

(2003) 08 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 9765 of 1998

G. Masilamani

APPELLANT

Vs

Joint Director of School Education, (Secondary Education)
and Others

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 08 MAD CK 0009

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : K. Chandru, for K. Sridhar, for the Appellant; Sivashanmuga Sundaram, A.G.P. for Respondents 1-3 and K. Alagirisamy, for R. Kannan, for Respondent 4, for the Respondent

Judgement

P.K. Misra, J.—The petitioner was working as B.T. Assistant (Selection Grade) under the fourth respondent school, which is a private

aided minority school. It appears that the petitioner on an earlier occasion protested against the action of the school on the question relating to

appointment of Headmaster and even a civil suit had been filed. It is alleged that thereafter the school is having a vindictive attitude towards the

petitioner. While the matter stood thus, some teachers including the petitioner jointly submitted a petition to the Chief Minister's cell alleging about

the delayed payment of monthly wages, bonus and other dues. Such action of the petitioner and other teachers added fuel to the fire and gave rise

to increased ire against the petitioner. Against a few of such teachers, departmental proceedings were initiated. Similarly a proceeding was also

initiated against the petitioner. Subsequently, the petitioner was placed under suspension which was challenged by the petitioner in W.P. No.

17172 of 1997 and subsequently a charge-memo containing four charges was issued to the petitioner, which are to the following effect :-

1. Thiru G. Masilamani, Rengarajan and Ramanujam teachers, have petitioned to the Chief Minister cell alleging that the payment of monthly

salary annual increment of such other payments was not made in due time. The District Educational Officer, Virdhachalam, after having examined

the accounts and records has come to a conclusion in his enquiry that the allegation in the petition was false.

2. Without giving details to Mailoham, Perumal, Subbiah, Thiagarajan and Kaliamoorthy and after getting their signatures, you have filed a writ

petition against the school. The above five persons have informed us in writing that you have filed the writ petition by misusing their names. This is

against the school.

3. You are teacher of 9th standard, without teaching lessons and by calling the girl students nearer you made astrological prediction and mischief

by holding their hands. The school lost respect among girl students and their parents. Your action has brought a bad name.

4. You lodged complaint with the police stating that you were threatening and asked to sign in blank white papers, when we handed over the

suspension order.

The petitioner submitted his explanation denying the allegations made against him. In respect of Charge No. 1 he submitted that since there was

some delay in payment of pongal bonus and monthly salary, a representation has been made. In respect to Charge No. 2, he has stated that the

said writ petition has not been filed by him and has been filed by somebody, who was not at all related to him. He denied Charge No. 3 and

submitted that he was made to sign in blank paper. A departmental proceeding was thereafter held and enquiry was conducted on the allegations

contained in Charge Nos. 1 and 4. The enquiry officer found that those two charges have been established. Thereafter, an order was passed

terminating the petitioner from service.

2. It is the case of the petitioner that such order of termination without prior approval from the competent authority, as envisaged u/s 22(1) of the

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, is illegal. It has been further submitted that principles of natural justice had been

violated. It is further contended that the impugned order is in violation of Section 22(1) of the Tamil Nadu Recognised Private Schools (Regulation)

Act, 1973. It has been further contended that the impugned order of termination is also vitiated by legal malice. It is also indicated that there was

no breach of conduct as enumerated in Appendix II and ventilating genuine grievance and police complaint for personal protection cannot be characterised as misconduct warranting termination.

3. Counter affidavits refuting the contentions made in the writ petition have been filed on behalf of the respondents. Apart from justifying the action,

it has been stated that in relation to Charge No. 3, in the interest of justice the school authorities did not hold any formal enquiry with a view to

protect the name of the institution as well as to protect the girl students. A plea has been taken that the school being a minority institution, writ

petition would not be maintainable and at any rate the petitioner should not be reinstated in service.

4. At the time of hearing, the learned senior counsel appearing for the petitioner has contended that the alleged misconduct in Charge Nos. 1 and 4

do not come within the misconduct as enumerated in Appendix II and even assuming that these allegations constitute some misconduct, punishment

of termination from service against the petitioner who tried to ventilate his grievance is improper. This submission of the learned counsel for the

petitioner appears to be justified. The alleged misconduct as enumerated in Charge Nos. 1 and 4 by no stretch of imagination can be characterised

as breach of conduct as enumerated in Appendix II. The allegations are not such which can be characterised as per-se misconduct. Even assuming

that there is some truth in the allegations, the punishment of termination from service appears to be disproportionate.

5. In view of the above conclusion, in normal course, reinstatement in service would have been ordered. However, the submission of the learned

senior counsel for the respondent No. 4 that other serious lapses on the part of the petitioner, as reflected in charge No. 3, cannot be lost sight of

and it is a case where the management has lost confidence in the petitioner. It has been further indicated that since it was impracticable to hold an

enquiry, particularly with a view to protect the fair name of the institution as well as the concerned girl students, the petitioner should not be

reinstated in service.

6. The petitioner of course characterised such allegations as untrue. As observed by the Supreme Court in Union of India and another Vs. G.

Ganayutham (Dead) by LRs., it may be impracticable to hold enquiry into such allegations at this distant point of time. On the other hand the

submission of the learned counsel for the respondent is that the management has lost confidence in the petitioner and a direction regarding

reinstatement would not be proper. It is to be kept in view that the respondent No. 4 is a minority institution and has got some leeway.

7. Having regard to all these aspects and keeping in view the peculiar facts and circumstances of the case and the principles enunciated in

Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, , the writ petition is disposed of with the

direction to the fourth respondent to pay a consolidated sum of Rs. 2,00,000/- as compensation within three months from the date of receipt of the

order.

8. Subject to the aforesaid observations, the writ petition is disposed of. No costs.