

(2011) 12 MAD CK 0046

In the Madras High Court

Case No : Writ Petition (MD) . No's. 13796, 13797 of 2010, 3824 and 13242 of 2011 and M.P. (MD) .Nos. 1 and 1 of 2010 and 1 of 2011

G. Velmurugan

APPELLANT

Vs

The District Elementary Educational Officer, Virudhunagar District, Virudhunagar District, The Assistant Elementary Educational Officer, Rajapalayam Town, Virudhunagar District, The Secretary, Sattamuni Saliyar Primary School, Muthusamipuram, Muhavoor Post, Virudhunagar District, M. Somasundaram and M. Nallamuthu

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 15, 18(1), 19, 22(3)

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 12, 13(4), 15, 15(2), 15(4)

Citation : (2011) 12 MAD CK 0046

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A.V. Arun, for the Appellant; Ts. Md. Mohideen, AGP for R1 and R2, Mr. Shabu Jose for Mr. Isaac Mohanlal for R3 and R4 in W.P. (MD). Nos. 13796 and 13797 of 2010 and Mr. Veerakathiravan for R3 and R4 in W.P. (MD). Nos. 3824 and 13242 of 2011, for the Respondent

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner in all these writ petitions are one and the same person. He claiming himself as the Headmaster of the third respondent school at Muthusamipuram, Virudhunagar District. The petitioner filed the first writ petition (W.P.(MD).No. 13796 of 2010) seeking for a direction to the third respondent school to send the proposal of the School Committee resolution dated 31.05.2010 to the second respondent namely, the Assistant Elementary Educational Officer, Rajapalayam for grant of approval and proposal to the first

respondent to pass appropriate orders. The petitioner also filed W.P.(MD).No. 13797 of 2010 seeking to set aside the order of the third respondent dated Nil (November 2010), wherein the charge memo has been framed by the Correspondent of the School. The Charge number 8 relates to the petitioner refusing to sign in the minutes of the School Committee relating to the promotion to the post of Headmaster and the Charge number 9 relates to non attending the School Committee.

2. Those two writ petitions were admitted on 22.11.2010. Pending the writ petitions, no interim orders have been sought for. Even while those two writ petitions were pending, the petitioner filed the third writ petition being W.P. (MD).No. 3824 of 2011 seeking to challenge the order dated 20.12.2010, wherein the petitioner's increment was refused to be considered on the ground that pendency of the two writ petitions and also pending enquiry. When that writ petition came up on 31.03.2011, notice regarding admission was ordered. Subsequently, the matter was adjourned and on 29.06.2011, it was admitted and pending that writ petition, this Court granted a direction to the petitioner to sign the attendant register and also the relevant papers for sending the same to the educational authorities for getting salary for the petitioner. Thereafter, the school authorities were directed to send a proposal to the official respondents, who in turn, have to settle the entire salary payable to the petitioner to the post of Secondary Grade Teacher. This interim order again arises to Cont. P.(MD).No. 434 of 2011, in which the petitioner alleged that the order has been disobeyed by the Secretary of the School by name M. Nallamuthu and no notice has been ordered in the contempt petition.

3. The Petitioner also filed fourth writ petition being W.P.(MD).No. 13242 of 2011 challenging the suspension order dated 10.08.2011. The suspension order made another five charges against the petitioner. The suspension order also refers to the School Committee resolution dated 09.08.2011 proposing to suspend the petitioner. That writ petition when came up on 21.11.2011, notice was directed to be taken by the Government Advocate for the official respondents, but that writ petition was not admitted.

4. On notice from this Court in W.P.(MD).No. 3824 of 2011 a counter affidavit has been filed by the Assistant Elementary Educational Officer, Rajapalayam. When the contempt petition came up before this Court, this Court directed all the writ petitions to be posted, since already an order to that effect is found in W.P. (MD).No. 13242 of 2011 by an order dated 21.11.2011.

5. The intention of filing of these writ petitions was that the petitioner is an aspirant for the post of Headmaster of the third respondent school as the senior most teacher. He is also a member of the School Committee, but he claims that he has been given a promotion order by the Secretary of the school committee and a copy of the same is found enclosed in the typed set at page number 5 in W.P.(MD).No. 3824 of 2011. It is claimed in the said order that the petitioner has been give promotion in view of the vacancy arises on account of retirement of

one M. Periyaalagu Rajarathinam on 31.05.2010 and on the basis of his seniority. However, the council of the School Secretary stoutly denied the existence of the said document and it is stated that the Secretary signature has been forged and charged memo has also been issued.

6. It is claimed by the petitioner that he joined the school on 11.11.1987, whereas one Somasundaram, who is junior to him and appointed only on 20.02.1991 and the school management has bent upon promoting the said Somasundaram, who is none other than the son of the Correspondent. Therefore, a junior is stated to be promoted without giving credence to the Seniority of the petitioner. But, however a perusal of Rule 15(4) of the Tamilnadu Private Schools (Regulations) Rules 1974, will clearly shows any promotion to the post of Headmaster shall be made on the grounds of merits and ability and seniority would be considered if merit and ability are approximately equal. Who should decide the merit and ability has also set out u/s 18 (1)(b) of the Tamilnadu Recognised Private Schools (Regulation) Act, 1973 and it is only the school committee which has power of deciding the issue.

