residence or in private coaching centres.

17. Many a times, they skip their classes in the government schools so as to show up in the private coaching centres. Their engagement in activity of

private coaching invariably slows down their performance in the Government schools. It is with a view to avoid such unsavory situation and to prevent

the government employees from engaging in private occupations, which may directly or indirectly be in conflict with their official duties, the Employees

Conduct Rules, have been framed. Rule 10 of the Employees Conduct Rules reproduced herein above takes care of the situation we are confronted

with in this petition. If Rule 10 of the Employees Conduct Rules is implemented by the Government in all the departments particularly in the

department of Education in letter and spirit, the menace of private tuition by government teaching faculty could be eradicated and the teaching faculty

can be made accountable and responsible towards the students who completely depend on government institutions for their education and have no

means to pay for private tuitions.

18. In view of the foregoing discussion, this petition is disposed of by providing as under:-

i) That the impugned circular issued by the Chief Education Officer, Kishtwar is beyond the scope and ambit of the Act of 2009 particularly Section

28 thereof and therefore, cannot be applied to the Government Teaching faculty of higher secondary schools and colleges. The circular would have its

applicability only to the government schools imparting elementary education i.e. schools up to 8th standard. The circular to the extent aforesaid is, thus,

upheld.

ii) That the Rule 10 of the Employees Conduct Rules enjoins on the Government a duty to ensure that no government employee, which would include

the government teaching faculty, engages in private trade or occupation without previous sanction of the government.

iii) Imparting private tuition at residence or at some other premises including coaching/tuition centres by the teaching faculty of the government is

necessarily an engagement in the trade or business and, therefore, prohibited under Rule 10 of the Employees Conduct Rules, if undertaken without

previous sanction of the government.

iv) That the government employee is, however, entitled to undertake honorary work of a social or charitable nature or occasional work of a literary,

artistic or scientific character even without such sanction.

v) Neither Rule 10 of the Employees Conduct Rules nor any other provision of any Act or Rules debars the government from issuing circular,

guidelines or instructions for enforcing Rule 10 of the Employees Conduct Rules. There is nothing that prevents the government from taking a policy

decision in the matter of teaching faculty of the government that there shall be no sanction/grant for engagement directly or indirectly in private tuition

in private coaching/tuition centres during and after the duty hours.

vi) Any circular issued to give effect to Rule 10 of the Employees Conduct Rules, would be valid in law and it would be the responsibility of all DDOs

and controlling authority to ensure that it is implemented in letter and spirit. The decision to generally withdraw sanction for permitting the teaching

faculty for undertaking the private tuition at the private tuition centres will be a policy decision of the government to be taken by it taking into

consideration all relevant factors.

vii) That the department of education (school as well as higher education) is directed to implement Rule 10 of the Employees Conduct Rules in letter

and spirit and ensure that no member of its teaching faculty engages in private tuition at private coaching/tuition centres without previous sanction of

the government. The Zonal Education Officers at the zonal level and Chief Education Officers at the district level shall be the nodal officers, who will

ensure the implementation of Rule 10 of the Employees Conduct Rules and the circular/instructions, if any, issued by the Government to give effect to

Rule 10 of the Employees Conduct Rules.

viii) That the Government shall do well to create and provide toll free telephone number in each District where the complaint(s) against the banned

activity of the teaching faculty could be made. The government may create a web portal/grievance cell for receiving and redressal of the complaint(s)

made by the citizens against the banned activities of the teaching faculty of the Government.

19. This Court hopes and trusts that the Government would adhere to Rule 10 of the Employees Conduct Rules and will adopt a proactive approach to

eradicate the menace of government teaching faculty engaging in private tuitions at the cost of students studying in the government institutions.

20. This would not only discipline the teaching faculty but would also help in raising the standard of education in government run educational

institutions.

21. With the aforesaid observations, this petition is disposed of.