
(2010) 12 MAD CK 0317

In the Madras High Court

Case No : Writ Appeal No. 1516 of 2005 and W.A.M.P. No. 2801 of 2005

G.R. Premkumar

APPELLANT

Vs

The Correspondent Corley Higher Secondary School,
Diocesan Educational Officer, Diocesan Office, The
Correspondent, St. David Higher Secondary School, and The
District Educational Officer

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

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

Citation : (2011) WritLR 38

Hon'ble Judges : S. Palanivelu, J;K. Mohan Ram, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for R. Karthikeyan, for the Appellant; F.A. Xavier Arulraj, for Respondents Nos.1 to 3, S. Naganathan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The Appellant joined the service as Secondary Grade Teacher with the first Respondent on 5.1.1978 in St. Thomas Higher Secondary School, Chennai. He completed his B. Ed. and M.A. Degrees and he was holding necessary qualifications for the post of B.T. Grade Teacher. Vacancy arose for B.T. Grade Teacher in History Department and he applied for the same. But with ulterior objective of denying promotion to him, 2nd Respondent transferred him outside the district to St. David's Higher Secondary School, Cuddalore. So, he filed suit before the District Munsif, Tambaram, challenging the order of transfer. He has not been relieved from the post at the 1st Respondent school since he has been applying for medical leave. The 2nd Respondent cannot issue an order of transfer affecting his service when he is not an employee of 3rd Respondent. The first Respondent school is situated in another educational district and he cannot be transferred to another district. Statutory agreement in Form VII A and referred to in Rule 15(2) also does not provide any provision for transfer of

employees of private school. Hence the impugned order of transfer may be quashed by issuing a writ of certiorari as per law.

2. The learned single Judge, after hearing both sides dismissed the petition by observing that it is not acceptable contention in the absence of any specific reference in the order of appointment he cannot be transferred to another school, that except stating that he was not given due promotion, he has not highlighted or substantiated the plea of mala fide, that he has suppressed the filing of the earlier writ petition for the similar relief and the same was withdrawn by him, which cannot be appreciated and that his claim is not sustainable.

3. The learned Counsel for Appellant Mr. N.G.R. Prasad, would contend that even though the management is same, the schools functioning under the control of Diocese in Chennai and Cuddalore are different units, that affiliation or recognition is given to the schools alone and not to the management, that there is nothing in the appointment order that the teacher is liable to be transferred from one school to another and even though it is a private school, it has no authority to transfer a teacher from one school to another without valid ground.

3(a) He further argues that the transfer effected by the first Respondent is illegal and if in case, this Court reaches a conclusion that the transfer is bad in law then he can claim the benefits which would have accrued to the Appellant, had the transfer not been made and that the appeal may be disposed of on merits even though if it is stated that the appeal has become infructuous in view of superannuation of the Appellant pending the hearing of the appeal. Hence, this appeal is disposed of on merits.

4. In support of his contention he placed reliance upon a Full Bench decision of this Court in 1998 (4) L.L.N.804 [Correspondent, Malankara Syrian Catholic School, Marthandam v. J. Rabinson Jacob and others] wherein it is observed as under:

Transfer has either expressly or impliedly to be provided for the statute or by the contract or must be inherent in the nature of contract or subject-matter or the circumstances leading to the conclusion that the parties by necessary implication have intended it. Where there was no contract of service providing for transfer rather the letter of appointment which is the magna carta of terms of contract conferred a right on the employee to be transferred to another unit of a school only on, a condition that if the one seeking transfer opts to become the junior-most in the new unit, transfer cannot be termed as an incident of service. The schools have been treated as separate units. School, not to the management. Separate seniority list is maintained in each individual school and admittedly there is no common seniority list. Grant-in-aid is provided to each school as a unit and not to the society.

5. In addition to the above extracted portion, the Full Bench has also observed as follows:

26. From the resume of the observations made above it can be safely concluded that transfer is not necessarily included in the conditions of service as a term of the conditions of service. Transfer is a specie of appointment and being one of the modes of appointment, cannot be included in the appointment itself unless it is expressly or impliedly provided for. Thus, the assumption that the power to transfer is included in the power of appointment is unsustainable. Power of transfer involving the cessation of appointment would depend upon the nature of the transaction involved. May be in peculiar facts where it does not being about any alterations of the conditions of service, change of master, change of place, alteration in the terms of appointment, usage prevalent in the statutory provisions, rules and regulations and structure, duration of employment and various other circumstances may provide for a lead that it is an incident of service. The question whether it is an incident of service has to be determined in the facts and circumstances of each and every case is a question of acts.

6. It is also observed therein that there is no minority corporate management recognised by the authorities and the transfer is not an incidence of service, the contract does not provide for the minority institutions being affiliated as one as aided cannot transfer the teachers in the different units established and administered by it and it has no inherent power to transfer. It has been also held in the decision that the question whether it is an incidence of service has to be determined in the facts and circumstances of each and every case.

