

(2008) 09 MAD CK 0214

In the Madras High Court

Case No : Writ Petition No. 3754 of 2001

P. Moorthinathan

APPELLANT

Vs

District Educational Officer and Secretary, Nehru Higher
Secondary School

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 18(1), 22(3)

Citation : (2008) 09 MAD CK 0214

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

**Advocate : T. Sellapandian, for the Appellant; T. Seenivasan, Additional
Government Pleader for R1, for the Respondent**

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing on behalf of the respondents.

2. It has been stated that the petitioner has been working as a P.G. Assistant in Commerce in the second respondent school. While so, the petitioner has been placed under suspension, based on the charges levelled against him. The petitioner has stated that the school Committee has not been properly constituted and it has not been recognised by the authorities concerned with school education. Since the school Committee has not been validly constituted it does not have any authority to level charges against the petitioner and to conduct an enquiry based on the said charges. The charge memo given by the Secretary of the school Committee, on 11.10.2000, is invalid, in view of the fact that it is the school Committee which is the competent authority to take disciplinary action, u/s 18(1)(c) of the Tamilnadu Recognised Private Schools (Regulation) Act, 1973. The order suspending the petitioner from service, the framing of the charges and the proposed enquiry, are illegal and void.

3. It has been further stated that a disciplinary action can be taken only for

violation of the code of conduct prescribed under the provisions of the Tamilnadu Recognised Private Schools (Regulation) Act, 1973 and the rules framed thereunder. The allegations made and the charges framed against the petitioner are vague and they do not indicate any misconduct on the part of the petitioner. Since some of the charges are relating to the allegations said to have been made by the petitioner against the Secretary of the second respondent School, it would be illegal for the said Secretary, J. Kannan, to frame the charges and to conduct the enquiry against the petitioner, based on the said charges. In such circumstances, the petitioner has filed the present writ petition before this Court, under Article 226 of the Constitution of India.

4. In the counter affidavit filed on behalf of the second respondent, the allegations made by the petitioner have been denied. It has been stated that the petitioner has no locus standi to question the constitution and the legal status of Nehru Educational Society, which is the educational agency in respect of the second respondent school. Nehru Educational Society is a registered society, registered under the Tamilnadu Societies Registration Act, 1975, after it had fulfilled all the necessary conditions. The issues regarding its constitution and its legal status could only be decided by the competent civil Court as it involves various disputed questions of fact. The petitioner has preferred the present writ petition only with a view to delay the enquiry to be conducted against the petitioner for the charges levelled against him.

5. It has also been stated that the petitioner has no authority to question the Constitution or the legal status of the Educational Agency or the school Committee, as he has subscribed to the code of conduct, under the Tamilnadu Recognised Private Schools (Regulation) Act, 1973. The petitioner, who is a member of the Tamilnadu Teaching and Non-teaching Employees Welfare Society, has been attempting to create indiscipline amongst other employees under Nehru Educational Society. If such acts are encouraged it would lead to serious indiscipline amongst the teaching and the non-teaching staff of the second respondent school. Therefore, the writ petition is liable to be dismissed. The petitioner has to face the enquiry to be held in respect of the charges levelled against him. In such circumstances, the writ petition is liable to be dismissed.

6. The main contention of the learned Counsel appearing for the petitioner is that the Secretary of the second respondent School had framed the charges and he would be the enquiry officer to conduct the enquiry against the petitioner, based on the charges levelled against him. When some of the charges are relating to certain allegations said to have been made against the Secretary, J.Kannan, he cannot be a Judge in his own cause. If, J. Kannan, the Secretary, of the second respondent school is permitted to conduct the enquiry, it would be a gross violation of the principles of natural justice. Therefore, the learned Counsel had submitted that this Court may direct the respondents to proceed with the enquiry appointing a competent person, other than J. Kannan, as the enquiry officer by giving sufficient opportunity to the petitioner to put forth his case.

7. The learned Counsel had also submitted that in view Section 22(3)(b) of the Recognised Private Schools (Regulation) Act, 1973, the enquiry ought to have been completed within the time prescribed therein. However, in view of the pendency of the present writ petition, a specific period may be fixed by this Court for the completion of the enquiry, without suspending the petitioner from service, since the earlier order of suspension passed against the petitioner had been stayed by this Court and the said order has been in force till date.

8. The learned Counsel appearing on behalf of the first respondent had pointed out that the petitioner cannot be permitted to question the legal status or the Constitution of the school Committee, at this stage, before this Court. However, he could do so in accordance with the procedures established by law, under the Tamilnadu Recognised Private Schools (Regulation) Act, 1973. Further, since certain disputed questions of fact are involved, the petitioner could raise the issues before the concerned Civil Court for their adjudication, in accordance with law. It is also pointed out that in view of the order passed by this Court, on 10.9.2003, in W.P.M.P. Nos. 31507 and 31508 of 2001, in W.P. Nos. 3753 and 3754 of 2001, it is not open to the petitioner to state that the enquiry proposed to be conducted against the petitioner is invalid and illegal. The learned Counsel appearing on behalf of the first respondent has no objection for this Court to pass an order permitting the enquiry proposed to be held, with regard to the charges framed against the petitioner, by any person other than J. Kannan, the Secretary of the second respondent school, in accordance with the relevant provisions of law.

9. There is no appearance on behalf of the second respondent school.

10. In view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the first respondent and on a perusal of the records available before this Court, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the impugned order of the second respondent, dated 31.1.2001, at this stage. It is open to the concerned authorities to conduct an enquiry against the petitioner, based on the charges levelled against him, by the impugned order, dated 31.1.2001, by appointing a competent person, other than J. Kannan, against whom the petitioner is said to have made certain allegations. The petitioner is to submit his explanation for the charges levelled against him, within a period of two weeks from the date of receipt of a copy of this order and the competent authority is to conduct the enquiry proceedings, based on the charges already framed against the petitioner, by giving him sufficient opportunity to put forth his case. The enquiry is to be completed, within a period of eight weeks from the date of receipt of the explanation from the petitioner. However, the petitioner shall not be kept under suspension during the enquiry.

The writ petition is disposed of with the above directions. No costs.