
(2002) 11 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 20547 of 2002 and WPMP No. 28436 of 2002

National College

APPELLANT

Vs

The Joint Director, Collegiate Education, Dr. N. Baskaran,
Head of the Department, Philosophy, R. Ravivenkatesan,
Lecturer in Selection Grade Mathematics, Dr. K.
Rajarathinam, Reader in Tamil, K. Pandian, Selection Grade
Lecturer in History, Dr. V. Kannan, Reader in Biology, Dr. S.
Hariharan, Reader in Commerce, Dr. K. Anbarasu, Reader in
Geology, Dr. V. Kumar, Reader in Geology, Dr. D. Srinivasan,
Reader in Geology, Dr. R. Bhaskaran, Reader in Geology and
A. Ashokan, Lecturer-Selection Grade Philosophy

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 11 MAD CK 0099

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : S. Ramamurthi, for the Appellant; P. Jyothimani, for RR 2 to 12 and V.R. Rajasekaran, Spl. G.P. For R1, for the Respondent

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of a writ of certiorari to call for the records of the first respondent in Na.Ka. No. 2758/E4/2001, dated 29.4.2002 and quash the same.

2. Heard Mr. S. Ramamurthy, learned counsel appearing for the petitioner, Mr. V.R. Rajasekaran, learned Special Government Pleader for the first respondent and Mr. P. Jyothimani learned counsel appearing for respondents 2 to 12.

3. With the consent of counsel on either side, the writ petition itself was taken up for final disposal.

4. The petitioner college initiated disciplinary proceedings against the respondents 2 to 12, who are either Head of the Department/Reader/Lecturer in

various faculties in the petitioner college. We are not concerned with the merits of the action taken by the petitioner college or the defence of the respondents 2 to 12. The Secretary of the College Committee called for explanation from the respondents 2 to 12 with respect to certain alleged misconduct, dereliction of duty and willful disobedience etc., by the respondents 2 to 12. The respondents 2 to 12 submitted their explanation. The explanations were placed before the College Committee. The College Committee considered the explanations of the respondents 2 to 12 and resolved to initiate disciplinary proceedings against the respondents 2 to 12 by appointing Mr. D. Stanislaus, a Member of the Bar as enquiry Officer.

5. As against the respondents 2 to 12, distinct and separate charges were framed and each of them being proceeded separately in respect of the different charges framed by the Disciplinary Authority. Mr. Stanislaus, Member of the Bar was appointed as Enquiry Officer in terms of the Resolution passed by the College Committee, which is the disciplinary authority. The enquiry officer conducted enquiry after due notices on various dates and the enquiry proceedings were being reported stage by stage to the first respondent. The enquiry is over in respect of respondents 2 to 6 and a report has been submitted. In respect of 7th respondent enquiry is in progress. In respect of respondents 8 to 11, as they absented themselves, the proceedings were conducted ex parte, report has been submitted, the College committee imposed the punishment of stoppage of increment for three years with cumulative effect. It is also represented that respondents 8 to 11 have preferred an appeal to the first respondent. As regards the 12th respondent two set of charges were framed and in respect of the first set of charges stoppage of increment with cumulative effect for three years was imposed while in respect of the other set of charges the disciplinary authority has proposed the punishment of dismissal and the matter is pending with the first respondent for approval.

6. During the pendency of the domestic enquiry proceedings, the petitioner college was submitting its report from time to time about the progress of the enquiry. The first respondent by the impugned communication directed that the enquiry if any should be by the College committee and not by the outsider Mr. Stanislaus, a Member of the Bar appointed by the College Committee, challenging the communication the present writ petition has been filed.

7. It is contended that in terms of Section 14(1)(c) of the Tamil Nadu Private Colleges (Regulation) Act, the College Committee shall take disciplinary proceedings against the teachers and other persons employed in the private college. In terms of Rule 9(3) and (4), the Secretary shall function for and on behalf of the committee and according to the resolution passed in the meeting of the college committee. The college committee has to enter into an agreement with the teachers in Form 7A as prescribed in Rule 11(2)(i). The disciplinary proceedings by the College committee against the teacher shall be in accordance with the sub-clause (a) to (d) of Clause 7 in Form 7A. It is contended that there

is no bar for the College Committee to appoint an outsider, like a Member of the Bar, to be the enquiry officer and there is no legal bar nor there is any restriction in the Tamil Nadu Private Colleges (Regulation) Act or in the Rules in this respect. While pointing out that the petitioner college is taking action in terms of the provisions of the act, it is contended that the direction issued by the first respondent that no outsider could be the enquiry officer is being challenged as illegal.

