

(2009) 12 MAD CK 0018
In the Madras High Court
Case No : Writ Petition No. 11850 of 2000

Benedict Crizal

APPELLANT

Vs

St. Joseph's Higher Secondary School and Joint Director of
School Education (Higher Secondary)

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3
Constitution of India, 1950 — Article 226, 311(2)
Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 2(7), 23

Citation : (2009) 12 MAD CK 0018

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : G.S. Thamby, for P. Godson Swaminath, for the Appellant; T.R. Rajagopalan for T.R. Rajaraman, for R3 and S. Gopinathan, AGP for R4, for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—The legality and correctness of the order of dismissal passed by the Manager of an educational institution, who acted

as the complainant, prosecutor, witness and judge is the subject matter of this writ petition.

2. The petitioner challenges the proceedings of the second respondent dated 29.6.2000 whereby and whereunder he was terminated from the

service of St. Joseph Higher Secondary School, Vizhunthayambalam, Kanyakumari District.

THE FACTUAL MATRIX:

3. The petitioner was appointed as B.T. Assistant on 4.6.1984, in the first respondent School. He was promoted as Head Master with effect from

1.6.1991. The School is a Private School as defined u/s 2(7) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1974. Eighteen

teachers were employed in the said institution. Teachers in the non-sanctioned posts were employed for years together on the hope that they would

be appointed either in the posts that would be sanctioned newly or in the vacancies caused due to resignation, death or retirement. However

whenever such vacancies arose, the management used to employ fresh candidates instead of regularising the appointments made earlier. The

teaching and non-teaching staff protested against the school management by organising demonstration in front of the school on several days during

October and November, 1998.

4. The main reason for the demonstration was the appointment of Tmt. Mary Mercilet, a close relative of the Correspondent of the School. By

appointing a teacher afresh, the claim of other B.T. Assistants working in the institution for the past twelve to sixteen years were overlooked. The

difference of opinion between the teachers and the management made the teachers to issue a notice to the management through Thiru V.

Ramachandran Nair, Advocate, Kuzhithurai.

5. The Manager of the School instituted a private complaint before the Judicial Magistrate Court, Nagercoil for defamation against the Senior

teachers, who were instrumental in issuing notice through Mr. V. Ramachandran Nair. In the meantime the teachers were pressurised using money

and muscle power to come to the terms dictated by the Manager. Therefore they gave letters on the dotted lines as desired by the Manager and

the Correspondent implicating the petitioner as the person behind the entire episode.

6. The Manager and the Correspondent gave the petitioner one memo after another vindictively to throw him out from the post of Headmaster.

The Manager also withdrew the defamation case against the staff, who signed on the dotted lines as desired by him and continued the case against

rest of the three employees. Those three employees were terminated abruptly without holding any enquiry.

7. While the matters stood thus, the petitioner was given a show cause notice with thirty five charges and he was asked to submit his reply. The

petitioner submitted his explanation to the charges framed against him. The

manager, who was determined to terminate the petitioner appointed one Mr. Johnson, Advocate, Nagercoil as the enquiry officer as per memo dated 16 March, 2000. The said Johnson was the lawyer for the Manager and he was also sharing the office with Mr. Justin, standing counsel for the Manager. Therefore the petitioner submitted a letter for change of enquiry officer. However the said request was not considered.

8. The enquiry officer issued a notice asking the petitioner to appear for enquiry on 1.4.2000 at New Ganga Lodge, Nagercoil. Notice was received by the petitioner only on 31.3.2000 and as such he sent a telegram requesting adjournment of the proceedings. Subsequently the enquiry officer sent a letter dated 1.4.2000 asking the petitioner to appear on 5.4.2000 again at New Ganga Lodge, Nagercoil without mentioning the time at which the enquiry proceedings would be taken up. The petitioner as per his letter dated 4.4.2000 opposed the conduct of enquiry in the lodge at Nagercoil. According to the petitioner his life was in danger as the Manager had earlier attempted on his life by sending hired rowdies which made him to prefer a police complaint. The petitioner has also pointed out that the enquiry officer Mr. Johnson was inimically disposed of towards him for various reasons. The petitioner pointed out that Mr. Johnson was biased and as such he was not competent to conduct the enquiry against him.

9. The distance between Nagercoil and the place of School is about 40 kms. Therefore the petitioner was put to difficulties to appear at Nagercoil. He was also not paid conveyance allowance and other expenses. The request made by the petitioner to change the venue was not accepted by the enquiry officer. The petitioner was waiting for a reply in respect of his letter. However the enquiry officer without changing the venue as requested by the petitioner conducted enquiry ex parte and concluded that majority of the charges framed against him were proved.

10. In the meantime the petitioner filed a suit in O.S. No. 164 of 2000 before the District Munsif, Kuzhithurai praying for a judgment and decree of permanent injunction restraining the Manager, Correspondent and enquiry officer from proceeding further with the enquiry and from terminating him from service. In the said suit the District Munsif, as per order dated 20.4.2000 in I.A. No. 314 of 2000 restrained the Manager, Correspondent and the enquiry officer from proceedings further with the enquiry

and from terminating him from service till 29.6.2000.

11. The notice in the suit as well as in the interlocutory application were served on the respondents. However disregarding the order of injunction,

the enquiry officer submitted his report on 22.4.2000. The Manager has given a notice on 2.6.2000 to the petitioner enclosing a copy of the report

of the enquiry officer. Even in the said notice the Manager had noted that an interim injunction was granted by the District Munsif in respect of the enquiry proceedings.

12. The enquiry officer found that the petitioner was guilty of charges 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, 15, 18, 22, 24, 25, 27, 28, 30, 31, 32, 33, 34 and 35 and held not guilty in respect of other charges.