7. In the above said case the school which effected transfer was not maintaining approved common seniority list of the teachers and neither the school society nor the management was recognised nor conferred with the status of a corporate. In the back drop of these circumstances, the above said decision came to be passed.

8. In the present case the facts are distinguishable. The learned Counsel for the Respondents 1 to 3 Fr.A. Xavier Arulraj produced a copy of the proceedings issued by the Director of Public Instructions dated 25.5.1960, which is with respect to the letter addressed to him by the convener of C.S.I. Schools, Chingleput. The authority concerned has permitted the first Respondent school to maintain one seniority list for all teachers and the entire Diocese should be taken as one unit for the purpose transfer of teachers. The relevant portion in the proceedings runs as follows:

The Convener, C.S.I. Schools, Chingleput, request for permission to treat the schools in his diocese as one unit for the purpose of transfer of teachers.

After careful consideration the Director permits the Convener, C.S.I. Schools, Chingleput, to maintain one seniority list for all the teachers working in Elementary and Higher Elementary Schools under the Diocese. A copy of the seniority list of teachers shall be furnished to each of the District Educational Officers concerned. The entire Diocese should be taken as one Unit for the purpose of transfer of teachers and teachers should be taken in service in the C.S.I. Managements subject to this condition.

9. In view of the above said proceedings it comes to light that even in 1960, the authority concerned has permitted to maintain common seniority list and directed the Diocese be taken as one unit. Hence, the facts in the present case are different with those available in the case covered by the Full Bench decision and hence the same is not applicable to the facts of the present case.

10. The learned Counsel for the Respondents 1 to 3 would also contend that the averment that each school is an independent entity is not true, that the Appellant filed Civil Suit before the District Munsif, Tambaram, challenging the transfer, that he had been continuously applying for medical leave and inspite of the mandate he did not appear before the Medical Board, that he was suspended on 1.2.1996 and he challenged the transfer in W.P. No. 5908 of 96, but subsequently withdrew it and suppressing the suit, he filed the writ petition with an identical relief, that he filed another W.P. No. 17445 of 2000 challenging the charge memo dated 10.1.1996 and prayed for reinstatement and the same was dismissed by this Court holding that the legality of the order of transfer has become final, that he was superannuated on 28.4.2006 and he has preferred this appeal after the lapse of five years from the date of disposal of writ petition.

11. Challenging the transfer order, the Appellant filed suit in O.S. No. 578 of 1995 on the file of the District Munsif, Tambaram and subsequently he withdrew the same. But he has not mentioned the filing of the suit and its date of disposal in the writ petition. Earlier he filed a writ petition in W.P. No. 15908 of 1996 praying for the same relief, challenging the transfer order but he had withdrawn the same, not pressing it on 11.6.1996. The writ petition is silent in respect also. The present writ petition is not maintainable on the abovesaid reason, as indicated by the learned single Judge, after following a decision in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, .

12. In yet another attempt against the Respondents, he filed W.P. No. 17455 of 2000 challenging charge memo issued to him on 10.1.1996 and he sought relief for reinstatement. But the said petition was dismissed on 39.9.2002 by this Court. He preferred appeal in W.A. No. 1388 of 2004. The Honourable First Bench, on 30.8.2004, dismissed the appeal.

13. After a long legal fight the Appellant joined duty in St. David's Higher Secondary School, Cuddalore on 24.4.2006 and was suspended for one day on 26.4.2006. He rejoined duty on 27.4.2006 and thereafter he got superannuated with effect from 28.4.2006.

14. The learned Counsel for the Respondents 1 to 3 would place reliance upon a decisions of this Court, in 2002 W L.R.538 [Sri Kasi Mutt, Educational Agency etc., v. The Commissioner of Collegiate Education, etc and Ors.] wherein a Division Bench of this Court, after referring to the above said Full Bench judgment has reversed the order of a learned single Judge who held that teaching staff cannot be transferred from one college to another, even though they are under the same

management. In the said case it was reported that the school management, which transferred him was maintaining a common seniority list. It is also observed therein that if two institutions are run by one and the same educational agency as a single corporate unit, it is not necessary to obtain prior approval of the concerned authority for effecting transfer. It has been made clear that the decision of the Full Bench of this Court, *supra*, is applicable with reference to the facts and circumstances of each case. On the facts of the case before the Full Bench it was held that the transfer of teachers has either expressly or impliedly to be provided for by the statute or by the contract or must be inherent in the nature of contract or subject matter on the circumstances leading to the conclusion that the parties by necessary implication have intended it. Finally the Bench directed the educational agency to apply to concerned authority for necessary approval to declare it as a single corporate unit running two or more educational institutions.