7. A school committee itself has to be formed in terms of Section 15 of the Act, which include the headmaster of the private school and the senior most teachers employed in the private school and the composition of the school committee has been set out under Rule 12 of the Rules. After amendment to the Rule by G.O.Ms.No. 1133, Education Department, dated 26.08.1989, a School Committee will have the maximum of 12 members by which 6 will be the representatives of teachers including a nominee of the parent teacher association and the educational agency will have the maximum of 6 members and therefore, in all together, the school committee will have 12 members, out of which 6 will be from outside.

8. When the Rule came to be challenged before this Court, the Rule was upheld by this Court. In the present case, in case of promotion, it is only the school committee, which can decide the matter and therefore, ultimately, the decision will have to be taken on the basis of the resolution made by the School Committee and proposal will have to be forwarded to the competent authority for approval. In case of any person who is aggrieved by the decision of the school committee, or any Order made, Rule 15(4-A) provides for an appeal to the competent authority an in case Pre-primary, Primary or Middle School, the competent authority is the Chief Educational Officer of the revenue district. Therefore, the stage for the petitioner challenging any appointment of the third respondent School, Sattamuni Saliar Primary School, will arise only when the proposals are sent to the department and the department also approves his appointment.

9. In the counter affidavit filed by the Assistant Elementary Educational Officer, Rajapalayam, it is stated that as and when the proposals are received by the department, they will consider the proposal. Since at the time of the filing of the affidavit no proposals have been received, they have not decided any matter.

10. The question of promoting a person in terms of Rule 15(4) and the power of the School Committee as well as the power of the appellate authority came to be considered by the Supreme Court in *S. Sethuraman Vs. R. Venkataraman and Others*, wherein the Supreme Court has held that in such matters, the school committee decision will have a bearing and in case decision was taken contrary to the provisions of the Act and Rules, it is open to the appellate authority to reconsider the same and pass appropriate orders. In any event, the power of the High Court under Article 226 of the Constitution of India to review the decision is very limited. It is necessary to refer the following passages found in paragraph numbers 16 to 19, which is as follows:-

16. The terms and conditions of service of the teachers of an aided school are governed by the Act and the rules framed there under. The Managing Committee of the school in terms of Rule 15 of the Rules are enjoined with a duty to fill up the post of Headmaster primarily on the basis of "merit and ability". Indisputably, the Committee while appointing a person must take into consideration the merit and ability of the candidate alone and only when the respective merit and ability of two candidates are equal, seniority will have some role to play. Respondent 1 is senior to the appellant only by 13 days. At the relevant point of time, the appellant had passed the prescribed Accounts test for Headmasters conducted by the Tamil Nadu Public Service Commission in the year 1989. Before us various other factors have been placed for the purpose of showing that apart from the fact that the appellant was more qualified, Respondent 1 having regard to his past services should not have been considered suitable for appointment to the said post.

18. While exercising the appellate jurisdiction, the appellate authority has indisputably a plenary power. It may not only consider the respective educational qualifications and other activities of the respective candidates for the purpose of arriving at a decision as to which of the two candidates had better merit and ability, but it should exercise its jurisdiction keeping in view the views of the Managing Committee. If two views are possible, ordinarily, the view of the Managing Committee should be allowed to prevail.

19. It is unfortunate that the High Court failed to apply the correct principles of law in this case. Each one of its reasons, in our considered opinion, is wholly untenable. It suffers from misdirection in law.

20. As noticed hereinbefore, the matter was remitted to the Joint Director of School Education by the High Court with the consent of the parties but the High Court in its order categorically directed the said authority to consider the matter strictly within the scope of Rule 15 of the Rules. The High Court did not and could not enlarge the scope of the appeal.

11. In the light of the clear legal provision, the writ petition filed by the petitioner in W.P.(MD).No. 13796 of 2010 is not only premature and it cannot be countenanced by this Court as there is no decision taken at the relevant time and

the petitioner with the help of this Court cannot become headmaster of the school. Therefore, W.P.(MD).No. 13796 of 2010 will stand dismissed.

12. In W.P.(MD).No. 13797 of 2010, the charge memo has been given to the petitioner by the Secretary of the School Committee dated 13.11.2010 as there is no reference to the School Committee in framing the charge sheet u/s 19 of the Tamil Nadu Recognised Private Schools (Regulation) Act. The Government can make Rules relating to the conditions of service of teachers including rights as respects discipline matters. Pursuant to the powers, the State Government has framed Rule 15(2)(i), wherein the School Committee of every private school shall enter into agreement with the teachers in terms of Form VII(A) in respect of permanent teachers, wherein procedure for taking disciplinary action against the teachers were set out. Under term 7 of Form VII(A) a disciplinary action can be initiated only by the school committee and this includes even framing of charges. It is necessary to extract term 7 of Form VII (A), which is as follows:

7. That the School Committee shall not dismiss, remove or reduce in rank or terminate the services of the said teacher without informing him/her in writing on the grounds on which they intend to take action and shall adopt the following procedure before taking any final decision regarding the punishment to be imposed:

(a) The memorandum of charge shall be communicated to him/her in writing giving him/her reasonable time to send his/her explanation to the School Committee.

