Before: *S. P. Goyal and Pritpal Singh, JJ.*

MANAGING COMMITTEE OF THE KANYA MAHA VIDALAYA, JULLUNDUR,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5026 of 1984.

May 27, 1986.

Constitution of India, 1950—Articles 30(1) and 226—Punjab Affiliated Colleges (Security of Service of Teachers) Act (XXII of 1974)—Section 3—Management of a minority run institution receiving state grant suspending its employee—Order of discharge passed during the pendency of order of suspension—Representation under the Act filed by the employee before Director—Director opinion that the order of discharge was in violation of the provisions of the Act and directing the management to produce relevant record—Action of the Director—Whether violative of Article 30(1) of the Constitution—Provisions of the Act—Whether applicable to privately run institutions—Such institutions—Whether amenable to the writ jurisdiction of the High Court under Article 226—Purported order of discharge—Whether a camouflage for an order of dismissal—Such order—Whether violative of Section 3 of the Act.

Held, that the principle that emerges from the analysis of Article 30(1) of the Constitution of India, 1950, is that it is a fundamental right of the minority institution to manage and administer their educational institution. Although the right conferred on the minority is absolute and unconditional but this does not give them a licence for mal administration. While the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can certainly take regulatory measures to promote the efficiency of educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers and other employees of the institution. At the same time the State or any other authority cannot, under the garb of adopting regulatory measures, interfere in the administrative autonomy of the institution. If any authority starts interfering with the management of the institution it would amount to blatant interference which is violative of Article 30(1) and would be wholly inapplicable to the concerned institution. The Director who is wholly unconnected with the management and administration of the institution cannot direct the management to produce certain documents and to hear the case on merits on the action taken by the Committee. This interference by

an outside authority evidently takes away the disciplinary power of the Managing Committee of the Institution. As such, the action of the Director is violative of Article 30(1) of the Constitution of India.

(Paras 9 and 10)

Held, that admittedly, the institution is affiliated with Guru Nanak Dev University, Amritsar. When a minority institution applies to a University to be affiliated it expresses its choice to participate in the system of general education prescribed by the University, the measures which will regulate the course of study, qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30. The provisions of the Act constitute such regulatory measures which are indeed applicable to all the institutions affiliated with the University. more so, when the entire provisions of the Act have been specifically adopted by the Guru Nanak Dev University in its Calendar. It cannot, therefore, be said that the provisions of the Act have no application to the functioning of the institution.

(Para 10-A)

Held, that the institution in question is affiliated with Guru Nanak Dev University, Amritsar, and the state provides financial grant to the institution to the extent of 95 per cent of the deficit. The institution being affiliated with the University has to follow the statutory measures regulating educational standard and efficiency imposed by the University. Clause 14 of the University Calendar adopted provisions of the Punjab Affiliated Colleges (Security of Service of Teachers) Act, 1974, as part of the regulatory provisions. The financial assistance of the State to meet financial expenditure of the institution could afford the indication of the institution being impregnated with governmental character. As such the aided institutions receiving 95 per cent grant from the public exchequer and whose employees have received the statutory protection under the Act would certainly be amendable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India, 1950.

(Para 10)

Held, that a permanent employee, in view of Section 3 of the Act cannot be dismissed or removed from service except after an enquiry. Services of such an employee cannot be dispensed with merely by giving three months' notice or on payment of three months' salary in lieu of notice. On the face of it the order is not

of dismissal for misconduct but a simple order of discharge but the form of order of termination in which it is couched is not conclusive. The Court will lift the veil to see the true nature of the order. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test it cannot be called a punishment. If the order gives a clear indication as to the punitive character of the order, then in such circumstances it is obligatory on the Managing Committee to hold a disciplinary enquiry envisaged under Section 3 of the Act. It is clear that in order to circumvent the provisions of Section 3, the impugned order was couched in terms of simple discharge. As such the order is liable to be quashed as being violative of provisions of Section 3 of the Act.

