
(1989) 03 MAD CK 0047
In the Madras High Court
Case No : Writ Appeal No. 1646 of 1988

P. Kasilingam

APPELLANT

Vs

Bharathiar University and Others

RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 13(2), 15
Central Reserve Police Force Rules, 1955 — Rule 27
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 112, 14, 14(3)
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 15

Citation : (1990) 1 LLJ 73

Hon'ble Judges : Sathia Dev, J;Padmini Jesudurai, J

Bench : Division Bench

Judgement

Sathiadev, J

1. Petitioner in W.P. No. 12581 of 1988 is the appellant, and the three respondents therein are the respondents herein. The write petition was filed

for issue of a writ of certiorari to quash the proceedings of the third respondent dated 16th September 1988.

2. In the supporting affidavit, he has stated as follows :

He joined third respondent college in June 1966 as Associate Lecturer in Electrical Engineering. In 1974, he was promoted as Lecturer in

Electrical, Electronics and Communication Engineering. After referring to several writ proceedings filed in the Court and the Supreme Court

between himself and the college, he would state that on 30th April 1988, he attended the Annul Senate Meeting of the first respondent University

to which he was selected unopposed in April, 1986. During the course of discussions in the meeting, in the presence of the Principal of the third

respondent College, who was also present, he had made his speech about internal assessment marks being misused by certain teachers, and that it should be put an end to. A resolution was passed to that effect. Subsequently,, the Committee appointed on that respect, recommended scrapping of the system of internal assessment, which has given rise to favouritism and malpractices, and the amended resolution is made applicable for the academic year 1988-89 onwards. The Principal of the third respondent College, who has been nurturing continuous grudge against petitioner, and waiting for an opportunity to victimise him because of several proceedings instituted earlier in which he had succeeded, had sent a memo on May 6, 1988 asking petitioner to give particulars with regard to the speech made by him on April 30th, 1988 during the course of the debate in Senate Meeting. When the Principal was asked to produce a certified copy of the discussions, he refused to furnish and stated that there was no necessity to produce copy of deliberations and asked him to send a reply. On September 6, 1988, petitioner replied in Tamil questioning the bona fides of the Principal in initiating action for the role played by him in the Senate Meeting. As expected, he drew a proceeding on September 16, 1988 framing charges and also placed him under suspension as if grave charges exist. This was replied on September 19, 1988 and on September 28, 1988 he had asked for his explanation. Hence, he had filed the present writ petition.

3. In the counter-affidavit, Principal had stated that the Private Colleges Act will not apply, but Grant-in-Aid Code alone will apply to third respondent College as held by the Division Bench of this Court in W.P. Nos. 2604 and 2889 of 1981, etc. and even if the Private Colleges Act applies, petitioner cannot straightway file a writ petition. The impugned order was passed on September 16, 1988 and the petitioner had been relieved immediately, and it is only after a month, he had chosen to file the present writ petition and obtained stay in the Vacation Court suppressing several material particulars. He had initiated action in exercise of his powers as head of the Institution and not because of any personal grudge against him. The College is an autonomous Institution and affiliated to Bharathiar University, and therefore, not amenable to writ jurisdiction of this Court. By letter dated May 6, 1988 he was called upon to state particulars of his speech in the Senate Meeting so that action could be

taken against the concerned individuals against who charges were levelled. Petitioner refused to give information on the allegation made by him in the Senate Meeting. Further in his letter dated July 4, 1988, petitioner had raised untenable contentions, and hence, he was asked to give particulars. Instead of furnishing particulars, he had chosen to send copies of his communication to members of the Teaching staff, Lecturers, Professors, etc. On July 12, 1988, he was called upon to give information which necessitated certain remarks made by him to be investigated. Yet, he did furnish information and wrote a letter on September 6, 1988 in Tamil making false and defamatory allegations. It is the contents of this letter which had led to the framing of the impugned memo dated September 16, 1988, and therefor, and at this stage, he cannot file the writ petition and prevent a proper enquiry being conducted.

4. Several contentions were raised before the learned Judge in the writ petition, and it was held that the writ petition is maintainable, and that after the decision of the Division Bench, as far as third respondent College is concerned, provisions of the Private Colleges Act, 1976 would not apply, and that even though the whole proceeding had started from the speech of the petitioner in the Senate Meeting, by letter dated July 12, 1988, third respondent had clarified that no enquiry was contemplated as against him for what he had spoken in the Senate Meeting, and it was because of the contents of the letter dated September 6, 1988, it resulted in framing of charges; and that this Court cannot at this stage go into the question as to whether the said letter warranted framing of charge or not; and in view of certain allegations made against the Principal relating to earlier proceedings instituted at his instance, it was directed that the Enquiry Officer should be an independent person and he should complete the enquiry within four weeks from the date of receipt of the copy of the order, and hence the writ petition was dismissed

