

(2011) 07 MAD CK 0102

In the Madras High Court

Case No : Writ Petition No. 14014 of 2009 and M.P. No. 2 of 2009

G. Menaka

APPELLANT

Vs

The Chief Educational Officer, The District Education Officer
and The Correspondent, Singarampillai Girls Higher
Secondary School

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 2(1), 2(7)
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 13(5)

Citation : (2012) 1 MLJ 1089

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R.Yashod Vardhan, SC for S. Selvathirumurugan, for the Appellant;
N. Subbaih, Spl. G.P. for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition, seeking to challenge an order of the third Respondent dated 30.06.2009

and after setting aside the same seeks for an employment till the end of the academic year 2009-2010 on re-employment basis.

2. The Petitioner is employed as a PG Teacher in the third Respondent school since July 1981. The third Respondent school is a private school

within the meaning of Section 2(7) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (for short Private School Act). The

school is also receiving cent percent grant towards salary of teachers and other persons employed in the school as well as Grant towards

maintenance. Subsequently, the Petitioner was promoted to the post of Assistant Headmistress in the year 1993. Thereafter, she was promoted as

Headmistress of the third Respondent school in the year 1998. She had reached the age of retirement on 30.06.2009.

3. As per the orders of the Government which is in force and which are also referable to the "Grant-in-Aid" Rules viz., G.O.Ms. No. 1643

Education Department, dated 27.10.1988, a Teacher who reaches the age of superannuation during the middle of the school year is entitled for re-employment. There are only two conditions prescribed viz., that the character and the conduct of the teacher should be satisfactory and the teacher must be physically fit to continue in service.

4. The said Government Order was in continuation to the earlier order of the Government, which was issued in the year 1959. The purpose of

issuing such an order is that if a Teacher retires in the middle of the academic year that may be inconvenience to the students studying in the school

and it will result in academic disruption. Therefore, the purpose of the said order is not based upon any extra monetary benefit for a retired school

teacher nor it imposes obligation on the school Management with any financial responsibility. But it is purely based upon the interest of the students

studying in the private school. In the said G.O.Ms. No. 1643 dated 27.10.1988, it is also stated that the school concerned even while proposing

re-employment should send the pension proposals of the teacher to the Accountant General one year before the date of their retirement.

5. When the Petitioner had reached the age of superannuation on 30.06.2009, it certainly fell during the academic year 2009-2010. The term

academic year is defined u/s 2(1) of the Private Schools Act as the year commencing on the first day of January or June as the case may be. The

Petitioner claims that she has a good academic record during her tenure as a PG Teacher and also as Headmistress of the school. She also applied

for the grant of re-employment till the end of the academic year viz., till 31.05.2010 and produced a medical fitness certificate issued by Resident

Medical Officer of Kilpauk Medical College and Hospital. But the third Respondent, by the impugned order dated 30.06.2009 informed the

Petitioner that her request for reemployment was rejected and she will be relieved from duty on 30.06.2009 and she was also directed to entrust

the post to one Mrs. Suseela Ramakrishnan.

6. Anticipating that the Petitioner may move this Court by way of civil suit, the

third Respondent had also filed a caveat before the original side and also before the City Civil Court. However, the Petitioner filed the writ petition as the third Respondent school is amenable to writ jurisdiction of this Court and to enforce the statutory service conditions open to her.

7. The writ petition was admitted on 23.07.2009. Pending the writ petition, this Court granted an interim stay. This Court referred to the judgment

of this Court reported in 2006 WLR 633 [C.Harris v. The District Elementary Educational Officer, Coonoor -2, Nilgiris District and another] in

support of the reason for granting the interim order.

8. Aggrieved by the grant of interim stay, the third Respondent filed M.P. No. 3 of 2009, seeking to vacate the interim order together with

supporting counter affidavit dated 04.08.2009.

9. In the counter affidavit filed by the third Respondent, the reasons for not granting re-employment was stated in paragraph 11, which is as

follows:

11. In so far as the physical fitness is concerned, it was felt that during her service from 16.08.1985 to 1995, the Petitioner had taken 280 days, by

way of an Medical Leave and on that basis it was felt that the contention that she was physically fit enough could not be taken as correct in view of

herself taking the leave on medical grounds and as such, the inconsistency in her stand was clearly noticed by the members.

