
(2003) 04 MAD CK 0172

In the Madras High Court

Case No : Writ Petition No. 13541 of 2001

Joseph Dharma Sekaran

APPELLANT

Vs

The District Educational Officer, The Chief Educational Officer
and The Management of Papanasam Labour Welfare
Association Higher Secondary School

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 04 MAD CK 0172

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : R.T. Shyamala, for the Appellant; R. Rajasekaran, G.A. for Respondents 1 and 2 and S. Jayaraman, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—By consent, the writ petition itself is taken up for hearing.

2. The petitioner, who is a teacher, assails the order of suspension dated 20.7.2001 pending an enquiry into certain grave charges framed against her.

3. According to the learned counsel for the petitioner, the impugned order of suspension pending an enquiry is bad in law, as

(i) the decision was not taken by the School Committee; and

(ii) the same lacks prior approval of the competent authority.

4. Per contra, learned counsel for the third respondent, placing reliance on the averments stated in the counter affidavit, states that

(i) the impugned order dated 20.7.2001, suspending the petitioner pending an enquiry, was made pursuant to the decision of the School Committee of the third respondent Management; and

(ii) no prior approval is required for passing an order of suspension pending an enquiry.

5. I have given careful consideration to the submissions of both sides.

6. A reference to Section 22 of the Tamil Nadu Recognised Private Schools Regulation Act and Rule 17 of the Rules are relevant to be referred to, which read as under.

Section 22:

Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools.- (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

(3)(a) No teacher or other person employed in any private school shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of section 21, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee:

Provided that the competent authority may, for reasons to be recorded in writing extend the said period of two months, for a further period not exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person.

Rule 17:

Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools.- (1) The competent authorities to accord prior approval for the dismissal, removal or reduction in rank of a teacher or other person employed in any private school, shall be the District Educational Officer in respect of teacher or other person employed in Pre-primary, Primary and Middle Schools and the Chief Educational Officer in respect of teacher or other person employed in High Schools, Higher Secondary Schools and Teachers' Training Institutes.

(2)(i) Whenever a teacher or other person employed in a private school is kept under suspension, such suspension shall immediately on the date of issue of the suspension order be intimated by the Secretary of the School Committee to the District Educational Officer concerned along with a copy of the suspension order.

(ii) On receipt of intimation regarding the suspension of a teacher or other person as mentioned in clause (i) above the District Educational Officer concerned shall make payment of subsistence allowance to the Teacher or other person who is placed under suspension every month from the date of suspension for not more than two months at half the rate of pay which he was drawing at the time of suspension and in addition the Dearness Allowance if admissible on the basis of such pay.

(iii) Whenever the competent authority has extended the period of suspension of a teacher or other person under the proviso to clause (b) of sub-section (3) of section 22 of the Act, he shall intimate such extension of suspension to the District Educational Officer concerned. On receipt of such intimation the District Educational Officer concerned shall make payment of subsistence allowance to the teacher or other person who is placed under suspension for a further period not exceeding two months at half the rate of pay which he was drawing at the time of suspension and in addition, the Dearness Allowance if admissible on the basis of such pay.

(iv) The District Educational Officer concerned shall send an intimation regarding the payment of the subsistence allowance under clauses (ii) and (iii) above to a teacher or other person who is placed under suspension to the Secretary of the School Committee.

(v) The payment of subsistence allowance shall be limited to maximum of four months in all.

(3)(i) Where after enquiry, including the appeal, a suspension is found to be not justified, the management shall remit the amount of subsistence allowance paid to the teacher or other person, employed in that private school to the Government in one lumpsum under the appropriate head of account. The Educational Agency shall however, pay such teacher or other person the full pay and allowances he would have drawn but for his suspension less the amount of subsistence allowance already paid to the teacher or other person for the suspension period from the funds of the management without any claim from grant.

(ii) Where a substitute is appointed in the place of a teacher or other person employed in a private school kept under suspension, the management shall not be entitled to any grant in respect of such a substitute.

(iii) Where the appellate authority has decided against the imposition of the penalty of dismissal or removal from service or placement under suspension of a Teacher or other person employed in a private school by the management of that

school, the management of every private school, not being a minority school, shall implement the order of the Appellate Authority and re-instate the teachers or other persons with all backwages for the period of dismissal or suspension or removal within one month from the date of order of the Appellate Authority, failing which, apart from resumption of the post, recognition shall be withdrawn."

7. Both Section 22 of the Act as well as Rule 17 of the Rules contemplate only prior approval of the competent authority, when a teacher or any other person employed in a private school is proposed to be dismissed, removed or reduced in rank or the appointment is otherwise proposed to be terminated. Such prior approval of the competent authority is not condition precedent for passing an order of suspension pending an enquiry into the grave charges.

8. That apart, I find that the impugned order dated 20.7.2001 suspending the petitioner pending an enquiry has been made pursuant to the decision of the School Committee of the third respondent Management.

9. Hence, both the contentions of the petitioner fail and therefore, the writ petition is dismissed. No costs.

Consequently, WPMP Nos. 25100 and 19914 of 2001 are also dismissed.