
(2005) 08 MAD CK 0091

In the Madras High Court

Case No : Writ Petition No's. 10036 and 10037 of 1996

D. John Thiruthuvadoss

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Citation : (2005) 08 MAD CK 0091

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : R. Parthiban, for the Appellant; R. Lakshminarayanan, Government Advocate (for R1 and R2), K. Alagirisamy, S.C. for T. Ravikumar, (for R3 to R7), for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—In W.P. No. 10036 of 1996, the petitioner is challenging the proceedings of the fourth respondent dated 20.5.1996 in and by which the petitioner's service as teacher came to be terminated with effect from 21.5.1996.

2. In W.P. No. 10037 of 1996, the challenge is to the appointment of the seventh respondent as Principal of the Union Teacher Training Institute, Viruthampet, by an order of appointment dated 25.1.1995 issued by the third respondent.

3. Heard the learned counsel for both sides.

4. Mr. K. Alagirisamy, learned senior counsel representing the third respondent states that the seventh respondent is no longer serving as the Principal as she has reached age of superannuation and therefore, nothing survives in Writ Petition No. 10037 of 1996 and accordingly, this writ petition is dismissed as having become infructuous.

5. As far as W.P. No. 10036 of 1996 is concerned, the brief facts which are required to be stated are that the petitioner, while he was working as a B.T. Assistant in the fourth respondent Institute, was placed under suspension

pending disciplinary action by an order dated 25.1.1995. Subsequently, he was issued with a charge memo. on 14.3.1995 in which 11 charges were levelled against him. The petitioner submitted his explanation on 28.3.1995 to the charges levelled against him. As the explanation submitted by the petitioner was not convincing, the third respondent School is stated to have appointed an enquiry officer to enquire into the charges levelled against the petitioner in the charge memo. dated 14.3.1995. The petitioner fully participated in the enquiry. On behalf of the management, M.W.1 to M.W.3 were examined and Exs.M.1 to M.32 were marked. On behalf of the petitioner, Exs.W.1 to W.9 were marked. The enquiry officer submitted his report dated 30.3.1996 holding that except charges 2, 3, 4 and 10, the other seven charges levelled against the petitioner were proved. The petitioner was subsequently issued with a second show cause notice dated 6.5.1996, to which also he submitted his explanation on 11.5.1996. Thereafter, the impugned order of termination came to be issued on 20.5.1996.

6. Assailing the order of termination, Mr. R.Parthiban, learned counsel for the petitioner contended that the enquiry was not conducted strictly in accordance with the principles of natural justice and that the 6th respondent, who is the Correspondent of the third respondent school, was one of the witnesses and hence, it will have to be held that because of his prejudice, the order of termination came to be issued.

7. As against the above submissions, Mr. Mr.K.Alagirisamy, learned senior counsel contended that the petitioner was extended every opportunity in the enquiry, as could be seen from the report of the enquiry officer himself and therefore, the allegation that the enquiry was not conducted in accordance with the principles of natural justice is not substantiated. As regards the examination of the Correspondent as a witness, the learned senior counsel would contend that he was not the disciplinary authority, and when he was competent to speak about the charges levelled against the petitioner, his role as a witness cannot be put against the management.

8. In the challenge made to the order of termination, another contention raised on behalf of the petitioner is about the role played by the 6th respondent as the Correspondent of the third respondent school when the proceedings of the Committee were held. Admittedly, the 6th respondent did not participate in the Committee Meeting when the issue relating to the petitioner was discussed. In fact, this writ petition came to be allowed earlier by this Court on 24.10.2000 on the above said ground. However, the school management preferred an appeal in W.A. No. 2028 of 2000 and a Division Bench set aside the order of the learned single Judge and remitted the matter back for fresh disposal on merits. Therefore, the last ground raised on behalf of the petitioner does not survive for consideration.

