

(2002) 10 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No. 10791 of 1996 and WPMP No. 14354 of 1996

K. Rudrakoti

APPELLANT

Vs

The Chief Educational Officer, The District Educational Officer
and The Secretary, YMCA College Sports Higher Secondary
School

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 10 MAD CK 0011

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : D. Hariparanthaman, for the Appellant; R. Thiagarajan, for R.3 and Velumani, AGP for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner prays for the issue of a writ of certiorarified mandamus to call for the records from the file of the third respondent in

Ref.No.1551/KR/96-97, quash the same and consequently direct the respondents to continue the services of the petitioner till the end of the

academic year 1996-97 (31.5.1997) and award exemplary costs.

2. The petitioner who was employed as a B.T.Asssitant in the third respondent, a minority school, reached the age of superannuation during June

1996. The petitioner requested re employment till the end of the academic year. The third respondent by reply dated 27.3.1996 intimated the

petitioner that as the District Educational officer required production of the Medical Fitness Certificate in connection with the petitioner's for

reemployment for the academic year 1996-97, the petitioner was required to appear before Dr. Hisamuddin Papa, HUMA Hospital on 12.4.1996

at 11.00 A.M., for medical check up. But the petitioner did not appear before the Medical Officer indicated by the third respondent School, but

he has secured a Medical Certificate from a Doctor of his choice and forwarded the same on 26.6.1996 and requested that he be reappointed

after superannuation and retained till the end of the academic year.

3. On 28.6.1996 the third respondent passed a relieving order relieving the petitioner from his duties on superannuation with effect from 30th June

1996 indicating that the request for reemployment is declined. On being relieved the petitioner has approached this court to quash the said

communication dated 28.6.1996 and for direction to continue the petitioner in service till 31.5.1997 (1996-97 academic year end). The petitioner

has prayed for the writ of mandamus on the ground that he has got a right to be reemployed. The period for which reemployment was sought for

had come to an end but according to Mr. Hariparanthaman, the petitioner is entitled to monetary benefits even if he is not reemployed.

4. Per contra the respondent filed a typed set of papers pointing out that the conduct of the petitioner was not satisfactory during the past several

years, that the petitioner has not appeared before the Medical Board constituted by the third respondent, that the petitioner has absented himself

on a number of days and that well in advance on 14.7.1995, the pension papers have been submitted to the District Educational Officer and

according to the third respondent, the petitioner's character and conduct not being satisfactory and his retirement being not during the middle of the

year, he is not entitled for reemployment. It is also contended that the retirement in the case of the petitioner fell on 30th June 1996 which is not the

middle of the academic year and the petitioner cannot compel the respondents to reemploy him.

5. It is also contended by the third respondent that the petitioner has no right much less a fundamental right to compel the respondents to reemploy

him. The third respondent further pointed out that it is not as if the petitioner is retiring during the middle of the year, but he has to demit his office

even in the beginning of the academic year, which date is well known and therefore the claim of the petitioner if sustained would defeat the very

object of the Government Order namely the student shall not suffer by a teacher being allowed to retire during the middle of the academic year. It

is further contended that the petitioner is not entitled to monetary relief as a Teacher was appointed in the place of the petitioner.

6. Mr. D.Hari Paranthaman, learned counsel appearing for the writ petitioner contended that the order impugned is liable to be quashed and and

the respondents should be directed to pay full salary for the period ending with the academic year. According to the petitioner academic year starts

on the first day of June and the learned counsel also refers to the definition ""academic year"" in Section 2(1) of the Tamil Nadu Recognised Private

School (Regulation) Act, 1973. According to which ""academic year"" means ""the year commencing on the first day of January or June"". Admittedly

the third respondent school commences on the first day of June of the year. But by virtue of the said definition it cannot be argued that 30th of June

falls in the middle of the academic year.

7. By G.O.Ms.No. 249, Education dated 9.2.1959 the Government provided for the continuance of the Teachers in service on reemployment

terms on their attainment of the age of superannuation in the middle of the school year. The G.O refers to the school year and not academic year.

The object of the G.O., being that by a Teacher being allowed to retire during the middle of the school year when the students are preparing for

the examinations for the year in question or likely to appear for examination, they shall not suffer for want of a teacher or they shall not suffer by

another teacher differently handling the subject. On a fair construction of the G.O., it has to be taken that the retirement should be in the middle of

the school year.

8. The word ""middle"" means equal distance in measurement or in number of steps from the extreme ends-intermediate, intervening etc., Therefore

the popular meaning of the word ""middle of the school year"" means any time around December and thereafter. In other words, a Teacher who

retires in the month of November or December in a school year or thereafter is entitled to claim that he is retiring in the middle of the year and not a

person who retires in the beginning of the school year which is not the middle of the year, 30th of June is the beginning of the year alone. Therefore

it is rightly contended by the respondent that the petitioner is not entitled to the benefit of the G.O.Ms.No.259 Education dated 9.2.1959 as

modified by G.O.Ms.No1643 Education dated 27.10.1988.

9. The learned counsel for the third respondent also pointed out that assuming for the purpose of arguments that the retirement in the case of the petitioner falls in the middle of the school year, unless he satisfies the following prerequisite conditions he will not be entitled to reemployment as sought for by him. The prerequisite conditions being (i) The character and conduct of the Teacher should be satisfactory (ii) The teacher should be physically fit to continue in service.

10. It is pointed out and rightly too by the third respondent that the character and conduct of the teacher was not satisfactory. As against the petitioner, there were complaints and he has not been regular in attending the classes as he has not only absented himself on number of days during the last three years preceding 30th June 1996, but also during those years he had not been sincere and he has availed leave too frequently. Even during the year 1993, out of total working days of 139 days he has attended school for 62 "" of days. He availed 5 "" days Casual Leave, 1 day as restricted holiday, 27 days as Medical Leave, and absented himself for 43 days without any information. In all during the said year the petitioner has not attended the school for 76 "" days out of 139 days. The petitioner was continuously absenting himself and therefore he was on leave on loss of pay which has also been entered in the Service Register. This shows that the petitioner was not sincere, nor he had concern for the students and their education.