13. The petitioner found that twenty six persons were examined as witnesses in the ex parte enquiry and documents in Exs.A.1 to A.130 were

marked. There was no indication in the enquiry report as to who were all those twenty six witnesses examined in the enquiry. The list of witnesses

examined in the enquiry were not appended to the report. The petitioner submitted his explanation to the second show cause notice on 20.6.2000

along with sixty nine documents to justify his contention that there was no basis for the charges. However without considering the explanation and

particularly the documents annexed with the explanation, the Manager passed the impugned order dated 29.6.2000 dismissing him from service.

Accordingly the petitioner is before this Court.

COUNTER:

14. The second respondent filed a counter in answer to the contentions raised in the writ petition. The second respondent has detailed the reasons

which made him to initiate the enquiry proceedings against the petitioner. According to the second respondent, the petitioner is none other than his

sister's son. The second respondent narrated the background facts leading to the enquiry, which ultimately culminated in passing the order of

termination against the petitioner.

15. While the writ petition was pending, respondents 3 and 4 were impleaded. The third respondent is the Congregation of the Sisters of St.

Annes, Tiruchirappalli. The first respondent institution was taken over by the third respondent on 1.9.2000. However they were not aware of the

termination of the petitioner and the pendency of the proceedings.

16. The third respondent has filed a counter wherein it was indicated that the petitioner was having a remedy of appeal before the Government in

accordance with Section 23 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The third respondent has also pointed out that

they have appointed sister C. Pounthai as Headmistress of the School and she was in the service for a period of seven years with the approval of

the District Educational officer. Subsequently sister C. Nambikkai Rose was appointed as Headmistress of the School and she is continuing as

Headmistress as on date. Therefore the writ petition is bad for non-joinder of the present Headmistress. The third respondent has also justified the

action taken by the second respondent.

SUBMISSIONS:

17. The learned Counsel for the petitioner contended that the enquiry proceedings clearly shows that the enquiry officer as well as the Manager

were determined to punish the petitioner. The Manager, who passed the order of termination himself was a witness to prove majority of charges

and as such the order of termination is liable to be set aside solely on the reason of bias. According to the learned Counsel, the Manager has taken

a decision to terminate the service of the petitioner and the same is evident from the letter dated 16.9.1998 sent by him to the petitioner. The

learned Counsel further submitted that the challenge is not to the decision but only against the decision making process and the report of the

enquiry officer clearly shows that the enquiry was not conducted in the manner in which it should have been conducted.

18. The learned Counsel for the petitioner placed reliance on the following judgements.

(1) B.C. Chaturvedi Vs. Union of India and others,

(2) Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others,

(3) 2007(5) MLJ 1111 (Secretary St. Jude's College v. S. Robert)

(4) Punjab National Bank and Others Vs. Sh. Kunj Behari Misra,

(5) P. Govindan Vs. State of Tamil Nadu and The Registrar Tamil Nadu Administrative Tribunal,

19. The learned Senior Counsel for the third respondent contended that the third respondent was kept in darkness in respect of the disciplinary proceedings against the petitioner. The institution was taken over by the third respondent only on 1.9.2000 and they have appointed the Headmistress. Any order in this writ petition would affect the present Headmistress and as such the writ petition is bad for non-joinder of necessary parties. The learned Senior Counsel also relied on the judgment of this Court in Baskaran Vs. The Commissioner of College Education and Others, in support of his contention that non-joinder of affected party warrants dismissal of the writ petition.

ANALYSIS:

20. The petitioner was working as Headmaster of the first respondent institution with effect from 1.6.1991. The petitioner is the sister's son of the Manager. But the said fact had not been disclosed by the petitioner in the affidavit filed in support of the writ petition. The petitioner and the Manager appears to have been waging a war and the teaching faculty were used as soldiers. The Manager entertained a belief that the petitioner was instrumental in creating various problems through the teachers. The Manager was also of the view that the petitioner had indulged in serious misconduct. Accordingly he has appointed the enquiry officer after receiving the explanation from the petitioner.

21. The enquiry officer appointed by the Manager was none other than his own counsel. However it cannot be said that the enquiry proceeding is bad solely on the ground that the enquiry officer earlier appeared as a Counsel for the Manager. The apprehension raised by the petitioner on that ground does not merit consideration. The enquiry officer was a practising lawyer. The fact that he appeared once for the Manager or that he shared the Chamber with the standing counsel for the Manager will not go to show that he was having bias against the petitioner. In fact some of the charges levelled against the petitioner were negatived by the enquiry officer as according to him there was no sufficient evidence to prove those charges. However the enquiry officer was not care enough to mention the timing of the enquiry in the notice. He has chosen a Hotel to conduct the enquiry which was not liked by the petitioner. The enquiry officer could have conducted the enquiry in the educational institution itself and there

was no necessity to conduct the same in a lodging house. The petitioner has got apprehension that he would be attacked in case the enquiry was conducted in a hotel and he has expressed the said apprehension in his letter to the enquiry officer. However such grievance raised by the petitioner was not considered by the enquiry officer. In any case, that alone cannot be a reason to set aside the enquiry report and to come to a conclusion that the order of termination is bad.

22. The principal issues in this matter pertains to the conduct of enquiry during the currency of the injunction order passed by the Civil Court, the participation of the Manager in the enquiry proceedings as a witness and his ultimate decision to terminate the petitioner acting as the disciplinary authority.

23. The enquiry against the petitioner was initiated by none other than the Manager. Show cause notice was issued by him calling upon the petitioner to submit his explanation with respect to thirty five charges framed against him. The explanation was also received by him. The Manager considered the explanation and opined that there were no justifiable reasons in the explanation to drop the charges. Accordingly the Manager himself appointed the enquiry officer to conduct the enquiry into the charges.