5. Mr. K. Chandru, learned Counsel for the petitioner, has urged several contentions, and some of them being : (1) "misconduct" having not been defined, for each line in letter dated September 6, 1988 a separate charge being framed was illegal; (2) speech made in the Senate Meeting by petitioner cannot form the foundation for disciplinary proceedings by the College; (3) neither the letter being written in Tamil, nor the language used

therein can be treated as indisciplined conduct : (4) the letter dated May 6, 1988 written by Principal and which had later on resulted in letter dated

September 6, 1988 being written by Petitioner, cannot be dissociated; and (5) that the Principal had no authority to "initiate" disciplinary

proceedings, when only the Governing Council is the disciplinary authority.

6. Since the jurisdictional aspect has been raised under Point No. 5 it was considered that it should be decided in the fore-front. Mr. G.

Subramaniam, learned Counsel for the College, would state that such a point was never canvassed before the learned Judge and even in the

Memorandum of Grounds in this appeal, this point had not been taken, and therefore, the petitioner should not be permitted to raise this point

Ground No. (2) in the Memorandum of Grounds is to the following effect :

Further the learned Judge failed to see that in so far as the Governing Council had been empowered in the Grant-in-Aid Code to take action

against the teacher including disciplinary action, the question of the Chairman coming in his individual capacity directing the Principal to take action

is not warranted and it is also ultra vires of the Grant-in-Aid Code.

This ground is sufficient to consider the point as to whether the Principal had the authority to issue the charge-sheet or not. When a jurisdictional

point is involved, it could always be raised at any stage of the proceedings, because it goes to the root of the matter. Yet, Mr. G. Subramaniam,

learned Council relies upon the decision in S. S. Sharma v. Union of India 1983 I LLJ 381 and claims that no new point could be permitted to be

raised if not already taken in the earliest stage of the matter. Reliance is also placed on Krishna Mohan Mookherjee v. State Bank of India. 1983 I

LLJ 288 on his aspect. In that decision, the delinquent employee was charge-sheeted and dismissed from service by the Superintendent of Staff

Section and who was the authority under the Memorandum to take disciplinary action and pass orders imposing punishment upon him. In the writ

petition, neither the validity of the Memorandum nor the nomination made had been questioned. After referring to relevant regulations and the

Sastry Award, it was found that there was no substance in the contention that he had been dismissed by a person not competent to pass the order

of dismissal. Yet, it was observed that from the averments made in the petition and from the materials on record, it was not possible for the Court

to come to any conclusion whether Regulation 55 has at all any application to the instant case. It has not been held that because the point had not been taken, no relief could be granted. Rather, in the concluding portion, they found that there was no substance in the objection regarding the competence of the disciplinary authority.

7. These two decisions are not to the effect that a legal point dealing with the jurisdictional aspect cannot be raised for the first time in appellate stage. By putting such a stumbling block, no court could allow a person without authority in law to decide the fate of another individual, pertaining to his service conditions. It would then result in not only giving approval to an illegality committed by concerned person or authority, but also result in re-writing the rules or regulations or provisions of an Act. When in law, an action could be taken or an order could be passed only by a prescribed authority, then any of these done by a person without authority cannot be approved by Court, once the lack of authority comes to its knowledge; be it in the stage of original proceeding or appellate proceeding or revisional proceedings or second appellate proceeding etc., Therefore, the point as taken is entertained and it is considered hereunder.

8. In the counter-affidavit filed by the third respondent-Collage, it is stated in para 4 :

..... It is respectfully submitted that only Grant-in-Aid Code will apply to the respondent institution as held by the Division Bench of this Hon"ble

Court in W.P. Nos. 2604. 2889, 3830, 3205 etc., of 1981 V. Ramaswamy and Singaravelu. JJ

Art. 14 of Grant-in-Aid Code states :

Disciplinary control over staff :- No employee of the institution shall be punished or dismissed from the institution except in accordance with the instructions given in Appendix 3.

Appendix 2 contains the form of agreement and clause 7 therein is to the following effect :.

That the council or competent authority shall have power to take disciplinary action on the said as provided for in the Grant-in-Aid Code of the Madras Technical Education Department.

Appendix 3 deals with procedure for taking disciplinary action against members of staff and referred to in Art. 14 of the Code. Clauses 2 and 3

are relevant and they are to the following effect :.

(2) The authority which may impose suspension pending enquiry into grave charges under clause 3 or the penalties of (i) censure (ii) withholding of increments, (iii) recovery from pay, shall be the Principal, the authority which may impose the other penalties of (i) withholding of promotion (ii) reduction to lower rank, and (iii) dismissal from services, shall be the Chairman of the Governing Council acting on behalf of the Governing Council.