(Para 17)

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, *Mandamus or any other suitable Writ, Direction or Order be issued directing the respondents*:

(*i*) *to produce the complete records of the case;*

(*ii*) *the order at Annexure 'P-10' be quashed;*

(*iii*) *it be declared that the provisions of the Act are not applicable to the petitions and are* ultra vires *the Constitution of India in respect of its applicable to minority institutions;*

(*iv*) *this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstance of the case;*

(*v*) *this Hon'ble Court may also grant all the consequential relief to which the petitioners may be found entitled to after the decision of the present writ petition;*

(*vi*) *filing of the originals of annexures be dispensed with;*

(*vii*) *service of advance notice of the writ petition on the respondents be dispensed with;*

(*viii*) *it is further prayed that pending the disposal of the writ petition, the respondents be restrained from proceeding with the case;*

(*ix*) *the costs of this writ petition may also be awarded to the petitioners.*

J. L. Gupta, Senior Advocate with Rajiv Atma Ram, Advocate and Rakesh Khanna, Advocate, *for the Petitioner.*

D. S. Brar, A. A. G. (Punjab), Kuldip Singh, Senior Advocate, with S. P. Jain, R. S. Mongia, and A. K. Sharma, Advocate, *for the Respondents.*

JUDGMENT

Pritpal Singh, J.

(1) By this judgment we are going to decide two writ petitions (C.W.P. No. 5026 of the 1984 and C.W.P. No. 291 of 1986) which are interlinked.

(2) The facts leading to these petitions are thus : Smt. Santosh Puri was employed as Principal of the Kanya Maha Vidyalaya, Jullundur since November, 1979. Two girl students of this College disappeared from the hostel on January 14, 1984. The Managing Committee of the College made investigation and it believed that the Principal was involved in the disappearance of the girls. The Managing Committee thereupon initially forced the Principal to proceed on three months leave with effect from February 6, 1984 and suspended her from service on February 10, 1984. Eventually an order was passed by the Managing Committee on February 19, 1984, discharging her from service. Aggrieved by this action of the Managing Committee, the Principal made a representation to the Director, Public Instruction (Colleges), Punjab, Chandigarh, praying that the order regarding her removal from service be set aside. The Director, after hearing the parties, passed an order on September 6, 1984 to the effect that the order passed by the Managing Committee of the Institution removing the Principal from service was in fact an order of her dismissal which in violation of the provisions of the Punjab Affiliated Colleges (Security of Service of Teachers) Act, 1974 (hereinafter referred to as 'the Act'). The Management were directed to place on record the relevant documents as requested by the Principal and the parties were ordered to appear before the Director on a specified date for hearing on merits.

(3) The first writ (C.W.P. No. 5026 of 1984) has been filed by the Managing Committee of the College challenging the order of the Director of the Public Instruction (Annexure P.10) on the ground that Kanya Maha Vidyalaya, Jullundur, is an Institution established and administered by a religious and linguistic minority which is protected by Article 30 of the Constitution of India and the Director of Public Instruction (Colleges), Punjab, had no authority to interfere in the affairs of the institution. The impugned order is said to be violative of Article 30 of the Constitution and it is contended that provisions of the Act have no application to the institution.

(4) In the second writ (CWP No. 291 of 1986) the Principal Mrs. Santosh Puri, has assailed the order dated February 24, 1984 (Annexure P. 4), removing her from service, on the plea that this order is actually an order of dismissal from service without affording an opportunity of being heard and it, therefore, violates the rules of natural justice. It is contended that the institution which she was serving is neither of a religious and linguistic minority nor it is absolved from the application of the provisions of the Act.

(5) Dealing with the case set up by the Managing Committee of the institution, it seems to be proved that Kanya Maha Vidyalaya, Jullundur, is an educational institution established and administered by a religious and linguistic minority. This fact has not been denied by the respondent-State of Punjab. Smt. Santosh Puri has controverted this fact but, in our opinion, in vain. There is no doubt that Arya Samajists in the State of Punjab are members of a religious denomination and constitute a religious minority. It is stated by the Managing Committee in their replication that this institution was established in the year 1886 by the leaders of the Mahatma Party which was an Arya Samaj Organisation. Mahatma Shardha Nand, Lala Dev Raj Sondhi and Diwan Badri Dass, who were amongst the founders of the Arya Samaj ideologies, were empowered to administer the institution. It is further averred that this institution was established by the Arya Samaj to promote the study of Hindi, classical Sanskrit and the Vedas. These averments stand unrebutted. It is, therefore, clear that this institution has been established by members of Arya Samaj and it is being administered by them.

