

(2013) 03 MAD CK 0056

In the Madras High Court

Case No : Writ Petition No. 16236 of 2012 and M.P. No's. 1 and 2 of 2012

Periyasamy Middle School

APPELLANT

Vs

The Joint Director of Elementary School Education (Aided),
The District Elementary Education Officer and A.G. Kalaiselvi

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 19

Citation : (2013) 03 MAD CK 0056

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K.A. Ravindran, for the Appellant; V. Subbiah, Spl. G.P. for R1 and R2 and Mr. N. Manokaran, for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the Management of a Middle School at Ammapet, Erode District. In this writ petition, they have

challenged an order of the first respondent viz., Joint Director of Elementary School Education dated 13.06.2012 (Appellate Authority) and also

the order dated 02.02.2011 passed by the second respondent viz., the District Elementary Education Officer, Erode (competent authority) and

after setting aside the same, seeks for a direction to respondents 1 and 2 to accord permission for dismissing the third respondent from the post of

Tamil Teacher employed in the petitioner school. When the writ petition came up on 27.06.2012, notice of motion was ordered. On notice, the

third respondent has entered appearance and has also filed a counter affidavit dated 31.07.2012 with supporting documents.

2. Heard the arguments of Mr. K.A. Ravindran, learned counsel appearing for the

petitioner school, Mr. V. Subbiah, learned Special Government

Pleader appearing for respondents 1 and 2 and Mr. N. Manokaran, learned counsel appearing for the third respondent.

3. It is seen from the records that the third respondent (A.G. Kalaiselvi) was appointed by the petitioner Management as a Tamil Pandit on

13.04.2009. Her appointment was approved by the second respondent by an order dated 24.04.2009 on the basis of the details furnished by the

Secretary of the school. There were lot of complaints between the third respondent and the Correspondent of the school, which even lead to

making Police complaints. A charge memo dated 14.09.2009 was given to the third respondent. She was subsequently placed under suspension

on 23.09.2009. The third respondent filed a writ petition, being W.P. No. 20783 of 2009, challenging the order of suspension. The said writ

petition, after notice to the parties was disposed of by an order dated 02.03.2010. This Court held that the suspension order was not valid as no

extension was sought for beyond two months as required u/s 22(3)(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (for

short Act). However, the school Management was given liberty to frame definite charges and not vague charges.

4. On 29.03.2010, the District Elementary Education Officer had passed an order for direct payment of salary to the teachers. Hence, the third

respondent sent a representation to respondents 1 and 2 to pay arrears of salary and increment. Once again on 24.08.2010, the petitioner

Management suspended the third respondent and an enquiry was directed to be conducted against her.

5. She once again filed a writ petition, being W.P. No. 28411 of 2010, challenging the order of suspension, dated 24.08.2010. This Court held

that since approval sought for extension of suspension was not granted, there was no provision to keep a Teacher under suspension beyond 60

days. Therefore, the Management was directed to restore the third respondent in service and ultimately, on the conclusion of the enquiry, if any

order of dismissal was passed, it requires a prior approval of the Competent Authority u/s 22(1) of the Act.

6. While saying so, in paragraph 3, this Court observed as follows:-

3....In so far as the other allegations made by the petitioner are concerned, it is

to be noted that, if any order has to be passed by the first respondent, which is adverse to the petitioner, the first respondent shall get prior approval from the competent authority u/s 22(1) of the said Act.

The third respondent will definitely get the remarks from the petitioner, if any prior approval is sought or by the first respondent and if any such

remarks are called for, the petitioner can very well raise all the objections raised in this writ petition before the third respondent and the third

respondent will consider the objections while granting permission or rejecting the permission, which will be sought for by the first respondent as

required u/s 22(1) of the Tamil Nadu Private Schools (Regulation) Act.

7. The third respondent, pursuant to the order reported for duty. However, by an order dated 21.12.2010, she was dismissed from service.

That fact was decided to be intimated to the second respondent with a request for ratification of the dismissal of the Teacher.

8. In the meanwhile, the second respondent, by an order dated 02.02.2011 informed the Management that there was no basis for the complaints

levelled against the third respondent. The charges were not proved beyond reasonable doubt and any decision regarding disciplinary action against

a Teacher will have to be done only by a duly constituted School Committee, which has to be approved by the authorities. In the absence of any

School Committee, not approved by the Department, no approval can be granted.