(3) A member may be placed under suspension from service, pending enquiry into grave charges, where such suspension is necessary in the interest of the institution. A person so suspended shall be eligible for subsistence allowance during the period of such suspension at the rates applicable to the Government servants of the corresponding cadre and status in Government Technical Institution.

9. Petitioner by the impugned order was not only served with a charge-sheet, but also placed under suspension pending enquiry by characterising the charges as "serious in nature". Therefore, it means that the College had treated the charges as grave, which may lead to imposing of penalties such as "withholding of promotion, reduction to a lower rank and dismissal from service." It could be issued by the Chairman of the Governing Council acting on its behalf. The power to suspend pending enquiry when grave charges are framed, is with the Principal, but as far as disciplinary proceedings are concerned, it could be done only by the Governing Council. The impugned charge memo is not confined only to suspension pending enquiry into grave charges, but the Principal has framed charges as well. Learned Council Mr. Subramaniam would state that it had been done at the direction of the Chairman of the Governing Council as found in first para of the impugned order, and before this Court, in the subsequent stages of the hearing, he produced an inter-departmental memo dated September 8, 1988, and that it calls for Principal stating that he had perused the letter dated September 6, 1988, and that it calls for disciplinary action, and that

You are directed to initiate suitable proceedings against Thiru P. Kasilingam and report the same.

Mr. Chandru, learned Council for the petitioner rightly points out that the

initiation of the proceedings in law could be done only by the appointing/disciplinary authority i.e., the Governing Council and it was not open to the Chairman on his own to ask the Principal to initiate action.

He submits that the Governing Council consisting of nearly 14 members drawn from different sources and composing of persons of high

responsibility would not have ever considered framing of charges based on a letter by making each sentence in it as a separate charge ! If only the

matter had been raised before the Governing Council which was the only authority which could initiate disciplinary proceedings, it would have

desired to avoid litigation and prevented the Principal from acting with mala fide intentions. He submits that this inter-departmental memo was

never relied upon before the learned Judge, and it could come into existence without authority of the Governing Council. He also points out that no

resolution passed by the Governing Council or its records had been placed before Court to show that the Chairman has the authority to act on

behalf of the Governing Council for initiating disciplinary action. No resolution passed by the Governing Council authorising the Chairman to act on

its behalf in disciplinary proceedings had been placed before Court. In its absence, if the Chairman is to write interdepartmental memo dated

September 8, 1988, it could have been done only by securing a special authority; which is not also forthcoming. Hence, he submits that the

direction of the Chairman referred to in the impugned communication, even assuming that on September 8, 1988 authority had been obtained prior

to that, it is contrary to the Grant-in-Aid Code, and hence the charges as framed by the Principal were without jurisdiction

10. To counter these claims, Mr. G. Subramaniam, learned Counsel for the Collage, relied upon the following decisions.

(a) In M.C. Vasudevan Vs. S.N.D.P. Yogam, , it was held as follows :

No decision has been cited before us in support of the proposition that the charge and the demand for an explanation must proceed from the very

authority competent to inflict the punishment, and, on principle, we see no reason why these these should not proceed from some subordinate

authority

In The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras, which was a case wherein the Company's

Mill-manager issued a charge-sheet and the senior Labour Officer recorded evidence, and thereafter on scrutiny of the enquiry proceedings, the

Mill-manager passed orders of dismissal, the Labour Court held that the enquiry proceedings are valid, and negating the contention that the Mill-

manager had no jurisdiction to delegate to another Officer the power to hold the enquiry, it was also held that the Mill-manager had acted legally in

delegating his powers to the Senior Labour Officer in collecting necessary evidence, and that there is no prohibition in the Standing Order of what

he had done, and that the requirement is that, the enquiry has to be in conformity with the principles of natural justice. It was further held that the

Mill-manager, who has the authority, is competent to impose punishment, and he has gone into the evidence and ultimately found the worker guilty

of misconduct and imposed punishment of dismissal, and therefore, there is no violation of principles of natural justice. Therefore, it is the

disciplinary authority, who could issue the chargesheet, but could delegate the holding of enquiry to another, which is permissible in law; whereas in

the instant case, the Governing Council which is the appointing authority, and in turn the disciplinary authority, had not considered whether

disciplinary proceeding requires to be initiated or not. Assuming that the Chairman of the Governing Council had been delegated by the Governing

Council to initiate disciplinary proceedings, he ought to have framed the charge-sheet. Whether it is permissible, is dealt with later on. He cannot

further delegate it to the Principal. No resolution is produced to show that he had the authority to institute, and even if so, to further delegate it.