10. It was also stated by the third Respondent that the Petitioner's attendance was not punctual. Since the Management is already having another

PG Teacher in Geography to handle the subject, it will not cause any disruption. In paragraph 13(g) of the counter affidavit, it was stated as

follows:

13(g) The Petitioner was the Head Mistress of the School for more than 11 years, and in the event of the appointment of the Petitioner by giving

her reemployment it would delay the appointment/promotion to the other eligible teachers waiting in the order of seniority possessed with all the

prescribed qualifications.

11. The reason for not bringing this fact earlier during the tenure of the term of 28 years of service of the Petitioner, out of which she was

headmistress for 11 years, in Paragraph 23 of the counter, it was stated as

follows:

23. Though, specific instances of this nature was brought to the notice of the Members of the School Committee by keeping the interest of the

Petitioner at the time of her retirement, the School Committee took a lenient view in not bringing those factors on record, in order to avoid any

blemish, though she suffered the same, during her employment with the third Respondent.

12. The District Educational Officer, Chennai North, the second Respondent herein also filed a counter affidavit, dated Nil (2010). In the counter

affidavit, he had stated that there are three conditions in the Government Order and the Petitioner has fulfilled only two conditions viz., that work

and conduct are satisfactory and that she is possessing good health. It was stated that the pension proposals were not sent to the Accountant

General one year before the date of retirement and therefore, the Petitioner was not eligible for re-employment.

13. When the vacate stay application filed by the third Respondent came up for hearing, the learned Judge of this Court after elaborate arguments,

passed a detailed order dated 17.08.2009 and dismissed the vacate stay application and the interim stay granted by this Court was confirmed. The

learned Judge took exception to the fact that the School Management was pleading the ground for not considering the re-employment and that the

allegations of her conduct and character not being satisfactory was an afterthought as these reasons did not found reflected in the order denying

reemployment. The learned Judge also held that such reasons cannot be adduced in the counter affidavit and these facts were never put to the

Petitioner while she was in service.

14. However, the third Respondent school Management filed a writ appeal against the interim stay before the Division Bench in W.A. No. 1804 of

2009. After notice to the Petitioner, the writ appeal came to be allowed by a final order dated 15.02.2010. The Division Bench after allowing the

appeal against the interim order recorded the findings in paragraph 8, which is as follows:

8. In our view, in the facts of the present case, the Appellant - Management was justified in the view that it has taken. Though we would like to

state that these are observations for the purpose of deciding the interim

application, which is because the learned Senior Counsel appearing for the first Respondent would like the writ petition to survive and in these circumstances, we are inclined to allow this appeal and set aside the order passed by the learned single Judge.

15. Therefore, the main writ petition was directed to be disposed of by this Court. If the Petitioner is not allowed to be reemployed, then the official Respondents may not release the grant for the re-employment period and if ultimately, the Petitioner succeeds, the question as to who will bear the salary for the said period of re-employment was also considered by the Division Bench and in Paragraphs 9 and 10, the undertaking given by the learned Counsel for the third Respondents is also recorded by the Division Bench, which is as follows:

9. We record the statement of Mr. R.Subbiah that in the event the first Respondent succeeds in the writ petition, the Appellant - Management will be liable to make payment of the salary to the first Respondent in respect of the period she could not work in view of the declining of the interim order. The first Respondent was entitled to work in the Appellantschool from 1.7.2009 until 16.12.2009, before the Division Bench granted the stay. As far as that salary is concerned, she would have been entitled to full pay, had she worked during that period.Mr. Subbiah, however, submits that the first Respondent did not turn up for work, whereas Mr. Yashod Vardhan submits that the Appellant-Management did not allow her to join.

10. These issues have to be considered by the learned single Judge in order to decide as to whether the first Respondent in any case be paid salary for the period between 1.7.2009 and 16.12.2009. As far as the question whether the first Respondent should be paid her salary from 17.12.2009 onwards until the end of the academic year is concerned, that will be another issue that has to be decided by the learned single Judge. That will, of course, as stated above, depend upon the fact whether the Appellant succeeds in the writ petition or not.

