

(2000) 03 MAD CK 0098

In the Madras High Court

Case No : Writ Petition No. 10425 of 1998

G. Purushothaman

APPELLANT

Vs

Punjab Association and The Principal, M.G.R. Adarsh Public
Matriculation Higher Secondary School

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 39

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 2(7), 26, 29

Citation : (2000) 03 MAD CK 0098

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : K. Chandra for D. Hariparanthaman, for the Appellant; Sivathanu, for Surana and Surana for Respondents, for the Respondent

Final Decision : Dismissed

Judgement

T. Meenakumari, J.—The writ petitions are for the issue of writ of certiorarified mandamus to call for the records from the file of the first Respondent pertaining to the proceedings in reference No. PA/GS/HRD/98 and quash the order dated 25.6.1998 and consequently direct the Respondents to forbear from terminating the services of the Petitioners.

2. By the impugned proceedings, the first Respondent has declared the Petitioners as surplus and sought to terminate them by giving a month's notice.

3. The necessary facts in the writ petitions are as follows:

The Petitioners are qualified Post Graduate Teachers in Zoology. They were appointed by the first Respondent by order dated 22.12.1992 and 8.6.1994 respectively. In the appointment order, it was stated that it was only for a temporary period. It is not in a dispute that the first Respondent is an Association running several schools and they come within the definition of "Private Schools" within the meaning of Section 2(7) of the Tamil Nadu

Recognised Private Schools (Regulation) Act 1973. All the schools are run by the Respondents on self-financing basis. All the teachers working in various schools run by the first Respondent formed an Association by name "Adarsh Teachers Welfare Association" bearing Registered No. 318/94. From the year 1997-98, the Teachers Association started various agitational programmes. There was also correspondence between the Teachers' Association and the Management during February 1998 regarding the grievance of the teachers. The other facts narrated in the writ petition relate to strike and taking out procession on different dates. According to the Petitioners, in the year 1997-98, the Management has made drastic changes like transferring the teachers. By order dated 25.6.1998, the first Respondent informed individually 25 teachers in the second Respondent school, that they were surplus to their requirement and they will be relieved from their post with effect from 25.7.1998 thereby giving a month's notice. Both the Petitioners are among them. Out of 23 teachers declared allegedly as surplus, 4 were Post Graduate Teachers (PGT), 11 were Trained Graduate Teachers (TGT) and 8 were Secondary Grade Teachers (SGT).

4. Learned Senior Counsel for the Petitioners argued that the first Respondent has no power to reduce the strength of the teachers and cut down any class and the merger of two wings in the second Respondent school is illegal. He has also argued that the first Respondent school treated all the schools run by them as Single Unit for the purpose of appointment, promotion and transfer, and they have to maintain common seniority of all the teachers for the purpose of effecting either promotion, transfer or retrenchment. Learned Senior Counsel has argued that as per Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act 1973, if any teacher is rendered surplus, he has to be transferred to some other school run by the Management. Learned Senior Counsel has further argued that the action of the first Respondent is tainted with mala fide with a view to take revenge against the teachers who participated in the protest. Under the circumstances, learned Senior Counsel for the Petitioners has argued that the writ petition is maintainable as the Respondents Management have got a public duty to perform and the services of the teachers cannot be terminated by giving a month's notice. The Petitioners have filed an additional affidavit stating that the first Respondent has detained the teachers who were appointed subsequently to the Petitioners and the Management has advertised in the Hindu dated 6.6.1999 calling for the posts of teachers in the subjects Botany and Zoology.

5. In support of his contentions that the writ petitions are maintainable, learned Senior Counsel for the Petitioners has relied upon the following decisions:

1. Order in W.P. No. 6925 of 1997 dt.25.3.1998. (passed by this Court);
2. K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, ;
3. U.P. State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey

and Ors. (1999) I SCC 741;

4. Venkateswaran Vs. The Director of School Education and Others, ;

5. A.P. John Paulraj v. Central Board of Secondary Education and Ors. 1999 W. L.R.23;

6. The Respondents have filed a counter in both the writ petitions. The main contention in the counter is that the Respondents school being a private school run solely on its own funds without receiving aid from the Government, is entitled to terminate the surplus teachers. The Respondents denied the averment made in the writ petition that the juniors to the Petitioners were continued.