Whether the disciplinary authority is a single person or body of persons, it is the disciplinary authority, which alone could initiate disciplinary

proceeding. It is no answer to claim that it being composed of several persons, it cannot discharge its duties as a disciplinary authority, when it is

invested with authority to decide upon it. The decision reported in Pradyat Kumar v. C. J. of Calcutta (AIR) 1956 S.C. 225 deals with the power

of the Chief Justice of the High Court to initiate disciplinary proceedings against the staff members of the High Court, and as the exercise of the

power to appoint or dismiss an officer is an administrative power, and as a statutory functionary exercising such a power cannot be said to have

delegated his functions merely by deputing a responsible or competent official to enquire and report, he can delegate to another Judge the enquiry

into the charges. What cannot be delegaed, except where the law specifically so provides, is the ultimate responsibility for the exercise of such

power. Hence, even in this decision, it is clear that the initiation of proceedings must be by disciplinary authority i.e. the Chief Justice of the High

Court. In spite of so many authoritative pronouncements of the Supreme Court on this subject, learned Counsel Mr. Subramaniam had chosen to

rely upon the decision reported in Sukhendra Chandra v. Union Territory, Tripura (AIR) 1962 Tri 15, but even therein interpreting Rule 15 of the

Central Civil Services (Classification, Control and Appeal) Rules, it was held that though the rule states that the disciplinary authority has to frame

the charges, it will amount to the same thing if he directs another who conducted the preliminary enquiry to draft the charges and get it approval.

Hence, if any one assisting him is to draft the charges and secure the approval of the disciplinary authority, then it would become valid. This

decision has no relevance for the point involved herein. He then relies upon the decision reported in Shyam Lal Yadav v. Smt. Kusun Dhawan

(AIR) 1979 SC 1947 to emphasise that Courts would be reluctant to interfere with any orders passed by autonomous bodies managing their

internal affairs in relation to employees when power to deal with them, is made out. Even in that decision, it was pointed out that, if jurisdictional

deficiency in the Committee is made out, then relief has to be granted.

(b) A Division Bench of Kerala High Court in T. C. Cheru v. Govt. of Kerala (1979). (I) SLR. 691 held that Rule 6 of Kerala Police

Departmental Inquires, Punishment and Appeal Rules, 1958 contains detailed provisions prescribing the procedure for enquiry and there is no

indication either in sub-rule (1) or sub-rule (2) that the preliminary inquiry or the framing of the charges is to be made by the disciplinary authority

itself. Hence, on a combined reading of sub-rules (2) and (3), it was held that the rules do not contemplate that the enquiry officer himself has to

draw up the charges against the delinquent. Taking note of the contents of Reg. 8-B and 11-B of Tamil Nadu Electricity Board Employees

Discipline and Appeal Regulations, a Division Bench of this Court has held in A. Krishnaswamy v. Tamil Nadu Elec. Board 1981 I LLJ 374 that

the respondent Board being a statutory body composing of numerous members, could delegate its functions in conducting an enquiry against its

employee to its subordinate officer, so long as there is no prohibition against such delegation under the statute. It was pointed out the Reg. 8-B

provides for such a delegation. In a case in which a clerk working in the office of the Labour Commissioner was charge sheeted by the Deputy

Labour Commissioner, and after enquiry he was dismissed from service by Labour Commissioner a learned Judge of the Allahabad High Court

held in *P. S. Mishra v. State of U. P.* 1983 (3) SLR 669 that the authority to institute disciplinary proceedings may be different from the authority

prescribed for removing the delinquent. A pointed reference was made to Rule 13(2) of the Central Civil Services (Classification, Control and

Appeal) Rules, 1965, which enables institution of disciplinary proceedings by a disciplinary authority for imposition of penalties specified Rule 11(i)

to (iv), notwithstanding that such disciplinary authority is not competent under the Rules to impose any of the penalties specified in Rule 11(v) to

(ix) In *K. R. E. S. v. E. A. T. Bihar* 1985 (2) SLR 273 a learned judge of the Karnataka High Court with reference to Karnataka Private

Educational Institution (Discipline and Control) Act, 1975, held that it was open to the Managing Committee to frame the charges itself, and entrust

the holding of the enquiry to an individual or a committee appointed by it or to authorise a person or a committee not only to frame charges but

also hold an enquiry and submit findings to the management, because there is no statutory compulsion that the Managing Committee itself should

frame the charges. It was a case in which Managing Committee by its resolution, empowered the inquiry committee to identify the irregularities

committed by certain employees and thereafter to proceed with the enquiry. It was by virtue of such authority given, it was held that, unless a

statutory provision required that a particular prescribed authority should frame the charges, there is no bar in law in the Managing Committee of

the private educational institution in whom the power of administration of the institution is vested, to entrust the task of framing charges as well as

that of holding enquiry to a person or a committee appointed and authorised by it, and thereafter Managing Committee to pass final orders on

consideration of the inquiry report. By reference to Rule 27(b) and (C) of Central Reserve Police Force Rules, a learned Judge of the Bombay

High Court in *Union of India v. Waccrare* 1986 (2) SLR 588 held that a draft charge-sheet prepared by the Enquiry Officer and approved by the

disciplinary authority and issued under the signature of the Enquiry Officer would not mean that the disciplinary proceedings were initiated by the

Enquiry Officer and not by the competent officer.

