

A INDIA LITERACY BOARD AND ORS.

v.

VEENA CHATURVEDI AND ORS.

FEBRUARY 21, 2005

B [ASHOK BHAN AND DR. AR. LAKSHMANAN, JJ.]

Constitution of India—Article 226 :

C *Writ of Mandamus—Issuance of—Held : Mandamus cannot be issued for continuing the appointee in service after expiry of contractual period.*

Writ Petition—Relief not prayed for, granted by High Court before final disposal—Propriety of—Held : Not proper for High Court to award relief not prayed for, even before the disposal of the main case.

D Respondents were appointed as teachers by the Appellant-Society on contractual basis for a fixed period. After expiry of the contractual period, Appellant issued an advertisement for fresh recruitment of teachers. Respondents were eligible to apply again. However, instead of applying they preferred writ petition for quashing the advertisement and seeking mandamus to appellant to allow them to continue as teachers. Single Judge of High Court, as an interim measure directed appellant to withhold implementation of any selection till the next date of hearing. Aggrieved by interim orders, appellant approached the Division Bench, and it held that since respondents had served for a period 8-13 years, appellant would not suffer any loss if respondents were allowed to work as teachers for one month more. In compliance of the above order, appellant paid salary to the teachers. Thereafter, respondent filed an application seeking clarification of the order of Division Bench contending that the purport of order was to allow the respondents to work and pay them their salary till decision of the Writ Petition. The said application was posted before another Division Bench, and it held that respondents should be paid salary in terms of the order passed by the Single Judge. Hence the present appeal.

Disposing of the appeal, the Court

HELD : 1. In a case of contractual appointment for a fixed term,

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mandamus cannot be issued for continuing the appointee in service. In the present case as an interim measure a direction has been given by the High Court to issue appointment orders, which was not even the main relief claimed in the writ petition. [208-C] A

2. Though a specific direction was given by the Division Bench to pay salary for one more month in pursuance of the interim order, the said order had been wrongly interpreted by another Division Bench of the High Court. Admittedly, the respondents are not working in the school. When they are not working in the school, they are not entitled to any salary by applying the rule of no work, no pay. It is not in dispute that the Management has issued an advertisement inviting applications from eligible candidates. The respondents have in fact not applied for the post in question in response to the advertisement, instead they chose to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. [208-E, F] B C

3. The question raised in the writ petition is an arguable one. The affidavits and counter affidavits have already been exchanged and, therefore, in the interest of justice a direction is issued to the Single Judge of the High Court to take up the main writ petition itself for final hearing and dispose of the same on merits including the maintainability of the writ petition. [208-G, H; 209-A] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1317 of 2005. E

From the Judgment and Order dated 8.5.2003 of the Allahabad High Court in C.M. Application No. 18906/2002 in S.A. No. 296 (S/B) of 2001.

Mahabir Singh, Rakesh Dahiya, Madhusmita Bora and Gagandeep for the Appellants. F

Mrs. Shobha Dikshit and Pradeep Misra for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted. G

This civil appeal is directed against the final judgment and order dated 08.05.2003 passed by the High Court of Judicature at Allahabad, Lucknow Bench in C.M. Application No. 18906/2002 in Special Appeal No. 296 (S/B)/2001 whereby the High Court has dismissed the petition. H

A The appellant - India Literacy Board is imparting education to children upto Class VIII at Lucknow, which - is now a separately registered society under the Societies Registration Act, 1860. The respondents were appointed as teachers on purely contractual basis subject to the terms and conditions which were made part of the written contract duly executed by the respondents respectively for fixed periods. An advertisement was got published by the
B Management of the appellant-Board for appointment of teachers. The respondents along with others were eligible to apply again for fresh contractual employment. The respondents instead of applying in response to the advertisement chose to approach the High Court by filing writ petition No. 2917 (S/S)/2001, praying for the following reliefs :

C “(a) to issue a writ, order or direction in the nature of Certiorari quashing the advertisement as published in “Dainik Jagran” dated 6.6.2001, the true copy of which is contained as Annexure-22 to the writ petition, as it relates to the post of Assistant Teachers of Welthy-
D fisher Children’s Academy, India, India Literacy Board, Literacy House, Kanpur Road, Lucknow, held by the petitioners.