(b) After considering his/her explanation the school committee shall communicate to him/her findings and if so desired by the said teacher conduct a personal hearing or enquiry, wherein he/she shall be given the opportunity to examine or cross-examine any or all the witnesses and also produce witnesses.

(c) After the conduct of the personal hearing or enquiry by the School Committee the report of such personal hearing or enquiry shall be furnished to the teacher and a notice shall be issued to him/her setting out the proposed punishment and he/she shall be given a reasonable time to defend himself/herself against the proposed punishment.

(d) After the receipt of the statement of defence from him/her and taking into consideration the School Committee shall inform him/her in writing about its final decision.

13. Apart from the fact that there is no power for the Secretary in his individual capacity to frame charge sheet and the power of the Secretary is merely carry out the decisions of the School Committee as set out in Rule 13(4) of the Rules. The charge memo itself is fault as noted above. The charges 8 and 9 are completely without jurisdiction.

14. A senior most teacher by virtue of its seniority is an executive office member of the school committee and even if any notice of the committee is given to him,

it is for him to attend or not, there cannot be a charge that he did not attend the meeting. Secondly, when the subject matter of the headmaster post is discussing in a school committee, then there is no possibility of even an executive office member attending a school committee that is the subject matter pertaining to his own interest in the decision and therefore, no expectation can be taken for the petitioner not signing the minutes of the school committee. Even if he does not sign, the school committee can pass the resolution and there is no impediment for the school management to forward the resolution of the school committee by notifying that one member has not signed the school committee minutes. Therefore, the charge memo is totally without jurisdiction. Hence, W.P. (MD).No. 13797 of 2010 will stand allowed. The impugned charge memo is set aside. Apart from charges 8 and 9 they are also other charges and if the management has interested in pursuing the other charges, the matter can be discussed in the school committee and proper decision can be taken. The set aside of the charge memo will not disentitle the management from deciding the issue afresh.

15. Coming up W.P.(MD).No. 3824 of 2011, the writ petition relates to denial of salary increase to the petitioner and that has been rejected by the Secretary on the ground that the writ petitions are pending and since an enquiry officer has been appointed, after getting a report alone his request to increase the salary could be rejected. In this case, the impugned order passed by the Secretary is clearly erroneous. If the petitioner is otherwise entitled for salary increase as per the revision of scale made by the State Government, it is the bounden duty of the management to pay the same, of course, it is without prejudice to any disciplinary proceedings taken. In the present case as noted already W.P. (MD).No. 13797 of 2010, the charge memo itself has been set aside and the writ petition is no longer pending, there is no impediment for the secretary to claim revision of salary to the petitioner including the increment if any. The writ petition W.P.(MD).No. 3824 of 2011 is disposed of with a direction to the school management to make proper claim in favor of the petitioner for the salary to which he is entitled.

16. In the last writ petition, W.P.(MD).No. 13242 of 2011, the petitioner is placed under suspension for pending enquiry into charges. The charges set out in the writ petition are entirely different from charges covered by W.P.(MD).No. 1397 of 2010. In this case, a reference to the School Committee resolution on 09.08.2011 is also made. While this Court did not wish to comment upon the charge memo, a suspension for pending enquiry is only for a period of two months and further extension of two months, to that the competent authorities prior approval is required. In the present case, the suspension order is dated 10.08.2011. In normal course, the suspension would have come to an end on 09.10.2011 and thereafter, there is nothing to indicate that the competent authority's approval has been obtained in terms of Section 22(3)(b) of the Act.

17. Under such circumstances, even if there was no justification for suspension,

since the period of suspension has already come to an end and there being no further extension period and if any further extension obtained and that extension is only for two months in which even that will come to an end on 10.12.2011 and there is no impediment to restore the service of the petitioner without prejudice to the enquiry as set out in Proviso 22(3)(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 Private Schools. The writ petition W.P.(MD).No. 13242 of 2011 is disposed of accordingly.

18. Contempt Petition (MD).434 of 2011, in which the notice is yet to be ordered. In the light of the orders passed above, it is unnecessary to punish or issue notice to the respondent. The contempt petition stands dismissed. In the result, W.P.(MD).No. 13796 of 2010 is dismissed. W.P.(MD).No. 13797 of 2010 is allowed. W.P.(MD).No. 3824 of 2011 is disposed of with direction and W.P.(MD).No. 13242 of 2011 is disposed of with observations. Consequently, connected miscellaneous petitions are closed. No costs.