
(1997) 07 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 10452 of 1995 and W.M.P. No. 16609 of 1995

M. Magudapathi

APPELLANT

Vs

The Manager and Correspondent Savariyappa Udayar
Memorial Higher Secondary School and Another

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 CTC 719 : (1997) 2 MLJ 499

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K.M. Vijayan for V. Illenchezhiyan, for the Appellant; T. Martin, for Joseph Thatheus Jerome and K. Balasubramaniam, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved against the order of the first respondent dated 24.7.1995 dismissing the petitioner from service, he has filed the present writ petition for quashing the same and consequential direction for re-instatement with all backwages and other benefits.

2. The case of the petitioner as seen from the affidavit filed in support of the writ petition is briefly stated hereunder:-

Since the first respondent school being a minority institution, the provisions relating to approval, appeal and other provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 are not applicable as per the Division Bench judgment of this Court, dated 22.4.1976, the petitioner has filed the present writ petition under Article 226 of the Constitution of India. It is contended that the entire charges from charge No. 1 to 10 which is found in the impugned order of dismissal would reveal that they are for the alleged complaint against the wrong administration of the first respondent school which is said to have been sent by one V. Palanisamy, who is nothing to do with the petitioner

herein. The impugned order of dismissal is liable to be dismissed on the sole ground that the first respondent who had given the charge had himself become the disciplinary authority and enquiry authority. Further the first respondent have violated the principles of natural justice by not providing sufficient opportunity to the petitioner to put forth his defence. The series of replies and demand from the petitioner from 11.5.1993 to 10.7.1995 would reveal that the entire enquiry was conducted in a manner totally disregard of principles of natural justice with the sole purpose of vindictive motive against the petitioner and five other teachers. In those circumstance, he has approached this Court for the necessary relief as stated above.

3. First respondent has filed a counter affidavit disputing the various averments made by the petitioner. It is contended that the present writ petition against the first respondent is not maintainable, since the first respondent school is not a Government school and is not governed by any of the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973. In other words, according to the first respondent it is not state or Agency of a State as defined under Article 12 of the Constitution of India. The first respondent School is declared as religious minority institution. Further in the counter affidavit the first respondent has elaborated various charges made against the petitioner. The allegation that the petitioners was not given proper opportunity is denied by the first respondent. There is no basis for the allegation that the enquiry was conducted without giving any opportunity to the petitioner. It is also contended that the impugned order is fair, legal, reasonable and proper and hence this court cannot exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

4. Respondents 2 and 3 have not filed any counter affidavit.

5. In the light of the above pleadings, I have heard Mr. K.M. Vijayan, learned senior counsel appearing for the petitioner, Mr. T. Martin, learned counsel appearing for the first respondent and Mr. K. Balasubramaniam, Additional Government Pleader for respondents 2 and 3.

6. The learned senior counsel appearing for the petitioner raised the following submissions:

(i) In as much as the first respondent is a minority institution the provisions viz., approval, appeal and revision mentioned in Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 are not applicable, this Court has ample jurisdiction to go into the order of the first respondent.

(ii) The impugned order of dismissal passed by the first respondent cannot be sustained, since notice for enquiry charge memo, enquiry report and the ultimate order of dismissal were passed by the Manager and Correspondent of the first respondent school.

7. In support of the above submissions he has relied on the following decisions:

(a) A. Casmir and Ors. v. The Joint Director of Schools (Education) (Higher Secondary) College Road, Madras 6 and 2 Ors. 1996 W.L.R. 470; (b) N. Sampathu v. The Chief Educational Officer, Vellore and Ors. 1989 (2) M.L.J. 263; (c) Order in P. Mohan v. Tamil Nadu Civil Supplies Corporation Limited, W.P. 8075 of 1995 dated 4.3.1996.

8. On the other hand Mr. T. Martain learned counsel appearing for the first respondent raised the following submissions:

(i) Since admittedly the first respondent is a minority institution, the writ petition is not maintainable and he has to approach only the civil Court if he has any grievance against the impugned order of dismissal;

(ii) Disputed questions of fact cannot be agitated in the writ jurisdiction.

9. In support of his both submissions he has relied on the following decisions:

(a) Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., ; (b) Francis John Vs. Director of Education and Others, ; (c) A.P. John Paulraj v. Central Board of Secondary Education, represented by its Chairman and 3 Ors. 1990 W.L.R. 223.

10. I have carefully considered the rival submissions.

11. There is no dispute that in view of the pronouncement by a Division Bench of this Court in Writ Appeal No. 295 of 1975 and Writ Petition No. 4478 of 1974 dated 22.4.1976, the provisions relating to approval, appeal and revision etc., are not available to minority institutions. In those circumstance, the petitioner has approached this Court by way of the present writ petition. First I shall deal with the maintainability of the writ petition. There is no dispute that the first respondent institution is a minority School. At this moment, it is worthwhile to refer the decision reported in A. Casmir and Ors. v. The Joint Director of Schools (Education) (Higher Secondary) College Road, Madras-6 and 2 Ors. 1996 W.L.R. 470. In the said decision Lakshmanan, J. following the two earlier decisions of this Court has entertained the writ petition in a similar nature and granted relief in favour of the petitioner therein. The following conclusion of the Learned Judge is very relevant for our case and the same is extracted hereunder:

"Though it is contended by the learned Government Advocate that the writ petitions are not maintainable, I am of the view that the said contention cannot of all be countenanced in view of the two decisions of this Court reported in C. Marianandan v. Government of Tamil Nadu 1989 (I) M.L.J. 269 and S. David Vs. St. Gabriels Higher Secondary School, Madras and Others, .