It is stated that the agitational attitude and actions of the teachers like the Petitioners were directly correlated to the reduction in the student strength of the M.G.R. Adarsh Public Matriculation Higher Secondary School where the Petitioners were working. It is also averred in the counter that the teachers including the Petitioners were directly responsible and accountable for the reduction in the students strength in that particular school, culminating in the excess teachers in the school and consequential issuance of the impugned order. It is also stated in the counter that the Petitioners are taking advantage of some transfers made by the Respondents to show that all schools run by the Respondents are to be taken as a single unit. According to the Respondents, that principle cannot be applied in the matter of retrenchment arising out of surplus teachers. According to them, the contention of the Petitioners that the impugned order was issued with a view to browbeat the agitational programmes of the teachers, is false. The Respondents have stated that they have not terminated all the teachers who participated in the agitational programme. The student strength was going down was emphasised in extensio by the Respondents to substantiate their action for the consequential termination of the excess teachers. As the Petitioners were found to be excess, they were retrenched. During the course of the arguments, learned Counsel for the Respondents has raised the objection that the writ petition itself is not maintainable against the Respondents school as the school is a private school and moreso, an unaided school. The Petitioners if at all they are entitled for any relief, could only claim damages against the Respondent school and not reinstatement and they were only temporary teachers. Learned Counsel for the Respondents relied upon the following decisions:

1. The State of Uttar Pradesh v. Dinanath Rai. 1969 S.L.R. 646;

2. The State of Uttar Pradesh v. Ram Chandra Trivedi 1976 2 SCC 2547;

3. Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, ;

4. Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others, ;

5. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, ;

6. N. Sampathu Vs. The Chief Educational Officer, Vellore and Others, ;
7. State of U.P. and Ors. v. Adya Prasad Pandey, 1995 Supp. (3) SCC 238 ;
8. Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, ;
9. State of Himachal Pradesh v. Ashwani Kumar and Ors. AIR 1997 SC 352;

7. Learned Senior Counsel for the Petitioners has emphatically argued that Section 26 of the Tamil Nadu Private Schools (Regulation) Act, 1973 provides for absorption of teachers or other persons on retrenchment and the Respondents herein have failed to follow the provisions of Section 26 of the Act. Learned Senior Counsel has further argued that in the present case, the Respondent have failed to obtain the prior permission of the competent authorities to reduce the strength of the students. Relying upon the decision of this Court in W.P. No. 6925 of 1997 dated 25.3.1998, learned Senior Counsel for the Petitioners has argued that this Court has quashed the termination order passed by the CorRespondent, Chinmaya Vidyalaya Senior Secondary School. Learned Senior Counsel has argued that this Court in the above writ petition did not agree with the contentions of the learned Counsel for the Respondents therein that the writ petition was not maintainable on the ground that the Respondent school is an unaided private institution. Relying upon the decision of the Supreme Court in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, , learned Senior Counsel for the Petitioner has argued that the writ petition filed by the dismissed employees to challenge the orders of their dismissal, is maintainable. Relying upon the above decisions, learned Senior Counsel for the Petitioners has argued that the writ petitions are maintainable and retrenchment of the Petitioners is in violation of the provisions of Section 26 of the Act and the impugned orders are liable to be quashed.

8. On the other hand, learned Counsel for the Respondents tried to emphasise that the writ petitions are not maintainable as the Respondents School is not an aided school. Relying to the arguments of the learned Senior Counsel for the Petitioners, learned Counsel for the Respondents has argued that Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act 1973 has no application in this case as the explanation to Section 26 of the Act provides that for the purpose of this Section, the strength of the pupils shall be determined in accordance with the norms fixed in Grant-in-Aid Code of the Tamil Nadu Educational Department or under any rule, regulation or order, as may be made or issued by the Government or the Director of School Education, from time to time, for appointment of teachers or others in any private school.. He has further argued that Section 26 is applicable where any retrenchment is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter. He has also argued that the private schools mentioned in Section 26 of the Act are the Private Schools which are receiving the Grant-in-Aid and if any private school which is receiving Grant-in-

