

Yash Pal Dalal Vs Governing Body of Jat Education Society (Regd.)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 3, 2003

Acts Referred: Constitution of India, 1950 " Article 12

Citation: (2004) 1 LLJ 1006 : (2003) 135 PLR 228 : (2003) 3 RCR(Civil) 71

Hon'ble Judges: Viney Mittal, J; V.M. Jain, J

Bench: Division Bench

Advocate: R.K. Hooda, for the Appellant;

Final Decision: Dismissed

Judgement

Viney Mittal, J.

Notice of motion. On the asking of the court, Shri Narinder Hooda, Advocate, accepts notice on behalf of the respondents.

2. We have heard the learned counsel for the parties.

3. This order shall dispose of Civil Writ Petitions No. 5053, 5169, 5111 and 5113 of 2003 as the common questions of facts and law are involved

in these petitions.

4. For the sake of convenience, the facts are taken from C.W.P. 5053 of 2003.

5. The petitioner has filed the present petition under Article 226/227 of the Constitution of India for the issuance a writ in the nature of certiorari.

The challenge in the Writ Petition is to the order dated December 27/30, 2002 vide which the services of the petitioner had been terminated.

6. The petitioner has averred that some posts of Junior Lecturer in different subjects were advertised on April 24, 2001. In response to the

advertisement for the filling up of the aforesaid posts, the petitioner was selected as a Junior Lecturer in History. He was appointed vide

appointment order dated May 7, 2001.

7. The petitioner has further averred that his services were confirmed vide order dated January 19, 2002. However, subsequently vide order dated

December 27/30. 2002 his services were terminated by the respondents without any justification and jurisdiction to pass the aforesaid order. The

petitioner has now challenged the aforesaid termination order Annexure P/5 in the present petition.

8. Sh. Narinder Hooda, the learned counsel appearing for respondents No. 1 to 3 has raised a preliminary objection that the Government Body of

Jat Education Society was a society registered under the Societies Registration Act and was running educational institution without receiving any

aid or grant from the Government. On that basis, it has been submitted by Shri Hooda that the present petition filed by the petitioner against the

aforesaid Society and the school run by it was not maintainable inasmuch as it could be termed that respondents No. 1 and 2 were State or

instrumentality within the meaning of Article 11 of the Constitution of India.

9. On the other hand, Sh. R.K. Hooda, the learned counsel appearing for the petitioner has submitted that the present writ petition challenging the

termination order was maintainable inasmuch as the aforesaid Society was running a school and since the school was imparting education to the

students, therefore, the order of termination passed by the Governing Council of School could be challenged by the petitioner in the present

proceedings under Article 226 of the Constitution of India.

10. We have given our thoughtful consideration to the entire matter and in our opinion, the present writ petition filed by the Jat Education Society

or the governing Body of the School run by the said Society was not maintainable. It has been held by the Hon'ble Supreme Court of India in G.

Basi Reddy Vs. International Crops Research Instt. and Another, as follows:-

25. A writ under Article 226 lies only when the petitioner establishes that his or her fundamental right or some other legal right has been infringed.

The claim as made by the appellant in his writ petition is founded on Articles 14 and 16. The claim would not be maintainable against ICRISAT

unless ICRISAT were a "state" or authority within the meaning of Article 12. The tests for determining whether an organisation is either (sic) has

been recently considered by a constitution bench of this court in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors., in which

we said:

The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and

administratively dominated by or under the control of the government. Such control must be particular to the body in question and must be

pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute

or otherwise it would not serve to make the body a State.

11. In view of the aforesaid law laid down by the Apex Court, it is apparent that the present writ petition which has been filed by the petitioner

challenging the order of termination passed by the Governing Body of Jat Education Society which is merely a Society under the Societies Act is

not maintainable. It cannot be suggested that the said Society or the school run by the society was a State or authority within the meaning of Article

12 of the Constitution of India."

12. In this view of the matter, we dismiss the present petitions. However, the petitioners would be at liberty to seek their remedies against the

termination order in an appropriate forum in accordance with law.

Sd/- V.M. Jain, J.