11. All these decisions in interpreting contents of the relevant rules, had held that the charge-sheet could be framed by an authority other than the

disciplinary authority, but it must be noted that the initiation of the proceedings could be only by the disciplinary authority. Assuming that there

would be a delegation, unless the Chairman produces before Court any resolution passed generally authorising him to initiate disciplinary

proceedings thereby surrendering its powers vested on them and further authorising him to delegate the functions to another authority or that any

special resolution was earlier passed to that effect, the right conferred on the disciplinary authority to initiate disciplinary proceedings cannot be

usurped either by the Chairman or by the Principal.

(c) Chief Commercial Supdt. v. Gorakhnath 1971 (2) 914 pertains to the provisions of Rule 1707 of Railway Establishment Code, which reads as

follows :

The General Manager is the only competent authority to remove or dismiss from service ex-Company Staff (B and NW and R and K Railway)

taken over by the Government on 1st January, 1943, as also the ex-Company Staff (ex. A B, B D, etc.,) who were offered employment by Agent

and General Manager. Detailed procedure in regard to the issue of charge-sheets to such of the employees is contained in Appendix 5.

In considering the scope and effect of this Rule in A.R.S. Choudhury Vs. The Union of India (UOI) and Others, , a learned Judge took the view

that the charge-sheet ought to be in the name of the punishing authority. In K.K. Murty Vs. The General Manager, South Eastern Rly. and

Another, in penultimate paragraph the same learned Judge stated that a show-cause notice cannot be issued except by an authority who can punish

a delinquent, and it is unthinkable that any self-chosen champion can take upon himself power to investigate the commissions and commissions of a

civil servant although he might have no power to inflict any punishment, but in appreciating as to what has been done in the Railways, the learned

Judge stated that the statement of law in the earlier decision stands modified by holding that it should be in the name of the punishing authority, and

that it must be with its authority, consent or approval.

A Division Bench in *Sudarshanlal Bajaj Vs. S.P. Agarwala and Others*, in considering Rules 1702 and 1707 of Railway Establishment Code, held

that the definition of the term "disciplinary authority" shows that any authority which is competent to inflict any of the penalties, whether it is major

penalty or minor penalty, its competent to issue charge-sheet, and no doubt an authority which is competent to impose only a minor penalty cannot

impose major penalty though it is competent to issue a charge-sheet. In construing Rule 1702 of Railway Establishment Code, a Division Bench of

the Allahabad High Court in *Lajpat Rai v. Financial Advisor* 1971 (I) SLR 592 held that the "disciplinary authority" as defined in clause (11) of

Rule 1702 makes it quite clear that any authority who is competent to impose any of the penalties specified in Rule 1707 is competent to issue a

charge-sheet, and the undoubted intention of the rule is to define the authority which is to frame the charge-sheet, under his signature. It was also

held that there is no rule which requires a charge-sheet, whether a major or minor penalty may possibly be inflicted, to be signed or issued by the

appointing authority. A Division Bench of the Allahabad High Court in *The Union of India v. Mahavir Prasad Srivatsan* 1973 (1) SLR 813, in

construing these rules, held :

.... It is, therefore, clear that any authority which is competent to impose any of the punishments described in sub-clause (iv) to (vii) of rule 1707,

eventhough it may not be an appointing authority of the railway servant concerned, can appoint an enquiry officer .. In our opinion, therefore, the

order passed by the Chief Cashier and Pay Master appointing the enquiring officer to look into the charges levelled against the petitioner, was in

order and the disciplinary proceedings were not vitiated on that account ...

These decisions pertain to the interpretation of the Railway Establishment Rules, and therefore, as no similar provision exists in Grant-in-Aid Code,

they have no applicability.

(d) In *Shardul Singh Vs. The State of Madhya Pradesh and Others*, a Division Bench of Madhya Pradesh High Court held as follows (pp. 276-

277) :

... If a power of appointment to an office, which is plainly an administrative act, been given by a statute to the holder of an office, then he cannot

delegate that power to another authority unless the statute expressly or by clear implication permits such delegation. If the power of appointment

cannot be delegated, the concomitant power of the appointing authority to dismiss the employee or to take disciplinary action against him cannot

also be delegated. The exercise of disciplinary power or the field of disciplinary action, is not confined merely to the passing by the appointing

authority of an ultimate order imposing disciplinary punishment against the employee. It extends also to the very initiation of disciplinary action

against a civil servant or employee by framing charges against him and holdings, or directing the holding of an enquiry into those charges. The

framing of charges, the holding of an enquiry into them, the suspension of the civil servant during the enquiry, the notice to show cause, are all steps

in the exercise of the disciplinary powers. All these steps are required to be taken by the disciplinary authority and not by a delegate of that

authority ... In the absence of a statutory provision permitting, expressly or impliedly, delegation of disciplinary powers ... an authority other than

the disciplinary authority has clearly no power to frame, on its own initiative, charges against a civil servant and hold an enquiry into them ...