9. As far as the allegation of violation of the principles of natural justice is concerned, Mr. R.Parthiban, learned counsel for the petitioner contended that when M.W.2 was tendered for cross-examination and while the petitioner was

cross-examining him on certain occasions, at one point of time, the enquiry officer abruptly prevented the petitioner from continuing the cross-examination of the said witness and thereby, serious prejudice was caused to the petitioner. For considering the said allegation, I feel that the nature of the charges levelled against the petitioner requires to be looked into. The charges which are stated in the charge memo. Dated 14.3.1995 are as under:-

"1. You have abstained yourself from duty without prior permission of the Correspondent on 8.11.94 and also several days. By residing in the school campus, you had been in the habit of sending leave letters through your servant girl (aged about 10 years) after the commencement of the school work on 12.1.95.

2. You had been in the habit of coming late to the school and never attend the morning assembly.

3. You had been in the habit of leaving from the School after signing the attendance register without the permission from the Principal and Correspondent during working hours.

4. You had been assigned 4 periods of work per day. Instead of working 4 periods, you had worked for only one period daily and thereby caused great hardship to the students. You also never attended the special classes allotted to you by the head of the Institution.

5. On 24.10.94, the Principal and Correspondent orally gave you an instruction to check and verify the scientific articles purchased from Vijaya Instruments & Chemicals for Science Articles. Instead of obeying the instructions of the head of the Institution, you had without any justifiable cause applied EL for 21/2 days. Your action amounts to dereliction of duty because on those days you had attended the contact class in Theological studies. You took leave at the time when the department officers where about to inspect the school for renewal of recognition. The head of the Institution had to carry out the work with the help of others.

6. You have admitted yourself as a student in Theological study. You did not get previous permission from the management. Therefore, you are not bestowing full attention to the School work and thereby your action leads to detrimental to the welfare of the school.

7. You had failed in your duty to submit the notes of lessons to the head of the Institution in spite of repeated instructions.

8. You have created an ugly scene on 20.12.94 during the Christmas function in the premises of the Institution by quarrelling with other staff members in front of the students.

9. On 29.12.94, you had instigated outsiders to assault the peon and the watchman of the Institution. In addition, you also attempted to assault the

menials and also misbehaved with the head of the Institution.

10. You always used to refuse to receive the instructions from the head of the Institution, but on the other hand you used to play carrom-board with the newly appointed attender on 15.11.94 during working hours within the school premises.

11. On 8.10.94, you had caused obstructions, prevented and threatened the attenders and the head of Institution from carrying out the salvage work of removing of a tree which was causing danger to the newly built school compound wall. The Treasurer of the Union Teacher Training School Association was also present there and he was not spared by you."

10. As far as the cross-examination of M.W.1 was concerned, on a perusal of the report of the enquiry officer, I find that the said witness was examined on 6.9.1995. His chief-examination ended on 20.9.1995. Though initially the petitioner was not inclined to cross-examine him on that date, on a change of mind, he went ahead with the cross-examination that day itself and the said cross-examination continued on 23.11.1995, 6.12.1995 and 12.12.1995. In this context, for better appreciation, it will be appropriate to extract what has been stated by the enquiry officer himself in his report which is found in his report at page 4 :

"The C S E has also been putting several irrelevant questions to M.W.1 in spite of several oral instructions and warnings by the Enquiry Officer. By putting several irrelevant questions to M.W.1, the C S E could not complete his cross examination of M.W.1 even after putting as many as 78 questions and 4 days of cross examination on 6.9.95, 23.11.95, 6.12.95 and 12.12.95. Even though on 12.12.95, after cross examination of M.W.1 in past, the enquiry was adjourned for continuation of cross examination of M.W.1, on the adjourned date, the C S E has brought one Mr. Emmanuel and said that he would examine him as his witness since he was not well and so could not cross examine M.W.1 when he was informed by the enquiry officer that he could examine his witness only after management close its evidence, he said that he was prepared to continue the cross examination of M.W.1. All these things would go to show that the C S E was not interested in completing the enquiry and he was trying to prolong the enquiry proceedings under the pretext of continuation of the cross examination of M.W.1 by putting irrelevant and unwanted questions touching on the personal and private matters of M.W.1. So I have decided to close the enquiry proceedings and I am giving my findings based on the elaborate evidence already recorded and several documents filed by the management as well as the C S E."