Aid and reduce the strength of the pupil, then in such a case, if there is any retrenchment of any teacher, such teacher shall be appointed in any school maintained by such private school. Learned Counsel has argued that the retrenchment was not made with reference to any Government Order and moreso, the Respondent school is not receiving any Grant-in-Aid. Basing on the above, learned Counsel for the Respondents has stressed that Section 26 of the Act has no application in the particular circumstances of the case. Learned Counsel for the Respondents tried to distinguish the case laws cited by learned Senior Counsel for the Petitioners on the ground that the case laws cited by the learned Senior Counsel for the Petitioners relate to the disciplinary proceedings. He has also argued that retrenchment was made necessary as there were no students in the subjects botony and zoology and the Petitioners could not be accommodated in other subjects. He has also stated that the Respondent school is a linguistic minority institution. He has also further submitted that as the Respondent school is not receiving any Grant-in-Aid, there is no need for obtaining the permission of the concerned authorities as per Section 26 of the Act.

9. Section 26 of the Act reads as follows:

Absorption of teachers or other persons on retrenchment:

-Where any retrenchment of any teacher or other person employed in any private school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter or consequent on the reduction in strength of the pupils studying in any such private school it shall be competent for the Government or the school committee of any private school, to appoint such teacher or other person in any school or institution maintained by the Government or in such private school, as the case may be.

10. The above section is controlled by the explanation stating that the strength of the pupils shall be determined in accordance with the norms fixed in Grant-in-Aid Code of the Tamil Nadu Education Department or under any rule, regulation or order, as, may be made or issued by the Government or the Director of School Education, from time to time, for appointment of teachers or others in any private school. Learned Senior Counsel for the Petitioners has also relied upon Section 29 of the Act. Section 29 relates to closure of private school. Learned Counsel for the Respondents submitted that Section 29 of the Act has no relevance to the case on hand.

11. In K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, , the Supreme Court has held that the writ petition is maintainable when the claim is based on government instructions. In the above said case, the grievance of the Petitioner was non-payment of equal pay for equal work, basing on the government instructions. The Apex Court has held that when there is an interest created by Government in an institution to impart

education, which is a fundamental right of the citizens, the teachers who impart the education, get an element of public interest in the performance of their duties. The element of public interest requires to regulate conditions of service of those employees at par with government employees. Such employees are entitled to parity of pay scales as per executive instructions of the Government. State has obligation to provide facilities and opportunities to people to avail of right to education. Private institutions cater to the needs of educational opportunities. A teacher duly appointed to a post in a private institution is entitled to seek enforcement of orders issued by Government. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of remedy provided under Article 226; the jurisdiction part is very wide. The Supreme Court has further observed that it would be a different position if the remedy is a private law remedy. They cannot be denied the same benefit which is available to others. It was held that the writ petition was maintainable and Appellants were entitled to equal pay on par with government employees under Article 39(d) of the Constitution. In the case on hand, it has to be seen that there is no claim based on the government institutions and the writ petitions are not filed for the grant of equal pay for equal work.. Under the circumstances, it has to be held that the above case law cited by the learned Senior Counsel for the Petitioners has no application to the particular circumstances of the case.

12. Learned Counsel for the Respondents has argued that the decision relied upon by the learned Senior Counsel for the Petitioners in John Paulraj's case 1999 W.L.R.23 has no application as the judgment was passed on consent of both sides that a writ lies against Unaided Private Educational Institution. The Division Bench in paragraph 23 of its judgment has held as follows:

We find that there is no dispute between both sides that writ will lie against Unaided Private Educational Institution, if an element of Public interest and a corresponding public duty is attracted in the proceedings sought to be challenged in such writ petition...

Learned Counsel for the Respondents tried to distinguish the above judgment saying that the writ will not lie against the Unaided Private Educational Institution and there is no element of public interest and a corresponding public duty to attract the proceedings sought to be challenged in the writ petitions. The case of the Petitioners rests on the termination order issued by the Respondents which happened to be an Unaided Private Educational Institution and the termination order has no element of public interest and in such a case, it cannot be said that the above cited judgment of the Division Bench, has relevance to the particular circumstances of the case.