This decision is overruled in *State of M. P. v. Shardul Singh* 1970 (II) SCJ 442 which is to the following effect :

Article 311(1) does not in terms require that the authority empowered under that provision to dismiss or remove an official should its initiate or

conduct the enquiry proceeding the dismissal or removal of the officer or even that enquiry should be done to its instance. The only right

guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was

appointed.

This decision is relied upon to plead that so long as there is no prohibition, even "initiation" of proceedings could be delegated. The purport of Art.

311 having been considered in the said decision, it cannot be held that this decision had gone to the extent of holding that ""initiation of disciplinary

proceedings could be done by a subordinate authority to the appointing or disciplinary authority."" As pointed out by Mr. K. Chandru, learned

counsel for the petitioner, in more or less a similar instance wherein a College Code framed under Nagpur university Act, 1974 came up for

consideration, in *M. I. Masih v. Peoples' Welfare Society* 1981 (3) SLR 531, a Division Bench in dealing with an order terminating the services of

a Lecturer by stating that the Chairman of the Governing Body had informed the Principal that the services of the Lecturer were no longer required,

it was held that under Art. 38 Chapter. V. of the College Code, when appointments could be made by the Governing Body of the College by

entering into a written contract in the prescribed form, and since it was the Chairman of the Governing Body who took the final decision, the

termination was illegal. It was a case wherein the Governing Body discussed the matter regarding his termination, and the members expressed

opinion on the matter in favour of termination, but no final decision was taken. It delegated taking of final decision to Chairman. Yet, it was held,

and which appears to be the only correct view, that the Governing Body cannot delegate its function in an important matter of this nature,

eventhough there was prohibition against delegation. The relevant paragraph reads as follows :

Here it may be contended in the absence of any prohibition for the Governing Body to delegate the taking of the final decision to the Chairman,

the Chairman could take that decision as an agent of the Governing Body when particularly asked by the Governing Body to take that decision.

We do not think this contention can be valid. It would amount to abdication by the proper authority of the function to take the decision itself and

the decision taken even by an agent, who was himself not authorised to taken the decision, would be a void one. In this respect, we may refer to

the observations of the Supreme Court in *Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another*,

In the instant case, even this sort of discussion by the Governing Council had not taken place nor it had ever delegated its power to Chairman. The

Grant-in-Aid Code is formulated by the State and applicable to all Colleges, and when the intention is that the application of mind of the collective

body is required in respect of disciplinary matters to safeguard the rights of staff members and institution, the theory that any person or body could

delegate his power in the absence of prohibition under the Rules, can have no applicability. It is not unknown to find in representative bodies,

certain personalities elected as Chairman and then secure a resolution delegating the powers of the Governing Body in him and thereafter, he

wields power to the detriment of the Council and the staff members, whose prospects are to depend on collective decision. The intention to

constitute a Governing Council consisting of 14 persons under Article 9 composed of authorities and persons like Director of Technical Education,

a nominee of the Central Government, a nominee of the University, a representative of the All India Council for Technical Education, etc., has to

result in an effective body continuing to function not only to the benefit of the institution but to those who serve in the institution. By passing one

resolution, delegating their powers in disciplinary matters to the Chairman, they cannot thereafter reduce their existence in the Council as non-est.

Knowing well now the Councils will function, the Grant-in-Aid-Code had been formulated by the State to keep the Council a live body wherein

every member will have to involve himself in the decision process, and particularly in disciplinary matters. Hence, the contention of Mr.

Subramaniam, learned Counsel for the College that the Council could delegate the power to the Chairman to initiate proceedings is not acceptable

as could be presently shown, it had exercised such a power in the case of another employee of the College. It has not passed any all pervasive

resolution hitherto being fully aware as to what would happen in future to the representative body. In the minutes of the 71st Meeting of the

Governing Council dated 24th September 1988 -

To peruse the papers connected with the initiation of disciplinary action taken against Mr. P. Kasilingam, Lecturer, Electrical & Electronics Dept.

and to decide on further action.

the resolution passed is :

Therefore, the Principal of the College/the Chairman of the Governing Council are authorised to take such steps as may be necessary to find out

the truth of the allegations levelled against Dr. Mayilswami and after necessary enquires in this connection, to decide further action/proceedings.

