STATE OF ASSAM AND ANOTHER

v.

AJIT KUMAR SHARMA AND OTHERS

October 27, 1964

(P. B. GAJENDRAGADKAR C.J., K. N. WANCHOO, M. HIDAYATULLAH, RAGHUBAR DAYAL AND J. R. MUDHOLKAR JJ.)

Constitution of India, 1950, *Art.* 226—*Administrative instructions by State to private college—Carried out by Governing Body—Conditions of service of teachers affected—Right of teacher to maintain writ petition.*

The respondent was a teacher in a private college affiliated to the Gauhati University in Assam. The college was receiving grants-in-aid from the State on certain conditions set out in the form of Rules. One of the rules, r. 7, provided that if a teacher stood for election to the Legislature, he should be on compulsory leave without pay from the date of filing of nomination till the end of the next academic session or, till the termination of the term of the office to which he may be elected. The respondent applied for leave for three months and contested for a seat in Parliament but was defeated. So, he applied for permission to rejoin, and the Governing Body granted him the permission. The Director of Public Instruction, however, pointed out that such permission was in contravention of the aforesaid rule, and therefore, the Governing Body informed the respondent that he had been granted compulsory leave without pay till the end of the academic session. The respondent thereupon filed a petition in the High Court for the issue of a writ of *mandamus* or other appropriate direction on the grounds that: (i) the rule had no legal force, (ii) the rule did not bind the Governing Body or the respondent and (iii) the order of the Governing Body putting him on compulsory leave was ineffective. He also prayed that the State should be directed not to withhold the grant-in-aid to the college if the Governing Body did not impose compulsory leave on him. The Governing Body was also made a party to the petition. The High Court held that the rules had no statutory force, and issued a direction to the Director, as a public authority, to refrain from giving effect to such rules. The High Court also issued a similar direction to the Governing Body, on the ground that it had not applied its independent mind to the question of respondent's leave. The State appealed to the Supreme Court, but did not dispute that the Rules were only administrative instructions.

HELD: The order of the High Court issuing a writ to the State through its Director should be set aside. [899 B]

The rules being mere administrative instructions have not the force of law as statutory rules. They therefore confer no right on the teachers of private colleges which would entitle them to maintain a writ petition under Art. 226, for the enforcement or non-enforcement of any provision of the rules. They being mere administrative instructions, are matters between private colleges and the Government in the matter of grants-in-aid to such colleges, and no teacher of any college has any right under the rules to ask either for their enforcement or non-enforcement. It is open to the Governing Body not to carry out any such instructions and it will then be open to the State to consider what grant to make. But if the Governing Body chooses to carry out the instructions it could not be said that the instruction was carried out under any threat; and, it is not open to a teacher

A to insist that the Governing Body should not carry out the instruction. [897 B-H]

Messrs Raman and Raman v. *The State of Madras*, [1959] Supp. 2. S.C.R. 227, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1062 of 1963.

B Appeal by special leave from the judgment and order dated September 25, 1962, of the Assam High Court in Civil Rule No. 221 of 1962.

G. S. Pathak and *Naunit Lal*, for the appellants.

C *M. K. Ramamurthy*, for respondent No. 1.

The Judgment of the Court was delivered by

Wanchoo J. This is an appeal by special leave against the judgment of the Assam High Court. Shri Ajit Kumar Sharma (hereinafter referred to as the respondent) is a teacher in the D Handique Girls College (hereinafter referred to as the College) at Gauhati. He filed a writ petition in the High Court on the following averments. This is a private college teaching up to B.A. standard and affiliated to the Gauhati University established under the Gauhati University Act, No. 16 of 1947, (hereinafter referred to as the Act). The College is managed by a Governing Body E according to the provisions of the Statute for the management of private colleges framed by the Gauhati University under s. 21 (g) of the Act. Under s. 23 (h) of the Act, the Executive Council may frame Ordinances to provide for the emoluments and conditions of service of teachers of the University, including teachers in private colleges. The University has in pursuance of the powers F so conferred on it framed rules for the grant of leave to teachers of private colleges which are binding on the Governing Bodies of such colleges, and had actually been adopted by the Governing Body of the College in July 1956 for its teachers. Under these rules the Governing Body of the College cannot compel a teacher to take G leave without pay.

The College receives grant-in-aid from the State of Assam and there are certain conditions for giving grant-in-aid. These conditions do not provide for withdrawal of the grant-in-aid if a private college fails to put a teacher, who seeks election to a legislative or local body, on compulsory leave without pay from H the date of the filing of nomination till the end of the next academic session or till expiry of the term of the office to which the teacher is elected.