E (b) to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to hold any selection and appointment from outside against the post of Assistant Teachers against which the petitioners have been working since last many years pursuant to the impugned advertisement contained in Annexure-22 to the writ petition.

F (c) to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to allow the petitioners to continue as Assistant Teachers of Welthy-fisher Children’s Academy, India, India Literacy Board, Literacy House, Kanpur Road, Lucknow and to pay to the petitioners their salary at par as admissible to an Assistant Teacher of a Basic School run and managed by the “U.P. Basic Shiksha Parishad” together with all allowances as also together with the arrears of salary.”

G They alleged that the appellant-Society is an instrumentality of the State within the meaning of Article 12 of the Constitution of India.

On 21.06.2001, the High Court passed the following interim order :

H “Learned counsel for the petitioners has pointed out that in pursuance of the advertisement dated 6.6.2001 which has been annexed

as Annexure-21 to the writ petition, the respondents are going to make selection although the petitioners are working with the respondents since last 8-13 years. In view of this, it is hereby provided that this matter be listed before appropriate Bench on 3.7.2001. A

In the meantime, any selection is finalized, that will not be implemented till 3.7.2001.” B

The writ petition was again listed on 03.07.2001. The appellants raised a preliminary objection regarding the maintainability of the writ petition itself. The case was listed again on 19.07.2001. Counter and rejoinder affidavits were exchanged between the parties. The appellants filed an application for vacation of the ex-parte interim order dated 21.06.2001. It was submitted by counsel for the appellant that the respondents are in a purely contractual employment and have no right to continue in service and their grievance is also not amenable to writ jurisdiction. In support of their contention, certain rulings of the Allahabad High Court and other rulings were relied on. C

Feeling aggrieved by the interim orders dated 21.06.2001 and 20.07.2001, which according to the appellant amounts to final decision, the appellant filed a special appeal before the Division Bench of the High Court. The Division Bench passed the following order : D

“We are of the view that any observation of ours in the present special appeal will ultimately prejudice the case of the parties before Hon’ble the single Judge in the pending writ petition, hence we desisted ourselves from expressing any view. Admittedly, the teachers have been serving in between 8 to 13 years. If they continue for one month more in pursuance of the interim order, the India Literacy Board will not suffer any loss. E F

In view of the aforesaid reasons, we direct the Registry to list the writ petition bearing No.2917/2001 (s/s) before Hon’ble single Judge in the next cause list.

On a mention being made by the counsel of either of the parties before Hon’ble single Judge may hear and decide the writ petition when the writ petition will be listed. In case due to the unavoidable reason, the writ petition would not be disposed of on the date of listing, Hon’ble the single Judge will fix another date within a fortnight from the date of listing and decide the writ petition on merit. G H

A With the aforesaid observations, the Special Appeal is disposed of.”

B The apparent intention of the Division Bench is thus seen that the matter was to be finally decided within one month and further that if the respondents herein are permitted to continue for *one month more* in pursuance of the interim order, the appellant-Society shall not suffer any loss. Accordingly, the appellant paid salary to the teachers in compliance of the order dated 10.08.2001.

C However, the case could not be decided despite the best efforts made by the parties. In the meanwhile, the respondents filed contempt petition before the High Court and the single Judge sitting in contempt proceedings passed the following order :

D “Shri P.K. Sundriyal, Secretary, India Literacy Board, Literacy House, Alambagh has stated before this Court that salary for one month was paid to the petitioners and they were not allowed to work as teachers. In the instant case, a detailed interim order was passed by this Court on 20.7.2001 which was challenged by the opposite parties in special appeal. The Division Bench while deciding the special appeal also mentioned in the judgment “Admittedly, the teachers have been serving in between 8 to 13 years. If they continue for one month more in pursuance of the interim order, the India Literacy Board will not suffer any loss.” Sri P.K. Sundriyal knowingly and deliberately has disobeyed the order passed by this Court by not allowing the petitioners to work. There was no direction by this Court for payment of salary to the petitioners in lieu of one month work and the intention of the Division Bench was that the petitioners should be allowed to continue in service for one month and no more. Mere giving one month’s salary will not make compliance of the order passed by this Court. *Prima facie*, Sri Sundriyal is guilty for disobeying the orders passed by this Court.”