In C. Marianandan v. Government of Tamil Nadu 1989 (I) M.L.J. 269 M. Srinivasan, J., as observed has follows:

"The aid received from the Government and the statutory protection given to the employees and administration governed by statutory rules and guidelines are relevant factors to be considered to decide whether an institution is amenable to

the writ jurisdiction. Admittedly the institution received teaching grant from the date of recognition of school pursuant to the orders of the Court. The teachers are entitled to protection afforded by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act. Procedure for termination of teacher on disciplinary grounds is set out in the agreement prescribed under Rule 15 read with Section 19 of the Act. Hence, a minority School receiving aid from the Government is amenable to writ Jurisdiction."

In *S. David Vs. St. Gabriels Higher Secondary School, Madras and Others*, , *R. Jayasimha Babu, J.*, in an identical case has held that a writ petition can be maintained against such institutions. Admittedly, in the instant case, the institution is receiving teaching grant from the Government. Therefore, the teachers of this institution are entitled to protection afforded by the provisions of the Act. Therefore, I am also of the view that a minority school receiving aid from the Government is amenable to the writ jurisdiction of this court and therefore, the petitions are maintainable."

12. In the very same decisions the learned Judge has also referred to the decision of the Supreme Court and the same is also extracted hereunder:

"The Judgment of the Supreme Court reported in *D.K. Yadav Vs. J.M.A. Industries Ltd.*, can also be usefully referred to in the context of considering the submission made by Mr. K. Chandra that the teachers are entitled to protection under Article 226 of the Constitution. The Supreme Court in paragraphs 14 and 16 observed as follows:

It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood the order of termination of the service of an employee/workmen visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conduct complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress* 1991 (I) S.C.C. (Supp.) 600 : 1991 S.C.C. (L & S), 1213 the Constitution Bench, per majority held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order of terminating the ... service of the employees was set aside.

This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor gave the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances, 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12, 1989 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a

period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs."

13. In our case during the course of the argument, learned counsel appearing for the first respondent admitted that the first respondent school is getting aid (building aid) from the Government, In as much as the first respondent institution is getting assistance from the Government either for building or maintenance, the fact remains the first respondent school is being ran by the assistance of the Government. In those circumstance, in view of the law laid down by three learned Judges of this Court referred above, I am of the opinion that the first respondent School is amenable to writ jurisdiction of this Court and therefore the writ petition is maintainable. The very same view has been expressed by a Bench of this Court reported in Sampathu v. The Chief Educational Officer, Vellore and Ors. even prior to the above referred 1989 (2) M.L.J. 263 three decisions.

14. The learned counsel appearing for the first respondent relying on the decisions reported in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., submitted that mere recognition or affodation to the private educational institution would not be termed as instrumentally of State. However, the learned counsel appearing for the first respondent himself has admitted the institution is getting aid from the Government, in those circumstances, the decision referred to by him may not be much helpful to him.

15. In the light of the above factual position, the other decision referred to by the learned counsel appearing for the first respondent viz., Francis John Vs. Director of Education and Others, is also not much helpful for his case.

16. Even in the decision of Srinivasan, J. as he then was reported in A.P. John Paulraj v. Central Board of Secondary Education represented by its Chairman and 3 Ors. 1990 W.L.R. 223 there is no complete bar with regard to in vocation of writ jurisdiction against minority institutions. The learned Judge has held only in very exceptional circumstances, it is open to this Court to interfere. In view of the reasons stated by me in earlier paras this Court can very well interfere in the impugned order.

17. Now, let me consider the merits of the impugned order passed by the first respondent. The reading of the impugned order clearly shows that all action had been done only by the first respondent. In other words, as rightly contended by the learned senior counsel for the petitioner commencing from the notice ending with order of dismissal has been passed by the first respondent himself. In those circumstances, even though the learned counsel appearing for the first respondent submitted that nothing wrong in the procedure adopted by the first respondent. I am unable to accept the reason given by the learned counsel appearing for the first respondent, sine the objection of the petitioner is acceptable on the ground of violation of natural justice. Hence there is no need for this court to go into the merits of the order passed by the first respondent.

However, it does not mean that there is no need to take action against the first respondent. In view of the defect in the procedure followed by the first respondent, I am of the view that the matter has to be remitted to the first respondent for taking fresh proceedings in accordance with law. In view of my above conclusion the impugned order of the first respondent dated 24.7.1995 is set aside and the first respondent is permitted to conduct fresh enquiry if they are so advised, in accordance with law.

18. Learned senior counsel appearing for the petitioner relying on the decision of Lakshmanan, J. in P. Mohan v. Tamil Nadu Civil Supplies Corporation Ltd., W.P. No. 8075 of 1995, dated 4.3.1996 submitted that the petitioner is entitled to all emoluments and other attendant benefits from the date of the impugned order.

19. In view of the decision of the learned Judge referred above. I am of the view that the petitioner is entitled to succeed with regard to prayer for mandamus also.

20. Net result, the writ petition is allowed as prayed for with a liberty to the first respondent to proceed against the petitioner if they are so advised, in accordance with law. Consequently W.M.P. 16609 of 1995 is closed as no order necessary.