The respondent as already stated is a teacher in the College. He applied for leave with pay from January 2, 1962 to March 5, 1962 in order to contest a seat for Parliament. This leave was granted to him by the Governing Body of the College by resolution No. 1 of March 9, 1962. The respondent stood for election and was defeated. He thereupon applied that he be permitted to rejoin his duties from March 6, 1962 and the Governing Body permitted him to do so by its resolution No. 2 dated March 9, 1962. He therefore worked as such from March 6, 1962. On March 20, 1962, the Director of Public Instruction, Assam (hereinafter referred to as the Director) wrote a letter to the Principal and Secretary of the College with reference to the letter of March 10, 1962 from the College in which apparently the Director had been informed of the leave granted to the respondent and certain other teachers in connection with elections to Parliament and Assam Legislative Assembly. In this letter, the Director informed the College that he was unable to approve the resolution of the Governing Body permitting respondent and certain other teachers to rejoin their duties "immediately". The letter pointed out that such permission was in contravention of r. 7 of the Rules regarding the Conduct and Discipline of the Employees of Aided Educational Institutions (hereinafter referred to as the Rules) and could not therefore be approved. The Director also added that the Rules had been framed in 1960 after due consultation with the University and the Assam College Teachers' Association. On receipt of this letter, the Governing Body seems to have reconsidered the matter of leave to the respondent, and passed a resolution on April 4, 1962. This letter along with another letter was considered by the Governing Body of the College, and it was resolved in view of these letters that the resolution of March 9, 1962, permitting the respondent to rejoin duties from March 6, 1962 could not be given effect to. It was further resolved that the respondent and some other teachers be granted leave in accordance with the Rules. This resolution of the Governing Body was conveyed to the respondent by the Principal of the College by letter dated April 5, 1962 and he was told that he had been granted compulsory leave without pay till the end of the academic session in view of his standing for election in the last general elections.

The respondent thereupon filed the writ petition in the High Court out of which the present appeal has arisen. His contention was that the Rules to which the Director had made reference had no statutory force and that he was entitled to leave under the Rules framed by the Gauhati University, which had been accepted by the

A College. He also contended that the Rules not having the force of law did not affect the powers of the Governing Body of the College in the matter of its functions. Consequently the second resolution of the Governing Body dated March 9, 1962 was proper and correct and the respondent was properly allowed to rejoin duty after the expiry of his leave on March 6, 1962. The
B Director had no authority to interfere with the second resolution of the Governing Body dated March 9, 1962 and that resolutions of this character passed by a Governing Body did not require the approval of the Director and would have effect by themselves. It was further contended that as the leave rules which govern the
C College did not give power to the Governing Body to put a teacher on compulsory leave without pay against his will and consent, the resolution of the Governing Body dated April 4, 1962 by which the respondent was put on compulsory leave without pay was of no effect and in any case the Governing Body should not have acted on the illegal direction of the Director. Finally it
D was urged that the Governing Body acted as it did on a threat contained in the letter from the Additional Director dated March 19, 1962, in which it was said that the education department would not provide funds for salaries and allowances for any employee who had gone on leave in connection with elections in contravention of r. 7 of the Rules, and therefore the action of the Governing
E Body was bad and in any case the Director had no right to threaten the Governing Body in this way. The respondent therefore prayed for a writ in the nature of *certiorari/prohibition/mandamus* declaring r. 7 of the Rules as having no legal force and also as having no binding character on the Governing Body or the respondent. He further prayed that the resolution of the Governing
F Body dated April 4, 1962 be declared *ultra vires,* void and ineffective in law, and the Director should be directed not to withhold the grant-in-aid to be given to the College on the failure of the Governing Body to put the respondent on compulsory leave without pay.

G Before we consider the reply of the State, we would like to give the genesis of the Rules. It appears that in February 1959 the State of Assam decided to grant additional grant-in-aid to private colleges to implement the recommendations of the University Grants Commission regarding scales of pay and other emoluments to the teacher of such colleges. Apparently these scales of pay
H and other emoluments were advantageous to the teachers and meant an improvement on their pay and other emoluments which they were getting from before. It was further decided that such

grant-in-aid should be given to private colleges on condition that the college authorities agreed to abide by certain rules regulating the conditions of service of their employees. Accordingly it was decided to frame rules in consultation with the University and the Assam College Teachers' Association. Further the views of the Governing Bodies of all private colleges were also invited on the draft rules. Among them, the Governing Body of the College was also consulted and it resolved on August 6, 1960 that it agreed with the proposed rules contemplated by the Government to be framed as communicated to it. The Government also ascertained the views of the Gauhati University and the Assam College Teachers' Association and eventually the Rules were notified by notification dated March 9, 1961, published on March 29, 1961. Rule 7 of the Rules, which is material for our purposes is in these terms:—

> "An employee desiring to seek election to the Legislative Body or to hold office with any political organisation or local bodies shall be on compulsory leave without pay from the date of the filing of his nomination till the end of the next academic session or till the termination of the term of office to which he may be elected as the case may be. Such employee however shall not be allowed to retain lien on his post for a period exceeding five years."