9. As against the order, the Management has filed an appeal before the first respondent u/s 41 of the Act. In the mean while, the third respondent

filed a writ petition, being W.P. No. 20546 of 2011, seeking for a direction to the respondents to restore her in service by implementing the order

dated 02.02.2011. This Court disposed of the said writ petition, by an order dated 24.11.2011, directing the first respondent to dispose of the

appeal filed by the Management within a time frame. The first respondent, on hearing the appeal filed by the Management, dismissed the same on

13.06.2012, as it was informed by the second respondent that the charges levelled against the third respondent were not proved beyond doubt

and the decision was not taken by the School Committee. Hence, the petitioner Management has come up with the present writ petition.

10. The contention raised by the Management was that the Appellate authority did not give any reason before passing the impugned order and the

procedure contemplated u/s 43(2) of the Act was not complied with. Respondents 1 and 2 have failed to accord permission to the School

committee and the Newly Elected School Committee was intimated as early as in the year 2008. Though proposals were returned, it was re-

submitted on 18.05.2010 and again in the month of February 2012, but so far, they have not granted any approval. It was informed by Mr. K.A.

Ravindran, learned counsel for the petitioner Management that appointment of teachers sent by the Secretary was approved by the very same

second respondent and the power of appointment of any Teacher or any other person vests only with the School Committee and if the School

Committee is not recognised by the respondents, then it is unthinkable, as to how the respondents would have granted any approval for

appointment of Teachers. Though in the grounds, it was not urged about the Appellate Authority not giving reason, however, the learned counsel

states that the same vice applies even to the order passed by the second respondent. Therefore, this Court should set aside even the order dated

02.02.2011 passed by the second respondent and must give a fresh opportunity.

11. In the counter affidavit filed by the third respondent, the allegations made by the petitioner were denied. The order of dismissal was illegal and

therefore, by setting aside the impugned orders, the Court should not restore another illegality viz., keeping the third respondent outside the service

of the school. The learned counsel for the third respondent also placed reliance on the judgment of a Division Bench of this Court reported in 2012

(2) CWC 432 [Tamilavel Uma Maheswaranar Karanthai Arts College v. The State of Tamil Nadu].

12. In so far as the contention raised by the petitioner Management that the Competent Authority as well as the Appellate Authority did not give

any opportunity before passing the impugned orders is concerned, the same is well founded. The authorities, exercising quasi judicial function are

bound to adhere to the principles of natural justice and the Management must be allowed to put up their case. This is especially when a finding is

recorded that the School Committee was not approved by the Competent Authority, even though the Management contends that the proposal sent

by them have been approved by the very same authority regarding appointment. Section 43(2) of the Act talks about the procedure to be adopted

by the Appellate Authority. On receipt of any appeal, the appellate authority must give opportunity of making their representations, and if

necessary to conduct such enquiry, as it deems fit and also to consider all the circumstances of the case, and thereafter make such order as it deem

just and equitable.

13. At the same time, the action of the Management in seeking approval u/s 22(1) of the Act after the dismissal of the third respondent and not

allowing her to work pending such approval cannot be legally valid. In fact, their proposal seeking for ratification from the competent authority is

unknown to the provisions of the Act.

14. If an approval is not obtained, the relationship between the teacher and the school management does not come to an end and the order of

termination will not take effect unless approved by the authority. Section 19 of the Tamil Nadu Private Colleges (Regulation) Act is *pari materia*

with Section 22 of the Tamil Nadu Private Schools Act. A question which arose u/s 19 of the Tamil Nadu Private Colleges Act came to be

considered by this court vide judgment in *The The Ayya Nadar Janaki Ammal College Vs. A. Pandian and Others*, . The learned judge of this

court in paragraph 24 had observed as follows:-

24....I am of the view that Section 19 of the Act would squarely apply to the facts of the case and the prior approval of the competent authority is

necessary before putting an end to the services of the first respondent. In this case, admittedly, the prior approval of the competent authority was

not obtained by the petitioner-college before terminating the services of the first respondent by the petitioner-college. Consequently, the order of

termination of the first respondent does not take effect or become effective unless approved by the competent authority and hence, the order of the

third respondent does not require interference by this Court, with the result, the writ petition is liable to be dismissed....

This view came to be upheld by the division bench in *The The Ayya Nadar Janaki Ammal College Vs. A. Pandian and Others*, .