G The respondents filed an application for clarification of the order dated 10.08.2001 passed by the Division Bench. In the said application, it was contended by the respondents that the Division Bench had directed the appellants to allow the respondents to work and to pay their salaries but a contingency was reflected in this direction because of the expectation of the Division Bench that the writ petition may be disposed of within a fortnight.

H The respondents further contended that the purport of the said order passed

by the Division Bench was to allow the respondents to work and pay them their salary till the decision of the writ petition. They alleged that the opposite parties and the appellants have interpreted the order passed by the Division Bench otherwise, and that they are taking undue benefit of the contingency expressed by the Division Bench by taking the plea that only one month salary was to be paid to the respondents by them and no more than that. A B

The said application was posted before another Division Bench for hearing. The appellant filed counter affidavit in the shape of objections to the said application. The learned Judges of the Division Bench, by order dated 08.05.2003, while clarifying the order dated 10.08.2001 observed that the respondents shall be paid salary in terms of the order passed by the single Judge. Aggrieved by the order passed by the Division Bench, the above appeal, by way of special leave petition, was filed before this Court. On 08.07.2003, upon hearing the counsel, this Court made the following Order: C

“Heard the learned counsel for the petitioners. D

It has been pointed out by the learned counsel for the petitioners that despite the final judgment rendered by the High Court of Allahabad holding that India Literacy Board is not a State within the meaning of Article 12 of the Constitution (Annexure P-3), High Court has entertained the petition and has granted interim order. It is pointed out that even though the matter is fixed for final disposal since last two years, it is not heard by the High Court. E

Hence, issue notice returnable within four weeks. Dasti in addition. Meantime, operation of the impugned judgment is stayed.”

We heard Mr. Mahabir Singh, learned counsel for the appellant and Mrs. Shobha Dikshit, learned senior counsel for the respondents. Mr. Mahabir Singh made the following submissions : F

1. The Division Bench while clarifying the order dated 10.08.2001 failed to consider the objections filed by the appellants;
2. The appellant-Society is neither an instrumentality of the State nor a State within the meaning of Article 12 of the Constitution of India and, therefore, not amenable to writ jurisdiction under Article 226 of the Constitution of India; G
3. The learned single Judge, in the instant case, by passing the order dated 20.07.2001 has granted to the respondents the reliefs H

- A which could not have been granted to them even at the time of final disposal of the writ petition;
4. The respondents were appointed as teachers on contractual basis and their appointment was extended from time to time on contractual basis with certain terms and conditions to which the respondents have agreed;
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5. Since the contractual term/period was over, the appellant-Society issued an advertisement for recruitment and that the appellant-Society is fully competent to issue the advertisement. However, none of the respondents though eligible to apply again for fresh contractual employment, have chosen to file the writ petition under mis-placed apprehension that they would not be selected for fresh contract of employment;
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6. The respondents have utterly failed to disclose their substantive right to the post and failed to point out violation of any statutory rule and are therefore not entitled to any relief;
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7. The relationship between the appellant and the respondents is based on contract and is purely one of master and servant.

E Mrs. Shobha Dikshit, learned senior counsel appearing for the respondents/teachers in reply to the argument of learned counsel for the appellant submitted as follows :

1. The respondents have experience of 8-13 years of service and that in the interest of justice, the appellant should allow the respondents to work as teachers pending disposal of the writ petition.
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2. All the respondents have rendered more than 8-13 years of service in the school except the artificial breaks created and during all these periods they have been paid a consolidated salary and by denying the payment of salary in the admissible scale;
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3. The advertisement has been issued by the appellant in such a manner so as to oust the respondents from the field of eligibility;
4. The interpretation order of the Division Bench made by the appellant as if they are not required to pay the salary after one month is not correct and the appellants are duty bound to pay the salaries to the respondents as directed by the learned Single Judge;
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5. The respondents who have rendered long continuous service as assistant teachers under the appellant are aggrieved against the intermittent breaks created in their services by issuing time-bound appointment orders from time to time and by the action of the appellant in proceeding to issue advertisement for selection against the posts held by the respondents in such a manner as to completely oust the respondents from the field of eligibility and also against the non-payment of salary as admissible to the teachers;
6. The appellant-Society was established with an object of furthering the cause of adult literacy and for other different laudable purposes enshrined under the Constitution of India. The constitution and composition of the appellant-Board is such as to have the pervading control of the Government of India in collaboration with the State Government. The funds for running and maintaining the appellant-Board are released by the Ministry of Human Resources and Development, Government of India and, therefore, the writ petition filed by the respondents in the High Court is maintainable in law.