24. The Manager, who issued the charge sheet and ordered for enquiry himself appeared as a witness before the enquiry officer. It is found that the evidence of the Manager examined as M.W.1 was the basis for proving majority of the charges. I have gone through the report of the enquiry officer in its entirety and found that majority of the charges were found proved only on account of the evidence given by the Manager and the documents marked through him.

25. The details furnished hereunder would indicate that the Manager actively took part in the enquiry proceedings and tendered evidence against the petitioner.

26. Before analysing the charges, the enquiry officer made a note of the witnesses examined to substantiate the charges and the documents marked. The introductory paragraph indicates the role played by the Manager in the enquiry proceedings which reads thus:

As the delinquent was reluctant of appearing before me and to defend himself I decided to get on with the enquiry setting him exparte. The enquiry

was commenced on 14.4.2000 at 10.a.m. in the venue fixed. On 14.4.2000 the Manager of the school was examined as management witness No.

1 and the documents Ext.A.1 to A.66 were marked. On 15.4.2000 management witness No. 1 continued his evidence and the documents

Ext.A.67 to 129 were marked.

27. The evidence tendered by the Manager as M.W.1 in respect of each of the charges are as under:

Charge No. 1

That Thiru Benedic Crysar, Headmaster of the School had connived to send, in the name of the following teachers legal notices to the management

alleging payment of huge sums of money ranging from Rs. 1,00,000/- to Rs. 2,00,000/- as illegal gratification and consideration money for their

appointment and not keeping other promises made at the time of their appointment, and that without the knowledge and consent of the concerned

teachers. That by such an action, he has involved the teachers being subjected to criminal action by the management and that these are allegations

against the management made with the motive to discredit it.

Point for Consideration:

The Manager of the School Rev. Ft. S. Joseph was examined as witness and he deposed Ext.A.1 to A.47 were the notices sent by Advocate

Thiru V. Ramachandran Nair, Ext.A.1 to A.47 were the notices sent by Advocate V. Ramachandra Nair Ext.A.1 is stated to have been sent for

and on behalf of Mr. T. Russel Raj.

Charge No. 3

That Thiru Benedic Crysar, instigated and led the teachers and some pupils of the school to a demonstration and ghero on 28.10.1998 in front of

the school in Vizhunthayambalam against the Manager and Correspondent of the school who had come to visit the school. They prevented them

by physical force from entering the school shouted slogans against the administration of the management and abused them in filthy language about

their personal character. That the Headmaster has also connived to gather a crowd of 500 local friends of him and induced them to demand the

Manager and Correspondent to transfer the management, Correspondentship, ownership and properties of the school to Thiru Benedic Crysar, the

Headmaster and that by these activities he had done irreparable damage to the prestige, honour and character of the Manager and Correspondent

of the School before the public at large and that Thiru Benedic Crysal resorted to illegal and unlawful means to appropriate the management and

properties of St. Joseph Higher Secondary School, Vizhunthayambalam.

Point for Consideration:

1. Whether there was a demonstration against the Manager and Correspondent on 28.10.1998..

2. Whether the Manager and Correspondent were physically prevented from entering into the school.

3. Whether the demonstration was instigated by the Headmaster.

Management witness No. 1 is the Manager, Management witness No. 2 is the Correspondent Miss. Rosammal. Both the Manager and the

Correspondent have given evidence before me and their evidence is corroborative and cogent. According to witness No. 1 those who assembled

in the School campus prevented him from entering into the school by force and they shouted slogans against him and the Correspondent. He

further says that their demand was the transfer of the Management and the Correspondentship and the ownership of the properties of the school to

the Headmaster. Witness No. 2 Correspondent says that on 28.10.1998 when she accompanied the manager to visit the school the teachers few

students and the hooligans of the Headmaster assembled there and they raised slogans against her and the manager. They demanded the transfer of

ownership and properties of the school to the Headmaster.

Charge No. 4

That Thiru Benedic Crysal, the Headmaster induced the teacher of the school to stage a demonstration before his office during school hours on

5.10.1998 and also before the office of the District Educational Officer, Kuzhithurai under the leadership of Thiru D. Jayakumar on 8.10.1998

against the lawful proceedings and actions of the Management thereby discrediting and defaming the management of the school.

Point for consideration:

1. Whether there was a demonstration on 5.10.1998.

2. Did the Headmaster induce the teachers for the demonstration.

Management witness No. 1 has deposed in his evidence that there was a demonstration on 5.10.1998 in front of the office of the Headmaster and the demonstration was staged only at the instigation of the Headmaster.

Charge No. 7

That Thiru Benedic Crisal, the Headmaster faked entries against his name in the Masters" Attendance Register by signing for the date 3.9.1999 as

if he was present while he was actually absent as detailed in charge 5 above and thereby committed grave offence of faking and manipulating

school records and forgery.

Points for consideration:

1. Whether the Headmaster was absent on 3.9.1999.
2. Whether the Headmaster has signed in the Masters" Attendance Register on a later date as through he was present on 3.9.1999.

Manager of the school has deposed before me narrating the charge. That the Headmaster was absent on 3.9.1999 and he put his signature in the

Masters" Attendance Register on 6.9.1999. The charge memo given to the Headmaster has been marked as Ext.39. Ex.A.40 is the memo given to

the Headmaster by the Administrator of the School. He issued this memo in the absence of the Manager as he was abroad and it has been given

for and on behalf of the Manager marking copies to the District Educational Officer, Kuzhithurai and Chief Educational Officer, Nagercoil. In the

memo the delinquent has been asked to give his explanation within three days from the date of receipt of the memo. But the Headmaster has not

responded in anyway even after the receipt of the memo though it is alleged in the memo that he has committed a very serious offence.