16. Thus, the matter is before this Court for final disposal. Mr. R.Yashod Vardhan, learned Senior Counsel appearing for the Petitioner submitted that the question relating to the right of the teachers for having re-employment benefits granted as per the Government Orders and also whether the

Management can plead that the conduct and character of the teacher were not satisfactory at the tail end of the service came up for consideration

before a Division Bench of this Court in W.A. No. 1179 of 1993 and batch cases in S.Sundaram v. The Secretary, C.S.I.Diocese of Madras,

Madras -86, dated 06.09.1994. The Division Bench, in paragraph 11 and 16 observed as follows:

11. ... It is the very same teacher who has been selected by the private management and continued in their service upto the age of superannuation

and has been found fit for further continuation, is directed to be re-employed in order to ensure that the benefit of their service is available to the

students during the rest of the academic year. The Government Order serves a great purpose, because a new teacher who would be recruited

during the middle of the academic year, would not be able to immediately assess the standard of the class and also the ability of each of the

students in the class and it is possible that the rest of the academic year would be lost in getting to know the same time which is necessary for

proper teaching. As a result of new appointment in the middle of the academic year, the students will be deprived of the benefit of teaching by the

old and experienced teacher during the rest of the academic year which may affect their performance in the examinations to be held at the end of

the academic year and it would also tell upon the standards and the results of the examinations of the students.

16. ...It is only on re-employment with a view to ensure continuity of the benefit of teaching by the teachers who attain the age of superannuation

during the middle of the year, for the rest of the academic year. Therefore, the measure itself is for a short period till the end of the academic year

applicable to such of the teachers who retire during the academic year. It does not take away the right of the Management to fill up the said post

by recruitment at the end of the academic year.

With these above observation, the Division Bench held that the measure of re-employment as introduced by the Government Order is applicable

even to minority institutions having protection under Article 30(1) of the Constitution.

17. In the very same case, on behalf of some other school management, it was pleaded that the teacher who was before the Court and whose

character and conduct was not satisfactory, the Division Bench observed in Paragraph 17, which is as follows:

17. ...It has been stated that after due consideration, it was decided by the Committee not to re-appoint him from 1.09.1993 in view of his work

and conduct not being satisfactory. This decision, in our view, has been taken without looking into the records of the teacher. The Petitioner has

produced merit certificates issued to him by the very same Management at pages 35 to 40 which cover the period upto March, 1992, whereas he

attained the age of superannuation in August, 1993. These merit certificates are not disputed. As far as the conduct is concerned, No. material is put

forth.

18. Therefore, in the light of the above, the learned Senior Counsel submitted that the grounds urged by the third Respondent after the age of

retirement of the Petitioner cannot be taken into account and they were invented for the purpose of denying her the right of reemployment. A similar

contention that the appointment of the successor will be delayed if re-employment is granted to the Petitioner as pleaded in the counter affidavit

was rejected by the Division Bench in Sundaram's Case (cited supra).

19. The learned Senior Counsel for the Petitioner also referred to the judgment of the Division Bench in *The Secretary, Sridevi Girls Hr. Sec.*

School Vs. S. Vijayalakshmi Amma and The Government of Tamil Nadu, for contending that though the Petitioner had reached the age of

superannuation on 30.06.2009, she is eligible for extension as per the Government Order as interpreted by the Division Bench in paragraph 2 of

the said judgment. It was observed as follows:

2. ...A plain reading of the above paragraph makes it clear that any teaching staff, who retires in an academic year 14 should be sanctioned re-

employment from the day following the last day of the month in which the said staff attains the age of superannuation and that should be extended

upto the day on which the school closes for vacation. From the above extract, we do not find any scope to conclude that the expression ""middle of

the academic year"" would indicate the period beyond the month of December of the relevant academic year.

20. Per contra, the learned Counsel appearing for the third Respondent School referred to the judgment of the Division Bench in *The Secretary,*

Kumaran Middle School, Ramanathapuram District v. V.Panchavarnam and Ors. in W.A.(MD) No. 169 of 2007 dated 05.09.2007 (CDJ 2007

MHC 5153) for contending that the Division Bench had stated that discretion has been conferred on the Management to grant extension or not.

