

(1991) 09 MAD CK 0012
In the Madras High Court

P. Pon Kailasam, Saraswathi Narayanan College	APPELLANT
Vs	
The Secretary, Saraswathi Narayanan College and Others	RESPONDENT

Date of Decision : 23-09-1991

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 14(1)(c)

Citation : (1992) 2 MLJ 55

Hon'ble Judges : Govindasamy, J

Bench : Single Bench

Judgement

Govindasamy, J.—The petitioner was originally appointed as a Tutor in the Department of Tamil in the 1st respondent College in the year

1971. The petitioner appeared for an interview before a Committee-held for the purpose of filling up a post of Assistant Professor in Tamil on

12.7.1975. When the College re-opened on 16.7.1975 after Summer Recess, the Principal of the College, by memo dated 16.7.1975 informed

the petitioner that he (Principal) was shocked at the petitioner's behaviour towards him on the evening of 12.7.1975 and called upon the petitioner

to explain why suitable disciplinary action should not be taken against him for the alleged behaviour of the petitioner towards the Principal. Then

again, the Principal by another memo dated 21.7.1975 framed the charges specified therein and called upon the petitioner to submit his

explanation. In the preamble portion of the said memo, it is stated that the petitioner was asked to show cause why the Principal should not report

to the Management his behaviour for suitable disciplinary action on the charges set forth therein. Later on, the petitioner submitted his explanation

on 9.8.1975. Subsequently, the petitioner was informed that there was an enquiry on 7.10.1975 with reference to the charges framed against him.

On 7.10.1975 the petitioner was given a communication with a direction to meet the Correspondent of the College to face the enquiry to be conducted by one L.N.V. Subramanian, Advocate, Madurai. It is alleged that at the request of the petitioner, the enquiry was adjourned. Later, on one Thiru J.R. Satchidanandam, Advocate, Madurai was said to be appointed as the Enquiry Officer. The petitioner was directed to appear for the Enquiry to be held by the said Advocate on 24.11.1977. Admittedly, the petitioner did not participate in the enquiry for the reasons set forth in the affidavit filed in support of the above writ petition. Thereafter, based on the Report of the said Enquiring Authority, the 1st Respondent, by Order dated 5.12.1977, imposed the punishment of withholding of increments in the scale applicable to the petitioner for three years commencing from June, 1975 on the basis that the misconducts committed by the petitioner, viz., gross misbehaviour, in subordination and wilful neglect of duty are serious acts of misconduct and such acts of misconduct, if not checked, would be deleterious to the maintenance of discipline, especially in an educational institution for higher studies. Aggrieved by the said Order, the petitioner preferred an appeal to the Government and the Government, by an order dated 17.4.1979, rejected the appeal on the ground that the petitioner's request was not feasible of compliance. Aggrieved by the said Order, the petitioner filed Writ Petition No. 2653 of 1979, on the file of this Court, and this Court, by Order dated 13.4.1983, directed the Government to dispose of the appeal on merits. Thereafter, the Government by G.O.Ms. No. 1778, dated 14.9.1983, rejected the appeal on the ground that the appeal preferred by the petitioner is not maintainable having due regard to the statutory provisions contained in the Tamil Nadu Private Colleges (Regulation) Act. It is at this stage, the petitioner herein has preferred the above writ petition for the issue of a writ of certiorari to quash the aforesaid Order of the 1st respondent dated 5.12.1977, as confirmed by the Order of the third respondent, namely, the Government, dated 14.9.1983, withholding the increment for three years commencing from June, 1975.

2. Mr. P. Shanmugham, learned Counsel appearing for the petitioner, contended that the initiation of the proceedings by the Principal who himself is involved in the incident in respect of which the proceedings were initiated, is not maintainable in law. Learned Counsel further contended that as

per Section 14(1)(c) of the Tamil Nadu Private Colleges (Regulation) Act, only the College Committee is competent to initiate the disciplinary

proceedings against the teachers of the Private College. In the instant case, the College Committee did not initiate the disciplinary proceedings and

consequently the entire proceedings are vitiated. Secondly, the enquiry was held by an Authority not competent to hold the same as per the

instructions issued by the University in this behalf. Thirdly, the petitioner was not favoured with a report of the Enquiring Authority. Finally, the

enquiry has been re-instituted after a lapse of two years. For all these reasons, learned Counsel for the petitioner contended that the impugned

proceedings are vitiated.