Charge No. 9

That Thiru Benedic Crisal, Headmaster of the School has failed to exercise effective supervision in the academic side of the school that he failed to

extract work from his assistants that he had not conducted intensive coaching for the pupils and that as a result, the percentage of passes in

S.S.L.C and Higher Secondary Public Examination of the year 1998 was poor and as a result the parents seek admission in other school providing

better education.

Point for consideration:

Whether the poor results in the SSLC and Hr. Secondary examination is due to the lack of supervision of Headmaster.

Management witness No. 1 deposes that the reason for the poor results in the Higher Secondary and SSLC Examination held in the years 1998

and 1999 was due to the failure on the part of the Headmaster to have effective supervision over the teachers.

Charge No. 10

That contrary to and in violation of the code of conduct for teachers that teachers should not participate in political activities. Thiru Benedic Crysal,

is actively engaged in political activities and he is a party ticket holder of the Tamil Manila Congress.

Point for consideration:

Whether the Headmaster involved in active politics violating the Code of Conduct.

Management witness No. 1 deposes that the Headmaster of the School is an active member of the political party T.M.C. and he holds ticket for

membership in the party. He says that he hold post in the teachers wing of the party. The delinquent Headmaster denies the charge. The

management has not placed any evidence supporting the oral testimony of M.W.1.

Charge No. 14

Whereas the Manager of the School visited the School on 19.4.1999 and found that Headmaster was not present and after waiting till evening in

the School he issued a memo regarding his absence, the Headmaster in his letter dated 14.5.1999 and 19.4.1999, stated that he was present in the

school thereby falsifying the statement of the Manager which is highly irregular.

Point for Consideration:

1. Whether the Headmaster was physically present in the School from 19.4.1999 to 28.4.1999.

2. Whether the Headmaster has signed for marking his presence from the period 19.4.1999 to 28.4.1999 on 29.4.1999.

3. Whether the Headmaster has made attempt falsify the statement of the Manager.

Management witness No. 1 says that he visited the School on 19.4.1999 and he was surprised to see that no one was there at School. According

to him the Headmaster and Assistant are expected to be in the school on all working days. Management witness No. 1 deposes that the

Headmaster was supposed to be in the school during summer vacation to attend office duties. The Headmaster did not attend school from

19.4.1999 to 28.4.1999, on 29.4.1999 when he turned up he signed for all these days from 19.4.1999 to 28.4.1999 and left the school after 45

minutes and the said act of the Headmaster amounts to manipulation and faking of attendance records.

Charge No. 15

That whereas the Manager had brought in certain changes in the day-to-day administration of the School from the School year 1999-2000 one of

them being that whenever the Headmaster had to go away from the School on leave or on some other official duty he should handover charge of

the school to Thiru Britto, Senior Assistant of the School. Thiru Benedic Crysar, the Headmaster had handed over charges of the School on

10.11.1999 to Thiru C.Jeyakumar, thereby disobeying the standing orders of the management.

Point for Consideration:

1. Had the Headmaster been given standing instructions to hand over charge to Thiru Britto in his absence by the Manager of the School.

2. Whether the Headmaster has given charge to C.Jeyakumar violating the instructions of the management.

Management witness No. 1, the Manager of the School states in his evidence that he had given instructions to the delinquent Headmaster to hand

over the charge of the office of Headmaster must be given to Mr. Britto, a Post Graduate Teacher of the School. Whereas the Headmaster handed

over the charge of the School on 10.11.1999 to one Jayakumar, Senior Assistant and violated his instructions.

Charge No. 16

That Thiru Benedic Crysar, the Headmaster had misappropriated a sum of Rs. 25,000/- (Rupees twenty five thousand only) entrusted to him for

remitting the money as endowment for obtaining recognition for the Higher Secondary Classes and Rs. 15,000/- for getting the stability certificate

of school building from the P.W. Department.

Point for Consideration:

Whether an amount of Rs. 40,000/- was entrusted to the delinquent Headmaster by the Manager of the School for the purpose of getting stability

certificate for the school building and for paying security deposit for endowment.

Management witness No. 1 the manager of the school says in his evidence that he paid the amount by two cheques drawn in favour of the

delinquent instructing him to obtain stability certificate from the competent authority for the school building and for paying deposit for endowment.

Ext.A.78 and A.79 is the reply notices issued by the delinquent. In the reply the delinquent has not denied the receipt of the amount. In Ext.A.79 it

is stated two cheques mentioned in your notice might have been given for the amount due to my client which is spent for the urgent need for the

school. In the explanation tendered also the delinquent admits the receipt of the amount. But he has not given the purpose for which it was spent.

The Headmaster has not given any statement of accounts stating the expenditure incurred utilising the amount. But the management has not

addressed any evidence but for the oral testimony of management witness 1 to prove the purpose for which the amount was given.

Charge No. 17

That Thiru Benedic Crysal, the Headmaster while filing counter to O.S. No. 283/1999, I.A. No. 277/1999 filed by Fr. Joseph, the Manager of the

St. Joseph's Higher Secondary School, Vizhunthayambalam, the Headmaster Thiru Benedic Crysal, had heaped abuses and slanders in the most

vulgar and indecent language against Fr.Joseph, the Manager and Miss. Rosammal, the Correspondent respectively of the St. Joseph Higher

Secondary School, Vizhunthayambalam which amounts to character assassination.

