
(2014) 10 MAD CK 0192
In the Madras High Court
Case No : W.A. (MD) No. 319 of 2012

K. Swamidhas

APPELLANT

Vs

The Director of School Education

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0192

Hon'ble Judges : R. Mahadevan, J;M. Jaichandren, J

Bench : Division Bench

Judgement

R. Mahadevan, J.—This writ appeal has been preferred as against the order passed by the learned Judge, dated 31.01.2012 passed in W.P. (MD) No. 3155 of 2009.

2. Brief facts leading to the filing of this writ appeal, are set out thus:

2.1. The case of the appellant is that he was appointed in the fourth respondent school as P.G. Assistant (Maths) on 01.10.1980. Thereafter, he was appointed as Headmaster on 13.12.1990, however, subject to the approval of the Education Department. His appointment to the post of Headmaster was turned down by the respondents and he challenged the same by filing a writ petition before this Court, wherein, the fourth respondent was directed to appoint a suitable person to the post of Headmaster as per law. Aggrieved by the order of this Court, writ appeal was filed and the same was also dismissed. Moreover, the Special Leave Petition filed by the appellant came to be dismissed. While so, he was on continuous medical leave from 04.09.2003 to 11.01.2006, so to say, 2 years 4 months and 8 days. He was issued with two charge memos and challenging those charge memos, he filed two suits, out of which, one ended in compromise, but the appellant did not state as to the result of the other one. Under such circumstances, the fourth respondent passed the impugned order dated 24.04.2006, in and by which, he was compulsorily retired from the services of the fourth respondent. Aggrieved by the same, he had filed the writ petition.

2.2. The writ petition was resisted by the fourth respondent, by filing the counter affidavit, inter alia, contending that though the appellant was served with a show cause notice dated 24.01.2006, he failed to submit a reply to the same and since the appellant had been running a jewellery shop, he had not shown any interest in joining the duty. It is further contended that the appellant had not received the impugned order and that the writ petition had been filed only after three years of the impugned order and therefore, the writ petition is barred by limitation. Accordingly, the fourth respondent prayed for the dismissal of the writ petition.

2.3. In the counter affidavit filed by the respondents 5 to 7, it is stated that the leave availed by the appellant was not sanctioned by the then Correspondent and that the appellant had attained the age of superannuation and therefore, they prayed for the dismissal of the writ petition.

2.4. Upon consideration of the rival submissions and scrutiny of the materials placed, the learned Judge dismissed the writ petition. Being dissatisfied with the same, the appellant filed the present writ appeal.

3. Mr. R. Subramanian, learned Counsel for the appellant submitted that before passing the impugned order, the fourth respondent had not issued either any charge memo or conducted an enquiry and that the fourth respondent had no jurisdiction to issue the show cause notice dated 24.01.2006 and to pass the impugned order of compulsory retirement. He further submitted that the fourth respondent had failed to adhere to the provisions of the Tamil Nadu Private Schools Regulations Act, as no prior approval had been obtained before passing the impugned order. Though the appellant had challenged the impugned order after a lapse of three years, he sought for his terminal benefits, without back wages, he argued.

4. He also contended that the learned Judge had not considered the plea of the appellant for terminal benefits, but rejected the writ petition, holding that the writ petition suffered by laches. According to him, the learned Judge ought to have looked into the violations committed by the fourth respondent, while passing the impugned order. Therefore, he prayed for setting aside the order of the learned Judge, by allowing this writ appeal.

5. In support of his contentions, he relied on the following decisions:

(i) State of U.P. Thr. Exe. Engineer and Another Vs. Amar Nath Yadav, .

(ii) S. Valluvan Vs. Tamil Nadu Civil Supplies Corporation and S. Purushothaman, .

6. Per contra, Ms. J. Anandhavalli, learned Counsel for the fourth respondent, reiterated the averments in the counter affidavit filed by the fourth respondent in the writ petition and argued that having absented for 2 years 4 months and 8 days without any leave, letter or sanction, the appellant was not justified in approaching this Court by way of a writ petition and that too, he filed the writ petition with a delay of nearly three years and that the learned Judge had rightly

dismissed the writ petition, on laches. She further contended that the appellant had been duly served with a show cause notice dated 24.01.2006, but he deliberately refrained from submitting a reply to the same and that the fourth respondent had scrupulously followed all the procedures before passing the impugned order and that there was an unexplained delay of three years in challenging the impugned order and on that score also, the learned Judge had dismissed the writ petition, finding no merit therein. Hence, she prayed for the dismissal of the writ appeal.

7. Mr. K. Sreekumaran Nair, learned Counsel for the respondents 5 to 7, placing reliance on the averments in the counter affidavit filed by them, contended that the terminal benefits to which the appellant was entitled to, may be given to the appellant in accordance with law.

8. Mr. V.R. Shanmuganathan, learned Special Government Pleader for the respondents 1 to 3, submitted that there was a delay in approaching this Court by way of a writ petition and that the appellant was also absented for nearly three years without any medical certificate, which would definitely have a negative impact on the future of the students of the school and that the learned Judge had considered each and every aspect of the issue and rightly rejected the claim of the appellant, warranting no interference at the hands of this Court.

9. We have considered the submissions made on either side and perused the materials available on record, including the order of the learned Judge of this Court.

10. "Teachers" are the role-models of the young pillars of our country and there could be no say over the same. In the case on hand, a Teacher was absenting for 2 years 4 months and 8 days, showing disregard to the post which he had held and thereby, he had deprived education to the students studied therein. Though the appellant contended that he was reverted to the post of P.G. Assistant from that of Headmaster, he ought to have met the legal battle, by imparting education to the needy students, but, unfortunately, he had derailed from his sacred path. Thus, he suffered the impugned order of compulsory retirement at the hands of the fourth respondent. Challenge was made to the said order unsuccessfully before the learned Judge of this Court and therefore, he had filed the present writ appeal.

11. We find that the appellant had been absenting for 2 years 4 months and 8 days, for the reasons best known to him and his leave application was not sanctioned by the school authorities. We could see that the appellant refrained from attending the school, for his so-called reversion from the post of Headmaster to the post of P.G. Assistant. He had also suffered two charge memos and he filed the suits and also approached this Court by filing the writ petitions.

12. We also find that the learned Judge had found that Section 22 of the Tamil Nadu Private Schools Regulations Act, would cover the impugned order of

compulsory retirement and so, the fourth respondent passed such an order, instead of passing an order of dismissal or removal.

13. The specific contention of the appellant is that he had suffered illness during the relevant period. However, we find that the appellant had denied to appear before the Medical Board to prove his illness. This would go to show that the appellant had been remained unauthorisedly absent and he had not established his case before the learned Judge, in accordance with law. Having found that the order of compulsory retirement would meet the ends of justice, the learned Judge had not remanded the matter for fresh consideration and ultimately, affirmed the impugned order.

14. We, therefore, find that the learned Judge had elaborately dealt with the issue and arrived at a conclusion that the appellant had approached this Court with an unexplained delay of nearly three years and on that score alone, dismissed the writ petition, which, in our opinion, warrants no interference by this Court.

15. For the foregoing reasons, the writ appeal fails and accordingly, the same is liable to be dismissed.

16. In fine, this writ appeal stands dismissed. No costs.