Additional Item 2 deals with a similar step taken relating to petitioner, and it was resolved that the charge-sheet dated September 16, 1988 only

goes to show that what are now levelled against petitioner are based on the contents of letter dated September 6, 1988, and it is then stated :

.... Therefore the proceedings already initiated as per the provisions of the Grant-in-Aid Code is in order

and concludes by stating that the Principal of the College/the Chairman of the Governing Council is empowered to take such steps as may be

necessary to find out the acts committed by him and to decide further action/proceedings. Therefore, these resolutions go to show that the

Governing Council had never conferred upon the Chairman any general power relating to disciplinary proceedings being well aware that the

intendment and purport of the Grant-in-Aid-Code is that there should be a collective application of mind in disciplinary matters, and the concept of

delegation is alien to the intention of the Code.

When a College Code of this nature comes into existence, as to how it could be construed has been considered in *Prabhakar Ramakrishna Jodh*

Vs. A.L. Pande and Another, and it was held that the College Code creates legal rights in favour of teachers of affiliated colleges. The plea of

learned Considered in *Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another*, and it was held that the Chairman in turn could direct the

Principal to initiate disciplinary proceedings, is also unavailable, because in *Gwalior District Co-operative Central Bank Ltd., Gwalior Vs. Ramesh*

Chandra Mangal and Others, dealing with the provisions of the Madhya Pradesh Co-operative Societies Act, 1960, it was held that when a Board

of Directors of the Bank was superseded by the Registrar, and he having vested the powers of it in an apex Bank as "Officer-in-charge", and in

turn, when the Apex Bank confirmed the action of the Chairman in deputing its powers among others to one person as Chief Executive Officer, the

only authority which could have conferred the necessary power on that person was the Registrar and that the delegate cannot further delegate. It

would certainly lead to a disastrous system if the Governing Council under the Grant-in-Aid Code is to delegate its power to the Chairman and he

in turn is to delegate its function to the Principal. That would virtually be rewriting the Grant-in-Aid Code according to the whims fancies of each

Council functioning in different colleges all over the State. Regarding the resolution dated 24th September 1988 is concerned, there could be no

ratification of an illegal act. Having not initiated the disciplinary matters, the Governing Council cannot ratify the illegal action of the Principal or of

what had been done by the Chairman in instructing the Principal to initiate action. In *M. I. Masih v. Peoples' Welfare Society (supra)* it has been

held that such a ratification is not permissible in law. Hence, all these contentions of learned Counsel Mr. Subramaniam that the Governing Council

could delegate its power of disciplinary proceeding to the chairman are fruitless and hence rejected yet he would not rest content with these

submissions, but would still claim that in view of clause 2 in Appendix 3 of Grant-in-Aid Code, which states that the authority to impose penalties

of certain types, shall be the Chairman of the Governing Council acting on behalf of the Governing Council, the expression ""on behalf"" as defined in

the Dictionaries would mean that the Chairman by virtue of his office, could act on behalf of the Council and take decisions in disciplinary matters.

The dictionaries relied upon by him are as follows :

1. Concise Oxford Dictionary :

Behalf : ""on behalf of" or ""in behalf of" on the part of on account of (a person) : in the interest of (person or principle etc.).

2. Websters World University Dictionary :

Behalf; Help; defence; interest; used with propositions, as, in behalf of the poor, on behalf of the owner.

3. The Random House Dictionary :

Behalf : 1. In or on behalf of, as a representative of or a proxy for : ""On behalf of my colleague I address you tonight.

2. In or on one's behalf; in the interest or aid of : ""He interceded in my behalf.

4. Chambers" Twentieth Century Dictionary

Behalf : (a) favour or benefit : cause; sake; account; part.

5. The World Book Dictionary :

Behalf : (a) side, interest, or favour; His friends will act in his behalf.

n the interest of; Hw worked in behalf of the community chest. I am speaking in behalf of my friend.

On behalf of : a. In the interest of; for, ... a publicity photograph on behalf of a charity called the Tolstoy foundation (Peter Mass) b.

As a representative of; the lawyer spoke convincingly on behalf of his client.

6. Lifco Dictionary :

Behalf : (a) Favour, sake - on (in) one's behalf.