Point for Consideration:

Whether the delinquent Headmaster has stated abusive and slanders allegations in the most vulgar and indecent language against the Manager and

Miss. Rosammal, the Correspondent of the School in the counter filed by the Headmaster to I.A. No. 277/99 in O.S. No. 283/99 on the file of the

Principal District Munsif, Nagercoil.

Management witness No. 1 deposes that he filed suit as O.S. No. 283/1999 on the file of the Judicial District Munsif Court, Nagercoil against the

delinquent and he filed I.A. No. 277/1999 in the said suit for injunction. The

delinquent filed counter to the injunction application and in the counter filed by him to the I.A. The headmaster heaped abuses and slanders in most vulgar and indecent language against him and the Correspondent of the School Miss "Rosammal".

Charge No. 18

That whereas the Headmaster was instructed not to permit three persons. 1. Justin , 2. Alphonsal , 3. Ambrose to enter or to work in the school

even early on October, 1999. He continued to allow Alphonsal and Ambrose to sign in the Staff Attendance Register which is disobedience of

orders.

Point for Consideration:

Whether the Headmaster disobeyed the order of the Manager.

Management witness No. 1 says in his evidence that he had instructed the delinquent Headmaster not to allow one Alphonsal, Ambrose and Justin

to sign in the Staff Attendance Register. Ext.A.82 is the instruction issued by the management witness No. 1 to the delinquent asking him not to

permit these three persons to enter into the School.

Charge No. 22

Whereas it is the duty of Thiru Benedic Crysar, as Headmaster to see the preparation and submission of the monthly staff grant claims to the

Correspondent for her approval and transmission to the District Educational Officer. He is often slack in the very important part of his duties and

the Manager and Correspondent had to remind him several times and call for the explanation for the delay and that the Correspondent was put to

caution and adverse remarks by the District Educational Officer, Kuzhithurai and that due to the delay caused by the lethargy of the Headmaster,

teachers were put to hardship on several occasions.

Point for Consideration:

Whether the Headmaster has failed in his duty of preparing monthly staff grant claims and submitting it to the District Educational Officer.

Management witness No. 1 deposed before me that it is the duty of the delinquent Headmaster to prepare the monthly staff grant claims statements

with relevant records and to send the same to the Correspondent for verification and signature and then to present the statement in the Office of the

District Educational Officer before the 18th of every month and the Headmaster caused delay in doing his above work several times and thereby caused hardship to the staff of the school.

Charge No. 25

That Thiru Marcelin, the Office Assistant of the school is being harassed unjustifiably and on charge not true to facts by the Headmaster Thiru Benedict Crysar.

Point for Consideration:

Whether the Headmaster harassed the Office Assistant Marcelin alleging false charges.

Management witness No. 1 says in his evidence that the Office Assistant of the school Mr. Marcelin is one of his loyal servants and the

Headmaster was harassing him giving him memos stating false allegations management witness No. 26 also deposed that Ext.A.99 is the memo

given to him by the Headmaster and the contents of the same are false and he is unnecessarily harassed by the Headmaster.

Charge No. 26

That Thiru Benedict Crysar conducted the annual school day on 12-2-1999 without the knowledge of the Manager and Correspondent which is

proof of his defiance of authority and which discredited the management and alienating the public from the management.

Point for Consideration:

Whether the Headmaster conducted the annual school day on 12_2-1999 without the knowledge and consent of the Manager and the correspondent.

Management witness No. 1 says in his evidence that the Headmaster conducted annual school day on 12-02-1999 without the knowledge and

consent of the manager and correspondent which is the proof of the defiance of the authority.

Charge No. 28

That whereas the Manager himself conducted the school assembly on 31-1-2000 Thiru Benedict Crysar, the Headmaster and the Administrator

were present and the Manager declared to one and all present that the Administrator was his personal representative and that he had authorised

him to hoist the national Flag on School Assembly days. Thiru Benedict Crisal running between the assembly lines, shouted to the students that he alone was competent to conduct the school assembly and that none else (referring the administrator) would be allowed to have anything to do with it, thus openly disobeyed the orders of the Manager within minutes and thereby brought disgrace and humiliation to the Manger before the staff and students in the open assembly.

Point for Consideration:

Whether the Headmaster disobeyed the management and humiliated the manager before the staff and students.

Management witness No. 1 in his evidence says that he conducted the school assembly on 31.1.2000. During the assembly he Headmaster ran

between the assembly lines shouting that he alone was competent to conduct school assembly and none else could be allowed to have anything to

do with it. The Headmaster denied Ext.A.111 is the statement giving by the Office Assistant Marcelin about the occurrence to the Manager.

Charge No. 34

That whereas a holiday was declared for 13-2-1999 the day following the school day celebration on 12-2-1999. However, when the teacher

come to school on 15-2-1999 (Monday) they were asked by the Headmaster to sign for 13-2-1999 also as if the school functioned on that the

teachers obeyed his orders which in falsification of attendance and that on hearing that a complaint had been lodged by the management with Chief

Educational Officer the Headmastering fearing enquiry tampered with the masters' attendance register to show 13-2-1999 as a holiday which

again in tampering of school records.

Point for Consideration:

Whether the Headmaster tampered the masters' Attendance Register

Management witness No. 1 deposed before me that the Headmaster declared 13-2-1999 as a Holiday. When the school reopened on 15-2-1999

Monday the Headmaster instructed the teachers to sign for 13-2-1999 as though the school worked on that day. So a complaint was lodged with

the Chief Educational Officer, Nagercoil against the Headmaster. Fearing the consequences, the Headmaster tampered the entries by tearing out

the particular page of the masters" Attendance Register.

