

(2009) 01 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No"s. 11692 of 1999, 7157 of 2001 and 5964 of 2002

Mr. G. Irudayasamy

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 30(1)

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 22(3)

Citation : (2009) 01 MAD CK 0094

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Irudayasamy, Party in Person, for the Appellant; C.K. Vishnupriya, AGP and Vijay Narayan, SC for R. Parthiban, for St. Joseph's College, for the Respondent

Judgement

K. Chandru, J.—The petitioner in these three writ petitions is the same person. In W.P. No. 11692 of 1999, the prayer of the petitioner is

to set aside the order dated 02.7.1999 passed by the third respondent school. By the aforesaid order, the school management suspended the

petitioner from 05.7.1999 to 11.7.1999. In this writ petition, initially notice of motion was ordered on 08.7.1999. Subsequently, the writ petition

was admitted on 27.9.1999. Pending the writ petition, an interim stay was granted on 27.9.1999 and it was subsequently made absolute on

01.9.2003.

2. W.P. No. 7157 of 2001 was filed challenging the order of suspension dated 10.1.2001 pending enquiry. Notice of motion was ordered on

17.4.2001. Pending the writ petition, the petitioner sought for interim stay and direction for salary and that was rejected by this Court by orders

dated 08.4.2002.

3. In W.P. No. 5964 of 2002, the challenge is to the order of dismissal dated 04.12.2001 passed by the school management. The said writ

petition was admitted on 22.6.2002. In view of the fact that the three writ petitions were filed by the same petitioner and arising out of the service

grievance of the petitioner, they were heard together and a common order is passed.

4. On behalf of the school management, a counter affidavit dated 20.2.2008 has been filed. A stand was taken by the school management that a

writ petition will not lie against a private body and therefore the writ petition is liable to be rejected. It is also stated that this Court under Article

226 will not interfere with the disciplinary action taken by a private school and question of re-appreciating the evidence and interfering with the

quantum of arrears may not arise.

5. It must be stated that W.P. No. 11692 of 1999 and W.P. No. 7157 of 2001 were directed against temporary suspension. Since the petitioner

was dismissed from service by an order dated 04.12.2001, the subject matter of challenge in those writ petitions has become infructuous and

hence they are liable to be dismissed.

6. With reference to the writ petition challenging the dismissal order (W.P. No. 5964 of 2002), since the school management had raised the

question of maintainability, the same may be dealt with before going into the merits of the dismissal order.

7. This Court in the decision relating to Casmir. A. and Ors. v. Joint Director of School (Education - Higher Secondary) etc. and two Ors.

reported in 1996 W L.R.470 held that a teacher employed by a minority school can maintain a writ petition under Article 226. AR.Lakshmanan, J.

(as he then was) held that the school management must conduct an enquiry before dismissing a teacher and the minimum principles of natural

justice as laid down by the Supreme Court in Meenglas Tea Estate Vs. Its Workmen, must be followed.

8. Subsequently, the said decision was referred to and approved by a Division Bench presided by V.S.Sirpurkar, J. (as he then was) vide decision

in C. Masanam v. The Chief Educational Officer, Madurai and Anr. reported in (2000) 3 M.L.J.19. The Division Bench in paragraph 16 held as

follows:

16. Every teacher in a private school including a minority school is given the protection of these Rules and therefore unless the procedure agreed

upon by the school and management for terminating the services is followed, there cannot be a valid termination of a service of the teacher. Clause

7 sets out clearly and in unmistakable terms, the steps to be followed by the school before taking a final decision regarding dismissal, removal,

reduction in rank or termination of the service of a teacher. These are all the statutory safeguards to protect the teacher against arbitrariness.

9. Further, a Larger Bench of the Supreme Court vide its judgment in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,

went into the scope and extent of Article 30(1) of the Constitution and the right of the minorities in running an educational institution. The Supreme

Court answered the relevant question in Q.5(c) in para 161 and it may be usefully reproduced below:

Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing

bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their

service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

Ans. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution,

the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board

have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative

control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational

procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a

mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided

over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

10. Since the State Government had not appointed any District Judge as a Tribunal to deal with the service grievance of teachers employed in minority schools as directed by the Supreme Court, the only option open to the petitioner is to approach this Court under Article 226 of the Constitution. Hence, the preliminary objection raised by the school management is hereby overruled.

11. It is seen from the records that the petitioner joined the first respondent school on 16.10.1992 as a vocational teacher in Commerce. He claimed that he applied for medical leave for 15 days from 06.11.2000 to 20.11.2000 and enclosed a medical certificate from a doctor attached to the Government Hospital at Srirangam. He was also treated as an in-patient from 08.11.2000 to 10.11.2000. On the advice of the doctor, he also applied for extension of leave for one month for medical rest from 21.11.2000. When he reported for duty on 21.12.2000 with all medical certificates, the petitioner was not allowed to join duty. He was directed to appear before a Medical Board. When he appeared, he was informed that since his medical leave was already over it was not possible for them to entertain any examination.