12. One redeeming feature is that he is not able to show any provision in the

Grant-in-Aid Code that absolves the Governing Council from being the appointing or disciplinary authority. He would state that it is undoubtedly General Council which is the disciplinary authority, but still when Chairman is permitted to act on its behalf, he can take the decision. This is what precisely in respect of more or less identical College Code, a Division Bench of the Bombay High Court in *M. I. Masih v. Peoples Welfare Society* (supra) held that the Governing Council alone can take the final decision and it cannot even authorise the Chairman to take the final decision and it can never abdicate its functions to take the decision by itself. Hence, clause 2 in Appendix III had not taken away the powers of the Governing Council to function as disciplinary authority. Hence, reliance placed by him on the words "acting on behalf of the Governing Council, by referring to the dictionary meanings above referred to, had not resulted in the Governing Council being substituted by the Chairman by virtue of this clause. It only means that the Chairman has to function to the dictates of the Governing Council, and only after it takes the decision, he could issue orders on its behalf. Therefore, for all the reasons above stated, it is held that it is only the Governing Council under the Grant-in-Aid Code which could initiate disciplinary proceeding and take the final decision thereon by looking into the merits of the matter. Form 7-A framed under Rule. II(2) of the Rules framed under the Act stipulates how it has to conduct disciplinary proceedings. As to whether on certain complaints received or certain circumstances arising, there is a need to initiate disciplinary proceedings or not, and whether they would entail imposing of major punishments is an aspect which has to be exclusively decided upon only by the Governing Council, and it cannot delegate the function of initiation of the Council of proceedings to the Chairman of the Council or to anybody else. It has to abide by the special procedure as framed in Grant-in-Aid Code. It is a well-known principle that special excludes general.

13. To strengthen this view, Mr. K. Chandru, learned Counsel for the petitioner, would refer to the provisions in Tamil Nadu Private Colleges (Regulation) Act, 1976. Section 14 deals with the functions of the College Committee and responsibilities of educational agency under the Act. It states the subject to the provisions of the Act, the College Committee shall have

power to take disciplinary action against teachers and other persons of the Private College. Section 112 contemplates a Secretary being appointed to the College Committee. Rule 9(3) states that he shall function for and on behalf of the Committee and educational agency. u/s 14(3), any decision taken by the College Committee over which it has the jurisdiction to decide, is deemed to be the decision of the educational agency and u/s 14(2), educational agency is bound by anything done by the Committee. Statutory forms have been framed under the Rules and one of them is Form VII-A which is an agreement to be executed by the College Committee with teachers and it states that the College Committee shall not dismiss, remove or reduce in rank or terminate the services of the said teacher ...", and it has to after following the prescribed procedure inform the delinquent of its decision. Identical terms are contained on Form VII-A under Rule 15 of Tamil Nadu Recognised Private Schools (Regulations) Rules. 1974, which have been framed under the provisions of Tamil Nadu Recognised Private Schools Regulations Act, 1973. In interpreting these rules, a Division Bench of this Court in P. S. Venkataramanujam v. The National High School, Tambaram West (W.A. No. 170 of 1978 - Judgment dated 13th November 1979) had held that there is no general provision that the disciplinary authority should conduct the enquiry and it is certainly open to it to authorise some of the persons to collect the materials and place the same before it. This general power is subject to any specific provision in a particular statute or a rule, and para 7 of Form VII-A prescribed under the Rules, clearly contemplates that the School Committee alone can conduct an enquiry and give a personal hearing, and hence it cannot delegate its duty in this regard to any other person. Therefore, in the instant case, the Chairman could never claim that he could function as disciplinary authority and "initiate" action against the petitioner.

14. The impugned charge memo dated 16th September 1988 having been issued by an authority without jurisdiction, it is hereby set aside, but this order would not preclude the Governing Council to take such decisions as it may consider necessary on the merits of the matter. Earlier resolution passed by it could have no relevance, and it will have to apply its mind afresh and decide upon the future course of action on what are alleged to

have been done by the petitioner. The learned Judge even while dismissing the petition had taken note of the fact that all is not well between the petitioner and the Principal, and therefore, had directed an independent person to hold the enquiry. When statutory rules govern the of parties, it cannot be varied by appointing an outsider as disciplinary authority. Hence, as and when Governing Council applies its mind, it would be in its interest to take note of the mala fides which petitioner had alleged and acid future litigations in which such claims could be made. It is entirely left to its sagacious decision as to whether disciplinary action is called for or not as against the petitioner, and it is made clear that this writ appeal is allowed only on the jurisdictional aspect as put forth by the petitioner and not on merits of the matter. They remain untouched because, once it is held that the entire action taken is without jurisdiction, any material gathered based on such a proceeding could never be treated as relevant evidence or material for going into the merits of the matter.

15. The charge-sheet and the suspension order, being a combined order, and when suspension order was passed because of the framing of charges, the order of suspension is hereby revoked entitling the petitioner to be restored to duty on or before 1st April 1989. The entire arrears of salary in full will have to be paid to petitioner on or before 5th April 1989. A steno copy of this order is being handed over to-day to the learned Counsel for the Colleges for prompt compliance. Hence, this writ appeal is allowed with costs. Counsel fee Rs. 500. -