Charge No. 35

That Thiru Benedict Crisal, the Headmaster had among other actions against Tmt. Josephin Helen, assistant teacher of the school had been

insisting on her to go with him to several places implying for immoral behaviour in such places.

Point for Consideration:

Whether the delinquent Headmaster insisted Mrs. Josephine Helen to go with him to several places for immoral behaviour.

The Manager of the School Rev. Fr. S. Joseph deposed before me as Management Witness No. 1. He deposed in his evidence that he received a

complaint from Mrs. Josephine Helen in December 1999 but he was reluctant of including the complaint in the earlier charge memo to the

Headmaster as it would affect the personal life of the both the Headmaster and the teacher. Only after receiving the notice from the Headmaster

this complaint also was included in the charge.

28. The above referred details clearly shows that the Manager actively participated in the enquiry proceedings. The Manager as well as the

Correspondent were the star witnesses for the management before the enquiry officer. Majority of documents were produced only by the Manager

and he has given oral evidence to substantiate the charges framed against the petitioner. The evidence tendered by the Manager as M.W.1 was

taken note of by the enquiry officer and the decision against the petitioner was primarily on account of the said evidence.

29. The enquiry report was submitted to the Manager in his capacity as disciplinary authority. The report which contains appreciation of evidence

tendered by the Manager was again considered by the very same Manager. The Manager accepted the findings of the enquiry officer with respect

to the charges reported as proved by the enquiry officer. The enquiry officer in his report submitted that charges 17, 19, 20 and 21 were not

proved for want of evidence. The said finding was also considered by the Manager and he has decided to indicate his dissent and those charges

were treated as proved. However before coming to a conclusion that those charges were also proved notice was not issued to the petitioner.

30. The order of termination passed against the petitioner suffers from two

major defects. The Manager was the complainant, he was the prosecutor, he was the witness and he was also the Judge. The enquiry officer functioned only as a jury and the report submitted by him was approved by the Manager acting as the disciplinary authority. The findings arrived by the Manager was only on the basis of the evidence given by him before the enquiry officer and as such I have no hesitation to conclude that the punishment imposed on the petitioner is liable to be set aside on account of illegality which goes to the root of matter.

31. It is true that second show cause notice was issued to the petitioner along with a copy of the enquiry report. At that point of time no decision was taken by the Manager to deviate from the views expressed by the enquiry officer with respect to charge Nos. 17,19,20 and 21. The Manager called upon the petitioner to submit his explanation with respect to the proved charges. Accordingly the petitioner submitted his explanation with the support of documents. It was only at the time of considering the said explanation the Manager has taken a dissenting view with respect to charges 17,19, 20 and 21 and held that those charges were also proved. Before taking a contra view in respect of charges which were not proved, the Manager should have issued notice to the petitioner. Therefore the ultimate punishment is liable to be set aside also on account of serious procedural irregularity.

32. The way in which the proceeding was conducted shows that neither the enquiry officer nor the Manager have regard to the rule of law. The petitioner has filed a suit for permanent injunction against the Manager and the Correspondent. The enquiry officer was also a party to the suit. The Civil Court as per order dated 20.4.2000 enjoined the Manager, Correspondent and the enquiry officer from proceedings further with the enquiry proceedings. It is true that the order was restricted upto 29.6.2000. The affidavit of the petitioner shows that the provisions of Order 39 Rule 3 of the CPC was complied with immediately. Therefore the enquiry officer and the Manager had knowledge of the interim order. In fact in the subsequent communication sent by the Manager on 2.6.2000 there was a reference about the interim order passed by the Civil Court and the steps taken by him to vacate the said injunction by filing C.R.P. No. 1240 of 2000 before the High Court. Therefore both the enquiry officer as

well as the Manager was in the know of things with respect to the order of injunction granted by the Civil Court.

33. The question as to whether the Civil Court was having jurisdiction to issue such an order of injunction is entirely a different matter. The fact

remains that an order of injunction was granted by the Civil Court. The enquiry officer being a practising Advocate and the Manager being the

Head of an Educational Institution should have respected the orders of the Court. The proceedings shows that the enquiry officer submitted his

report on 22.4.2000. Therefore the enquiry report was submitted during the currency of the order of injunction granted by the Civil Court. In fact

there was no mention in the counter affidavit filed by the Manager that they were not aware of the order of injunction as on the date on which the

enquiry officer submitted his report. The Manager as per his letter dated 2.6.2000 informed the petitioner of the submission of enquiry report by

the enquiry officer on 22.4.2000. In the said communication the Manager has also stated that the enquiry report submitted to the Manager on

22.4.2000 was accepted by the Management and he was convinced that the petitioner is unfit to hold the office of Headmaster. The said letter was

issued on 2.6.2000. Therefore it is clear that the enquiry report was submitted on 22.4.2000 in spite of the order of injunction granted by the

Court directing the enquiry officer not to proceed with the enquiry.

34. Similarly the injunction was very much in operation against the management restraining them from terminating the service of the petitioner. In the

communication dated 2.6.2000 the Manager has informed the petitioner that they have accepted the enquiry report and arrived at a conclusion that

he was unfit to hold the office of Headmaster. The said decision was taken during the currency of the injunction by the Civil Court. It is true that the

Manager has filed a Civil Revision Petition against the order of the Civil Court dated 20.4.2000 in I.A. No. 314 of 2000 in O.S. No. 164 of 2000.

The order of injunction was suspended only on 28.6.2000.

35. It is trite that mere pendency of the revision would not operate as a stay of the order impugned in the revision. Therefore as on the date on

which the enquiry report was finalised and a decision was taken by the Manager to accept the report, injunction was in operation. In such

circumstances, I am of the view that the enquiry proceedings were conducted

only during the currency of the injunction order. The order of injunction was binding on the enquiry officer as well as on the Manager as they were parties to the proceedings. Their deliberate action in proceeding with the enquiry and the acceptance of the enquiry report are all procedural irregularities.