Concluding her arguments, learned senior counsel for the respondents submitted that the appellant cannot legally be permitted to proceed with the impugned action pursuant to the impugned advertisement against the posts held by the respondents nor can the appellant discontinue or dis-engage the respondents from service. By issuing periodical appointment orders under the conditions of payment of consolidated monthly amount, the respondents had been subjected to an unfair treatment and to exploitation of labour which is specifically forbidden under the constitutional scheme.

We have carefully considered the rival submissions made by the respective counsel appearing on the either side. We have also perused the orders passed by the learned Single Judge and of the orders passed by the Division Bench.

A perusal of the order passed by the High Court would clearly show that the High Court as an interim measure directed issue of appointment order which was not even the main relief claimed in the writ petition. The question is whether the reliefs which are not prayed for or which are not claimed in the petition could have been awarded by the High Court even before the disposal of the main case. Another question would also arise as

A to whether the writ petition is maintainable against the appellant-Board which according to the appellant is neither an instrumentality of the State nor a State within the meaning of Article 12 of the Constitution of India. A further question would also arise as to whether the appellant is under an obligation to select the respondents as teachers when the contract entered into by them ceased on 30.06.2001.

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Leave to appeal was sought for by the appellant on the above grounds, among others. It has been consistently held by this Court in various cases that in a case of contractual appointment for a fixed term, no mandamus can be issued for continuing them in service but in the present case as an interim measure a direction has been given by the High Court to issue appointment orders which was not even the main relief claimed in the writ petition.

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Though we have extracted several legal contentions urged by the counsel appearing on either side in this appeal, we refrain ourselves from expressing any view on the merits of the rival contentions which is premature. Any observation of ours in the present appeal will ultimately prejudice the case of the parties before the High Court in the pending writ petition. It is stated by learned counsel for the appellant that one month salary as directed by the High Court has already been paid to the respondents in compliance of the order. Though a specific direction was given by the Division Bench by its order dated 10.08.2001 to pay salary for one more month in pursuance of the interim order the said order had been wrongly interpreted by another Division Bench of the High Court. The order passed in the special appeal by the Division Bench also observed that the question raised by the parties in the writ petition is an arguable one. It is an admitted case that as on today the respondents are not working in the school. When they are not in fact working in the school, they are not entitled to any salary by applying the rule of no work, no pay. It is not in dispute that the Management has issued an advertisement inviting applications from eligible candidates. The respondents have in fact not applied for the post in question in response to the advertisement chose to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. In our opinion, the questions raised in the writ petition, is an arguable one. The affidavits and counter affidavits have already been exchanged and, therefore, in the interest of justice a direction should be issued to the High Court to hear the writ petition which is ripe for hearing. As already stated, we have desisted ourselves from expressing any view on the merits of the rival claims. Interest of justice would be amply met if a direction is issued to the learned Single Judge of the High Court with a

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request to take up the main writ petition itself for final hearing and dispose of the same on merits including the maintainability of the writ petition. We direct the Registrar General of the High Court, Allahabad at Lucknow to immediately place the matter before a learned Single Judge of the High Court after obtaining appropriate orders from the Hon'ble Chief Justice for posting the said case before the concerned single Judge for final disposal. Both the learned counsel appearing before us have assured that they will extend their cooperation in disposing of the writ petition finally. A B

We request the learned single Judge before whom the writ petition is posted to take up this matter on priority basis and dispose of the same in accordance with law within one month from the date of posting of the said case in his Court. C

The civil appeal is disposed of accordingly. No costs.

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Appeal disposed of.