The Rules therefore were framed in consultation with University and the Assam College Teachers' Association, which presumably represents the teachers of all private colleges. The Governing Body of the College was also consulted and it accepted the Rules to be promulgated. In this Governing Body the members of the teaching staff of the College are well represented and it was after the concurrence of the University, the College Teachers' Association and the Governing Body of the College in particular in which the teachers of the College were well represented that the Rules were notified.

The case of the appellants was that considering the manner in which the Rules were framed they were binding on the College as well as on the teachers of the College and it was thereafter that the Government gave the revised grants to the College. It seems further that the case of the appellants was that the Rules had statutory force in view of the amendment of the Act by Assam Act II of 1961 by which a proviso was added to s. 21(g) of the Act whereby the Government was given power to make the

A necessary rules in consultation with the University in respect of government colleges and government aided colleges. There were certain other objections by the appellants, to which it is unnecessary to refer.

The Governing Body of the College was also made a party to the writ petition and submitted a written-statement. It supported B the stand taken by the State, and in particular pointed out that the Governing Body in which the teaching staff of the College was well represented had accepted the Rules before they were notified. In consequence the Government had been giving grant-in-aid to the College in accordance with the recommendations of the University C Grants Commission by which the pay scales etc., of the teachers had been improved and the teachers had been receiving the pay and dearness allowance under this grant-in-aid. No representation was ever made by any member of the teaching staff when the Rules were under consideration and were notified that he would not be bound by the Rules. The teachers including the respondent having D accepted the pay and dearness allowance under the scheme of the grant-in-aid given by the State on terms and conditions laid down in the Rules, the respondent was estopped from challenging the Rules which were in the interest of the College and education in general. The Governing Body in particular was bound by the Rules having accepted them and the resolution of April 4, 1962 E was not passed on account of any threat by the Director.

The main question that was argued before the High Court was whether the Rules in question had statutory force. Alternatively, it was argued that even if the Rules had no statutory force and were mere executive instructions for the purpose of grant-in-aid, the F High Court should not issue a writ against the State or the Director interfering with such administrative instructions issued by the Director. It was further urged that if the Rules were mere executive instructions, which had been accepted by the Governing Body of the College in which the teachers of the College were well represented, they would be in the nature of contractual obligations G which could not be enforced by the issue of a writ under Art. 226.

The High Court first considered the question whether the Rules had statutory force and came to the conclusion that they could not be said to be issued under the proviso to s. 21(g) of the Act on which reliance was placed and therefore did not have any statutory force. But the High Court further held that even if the Rules had H no statutory force it was open to it to issue a *mandamus* under Art. 226 to the Director, who is a public authority, to refrain from giving effect to the Rules which had no statutory force. It

therefore made a direction to the Director not to give effect to his letter of March 20, 1962. A

Further it was urged before the High Court that the Governing Body of the College was not a statutory body and therefore no writ or direction could issue to it and the remedy of the respondent was to go to the civil court to enforce his right (if any). The High Court however held that the words of Art. 226 were wide enough and did not confine its power to the issue of writs, directions or orders in the nature of *mandamus;* they gave power to issue directions, orders or writs which the Court considered proper in the circumstances of each case and such direction could be issued for any purpose. The High Court therefore held that as the Governing Body had not applied its independent mind to the question of leave, it could issue a direction to it also. The High Court however did not decide whether the Governing Body was a statutory body or not, and in the result directed the Governing Body also not to give effect to the letter of the Director dated March 20, 1962. Thereupon there was a prayer to the High Court on behalf of the State and the Director for leave to appeal to this Court, which was refused. Then the State and the Director applied to this Court for special leave which was granted; and that is how the matter has come up before us. It may be mentioned that the Governing Body of the College has been made a respondent in the appeal before us. B C D E

The main question which falls for decision in this appeal is whether the High Court is right in issuing a writ of *mandamus* to the State through the Director directing it not to give effect to the letter of March 20, 1962. It has not been contended on behalf of the appellants that the Rules have statutory force and the arguments before us have been made on the basis that the Rules have no statutory force and are mere executive instructions given by the Government to private colleges as a condition for the implementation of pay scales etc., recommended by the University Grants Commission for private colleges, these scales being apparently higher than those existing from before. It seems to us that the High Court was in error in granting a writ of *mandamus* against the State through the Director once it found that the Rules had no statutory force and were mere administrative instructions for the purpose of giving grant-in-aid to private colleges. What grants the State should make to private educational institutions and upon what terms are matters for the State to decide. Conditions of these grants may be prescribed by statutory rules; there is however no law to prevent the State from prescribing the conditions F G H