(6) Under Article 30(1) of the Indian Constitution "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." The scope of Article 30(1) was considered by the Supreme Court in *I. S. Azeez Basha and another* v. *The Union of India etc.*, (1), and it was held as under:—

> "What then is the scope of Article 30(1) and what exactly is the right conferred therein on the religious minorities ? It is to our mind quite clear that Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their

(1) A.I.R. 1968 S.C. 662.

choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force. We are not prepared to accept this argument. The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody 'else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it."

In the light of the above observations of the Supreme Court, there is no scope for doubt that Kanya Maha Vidyalaya, Jullundur, is entitled to the protection provided under Article 30(1). This institution was established and is being run by a religious and linguistic minority.

(6-A) As to what is the nature of protection provided under Article 30(1) is made clear by the Supreme Court in *Lilly Kurian* v. *Sr. Lewina and others,* (2), as under :—

"Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means 'management of the affairs' of the institution. This right is, however, subject to the regulatory power of the state. Article 30(1) is not a character for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution

(2) A.I.R. 1979 S.C. 52.

is permissible; but the moment one goes beyond "that and imposes, what is in truth, not a mere regulation but an impairment of the right to administer, the Article comes into play and the interference cannot be justified by pleading the interests of the general public; the interests justifying interference can only be the interests of minority concerned."

(7) The principle that emerges from the analysis of Article 30(1) is that it is a fundamental right of the minority institution to manage and administer their educational institution. Although the right conferred on the minority is absolute and unconditional but this does not give them a licence for maladministration. While the State or any other statutory authority has no right to interfere with the internal administration or management of the minority institution, the State can certainly take regulatory measures to promote the efficiency of educational standards and issue guidelines for the purpose of ensuring the security of the services of the teachers and other employees of the institution. At the same time the State or any other authority cannot, under the garb of adopting regulatory measures, interfere in the administrative autonomy of the institution. If any authority starts interfering with the management of the institution it would amount to blatant interference which is violative of Article 30(1) and would be wholly inapplicable to the concerned institution.

(8) In the present case the respondent—Director of Public Instruction (Colleges), Punjab, Chandigarh, who is wholly unconnected with the management and administration of the institution, has passed the impugned order (Annexure P. 10) by which he has directed the management to produce certain documents before him and the parties have been directed to be in his presence on a specified date for being heard on merits of the action taken by the Managing Committee. This interference by an outside authority evidently takes away the disciplinary power of the Managing Committee of the institution. In this connection the following observations of the Supreme Court in *The All Saints High School etc.* v. *The Government of Andhra Pradesh and others etc.*, (3), are pertinent :—

"The introduction of an outside authority however high it may be either directly or through its nominees in the

(3) A.I.R. 1980 S.C. 1042.

governing body or the Managing Committee of the minority institution to conduct the affairs of the institution would be completely destructive of the fundamental right guaranteed by Art. 30(1) of the Constitution and would reduce the management to a helpless entity having no real say in the matter and thus destroy the very personality and individuality of the institution which is fully protected by Article 30 of the Constitution."

(9) There can, therefore, be no doubt that the respondent—Director of Public Instruction (Colleges) acted in violation of Article 30(1) of the Constitution while passing the impugned order Annexure P. 10.

(10) Adverting to the writ filed by Smt. Santosh Puri, Principal of the institution, it is objected by the Managing Committee that Kanya Maha Vidyalaya, being a private institution, is not amenable to writ jurisdiction of this Court. In order to give a decision on this objection, some facts may be noted. This institution is affiliated with Guru Nanak Dev University, Amritsar, and the State provides financial grant to the institution to the extent of 95 per cent of the deficit. The institution being affiliated with the University, the institution has to follow the statutory measures regulating educational standard and efficiency imposed by the University. Clause 14 of the University Calendar adopted provisions of the Panjab Affiliated Colleges (Security of Service) Act, 1974, as part of the regulatory provisions. Similar circumstances were before the Supreme Court in *Manmohan Singh Jaitla* v. *Commissioner, Union Territory, Chandigarh and others* (4). In that case Guru Nanak Khalsa High School was an aided school receiving 95 per cent of its expenses as grant from the Government. Services of the Head Master as well as of a Drawing teacher were terminated by the Management of the institution. The Head Master and the Drawing teacher filed a writ challenging their removal from service. A similar objection was taken that the school being a private institution is not amenable to writ jurisdiction of the Supreme Court. Repelling this objection, the Supreme Court *inter alia* held that the aided school receiving 95 per cent grant from the public exchequer and whose employees have received the statutory protection under the Punjab

(4) A.I.R. 1985 S.C. 364.