12. Once again the school by a letter dated 30.12.2000 directed him to appear before the medical board. Since the medical board had already expressed its opinion that they cannot examine him, he came to the school on 04.1.2001 with permission to report for duty. He also made a complaint to the District Educational Officer (third respondent herein) about the stand of the management in not permitting him to report for duty.

13. The Medical Board itself addressed a letter dated 08.1.2001 stating that

there was no provision under the rules in examining a candidate after the expiry of leave. In the light of the same, the petitioner once again reported for duty on 09.1.2001 and he was not allowed to join duty. The petitioner was placed under suspension by an order dated 10.1.2001 and he was given charge memo dated 15.1.2001. The charge memo was served on the petitioner on 21.1.2001 and the petitioner sought for an extension of time for submitting his explanation. Without grant of time, the first respondent appointed the second respondent, who is an advocate and the counsel for the management, as the Enquiry Officer.

14. The Enquiry Officer by his report dated 24.10.2001 held the petitioner as well as one A.Arokiaraj guilty of all the charges. The petitioner was given a show-cause notice on the basis of the enquiry report. To the showcause notice dated 24.10.2001, the petitioner gave a detailed reply dated 03.11.2001. Considering the explanation, the first respondent by an order dated 04.12.2001, dismissed the petitioner from service, which has become the subject matter in the writ petition (W.P. No. 5694 of 2002).

15. On behalf of the first respondent, a counter affidavit dated 20.2.2008 has been filed. It is claimed that the advocate appointed as the Enquiry Officer had never represented the management before any court and the petitioner was also given the assistance of one advocate. Eight witnesses were examined on behalf of the management and they were cross-examined by the counsel for the petitioner. The petitioner also examined himself as a witness and was cross-examined by management's advocate. He also gave a written statement of defence.

16. The petitioner appearing in person submitted that the management was wrong in dismissing the petitioner. The attempt by them to send him for the examination by the medical board did not fructify because the medical board refused to examine the petitioner and gave a letter dated 08.1.2001 in this regard. It is the management which did not allow the petitioner to report for duty even though there was no order preventing him from reporting for work. The other circumstances arose consequent on the management refusing to permit him to report for work. In the place of the petitioner, the first respondent is appointed as substitute without any justification. When the petitioner went to take class, he found that the substitute was taking class, whereas the petitioner was continued to be on the

rolls of school register. This cannot be tolerated. There is no allegation of any highhandedness on his part. Therefore, the entire issue has been precipitated by the management without any justification. Even though an enquiry was held with reference to the subsequent conduct, the root cause for the main issue arose because the management was preventing the petitioner from reporting to work. The two suspension orders passed were never required since the petitioner had not committed any grave misconduct as required u/s 22 (3) of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

17. Though the learned Senior Counsel for the management tried to justify the action of the school by stating that an enquiry was held against the petitioner by observing the principles of natural justice, the fundamental question arose in the present case was due to the refusal of leave applied by the petitioner. When his leave was supported by the medical certificate and when he had also stated that he was an in-patient in the Government Hospital at Srirangam, there was no justification for the first respondent to prevent the petitioner from reporting for duty. The first respondent ought to have permitted the petitioner to report for duty along with the medical certificate. The question of grant of medical leave can always be regularised subsequently. The fact that a substitute was appointed even while the petitioner was continued to be on the rolls, would have naturally irked him. That provocation has come only when he appeared before the medical board more than once and was told that he will not be examined by the medical board.

18. The entire blame for such provocation has come from the first respondent. The fact that the substitute teacher was also not examined in the enquiry will show that the best evidence was not let in. The statement alleged to have been obtained from the substitute teacher Mr. Laazar does not tally with the statement given by the other two witnesses. In the light of the same, the action of the first respondent in dismissing the petitioner without any justification is clearly illegal and the impugned order dated 04.12.2001 is liable to be set aside. The writ petition (W.P. No. 5964 of 2002) will stand allowed. The impugned order dated 04.12.2001 is set aside. The first respondent is directed to reinstate the petitioner in service within a period of four weeks from the date of receipt of a copy of this order. The

petitioner will be entitled to get only 50% of the salary for the period of non-employment. But, however, the entire period of non-employment will be treated as continuous service for all other purpose. No costs. The other two writ petitions, i.e. W.P.Nos.11692 of 1999 and 7157 of 2001 will stand dismissed.