8. It is also pointed out that none of the respondents 2 to 12 have raised any objection with respect to the appointment of the enquiry officer by the college committee and in fact most of them have taken part in the domestic enquiry conducted by the said enquiry officer.

9. Mr. V.R. Rajasekaran, learned Special Government Pleader fairly stated that the view taken by the first respondent cannot be sustained as there is no bar for appointing an outsider as enquiry officer. The learned Special Government pleader also contended that the College Committee being a body consisting of a number of persons, it cannot be said they alone should conduct the enquiry. It may be open to them to constitute a sub committee to hold an enquiry. But the members of the said sub committee may be disabled from taking part in the final decision in that event. It is pointed out by Mr. V.R. Rajasekaran that there is no prohibition in the rules or in the Act which bars the college committee, which is the competent disciplinary authority, from appointing an outsider, like a Member of the Bar to be the enquiry officer.

10. Per contra, Mr. P. Jyothimani referred to an earlier decision of Govindasamy, J., reported in 1997 WLR 281 (Pon Kailasam vs. The Secretary Saraswathi Narayanan College and others). In the said case the contention was that the Principal has no authority to initiate disciplinary proceedings. The said contention was sustained. Incidentally, it was also contended that the disciplinary authority cannot appoint outsider to hold the enquiry. In that respect the learned Judge referred to a circular issued by the Madurai Kamarajar University and based upon the said instruction held that the appointment of an outsider to conduct enquiry is contrary to the instructions issued by the University concerned and it is bad. The said case is clearly distinguishable on facts and that apart there are subsequent pronouncements of the Supreme Court which is on the point.

11. The learned counsel for the petitioner brought to the notice of the court that there is no provision or rule or a circular or direction by the Bharathiar University to which the petitioner college is affiliated prescribing that in respect of teachers no person other than the college committee could conduct the enquiry. There is no such instruction or circular in the present case like the circular that was issued by the Madurai Kamarajar University. The circular referred by Govindasamy, J., in my considered view, has no force or rule, much less, it has any statutory backing. It is only an instruction.

12. As fairly stated by either side, there is no provision in The Tamil Nadu Private

Colleges (Regulation) Act which, either directly or indirectly or by implication prohibits or bars the disciplinary authority, namely the College Committee from appointing a outsider such as a Member of the Bar from conducting the domestic enquiry. It is also pointed out that there is no rule, nor there is any clause in the agreement between the petitioner and the respondents 2 to 12 that only a Member of the college staff or college committee alone should conduct the domestic enquiry. In the absence of any bar or prohibition, there cannot be any difficulty in upholding the college committee appointing an outsider, such as a Bar Member as an enquiry officer. It is to be pointed out that the respondents 2 to 12 have not raised any objection in this respect, but it is only the first respondent who has raised an objection while referring to the order of Govindasamy, J., referred supra.

13. The attention of the court is drawn to the pronouncements of the Apex Court in *Thanjavur Textiles Ltd. Vs. B. Purushotham and Others*, . In the said case a Member of the Bar was appointed as enquiry officer by the employer when proceedings were initiated against the employees. The Supreme Court examined the question as to whether under the Standing Orders, an Advocate could be appointed as an enquiry officer and whether appointment of an outsider as an enquiry officer by the disciplinary authority is valid. In that context after referring to the observations made in *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, as well as *Dalmia Dadri Cement, Ltd. Vs. Shri Murari Lal Bikaneria*, and *Central Bank of India Vs. C. Bernard*, , the Apex Court held thus:-

"13. Once it was conceded in the High Court by the learned Senior Counsel who appeared for the workmen that an advocate could be appointed as an enquiry officer, the advocate would, in our opinion, have all the normal powers of an enquiry officer including the power to give findings as to the misconduct of the employees. We are unable to make a distinction between the powers of an enquiry officer who is an employee of the Company and an outsider. If the Manager was entitled to appoint an enquiry officer, in either case, the appointee in his capacity as an enquiry officer, would have the same powers. We accordingly hold that the advocate in this case could have given findings as to misconduct and the Division Bench of the High Court was wrong in thinking that the advocate being an outsider would not have the power to give findings as to the misconduct of the employees.

