

## Mahadev Dhara Vs State of West Bengal and Others

**Court:** Calcutta High Court

**Date of Decision:** Dec. 13, 1996

**Acts Referred:** Constitution of India, 1950 " Article 12, 226

**Hon'ble Judges:** N.K. Batabyal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Nisith Kumar Batabyal, J.

The writ petitioner is the Secretary of the Managing Committee of Kuapur High School. Dist. Midnapore,

affiliated to the Board of Secondary Education, W.B. The post of an Asst. Teacher in Bengali was vacant in the School as the D.I. of Schools.

Midnapore was pleased to sanction the post with directions to appoint an MA. B.Ed. in Bengali for the post The Central Employment Exchange

was approached for sponsoring the names of eligible candidates. The Exchange forwarded the names of 20 candidates. Thereafter, a meeting of

the Managing Committee of the School was held on 26th June. 1995 and a resolution was passed on that date by which the Headmaster of the

School (Respd't No. 6) was requested to contact the prospective experts for appointment as the member of the Selection Committee. A copy of

the Resolution dt. 26-06-95 has been annexed with the writ-petition and marked with the letter "A". The Headmaster, without the authority of the

Managing Committee, issued a letter dated 03-08-95 to Mr. Rameswar Mondal, Asst. Teacher of Jhakra High School, Dist. Midnapore. in

Bengali appointing him as expert. Thus, the Headmaster exceeded his jurisdiction and illegally appointed Mr. Mondal as an expert in the Selection

Committee. As a result, the composition of the Selection Committee was not in accordance with law and violated Rule 5 of the Recruitment Rules.

The writ-petitioner being the Secretary of the School moved this Court two-days before the proposed date of interview on 13-08-95

2. Being aggrieved by the conduct of the respondents, the petitioner has come before this Court for cancelling the appointment of the expert by the

Headmaster of the School by letter dated 03-08-95 and for the issue of a writ in the nature of certiorari directing the respondents to-produce all

the relevant papers and documents at the time of hearing, so that the conscionable Justine can be done by quashing the impugned appointment.

3. No one of the respondents, though served, has come to oppose the application.

4. During the pendency of the matter, one Anirban Jana has filed an appointment to be impleaded as a party-respondent to the writ-petition. On

11th August, 1995, when the writ petition was moved. Hon'ble Mr. Justice A. Kabir passed an order to the effect that the interview scheduled to

be held on 13-08-95 might be held but no further effect be given to the results of such interview without the leave of the court till 13th August,

1996. Liberty was given to the petitioner to apply for extension of the interim order for notice to the other sides. By virtue of the said order an

interview was held on 13-08-95. Mr. Anirban Jana was one of the candidates called for interview. As per letter dated 29th of July, 1995 signed

by Mahadev Dhara (the writ-petitioner). In the application for impleadment, the applicant has stated that he has come to know that his name was

included in the panel of selected candidates. As he is personally interested in the matter, so he has made an application to be added as party-

respondent.

5. An affidavit-in-opposition was filed by the writ-petitioner against the said petition. However, the Id. court was pleased to allow the application

for impleadment Sri Anirban Jana, the petitioner was accordingly impleaded as respondent No. 9 in the case.

6. From the submissions made by the Id. advocates of the sides present, it appears that the Secretary of the Managing Committee, Mr. Dhara

signed the letter for interview on 29.7.95 for the preparation of a panel for selecting a Bengali Teacher for Kuapur High School. The Headmaster

(Respondent No. 6) appointed Mr. Rameswar Mondal as an expert member of the selection committee on 3.8.95. The interview date was fixed

on 13.8.95. On 11.8.95, the Secretary of the School, Mr. Dhara came to the Court with a prayer for stopping the interview. The Id. Court was

pleased to pass an order on 11.8.95 as stated above. A xerox copy of the order date 11.8.95 is annexed with the application for further interim

order sworn by the writ-petitioner on 12th June, 1906.

7. According to Mr. H. Chakraborty. Id. Sr. Advocate appearing on behalf of the writ petitioner the appointment of the expert member of the

selection committee being not in accordance with law, the whole exercise made by the alleged selection committee on 13.8.95 is a fiasco.

Therefore, the appointment issued in the name of Mr. R. Mondal expert and the purported interview held on 13.8.95 should be quashed.

8. The Id. advocate for the respondent has referred to the following decisions in support of his contention that as the impugned act relates to the

administration of a non-Government School, a writ petition will lie. The first case cited by the Id. advocate is a Division bench decision of this

Court in *Director, Indian Association for the Cultivation of Science, Jadavpur & Ors. vs. Ashok Kumar Roy & Ors.*, (1992) 1 CLJ 319. In that

case, the writ-petitioner, an employee under the Indian Association for the Cultivation of Science was on the threshold of retrenchment. The said

Society is a Society registered under the Societies Registration Act, 1860. Under the Article of the Association, the affairs of the said Association

are administered, directed and controlled by an Executive Council. The composition of the Council is nominated by private persons and not by

persons nominated by the Central or State Government. The money required for running the said institution is not provided by the Central

Government or the State Government but from various other sources and the Council may or may not accept the grants given by the Government.

There is no provision that the Society can accept money only with the approval of the Central or State Government. The Government has no

manner of control over the receipts and disbursements of the money received by the Society. Only in respect of grants received from the Central

Government; the account has to be audited by the Auditor and Comptroller General and audit report has to be sent for information of the

government. There is no provision that the Society has to comply with such directions as may be given by the Central Government in this behalf.

The writ petitioner prayed for a mandamus upon the Director of the I.A.C.S. to compel him to absorb the petitioner in the regular cadre. The writ

petitioner succeeded in the Trial Court. The Director of the Association came up in appeal. The only point that fell for consideration was whether

the writ petitioner praying for mandamus lies against the said Association.