36. The learned senior counsel for the respondents contended that the Manager was in the helm of affairs and it was a one man show and as such it cannot be said that the punishment imposed by him as disciplinary authority is vitiated on account of his participation in the enquiry proceedings.

The said contention is liable to be rejected for more than one reason. Admittedly the institution had a Manager as well as a Correspondent.

Nothing prevented the Correspondent to adduce evidence on behalf of the Management. However for the reasons best known to the management, the Manager himself volunteered to give evidence.

37. In fact major portion of the evidence relied on by the enquiry officer was none other than the evidence of the Manager. Similar contention was

taken before a Division Bench of this Court in *Secretary St. Jude's College v. S. Robert* 2007(5) MLJ 1111. Before the Division Bench it was

contended by the Management that the Correspondent and Secretary of the College happened to be the constituents of the institution and as such

they have to be necessarily present in the committee while considering the enquiry report filed by the enquiry officer and therefore it was a matter

of necessity which cannot vitiate the proceedings. The said contention was negated by the Division Bench and ultimately the punishment was set aside.

38. It is true that this Court is concerned only with the decision making process. While considering the legality and correctness of the departmental

proceedings by invoking the power of judicial review this Court is not concerned with the merits of the matter. The primary issue before this Court

in such cases pertains to the decision making process. While deciding the matter if it is found that serious irregularities have been committed or

there were procedural violations which goes to the root of the matter, such decisions are liable to be set aside.

LEGAL POSITION:

39. The scope of judicial review by exercising certiorari jurisdiction was

considered by the Supreme Court in *B.C. Chaturvedi Vs. Union of India*

and others, , at page 759. The Supreme Court observed that Court/Tribunal cannot interfere with finding of fact based on evidence and

substantiate its own independent finding in the place of the finding arrived at by the departmental authorities. The Supreme Court indicated the

nature of judicial power thus:

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to

ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of

the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the

inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on

some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.

But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein,

apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is

entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate

authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the

authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules

prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion

or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and

mould the relief so as to make it appropriate to the facts of each case.

40. In *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, the Supreme Court

indicated that rules of natural justice are foundational and fundamental concepts and personal bias would vitiate the very proceeding. The dispute

involved in Rattan Lal Sharma's case was regarding participation of one of the members of the enquiry committee as a witness before the enquiry

authority in support of one of the charges against the delinquent. The Supreme Court held that the entire disciplinary proceeding was vitiated on

account of bias. The relevant paragraph would read thus:

One of the cardinal principles of natural justice is *nemo debet esse judex in propria causa* (no man shall be a judge in his own cause). The deciding

authority must be impartial and without bias. It has been held by this Court in *Secretary to Government, Transport Department v. Munuswamy*

Mudaliar that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one

of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision

of this Court in *State of U.P. v. Mohd. Nooh*. In the said case, a departmental inquiry was held against an employee. One of the witnesses against

the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to

complete the inquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding *inter alia* that the rules of natural

justice were grievously violated.

41. In *Secretary St. Jude's College v. S. Robert* 2007(5) MLJ 1111 the issue again was regarding participation of the Secretary and

Correspondent of the College in the enquiry proceedings. The Division Bench accepted the contention raised on behalf of the employee that the

manner in which the enquiry was conducted by the management was totally against the basic concept of the principles of natural justice in the sense

that the Secretary and Correspondent of the School having given evidence against the employee have chosen to sit as committee members to pass

the order of dismissal which is basically against the principles of natural justice. While concurring with the submission made on behalf of the

employee, the Division Bench observed thus:

10. Therefore on the face of it without going into the merits of the charges framed against the first respondent, we have no hesitation to come to the

conclusion that the impugned orders are devoid of any legal sanction, since it violates the principles of natural justice. Unfortunately, the persons

who has given evidence against the first respondent- lecturer have themselves decided to terminate the services of the first respondent, as

disciplinary authority which is not only against the legal norms but also against the principles of natural justice.

42. The active participation of the disciplinary authority in the enquiry proceedings and that too as the main witness to prove the charges against the delinquent vitiates the enquiry and the ultimate decision to terminate the service of the petitioner.

43. The second major irregularity in the proceeding relates to the decision taken by the Manager to treat the charge Nos. 17,19,20 and 21 as

proved inspite of the fact that the enquiry officer has given a clean chit to the petitioner in respect of those charges. The Supreme Court time and

again indicated that before taking a decision reversing the finding with respect to unproved charges, notice should be issued to the delinquent and

he should be given an opportunity to explain the position.

44. The Supreme Court in Punjab National Bank v. Kunj Behari Misra (1998) 7 SCC 84, observed that it will be most unfair and iniquitous that

where the charged officer succeed before the enquiry officer, he is deprived of representing to the disciplinary authority before that authority differs

with the enquiry officer's report and while recording a finding of guilt, imposes punishment on the officer. The Supreme Court further observed that

the charged officer in such circumstances must have an opportunity to represent to the disciplinary authority before final findings on the charges are

recorded and punishment imposed. The relevant observation reads thus:

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof,

whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such

charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its

findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to

persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already

observed, require the authority which has to take a final decision and can impose

a penalty, to give an opportunity to the officer charged of

misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

45. In Punjab National Bank case, the Supreme Court considered an earlier decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar,

etc. etc., . The legal position regarding issue of notice before arriving at a finding disagreeing with the finding given by the disciplinary authority was

indicated by the Supreme Court thus:

We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional

conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but

the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be

necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the

nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to

issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and

against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in

their entirety, it is another matter: but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or

all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on its own conclusions, it would be

necessary that the said conclusions should be briefly indicated in the notice. In this category of cases, the action proposed to be taken would be

based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the

other charges not held proved by the enquiring officer are, according to the dismissing authority, proved. In order to give the delinquent officer a

reasonable opportunity to show cause under Article 311(2), it is essential that the conclusions provisionally reached by the dismissing authority

must, in such cases, be specified in the notice. But where the dismissing

authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311(2) justify the view that the failure to make such a statement amounts to contravention of Article 311(2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in common sense manner, the respondent would not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in their entirety.