11. A reading of the charges levelled against the petitioner in the charge memo. dated 14.3.1995 and the above extracted portion of the report of the enquiry officer, it can be easily visualised that the purpose for which the petitioner requested to continue with the cross-examination of M.W.1 was not to vindicate his stand as rightly concluded by the enquiry officer, but to drag on the enquiry proceedings indefinitely. Such a perception reached by the enquiry officer based

on the conduct of the petitioner in the course of his cross-examination of M.W.1 cannot be held to be unjustified. As pointed out by Mr. K. Alagirisamy, learned senior counsel, in the explanation dated 11.5.1996 submitted by the petitioner to the second show cause notice, he has not whispered anything about this aspect, viz., the denial of opportunity of further cross-examination of M.W.1. There is no reason as to why the enquiry officer should have abruptly closed the enquiry proceedings, thereby depriving any fair opportunity to the petitioner. Nothing is stated as against the enquiry officer in order to contend that the enquiry officer was one-sided or was prejudiced against the petitioner. The enquiry officer, who has been appointed by the disciplinary authority to conduct an enquiry in the misconduct alleged and submit his report cannot be expected to remain a silent spectator to watch the proceedings even if the delinquent makes any attempt to make the enquiry proceedings a mockery. Therefore, as the Presiding Officer of the domestic enquiry proceedings, the enquiry officer can assess the situation to best of his eminence and satisfaction and can cut short the course of cross examination when he finds that the attempt of the delinquent was only to malign a witness or drag on the proceedings in an endless manner. I, therefore, do not find any infirmity in the proceedings of the enquiry officer in preventing the petitioner's prolongation of the lengthy cross examination.

12. On the other hand, the very fact that the petitioner could get along with the cross-examination of M.W.1 on four different dates itself suggests that every opportunity was extended to the petitioner for the cross-examination of M.W.1, but the petitioner has not taken pains to point out as to what were the pertinent questions which he wanted to put to M.W.1 by way of cross-examination so as to vindicate his stand with regard to the charges levelled against him in the charge memo. dated 14.3.1995. The enquiry officer has recorded in his evidence that in the four days of cross-examination, the petitioner had put as many as 78 questions to M.W.1. A perusal of the charges mentioned in the charge memo. dated 14.3.1995 makes it clear that all the charges relate to either the petitioner's absence or his indifferent attitude in discharge of his duties by not submitting certain reports or making certain verifications of certain materials belonging to the school. In such circumstances, the stand of the petitioner that he was put to serious prejudice by not being allowed to continue with the cross-examination of M.W.1 beyond 12.12.1995, in my opinion, was nothing but an attempt to keep the enquiry proceedings alive eternally and thereby prevent the management from proceeding further with the disciplinary action initiated against the petitioner.

13. For all the above reasons, I am unable to accept the contentions raised on behalf of the petitioner that the enquiry proceedings were vitiated on the ground of violation of the principles of natural justice.

14. As far as the examination of the 6th respondent, who is the Correspondent of the third respondent School as one of the witnesses in the enquiry is concerned, though he is the Correspondent of the third respondent Institute, so long as he

was a witness to the instances which formed the basis for the issuance of the charge memo. dated 14.3.1995, there is nothing wrong in the said person being examined as a witness simply because he is also the Correspondent of the third respondent Institute. It is not the case of the petitioner that the Correspondent himself is the disciplinary authority, and therefore, he cannot be the Judge of his own cause. It is also not in dispute that the Managing Committee consisting of certain other members is the disciplinary authority and that the decision was taken by that Committee to proceed against the petitioner. In fact, the 6th respondent, though he was one of the members of the committee, requested himself to be excluded from the proceedings when the issue relating to the disciplinary action against the petitioner was transacted by the Committee on 20.5.1996. Therefore, it cannot be held that merely because the 6th respondent is the Correspondent of the third respondent School, he ought not to have been examined as a witness in the domestic enquiry. Therefore, the said contention of the petitioner cannot also be accepted.

15. Since both the grounds raised by the petitioner in challenging the order of termination do not merit any consideration and in the absence of any other valid ground in the challenge made to the order of termination dated 20.5.1996, there is no scope to interfere with the order impugned in this writ petitioner. Therefore, the writ petition fails and the same is dismissed. No costs.