

(2011) 02 AHC CK 0379

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 39779 of 2006

Committee of Management
Madarsa Arabia Ataurasool

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Feb. 1, 2011

Citation: (2011) 4 AWC 3560 : (2011) 2 UPLBEC 1221

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sudhir Agarwal, J.

Heard Sri Krishnaji Khare for the Petitioner and learned Standing Counsel for Respondents No. 1 to 4. Respondent No. 5 is represented by Mrs. Swati Agrawal but she is not present though the case has been called out in revised list and besides her, names of Sri Rizwan Ahmad and Mansoor Ahmad are also shown in the cause list

2. It is contended that the Petitioner-institution, namely, Madarsa Arabia Ataurasool, Siswa Bazar, District Maharajganj is a minority institution wherein the Respondent No. 5 was working as Assistant Teacher. It appears that a charge-sheet was issued to the Respondent No. 5 and inquiry officer was also appointed. After inquiry, the committee of management passed an order on 22.1.2006 terminating him where against the Respondent No. 5 made a complaint before the Registrar/Inspector, Arabi and Farsi Madarsas, U.P., Lucknow who has passed the impugned order dated 16.3.2006 observing that the order of termination appears to have been passed without properly considering reply of the Respondent No. 5 and, therefore, is in violation of the principle of natural justice hence the appropriate action be taken. The said order passed by the Registrar is addressed to District Minority Welfare Officer, Maharajganj who pursuant to said order has passed the second impugned order dated 17.3.2006 directing the Petitioner-institution to treat

the Respondent No. 5 in continuous service and pay salary in accordance with law.

3. Sri Khare, learned Counsel for the Petitioner submitted that both the impugned orders passed by the Registrar/Inspector, Arabi and Farsi Madarsas, U.P., Lucknow and District Minority Welfare Officer, Maharajganj are wholly without jurisdiction. They have no such power under any provision to interfere in the management of the minority institution including disciplinary action taken against teaching staff of such institution.

4. Learned Counsel appearing for Respondent No. 5 through his counter-affidavit could not show that the Respondent Nos. 2 and 3 had any power under statute to interfere with the order passed by the management of Petitioners-institution in respect to disciplinary action of its teaching staff.

5. Uttar Pradesh Ashashkiya Arbi Tatha Farsi Madarson Ki Manyata Niyamawali has been placed before this Court. Apparently the rules are not statutory as also declared by the covering letter dated 22nd August, 1987 reads as under:

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6. Further para 34 thereof reads as under:

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7. From perusal of aforesaid rule it appears that though it entitle an employee of an institution to approach the Inspector, Arbi Madarsa against any order of termination passed by the Management, but the Inspector Madarsa has not been conferred any authority or power to interfere with such order, if he finds the same to be otherwise contrary to the recognized procedure of law. It only says that if any irregularly is noticed by the Inspector, he shall have right to send his suggestions to the Committee of Management. The provision is much short of empowering the Inspector to interfere with the order of the Management against which the concerned employee of the institution approaches him. There is nothing in the aforesaid rules to show that suggestions of the Inspector shall or may have the impact of making order of termination illegal or nullified in any manner. What would be status of the suggestion, is not clear from the said rules but at the best it may be construed as to advice the management to remain careful in future but so far as the order of termination, where against the incumbent had approached the Inspector concerned, the same shall stand invalidated as such, is not prescribed in the rules.

8. The rule framing authority was not short of the words. If it chose not to make any provision empowering the Inspector to cause any interference in an order of termination passed by the Management, it would not be for this Court to add certain words in the statutes so as to have such a result. It cannot be treated to be a casus omissus. Even otherwise, normally a casus omissus should not be read by the Court in the statute and should not be easily supplied unless it is found that by implication that it was the intention of the legislature and hence in the scheme of the statute, it is necessary. This would amount to adding something in para 34. This Court is aware that the rules of the interpretation are not rules of laws and are not to be followed like rules enacted by legislature in Interpretation Act as observed by the Hon'ble Apex Court in [Superintendent and Remembrancer of Superintendent and Legal Remembrancer, State of West Bengal Vs. Corporation of Calcutta](#), The principles of interpretation serve only as a guide. A casus omissus cannot be supplied by the Court. There is no presumption that a casus omissus exists and language permitting the Court should avoid creating a casus omissus where there is none. It would be appropriate to recollect the observations of Devlin, L.J. in *Gladstone v. Bower* (1960) 3 All ER 353 (CA):

The Court will always allow the intention of a statute to override the defects of working but the Court's ability to do so is limited by recognized canons of interpretation. The Court may, for example, prefer an alternative construction, which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for casus omissus.

9. The Hon'ble Apex Court in [Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others](#), quoted with approval the following observation of Lord Simonds in the case of *Magor & St. Mellons R.D.C. v. Newport Corporation* (1951) 2 All ER 839 (841):

The duty of the Court is to interpret the words that the Legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited.

10. It would be appropriate at this stage to remind another principle that though a Court cannot supply a real casus omissus, it is equally evident that it should not so interpret a statute as to create casus omissus when there is really none. Recently in [Vemareddy Kumaraswamy Reddy and Another Vs. State of A.P.](#), the Court reiterated that while interpreting a provision the Court only interprets the law and cannot legislate. If a provision of law is misused and subject to the abuse of process of law, it is for the legislature to amend, modify or repeal it if deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process.

11. In the circumstances para 34 of the aforesaid rules, in my view, does not confer any power or authority to the Inspector to nullify the order of termination.

12. Once it is an admitted case of the parties that the executive authorities had no statutory power to interfere with the disciplinary proceedings initiated by the employer, I find no justification to sustain the orders passed by the executive authorities having no jurisdiction to intervene in such matters.

13. The writ petition is accordingly allowed. The impugned orders dated 16.3.2006 and 17.3.2006 (Annexures-9 and 10 to the writ petition respectively) are hereby set aside. However, it is open to Respondent No. 5 to take such recourse against the order of termination passed by the Petitioner-institution as is permissible and available in law.

14. No costs.