A of such grants by mere executive instructions which have not the force of statutory rules. In the present case the Rules have been framed in order to give revised grants to private colleges to enable them to give higher scales of pay etc., to their teachers in accordance with the recommendation of the University Grants Commission. The Rules have been held by the High Court to B have no statutory force, and that is not disputed before us. In these circumstances it is clear that the Rules are mere executive instructions containing conditions on which grants would be made to private colleges to implement the recommendations of the University Grants Commission as to pay scales etc., of teachers of C private colleges. Where such conditions of grant-in-aid are laid down by mere executive instructions, it is open to a private college to accept those instructions or not to accept them. If it decides not to accept the instructions it will naturally not get the grant-in-aid which is contingent on its accepting the conditions contained in the instructions. On the other hand, if the college accepts the D conditions contained in the instructions, it receives the grant-in-aid. If however having accepted the instructions containing the conditions and terms, the college does not carry out the instructions, the Government will naturally have the right to withhold the grant-in-aid. That is however a matter between the Government and the private college concerned. Such conditions and instructions as to E grant-in-aid confer no right on the teachers of the private colleges and they cannot ask that either a particular instruction or condition should be enforced or should not be enforced. It is only for the Governing Body of the College to decide whether to carry out any direction contained in mere administrative instructions laying down conditions for grant-in-aid. Further it is open to the Governing F Body not to carry out any such instruction which is not based on rules having statutory force, and it will then be naturally open to the State to consider what grant to make. But if the Governing Body chooses to carry out the instruction, it could hardly be said that the instruction was being carried out under any threat. It G is certainly not open to a teacher to insist that the Governing Body should not carry out the instruction. The rules for the purpose of grant-in-aid being—as in this case—merely executive instructions confer no right of any kind on teachers and they cannot apply to the High Court for a *mandamus* asking for the enforcement or non-enforcement of the rules, even if indirectly there may be some effect H on them because of the grant-in-aid being withheld in whole or in part. Such mere administrative instructions even though called rules are only a matter between the Governing Body and the State

through the Director and cannot in our opinion form the basis of a petition for writ under Art. 226 by a teacher.

We may in this connection refer to *Messrs. Raman and Raman* v. *The State of Madras*(1) where this Court had to consider certain orders and directions issued under s. 43A of the Motor Vehicles (Madras Amendment) Act, 1948. The question arose whether the orders issued under s. 43A had the status of law or not. This Court held that such orders did not have the status of law regulating the rights of parties and must partake of the character of administrative orders. It was further held that there could be no right arising out of mere executive instructions, much-less a vested right, and if such instructions were changed pending any appeal, there would be no change in the law pending the appeal so as to effect any vested right of a party. That decision in our opinion governs the present case also, for it has been found by the High Court, and it is not disputed before us, that the Rules are mere administrative instructions and have not the force of law as statutory rules. They therefore confer no right on the teachers of private colleges which would entitle them to maintain a writ petition under Art. 226 for the enforcement or non-enforcement of any provision of the Rules. The Rules being mere administrative instructions are matters between private colleges and the Government in the matter of grant-in-aid to such colleges, and no teacher of a college has any right under the Rules to ask either for their enforcement or for their non-enforcement. We are therefore of opinion that the High Court was in error when it granted a writ against the State through the Director, by which the Director was asked not to give effect to its letter dated March 20, 1962, against the Governing Body of the College.

Then we come to the question whether a writ could have been issued against the Governing Body of the College. We find however that there is no appeal by the College against the order of the High Court issuing a writ against it. In these circumstances we do not think that we can interfere with the order of the High Court insofar as it is against the Governing Body of the College. At the same time we should like to make it clear that we should not be taken to have approved of the order of the High Court against the Governing Body of the College in circumstances like the present and that matter may have to be considered in a case where it properly arises.

Before we leave this case we should like to add that it was stated on behalf of the State before us that even if the decision went in

(1) [1959] Supp. 2 S.C.R. 227.

A favour of the State, it would not enforce r. 7 insofar as the respondent is concerned, as the State was concerned merely with the clarification of the law on the subject.

In the result we allow the appeal and set aside the order of the High Court granting a writ against the State through the Director.
B The State of Assam has agreed to pay counsel engaged *amicus curiae* for respondent, Ajit Kumar Sharma. We therefore pass no order as to costs.

Appeal allowed.