3. Mr. S. Jayaraman, learned Counsel appearing for respondents 1 and 2 vehemently contended that the Principal being one of the members of the

College Committee, he is competent to initiate the proceedings. Learned Counsel further contended that the writ petition as instituted by the writ

petitioner is not maintainable. It is further contended that the Committee can depute another Officer to hold that enquiry and accordingly in the

instant case, an Advocate-third party had conducted the enquiry and consequently the proceedings are sustainable in law. The delay is explained

by saying that the Advocate who was originally appointed was not in a position to hold the enquiry and, therefore, the 1st respondent-College had

to appoint a fresh Enquiry Officer and consequently there was delay in conducting the enquiry.

4. I have considered the rival submissions of the learned Counsel appearing for both parties. Section 14(1)(c) of the Tamil Nadu Private Colleges

(Regulation) Act specifies that the College Committee shall have the power to take disciplinary action against the teachers of the Private College.

The said Act does not specify that such a power can be exercised by any other Authority other than the College Committee. In the instant case, it

is not disputed that the Principal is involved in the incident in respect of which the disciplinary proceedings were initiated against the petitioner. On a

perusal of the impugned proceedings, it is magnified the proceedings. It may be that the Principal is one of the members of the College Committee.

But that does not mean that the Principal himself can be considered as the College Committee. In the absence of initiation of the proceedings by

the Competent Authority, namely, the College Committee, and on the sole ground that the disciplinary proceedings have been initiated against the petitioner by the Principal who has no jurisdiction to do so, the entire proceedings are vitiated. Admittedly, the petitioner was not favoured with a copy of the Enquiry Report so as to enable him to submit his explanation challenging the findings of the Enquiry Officer, since the Enquiring Authority is different from the Disciplinary Authority. The law is well-settled that the Report of the Enquiring Authority should be furnished to the Delinquent Officer so as to enable him to submit his explanation with reference to the findings of the Enquiring Authority especially when enquiry was conducted by an authority other than the Disciplinary Authority.

5. Finally, there is a delay of two years in continuing the disciplinary proceedings. However, learned Counsel appearing for the 1st respondent-

College explained it by saying that there was change in the Enquiry Officer and hence there was delay. The delay is not satisfactorily explained.

Even assuming that the Enquiry Officer who was originally appointed was not in a position to conduct the enquiry within a reasonable time, nothing

prevented the Disciplinary Authority from appointing another person to hold the enquiry. The Madurai-Kamaraj University has specifically

instructed the Principals and Managements of Private Colleges not to delegate the powers of holding enquiry to third parties. The relevant portion

of the communication dated 12.12.1978 sent by the Registrar of the Madurai-Kamaraj University to the Secretaries of the College Committee and

the Principals of all colleges reads as follows:

In accordance with the provisions of the Tamil Nadu Private Colleges (Regulation) Act and Rules ""the enquiry has to be conducted only by the

college has to be conducted only by the college committee."" There is no enabling provision under this Act or Rules enabling the delegation of the

powers of the said committee to any third party. The college committee has to decide the matter covering all States. The secretary cannot himself

make an enquiry, nor can his power be delegated to a sub-committee of the college committee.

In the instant case, contrary to the instructions issued by the University, the 1st respondent-Institution has appointed an advocate to conduct the enquiry.

6. With reference to the maintainability of the writ petition, the 1st respondent-College, being an educational institution imparting education and

which is for a public cause, the writ petition is maintainable. Further, the respondents have acted according to the statutory provisions and,

therefore, the writ petition is maintainable, vide: the decision of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami*

Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, .

7. For the reasons set forth hereinabove, the impugned Orders are not sustainable in law and consequently they are hereby quashed. Accordingly,

the writ petition is allowed. No costs.