15. u/s 22(1), the School management will have to seek prior approval of the competent authority before dismissal. u/s 22(3), a teacher can be

suspended pending enquiry for a period of two months and if the enquiry was not able to be completed within the stipulated time, then suspension

can be extended for a further period of two months after getting prior approval of the competent authority. In the present case, after the order of dismissal was passed, even without waiting for the approval by the competent authority, the management had chosen to suspend the teacher which is not contemplated under the provisions of the Act. This will defeat the very purpose of getting prior approval from the competent authority. Any such order passed either preventing the teacher from reporting to work or suspending the teacher pending approval is clearly illegal, void and not contemplated under the law.

16. In this context, it is necessary to refer to a judgment of the Supreme Court, wherein the provisions of Section 22(1) came to be considered, vide its judgment in Secretary, School Committee, Thiruvalluvar Higher Secondary School Vs. The Govt. of Tamil Nadu and Others, and in paragraphs 9 to 11, it was observed as follows:

9. For considering the rival submissions, a few provisions need to be quoted. The pivotal provisions are Sections 22(1) and (2) and Rule 17(1) which so far as relevant read as follows:

22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

17. Dismissal, removal or reduction in rank or suspension of teachers or other person employed in private schools. (1) The competent authorities to accord prior approval for the dismissal, removal or reduction in rank of a teacher or other person employed in any private school, shall be the District Educational Officer in respect of teacher or other person employed in pre-primary, primary and middle schools and the Chief Educational

Officer in respect of teacher or other person employed in high schools, higher secondary schools and teacher's training institutes.

10. Though attempt was made to contend that at the stage of consideration under Sections 22(1) and 22(2) and Rule 17(1), there is no scope for

looking into the proportionality of the punishment aspect, the same is clearly without any substance. What an authority is required to do at that

stage is to see whether the proposed punishment is to be approved. Obviously, it has to consider whether the punishment as proposed is a proper

one; otherwise there is no need for seeking its approval. The crucial words used in sub-section (2) of Section 22 are "adequate and reasonable

grounds" for the proposal. The proposal relates to dismissal, removal or reduction in rank or otherwise termination of appointment of any teacher

or any other person employed in a private school. While considering whether adequate and reasonable grounds exist for giving approval, the

authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it. Any

other interpretation would make the question of approval an exercise in futility.

11. Stand of the learned counsel for the management is that if adequate and reasonable grounds exist for the action, then no other question needs

to be looked into. This argument overlooks a vital aspect that the adequacy and reasonableness of grounds are relatable to the proposals for the

enumerated actions. The proposed actions being punishments, there is an inbuilt requirement to see whether the quantum of punishment

commensurates with the gravity of the proved charges. Therefore, clearly the authority has jurisdiction to decide the question as to whether the

punishment proposed commensurates with the proved charges. One of the related pleas was that if the quantum of punishment is permitted to be

considered, it would partake the character of an appeal. This plea is equally untenable. Sections 22 and 23 operate in different fields. At the stage

of consideration u/s 22, the teacher does not get any opportunity for presenting his side of the case. This opportunity is provided u/s 23 or Section

24, as the case may be. The authority u/s 22 takes decision on the material placed before it by the management. So the question of action u/s 22

partaking appellate characteristics does not arise.

17. From the above, it is very clear that the authority constituted for granting

approval is entitled to go into not only the procedural requirement, but even on the question of penalty. When a legal provision is available for the grant of prior approval, there is no question of terminating or suspending the teacher pending approval. Any decision taken to the contrary is void ab initio. The same view was taken by this Court in R. Santhakumari v.

Moongibai Goenka Girl's Higher Secondary School,(Managed by Bhagwandas Goenka Educational Institution), rep by its Secretary in W.P.

Nos. 19869 and 23932 of 2012 dated 07.02.2013

18. Therefore, the question of the third respondent being kept outside the school pending approval of the authority does not arise. If the petitioner

Management wants even the order of the second respondent dated 02.02.2011 to be set aside and the matter should be remitted to the second

respondent, then it is axiomatic that the third respondent should be restored to service pending approval of the proposal sent by the Management.

In the light of the same, the writ petition stands allowed to the extent indicated below:-

The order of the first respondent dated 13.06.2012 confirming the order of the second respondent dated 02.02.2012 stands set aside and the

matter is remitted to the second respondent for fresh consideration in accordance with law. As a condition precedent, the petitioner is directed to

restore the third respondent in the service of the petitioner school and await further decision of the competent authority u/s 22(1) of the Act. Since

the matter is remitted back for fresh consideration, this Court is not dealing with the merits of the allegations made by the parties and it is entirely

for the second respondent to deal with the same. No costs. Connected miscellaneous petitions are closed.