9. Held, a mandamus would not lie to enforce private duties or private obligations. The Indian COUNCIL for Cultivation of Science is not a

"Authority" with the meaning of Article 12 of the Constitution but it is an autonomous body and it is independent to carry out its affairs as it likes.

Nor the Society is an Authority within the meaning of Article 226 of the Constitution. Thus, it is an autonomous body not amenable to the writ

jurisdiction of the High Court.

10. The other case which has been cited by the Id. Advocate for the respondent is another Division Bench decision of this Court in *Sri Anupam*

*Ghosh vs. Union of India & Ors.*, (1991 (II) CHN 451). In that case, the appellant was the Finance Director of *Andrew Yule & Co. Ltd.* which is

a government company within the meaning of the Companies Act.

11. In his letter of appointment, it was, inter alia, provided that his service was liable to be terminated. On either side, on 3 month's notice. The

service of the appointee was terminated with immediate effect by a notice dated 22-08-86. This letter of termination of service was the subject

matter of a Writ petition, out of which the appeal was taken. In the appeal, it was contended that the impugned order was mala fide and bad on the

ground of lack of fairness. The writ application was opposed by the company contending that the company not being a "State" within the meaning

of Article 12 of the Constitution, the writ application was not maintainable and that the impugned order of termination of a personal contract of

service relating to private laws and having no relation to public law or public duty, no writ petition was maintainable. The Id. Trial Judge dismissed

the application that the writ application was not maintainable, as the Company was not a "State" within the meaning of Article 12 of the

Constitution. Held, that the provision, if it is assumed that the company is "State" within the meaning of Article 12 of the Constitution, no writ

should lie against the order of termination passed against the petitioner. It is not the mere fact, of employment by a public authority or

instrumentality per se which makes an action of such instrumentality touching the question of employment of its employees a subject matter for

interference under the Constitutional Writ Jurisdiction. If the right of an employee of an instrumentality or agency of the State flows from private

contract between the parties and the conditions of service are not governed by any statutory provision and the impugned action of the instrumentality

of the agency in the matter of employment of its employees has no public law character there will be no action for interference in the writ

jurisdiction. A State action relating to contractual obligation will not be examined unless the action has some public law character for exercising

constitutional writ jurisdiction. In such a case, the employee may avail of other alternative remedies in different forum. Accordingly, the appeal was

dismissed.

12. The Id. advocate for the petitioner has submitted that the cases cited by the Id. lawyer for the respondent can be distinguished. In both the

cases cited, it has been held that mandamus would not lie to enforce private duties or private obligations. But, the said cases have nothing to do

with public duties. According to the Id. Advocate for the petitioner, in the case of a statutory duty, mandamus will issue even though the person

against whom, the duty is imposed is a private party or a company Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra,

The only condition in the case of statutory duty is that the duty must be imperative and not discretionary. Thus, a writ will issue to an official of a

society to compel him to perform the terms of the Statute by which the society is controlled. {R. vs. Pharmaceutical Society, (1954) 2 W.R. 220).

13. u/s 45 of the W.B. Secondary Education Act, 1963 (As amended from time to time), the State Government can make Rules for carrying out

the purposes of the Act. In exercise of that power Recruitment Rules as per Government of W.B. Memo No. 1049/1 (19) GA. date 20.5.93 were

framed and published. Rule 5 of the Rules deals with ""Mode of Selection"". Sub-Rule (g) of Rule 5 lays down how experts for subjects other than

physical education and work education shall be selected for inclusion in the Selection Committee for recruitment of teachers of Secondary School

including Madrasah. Rule 5(a) (v) of the said Rules is quoted

(v) An external expert in the subject to be selected by the Managing Committee/Ad-hoc Committee/Administrator. (emphasis added).

14. It is obvious from above that the expert is only to be selected by the Managing Committee or Ad-hoc Committee etc. In the case at hand, the

relevant portion of the resolution of the Managing Committee dated 26-06-95 (Annexure -."A" reads as follows :

As subject experts, the names of the three persons stated below are proposed :

(1) Rameswar Mondal, Asst. Teacher, Jhakra H.S. School, Jhakra, Midnapore.

(2) Bibekananda Prathar, Chandrakona-Jeerut High School, Midnapur.

(3) Rasamoy Mondal, Chandrakona-Jeerut High School, Midnapur.

The Head Master will take steps for ascertaining their consent serially one after another as stated above.

15. It transpires from above that the Managing Committee proposed the three names as mentioned above for selection with a direction upon the

Head Master to write to the experts one by one according to the order in which the names were placed serially. The selection of the three names

of experts was made by the Managing Committee. It is obvious that compliance with Rule 5(a) (v) mentioned above was made. The Head Master

communicated the first named person by letter dated 03-08-95 as per annexure "X" to the supplementary affidavit filed by the Writ-petitioner that

I am directed by the Managing Committee to inform you that you have been selected to act as the External expert regarding interview of Bengali

teacher having qualification M.A. in Bengali preferably trained"". On the face of it, the letter shows that the Head Master was directed by the

Managing Committee to do so. The writ-petitioner has come with the allegation that the Head Master appointed the external expert without proper

authority from the Managing Committee. So, it is a disputed question of fact whether the Head Master issued the letter marked Annexure "X"

under the direction of the Managing Committee or not. To decide that question of fact, evidence has got to be taken. If the materials were available

on the record, then it might have been possible for this Court to go into that question as an exceptional case. But, that is not the case here. So, the

contention of the writ-petitioner can't be entertained. As a result, the writ-petition fails and it is accordingly dismissed. The interim orders will

stand vacated. No order as to costs in the circumstances of the case.