11. That apart, there has been some complaints. The petitioner also has not chosen to appear before the Medical Officer as indicated by the third respondent-management. But he has secured a Certificate from a Doctor of his choice. The cumulative effect of the above would show that the petitioner's service is not satisfactory. So also the character and conduct of the petitioner as has been pointed out by the counsel for the third respondent as seen from few complaints which were received by the third respondent-school. Mr. Hariparanthaman, learned counsel contends that those are complaints and so long as it has not been enquired into and a finding is rendered those complaints cannot be looked into or taken for consideration. In my considered view, such a contention is too wide a proposition.

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.

13. That apart even one year prior to the date of superannuation, pension papers have been submitted and it has been processed.

14. The petitioner has also suffered a heart attack during 1993-94 and his attendance was very low or very thin after that. The cumulative effect

would naturally reflect on the character and conduct of the teacher and not his being sincere to serve the student community. The petitioner has not

chosen to appear for the Medical examination before the Doctor nominated by the School. This again is a point to be commented adversely

against the petitioner as he has avoided the Doctor nominated by the School. Taking into consideration of the physical fitness for continuing in

service, the character and conduct and he being insincere, the third respondent has chosen to relieve him on 30th June 1996.

15. The petitioner not having performed or discharged his duties sincerely and efficiently cannot complain. The petitioner has absented himself. He

was on loss of pay, besides he has suffered a heart attack also. Naturally, the third respondent-school was not prepared to accept the petitioner as

a person with good character and conduct sincere to take care of the students. This court finds that there is nothing wrong with the view taken by

the third respondent-School.

16. Reemployment is not a matter of right. It is governed by the G.O.s issued. The petitioner has been actually relieved on 30th June 1996 as the

management has come to the conclusion that his performance was not satisfactory and his physical condition is not satisfactory and therefore, the

management has taken the decision not to reemploy the petitioner in the interest of the school. It is not as if the petitioner has got an absolute right

or fundamental right to compel the respondents to reemploy him. The petitioner's claim for reemployment is subject to the conditions enumerated

in the said G.Os which the petitioner has miserably failed to satisfy.

17. A Division Bench of this Court in W.A.No:1179 of 1993 etc., batch, dated 6.9.1994 (Sundaram Vs. Secretary CSI Diocese of Madras)

while analysing the purpose behind the G.O., held thus:-

10. We have already reproduced the relevant Government Orders. Those Government Orders are to be read as a whole. An analysis of the

aforesaid Government Orders would disclose that reemployment is for ensuring continuity of benefit of teaching from the same teachers to the

students during the academic year, that it is a reemployment and not continuity of service on fulfilling the conditions that the work and conduct are

satisfactory, that they are physically found fit for further service and that no disciplinary procedures are pending against them. Thus, it is clear that

neither a fresh teacher nor a teacher who is not fit to be continued, is imposed upon the institution. It is the very same teachers whose work and

conduct are found to be satisfactory and who is physically found to be fit for further service and against whom no disciplinary proceeding is

pending, is directed to be continued on reemployment basis during the remaining period of that academic year. Further, Section 14 of the Tamil

Nadu Recognised Private Schools (Regulation) Act, 1973 makes it incumbent upon the management which receives aid from the State

Government to abide by the orders that are issued from time to time by the State Government of course subject to them being in conformity with

the right guaranteed on the minority institutions under Art.30 of the Constitution.

18. The object of the G.O., has been highlighted by the Division Bench and in that background for valid reasons, the third respondent school ;has

declined to continue the petitioner on reemployment. The emphasis is reemployment is provided with a view to ensure continuity or benefit for the

teachers who attain the age of superannuation during the middle of the year for the rest of the academic year/school year. The Division Bench also

laid down that the Government Order specifically states that the institutions are to continue the teachers till the end of the academic year provided

the teachers satisfy the three conditions laid down in the G.O.Ms.No:452, Education dated 24.3.1970 which has been reiterated in the subsequent

Government Orders.

19. In the light of the above discussion, this court holds that the petitioner cannot compel the respondents to reemploy him as the respondent has

rightly declined reemployment for valid reasons as has been provided in the G.Os.

20. Though the learned counsel for the petitioner relied upon the decision reported in 1998 WLR 77 (R.Muthukrishnan Vs. The Secretary, Hyder

Middle School) as well as 1996 WLR 259 (David Thampi Dhas Vs. The Governing Board of N.M.Christian College, Marthandam and others)

and the judgement in Writ Appeal NO.1179/93 etc., batch dated 6.9.1994, on the facts of this case, those pronouncements are clearly

distinguishable and have no application. The petitioner whose conduct was not satisfactory who has absented himself for a considerable period,

who had not taken interest in the student community and who had also suffered a heart attack during the last two years, the management was well

founded in turning down the request of the petitioner for reemployment. The action of the third respondent cannot be held to be arbitrary or

violative of the G.Os governing the point.

21. Already a teacher has been appointed in the vacancy caused by the retirement of the petitioner. The pension papers of the petitioner have been

submitted one year in advance. But the petitioner kept silence. The reemployment has not caused any difference in the petitioner's terminal benefits

and pension. This is not a fit case where this court would be justified in interfering with the order of the third respondent or that of the other

respondents in not continuing the petitioner beyond 30th June, 1996. There are no merits in the writ petition and it is dismissed Consequently

connected WMP is also dismissed. No costs.