But the passage quoted by the counsel is tone out of context. In paragraphs 13 and 14, it was observed as follows:

13. According to Condition No. 1, the character and the conduct of the teacher should be satisfactory for granting extension on re-employment

basis beyond the date of attaining the age of superannuation. The said condition No. doubt incorporates in itself a discretion, 15 of course, a

guided discretion conferred on the Management to grant extension or not to grant extension on the basis of the character and conduct of the

teacher concerned. Admittedly, disciplinary proceedings were initiated and a charge memo was issued against the writ Petitioner on 05.04.2005

and pending enquiry, he was also placed under suspension with effect from 25.04.2005. At the conclusion of enquiry, the Enquiry Officer submitted

a report holding that four, out of five charges, stood proved. It is also not in dispute that based on the said enquiry report, a second show cause

notice was issued to the writ Petitioner. But, ultimately, as the writ Petitioner was due to retire on superannuation shortly, the Management thought

it fit to drop all further proceedings and allow him to retire on superannuation.

14. The fact that the Petitioner was not awarded any punishment and the disciplinary proceedings were closed will not be enough to hold that the

character and conduct of the writ Petitioner was without any blur or blemish. The very fact that he had to face a disciplinary enquiry in which the

charges levelled against him were found to be proved, is a valid ground to take his conduct and character not satisfactory for the purpose of

granting extension on re-employment basis. Therefore, the refusal on the part of the Management to extend the service of the writ Petitioner on re-

employment basis beyond the age of superannuation, according to the considered view of this Court, is justifiable.

But in the present case, there was No. disciplinary action taken against the Petitioner and the reasons which are now adduced were stated for the

first time and it was also not reflected in the order denying her right of reemployment.

21. The learned Counsel further referred to the judgment of this Court in K.Rudrakoti v. The Chief Educational Officer, Madras-15 and Ors. in

W.P. No. 10791 of 1996 dated 31.10.2002 (CDJ 2003 MHC 006) for contending that it was not necessary to conduct an enquiry to assess the

character and conduct of a teacher and for that purpose, he relied upon the following passage found in paragraph 12, which is as follows:

12. To adjudge the character and conduct of a Teacher, it is not necessary that the management or the employer has to conduct an enquiry and

thereafter depending upon the truth or otherwise of the complaints, his character and conduct should be adjudged. It is the subjective satisfaction

of the third Respondent school as to the conduct and character of the Petitioner, which the third Respondent school has to assess.

He also stated that pension papers have not been forwarded and that was also taken note of by the learned Judge in that case.

22. Thereafter, the learned Counsel referred to the judgment of this Court in B.Selvaraj and Anr. v. The Chief Educational Officer and Ors. in W.P.

No. 20273 of 2006 dated 28.07.2006 (CDJ 2006 MHC 1936). In that case, the Court relied upon the averments contained in the counter

affidavit and held that the character and conduct was not satisfactory. It also referred to the allegations made in Paragraph 6 of the said judgment

regarding the conduct of the teacher. In that case, the teacher was accused of giving a wrong community certificate, which was also under enquiry.

In paragraph 6, it was observed as follows:

6....Hence, the corRespondent of the 3rd Respondent by his proceedings dated 12.09.2005 issued a show cause notice to the Petitioner that why

disciplinary action should not be taken against him. As the Petitioner's reply was not satisfactory the concerned educational authorities were

addressed in this regard for further course of action. The enquiry is pending before the educational authorities.

23. He also referred to another Division Bench judgment of this Court in G.Annamalai v. The Joint Director (Higher Secondary) College Road and

Ors. in W.A. No. 1226 of 2003 dated 05.01.2007 (CDJ 2007 MHC 623), wherein the Division Bench upheld the order of the learned Judge in

holding the teacher was not having satisfactory character and conduct. For arriving at the finding, the Division Bench in paragraph 9 held as

follows:

9. In the case on hand, it is the specific case of the management that the Appellant's conduct is not satisfactory and he was imposed with punishment of withholding of increment for one year without cumulative effect for misconduct and the appeal filed against the said order of punishment was also dismissed by the Joint Director of School Education and therefore the management rejected the request for re-employment of the Appellant.