Aided Schools (Security of Service) Act, 1969, and which is subject to the regulations, would certainly be amenable to the writ jurisdiction of the High Court. It was observed that the financial assistance of the State to meet financial expenditure of the institution would afford the indication of the institution being impregnated with governmental character. The dictum laid down by the Supreme Court in this judgment squarely covers the facts of the present case and we hold that the writ petition filed by Smt. Santosh Puri is maintainable.

(10-A) The next contention on behalf of the Managing Committee is that the provisions of the Act are not applicable to Kanya Maha Vidyalaya and as such the question of violation of any provision of the Act does not arise in this case. There seems to be no merit, in this contention. Admittedly this institution is affiliated with Guru Nanak Dev University, Amritsar. When a minority institution applies to a University to be affiliated it expresses its choice to participate in the system of general education prescribed by the University. It is held in *The Ahmedabad St. Xaviers College Society and another etc.* v. *State of Gujarat and another,* (5).

> "With regard to affiliation a minority institution must follow the statutory measures regulating educational standards and efficiency, the prescribed courses of study, courses of instruction and the principles regarding the qualification of teachers, educational qualifications for entry of students into educational institutions *et cetera.*"

In order to make this dictum more clear it was amplified in this judgment that the measures which will regulate the courses of study, qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30. The provisions of the Act constitute such regulatory measures which are indeed applicable to all the institutions affiliated with the University. More so, when the entire provisions of the Act, as has been mentioned, have

(5) A.I.R. 1974 S.C. 1389.

been specifically adopted by the Guru Nanak Dev University in its Calendar. It, therefore, cannot be said that the provisions of the Act have no application to the functioning of the Kanya Maha Vidyalaya, Jullundur.

(11) It is then to be considered whether the impugned order of Smt. Santosh Puri's removal from service violates any provision of the Act ? Section 3 of the Act, which is pertinent in this case, is as follows :—

> "No employee shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a' reasonable opportunity of being heard in respect of those charges."

(12) In the instant case Smt. Santosh Puri has been removed from service without being heard. No enquiry was held before the impugned order (Annexure P. 4) in CWP No. 291 of 1986 was passed by the Managing Committee. It is, therefore, contended on behalf of Smt. Puri that there is a clear violation not only of Section 3 of the Act but also the rules of natural justice. In reply, the Managing Committee has contended that the impugned order is not an order of dismissal but only an order of discharge simplicitor inasmuch as no stigma is attached to Smt. Santosh Puri. It is also contended that the services of Smt. Santosh Puri have been dispensed with in accordance with Clause 11 of Chapter XIII of the University Calendar, which reads as under :—

> "11. Subject to what is contained in Ordinances 13, 14 and 15 infra, the Governing Body of a non-Government College shall be entitled to determine the engagement of a permanent employee after giving him three months notice in writing or on payment of three months salary in lieu of notice, for a good cause. Provided that in case of moral turpitude or misconduct, the Governing Body shall have the right to suspend the employee with immediate effect. The period of suspension shall not exceed three months within which the case must be decided. During the period of suspension the employee shall be paid an allowance equal to half the amount of pay of the employee. If ultimately the employee is removed from

service, notice for such removal shall not be required nor will any salary be paid in lieu thereof."

(13) In our candid opinion there is no force in either of these two contentions. So far as Clause 11 (supra) is concerned, it cannot override the provision of Section 3 of the Act reproduced above. A permanent employee, in view of Section 3, cannot be dismissed or removed from service except after an enquiry. Services of such an employee cannot be dispensed with merely by giving three months' notice or on payment of three months' salary in lieu of notice. A similar provision in the West Bengal State Electricity Board's Regulation was considered *ultra vires* by the Supreme Court in *West Bengal State Electricity Board and others* vs. *Shri Desh Bandhu Ghosh and others*, (6). Regulation 34 in that case was in the following words :—

"In case of a permanent employee, his services may be terminated by serving three months' notice or on payment of salary for the corresponding period in lieu thereof."