15. Subsequently, another Division Bench of this Court in 2003(4) CTC 65 [The Manager, R.C. Schools, Salem Social Services Society v. G. Vincent Paulraj] has held in unequivocal terms, that when the transfer does not prejudicially affect an individual as his seniority is preserved so also his emoluments, it can be made. Ultimately, the Bench refused to interfere with the impugned order of transfer. The Bench has referred the Full Bench decision of this Court above and distinguished the facts to the effect that the transfer is not prohibited by the provisions of the act, that if in a given case it is shown that transfer is a condition of service having regard to the terms of the contract between the parties, then the transfer is permissible subject to the transferee not being deprived of the benefits of his service prior to such transfer. The Bench has also referred to Rule 15 (4)(ii)(iii) of the Tamilnadu recognised Private School Regulations Rules 1974, wherein it is provided that in respect of a corporate body running more than one school, the school under that body shall be treated as one unit for the purpose of this Rule.

15(a) The above said provision has been introduced into the Rules by G.O.M.S. No. 65 School Education (VE) dated 24.2.2009. However, as far as the first Respondent school is concerned, as early as 25.5.1960, necessary permission was granted by the prescribed authority. Hence, being the corporate body, running more than one school, the Diocese has got authority to transfer teachers from one school to another with the common seniority of the teachers maintained and necessary recognition was also accorded to it much earlier to the transfer. It is also added that there is no material on the side of the Appellant to show that the transfer would prejudicially affect his seniority and disturb his scale of pay. When the Diocese has got authority for transfer, the Appellant has no right to challenge it.

16. The learned Counsel for the Respondents 1 to 3 also draws our attention to a decision of a learned Single Judge of this Court passed in W.P.(MD) No. 4816 of 2005 dated 28.07.2006 [Y. Balachandra Babu and Anr. v. The District Educational

Officer, Kanyakumari District.] In this decision also the above said Full Bench decision has been referred and it was observed that in the facts and circumstances of the case available before the Court, the transfer should be treated as an incident of service. Eventually, the learned Judge has held that the impugned order of transfer is not against the provisions of the Recognised Private Schools (Regulations) Act, or Rules thereunder and the same is not illegal.

16.(a) The defeated writ Petitioner in the above case, the teacher, Y. Balachandra Babu, carried the matter in an appeal in W.A.(MD)Nos.293 and 294 of 2006 [Y. Balachandra Babu v. The District Educational officer, Kanyakumari District and others] before the Division Bench in Madurai Bench of Madras High court. The Division Bench confirmed the order challenged before it holding thus:

13. Considering the facts and circumstances of the case, the third Respondent school registered as corporate body and rules and regulations were framed in the year 2000. Therefore, the transfer order has effected in the year 2005, though he was appointed in a single unit school in the year 1979. He was relieved on 02.06.2005 and joined duty on 03.06.2005. Thereafter, he made an application on 13.03.2000 to fix his seniority and as per the decision of the Division Bench of this Court if the pay and seniority was protected, no prejudice caused to the writ Petitioner. Therefore, it is within the policy of the government and statutes under Rules 15 of the above said Act.

17. Aggrieved at the said judgment the Appellant Y. Balachandra Babu, took the matter before the Honourable Supreme Court of India in Special Leave to Appeal (c) Nos. 11480-11481/2007 and the Apex Court by means of its order dated 27.07.2007 dismissed the Special Leave Appeals. Hence, the position has been made clear that when the seniority of the individual is protected and when the Diocese Corporate Body has got right to transfer teachers from one school to another under due recognition, the transfer could not be challenged.

18. A review has been sought to be made in the Full Bench decision of this Court in Malankara Syrian Catholic School's case (supra) by the Roman Catholic Diocese, Tuticorin, in Review Application No. 139 of 2007 before this Court, this Court after hearing the Petitioner and the concerned Government authorities, has opined that there is no scope for reviewing the Full Bench Judgment. The Full Bench directed the authorities, to consider the request of the Petitioner on the basis of the documents produced. It also observed therein that a factual aspect of Malankara Syrian Catholic Arch Diocese alone has been dealt with by the Full Bench and a decision has been given thereon and the Full Bench in Malankara Syrian Catholic Arch Diocese case did not consider the facts and circumstances relating to the Petitioner which claims that it is a corporate body running several schools and also maintaining single seniority list.

19. Since the facts in Malankara Syrian Catholic Arch Diocese Case is different from the Roman Catholic Diocese of Tuticorin case, the subsequent Full Bench has held that the observations contained in the Malankara Syrian Catholic Arch

Diocese case are not applicable. Likewise, observation in the Malankara Syrian Catholic Arch Diocese case, as adverted to supra, are not applicable to the facts of the present case. As per the consistent view taken by the earlier Division Benches of this Court, it is held that the Diocese has every authority to transfer the teachers from one school to another school, being the corporate management maintaining common seniority and there is no prejudice to any of the service conditions to the Appellant. In such a view of this matter, we are of the considered opinion that the transfer challenged before this Court is valid. Hence we hereby confirm the order passed by the learned single Judge and the present appeal suffers dismissal. The writ appeal is devoid of merits. In view of the superannuation of the Appellant on 28.4.2006 the appeal has become infructuous also.

20. In the result, the writ appeal is dismissed. No costs. Connected M.P. is closed.