24. The learned Counsel lastly referred to the judgment of this Court in S.Ekambaram v. The Chief Educational Officer, Panagal Building and Ors.

in W.P. No. 19750 of 2006 dated 20.12.2006 (CDJ 2007 MHC 660). In that case, while denying the relief to the teacher, the Court recorded the following finding in paragraph 4, which is as follows:

4....Therefore, it is clear that whether the conduct and character of a teacher is satisfactory for the purpose of extending the period of service

beyond the period of superannuation is for the management to decide on the facts and circumstances of the case. This Court would not interfere in

such decision unless it is shown that such decision has been taken by the management in an arbitrary manner. On the facts of the case on hand, it is

clear that disciplinary proceeding initiated against the writ Petitioner, based on the charge framed are pending against the Petitioner, and it is stated

by the third Respondent that those charges are serious in nature and, therefore, based on these facts, the third Respondent has taken a decision

that it shall not permit the Petitioner to continue in service beyond the date of superannuation.

It is not clear as to how these judgments will have any assistance to the case of third Respondent.

25. On the other hand, all the cases cited by the learned Counsel for the third Respondent are distinguishable. In each of the case, the Court was

satisfied about the decision taken by the School Management regarding the unsatisfactory character of the teacher concerned and there were

materials produced to the satisfaction of the Court. On the other hand, in the present case, the materials produced by the third Respondent is for

the first time and not even reflected in the order denying re-employment. The reason given that the school Management had withheld these

information to avoid any blemish by taking a lenient view cannot be swallowed by this Court.

26. In this context, it is necessary to refer to the judgment of the Supreme court in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur

Chenai and Others, . In paragraph 24, the Supreme Court observed as follows:

...When an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or on the grounds available

therefore in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the

affidavit dehors the order or for that matter dehors the records

27. When a school teacher had worked for 28 years without any cause for complaint and out of the 28 years, she had also headed the school as

Headmistress for over 11 years, the school Management suddenly cannot think of edging her out by trotting out certain complaints which did not

even form part of the records at the time when they denied her request for re-employment. Though the learned Counsel for the third Respondent

attempted to do certain complaints from the parents regarding admission procedure adopted by the Petitioner, under Rule 13(5) of Tamil Nadu

Private School Rules, admission of students is an exclusive responsibility of the Headmaster. The third Respondent school failed to establish that

the conduct and character of the Petitioner was unsatisfactory.

28. The third condition regarding sending the pension proposals, one year in advance cannot be said to be a mandatory condition. It is only

directory and further, forwarding of such application is the responsibility of the School Management and it cannot be thrust on the school teacher.

In any event, that is not an essential condition considering the scope of the Government Order relating to re-employment. If the purpose of re-

employment is based upon academic continuity, then sending pension papers cannot be made as pre-requisite for grant of re-employment. The

delay in sending such application form can only be at the worst, can delay pension being sanctioned to a school teacher. Further, during the re-

employment period, the school teacher is not eligible for the pension and that will get postponed till the teacher was engaged during the

reemployment period and pension will be paid only after the re-employment period comes to an end.

29. Before parting with this case, it is necessary to refer to the judgment of the Supreme Court in Deepa Augustine v. Geetha Alex, (2008) 16

SCC 526, at page 528, wherein, the Supreme Court dealt with the Rules framed by the Kerala Government relating to the appointment of a

Teacher. The Supreme Court observed as follows:

This will be doing a great harm to the interest of the students. The paramount consideration should be the interest of the students that the person

who is being appointed to teach a subject should possess minimum qualification of that subject.

30. Though the observation was made in the context of selection of a teacher, the said observation will apply to the case on hand. Ultimately, if the

conditions stipulated in the GO are fulfilled, the teacher will be entitled for re-employment as a matter of right.

31. Since the re-employment period had already come to an end and the Petitioner was denied serving the institution, it is for the third Respondent

school to pay the wages for the said period from 01.07.2009 to 31.05.2010. The liability to pay had also been accepted by the Management

before the Division Bench in the passages extracted above. Therefore, it does not require any further finding as to who should be held liable to pay

the said amount.

32 In view of the above, the writ petition stands allowed. The impugned order stands set aside. The third Respondent Management is hereby

directed to pay the entire wages for the period of re-employment to the Petitioner within a period of eight weeks from the date of receipt of the

order without fail. However, there will be No. order as to costs. Consequently, connected miscellaneous petition is closed.