14. We may point out that in the case cited by the learned Senior Counsel for the appellant in *Khardah & Co.* it was stated as follows:

"We are not prepared to adopt such a course. If industrial adjudication attaches importance to domestic enquiries and the conclusions reached at the end of such enquiries, that necessarily postulates that the enquiry would be followed by a statement containing the conclusions of the enquiry officer. It may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee, it is his duty to record

clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions."

15. So far as the judgment in *Workmen v. Buckingham and Carnatic Mills* is concerned, it was pointed out in that case that the relevant standing order did not permit any delegation whatsoever. Even so, if the authority concerned had merely delegated power to record evidence, there was nothing wrong in such a delegation as long as the delegate did not express any opinion on the merits of the case. The abovesaid decision is clearly distinguishable inasmuch as the relevant standing order in that case did not envisage the appointment of any enquiry officer whatsoever. But in the present case, the standing order does expressly contemplate appointment of an enquiry officer and if that is the position, the enquiry officer so appointed would, in our opinion, be certainly entitled to give findings in regard to the misconduct of the employees. The above decision is therefore clearly distinguishable. The Division Bench of the High Court in the judgment under appeal in our opinion erred in not noticing the abovesaid distinction. There was no provision in the standing orders in the above-cited case permitting appointment of another person to conduct the enquiry."

14. In *Indian Telephone Industries Ltd. Vs. Devi Shankar Kumar Shukla*, , the Apex Court held thus:-

"2. The only question for decision is whether the appointment of a person who was not in the employment, i.e., an outsider as the Enquiry Officer is contrary to the requirement of Standing Order 16(2)(b) so as to vitiate the domestic inquiry. The learned Single Judge as well as the Division Bench of the High Court have both answered this question in the affirmative. Hence, this appeal by special leave.

3. Standing Order 16(2)(b) is as under:

"16. Procedure for Punishment.-(1)

* * * (2) For major punishments listed in para 15.2 before disciplinary action amounting to postponement of annual increment for more than three months or reduction in the grade or reversion or demotion to a lower grade or dismissal is taken, action on the following lines will be taken by the Manager:

(a) * * * (b) On receipt of the explanation of the employee or on expiry of the time-limit whichever is earlier or under special circumstances at the time of issuing the charge-sheet, the Manager shall appoint an Enquiry Officer or constitute an Enquiry Committee consisting of one or more than one person, other than from the Security Department...."

4. It is clear from the above provision in the Standing Order that the requirement is to appoint an Enquiry Officer who is not from the Security Department. There is no other prohibition about choice of the person to be appointed Enquiry Officer in the above provision. The reason for excluding a person belonging to the Security Department is obvious. Such a person who is in the Security

Department may have some interest in the successful conclusion of the domestic inquiry against the delinquent employee. His exclusion, therefore, is to eliminate the likelihood of any bias. Such a provision cannot be construed to mean that a person who is not even an employee in any other department and being an outsider having no interest in the outcome of the domestic inquiry is also to be excluded. The view taken by the High Court is, therefore, untenable."

15. In *Central Bank of India Vs. C. Bernard*, , the Apex Court held that a disciplinary authority cannot be a non official, but an enquiry officer can be a non official. In that case, the Apex Court held that there is no illegality or bar for a third party non official being appointed as domestic enquiry officer.

16. In other words, in the statutory provision of the Tamil Nadu Private College Regulation Act, the Rules and the Form of Agreement entered, there is no bar, and in the absence of any bar, or in the absence of any provision specifying that the domestic enquiry, if any, shall be conducted only by a Member of the Committee or a staff member of the college, there can be no bar for the petitioner college in appointing an outsider, in this case a Member of the Bar to be the domestic enquiry officer. On the enquiry officer submitting a report, it is for the college committee to proceed further after furnishing enquiry Report calling for objections of the delinquent officials to state his objections and thereafter pass such orders as it deems fit.

17. In the light of the above pronouncements of the Supreme Court, this court holds that the decision of *Govindasamy, J.*, is no longer a good law and the impugned communication of the first respondent is quashed. Writ petition is allowed. Consequently, connected WPMP is closed. No costs.