13. Yet another case law relied on by the learned Senior Counsel for the Petitioners is U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, . In that case, the Supreme Court has held that the writ petition is maintainable against the U.P. State Cooperative Land Development

Bank Ltd, as it is an instrumentality of the State or an authority and it is controlled by the State Government and service conditions of its employees, particularly in regard to disciplinary proceedings, are statutory in nature. Hence, it was held that the writ petition filed by its dismissed employees to challenge the orders of their dismissal, was maintainable. Learned Counsel for the Respondents tried to distinguish the above case law on the ground that the same relates to the action taken as a measure of the disciplinary proceedings which are statutory in nature. The apex court has observed that when any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a co-operative society or association or body of individuals, whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But, then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. It has to be seen that the case on hand does not relate to disciplinary proceedings and more so, as held by the apex court, the guidelines are not mandatory in nature in all circumstances. It has to be held that the above case law has no application to the present case.

14. Learned Counsel for the Respondents relied on the decision of the Supreme Court in *Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others*, to substantiate his contention that the Petitioners are only entitled to damages and not a declaration of continuing in service. The apex court held as follows:

... But the Appellant is an employer of a private institution and their mutual rights and obligations are governed by the terms of the contract, Exhibit 1, which was entered into by them in 1953. Since under those terms the Appellant's services were liable to be terminated on three month's notice, all that she would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of her services she continued to be in service.

15. Learned Counsel for the Respondents has relied upon the decision of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , wherein the Supreme Court has observed as follows:

If the rights are purely of a private character, no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the Appellants-trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control,

maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party

16. In *State of U.P. and Ors. v. Adya Prasad Pandey*, 1995 Supp. (3) SCC 238 the Supreme Court has "held as follows:

We have no doubt that the High Court overlooked the impact of the proviso contained in Clause (2) of Rule 4 which is sufficient to indicate that the requirement of such a notice was not a condition precedent for a valid termination but it had the effect of making the government servant entitled on such termination to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or as the case may be for the period by which such notice fell short of one month, and no more. (See *Bachi Ram Vs. Union of India (UOI) and Others*, . The judgment of the High Court which is based only on this ground cannot, therefore, be sustained.

17. Learned Counsel for the Respondents relied upon the decision of the Supreme Court in *Ashwani Kumar's* case AIR 1997 SC 352, wherein the Supreme Court has held as follows:

It is seen that when the project is completed and closed due to non-availability of funds, consequently, the employees have to go along with the closed project. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to create posts by the State to a non-existent establishment. The court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them in spite of non-availability of the work. We are of considered view that the directions issued by the High. Court are absolutely illegal warranting our interference. The order of the High Court is set aside.

18. In this case, it is not in dispute that the Respondent school is not receiving aid and it is purely a private school. (Even assuming that the strength of the pupil has been determined), I see no force in the argument of the learned Senior Counsel for the Petitioner that the Respondent school should have obtained the prior approval of the competent authority as per Section 26 of the Act. The proviso to Section 26 makes it clear that the strength of the pupils shall be

determined in accordance with the norms fixed in Grant-in-Aid Code of the Tamil Nadu Education Department. When the Respondent school is an unaided and self-financing institution, Section 26 has no bearing on the action of the Respondents school in determining the strength of the pupils. I am of the view that the case laws cited by the learned Senior Counsel for the Petitioners is with regard to disciplinary action and they have no relevance to the particular circumstances of the case. It is not disputed that in view of reduction of students in the specified subjects i.e., Botany and Zoology, the Petitioners have become surplus which has necessitated the Respondents to terminate their services. Following the decision of the Supreme Court in Ashwani Kumar's case (AIR 1997 SC 352), I am of the view that no vested right is created on the Petitioners, moreso, they have been discontinued. It is seen that the Petitioners were not able to prove that there is an element of public interest and a corresponding public duty to attract the proceedings challenged in the writ petitions. Moreover, the claim of the Petitioners is not based on any government instructions and the Petitioners have not sought for enforcement of the Government orders. Under the circumstances, it is held that the writ petitions are not maintainable against the Respondent school. I see no grounds to interfere with the impugned orders. The writ petitions are dismissed. No costs.

19. However, learned Counsel for the Petitioners has argued that one Ms Lalitha, junior to the Petitioners, though, was terminated from service, was later absorbed. In reply to this, learned Counsel for the Respondents submitted that the said Lalitha has submitted an application for absorption in lower post. After consideration, she has been absorbed in the lower category. The Petitioners are at liberty to make a representation to the Respondent school to absorb them in the lower post. The Respondents are directed to consider the case of the Petitioners. It is also made clear that the Respondents shall give preference to the Petitioners while appointing the teachers in the subjects botany and zoology, in future vacancies. VCS.