46. The issue as to whether an opportunity should be given to the delinquent officer before proceeding with the action to punish the employee while

disagreeing with the views expressed by the enquiry officer was considered by a Division Bench of this Court in *P. Govindan Vs. State of Tamil*

Nadu and The Registrar Tamil Nadu Administrative Tribunal, . The Division Bench speaking through His Lordship Mr. Justice P. Sathasivam (as

His Lordship then was) reiterated the legal position thus:

11. While it cannot be denied that the enquiry conducted leading to an ultimate finding is not final or conclusive and the disciplinary authority has

every right to either accept or differ from, the availability of such course of action to differ from the enquiry officer's view carries with it a greater

responsibility on the part of the disciplinary authority to indicate the necessary base for such different finding, so that the delinquent officer has full

opportunity to put forth his case. It is essential that in compliance of the principles of natural justice, the disciplinary authority has to record its

tentative reasons for disagreement, to enable the delinquent officer an opportunity to represent his case. Otherwise, the entire proceedings would

become so iniquitous that when the delinquent officer gets a favourable finding before the Enquiry Officer, he is totally at a loss to offer his

objection further before the authority who seeks to differ on the very same facts without any further material.

47. The learned Senior Counsel placed reliance on the judgment of the Division

Bench of this Court in Baskaran Vs. The Commissioner of College

Education and Others, in support of his contention that without impleading the present Headmistress the writ petition challenging the punishment

imposed on the petitioner is not maintainable.

48. The petitioner was terminated from service on 29.6.2000. The writ petition was filed on 13 July, 2000. The administration of the management

of the institution was taken over by the third respondent Congregation only on 1.9.2000 Therefore the petitioner was not bound to implead the

Headmistress appointed by the third respondent subsequent to their taking over the management. In any case, I am not directing the management

to reinstate the petitioner into service without conducting an enquiry by an impartial authority.

49. The factual matrix narrated above clearly shows that the enquiry was not conducted in the manner known to law. The procedural irregularities

committed by the Manager and the enquiry officer goes to the root of the matter. The irregularities are not curable. The decision making process

was in violation of the settled legal position. Therefore I have no hesitation in setting aside the order of termination.

50. The remaining question relates to the relief to be granted in the matter. I have not considered the merits or otherwise of the charges framed

against the petitioner. The charges were reproduced in the earlier paragraphs of this order only for the purpose of showing that the Manager

actively participated in the enquiry proceeding as a witness. The learned Counsel for the petitioner fairly submitted that he is not against the

decision but only against the decision making process. Therefore the arguments were not in respect of the merits of the charges and the correctness

of the finding recorded by the enquiry officer. Now that this Court is convinced that there is an inherent defect and irregularity in the decision

making process and that illegality is writ at large, the necessary consequence is only a fresh enquiry and not an automatic order of reinstatement of

the petitioner. There were thirty five charges framed against the petitioner. Charge No. 35 relates to a complaint given by a lady teacher accusing

the petitioner of committing acts which are unbecoming of a Headmaster. It is true that the petitioner has submitted his explanation that the said

complaint was preferred by the lady teacher on account of the influence exerted

by the Manager. However it is a matter of record that the lady teacher herself appeared before the enquiry officer and tendered evidence against the petitioner. The charges cannot be brushed aside solely on account of the fact that the enquiry was not conducted in a proper manner.

51. This Court exercising the power of judicial review under Article 226 of the Constitution of India is not expected to dwell into the facts of the case and arrive at a conclusion one way or the other. Once it is demonstrated that the enquiry was not conducted in a fair and proper manner and illegality and procedural irregularity are apparent, the course open to this Court is only to remit the matter to the disciplinary authority to consider the matter afresh. It is true that in exceptional circumstances, by considering the long delay and the mental agony suffered by the delinquent and other attendant circumstances, the relief could be moulded without dragging the parties to another round of litigation. However the present case is not one of such exceptional circumstances.

52. In *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, , The Supreme Court indicated the consequential order to be passed after setting aside the impugned order made in violation of the principles of natural justice. It reads thus:

6. ...The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But in the circumstances of a case the court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice the court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its case...

CONCLUSION:

53. The first respondent School is now administered by the third respondent. Therefore the matter is remitted to the third respondent for fresh enquiry. The third respondent is given liberty to appoint an enquiry officer within four weeks from the date of receipt of a copy of this order and to

proceed with the enquiry on the basis of the charge memos issued to the petitioner on 24.1.2000, 2.2.2000, 16.2.2000 and 31.3.2000 and the corresponding explanation submitted by him on 18.2.2000, 19.2.2000, 22.2.2000 and 4.4.2000. The enquiry shall be completed, by following the principles of natural justice, within a period of four months from the date of appointment of enquiry officer.

54. In the result, the impugned order dated 29.6.2000 is quashed and the matter is remitted to the third respondent for fresh consideration.

55. The writ petition is allowed as indicated above. No costs.