The Supreme Court held that this Regulation was totally arbitrary and conferred on the Board a power which is capable of vicious discrimination. It was observed that it is a naked 'hire and fire' rule, the time for banishing which altogether from employer-employee relationship is fast approaching. The view taken was that this Regulation was violative of the basic requirement of natural justice. In the light of this judgment the Managing Committee cannot derive any benefit from Clause 11 (supra).

(14) The sole surviving question is whether the impugned order (Annexure P. 4) is an order of dismissal envisaged by Section 3 of the Act or is it an order of discharge simplicitor which could be passed by the Managing Committee without holding an enquiry and without affording Smt. Santosh Puri an opportunity to be heard ?

(15) The impugned order (Annexure P. 4) is couched in innocous terms. It reads as follows :—

"..... Your suspension has been revoked and it has been resolved to discharge you from service forthwith

(6) 1985(2) S.L.R. 304.

and you stand relieved. You are being paid three months' salary in lieu of notice period .....".

The contention of the learned counsel for the Managing Committee is that on the face of it this order is not of dismissal for misconduct but a simple order of discharge. The view of the learned counsel that merely the form of order may be seen to hold it as a simple order of discharge cannot be accepted. In *Gujarat Steel Tubes Ltd., etc.* v. *Gujarat Steel Tubes Mazdoor Sabha and others* (7), the apex Court held that the form of the order of termination of the language in which it is couched is not conclusive. The Court will lift the veil to see the true nature of the order. The following observations of the Supreme Court in this context are illuminating :—

"Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even

(7) A.I.R. 1980 S.C. 1896.

if full benefits as on simple termination, are given and non-injurious terminology is used.

On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simplicitor, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

16. In the light of the above observations of the Supreme Court the crucial point for determination in this case is whether the order of termination was passed to punish Smt. Santosh Puri because of her misconduct or whether her services were dispensed with simply because the Managing Committee was not satisfied with her performance as Principal of the institution. It may be highlighted that Smt. Santosh Puri was a permanent employee of Kanya Maha Vidyalaya. She was holding a permanent post and had been substantively appointed. In relation to an employee of this kind, the Supreme Court expressed the following view in *Moti Ram Deka* v. *General Manager, North East Frontier Railway,* (8) :

"..... A permanent servant has a right to hold the post until, of course, he reaches the age of superannuation, or until he is compulsorily retired under the relevant rule. If for any other reason that right is invaded and he is asked to leave his service, the termination of his right to continue in service, the termination of his service must inevitably mean the defeat of his right to continue in service and as such, it is in the nature of a penalty and amounts to removal."

17. Smt. Santosh Puri had been working as Principal of the Kanya Maha Vidyalaya since November, 1978. The Managing Committee did not find any fault with her functioning till January 14,

(8) A.I.R. 1964 S.C. 600.

1984, when two girl students of the institution disappeared from the hostel. It is manifest that till then Smt. Santosh Puri had been giving full satisfaction to the Managing Committee. The matter regarding the disappearance of the two girl students from the hostel was investigated and the Managing Committee believed that Smt. Santosh Puri was involved in this incident. That is why she was, at first, forced to proceed on three months' leave on February 6, 1984 and was then suspended from service, 4 days thereafter, on 10th of February, 1984. It is only for this reason that eventually her services were terminated on 19th of February, 1984. No other ground has been remotely suggested by the Managing Committee for passing the impugned order. This gives a clear indication as to the punitive character of the order, namely, punishment for a believed misconduct. In such circumstances it was obligatory on the Managing Committee to hold a disciplinary enquiry envisaged under section 3 of the Act before Smt. Santosh Puri could be removed from service. It is clear that in order to circumvent the provisions of section 3, the impugned order was couched in terms of simple discharge. We are, therefore, unable to uphold validity of the impugned order (Annexure P. 4).

For the foregoing reasons both the writ petitions are allowed. The order (Annexure P. 10) of the Director, Public Instruction (C), Punjab, Chandigarh, in C.W.P. No. 5026 of 1984, as well as the order (Annexure P. 4) of the Managing Committee in C.W.P. No. 291 of 1986 are quashed. Smt. Santosh Puri will be deemed to be in continuous service and as such entitled to all consequential benefits. This will not, however, preclude the Managing Committee from holding a regular disciplinary enquiry against her if they so decide. No order as to costs.

S. P. Goyal, J.—I agree.

H. S. B.

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