

(2006) 04 MAD CK 0301

In the Madras High Court

Case No : Writ Petition No's. 1809 and 31542 of 2005 and W.P.M.P. No's. 2015, 2016 and 34580 of 2005 & Writ petition No's. 1809, 31542 of 2005, W.P.M.P. No's. 2015, 2016 and 34580 of 2005

Prof. M. Gopal

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 12, 14, 14(1), 14(1)(C), 16

Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 11(2), 12, 8, 9, 9(3)

Citation : (2006) 04 MAD CK 0301

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : S. Vaidyanathan, for the Appellant; Suresh Viswanath, G.A. for Respondents 1 to 3 and T. Sellapandian, for Respondents 4 and 6, for the Respondent

Final Decision : Allowed

Judgement

K. Mohan Ram, J.—The brief facts of the two cases as culled out from the affidavits are set out below:

i) The Petitioner joined the services of the Salem Sowdeswari College as Assistant Professor of English in the year 1976 and since then he was discharging his duties without any blemish. The Respondent-College was always in the habit of targeting him and foisting false charges against him. Hence every time he had to approach this Court for redressal. In order to victimize him the fourth Respondent, in the capacity as Secretary, has suspended him by an impugned order dated 01.12.2004. Prior to the suspension order, he was issued with two charge sheets dated 28.10.2004 and it of Tamil Nadu & 6 others 2006 Writ L.R. Ram, J.) 29.11.2004 containing various allegations. He submitted a detailed explanation denying the charges and requested the College Committee to furnish

him with the necessary documents on the charges. But the Respondent did not comply with his request. By an order dated 27.12.2004 the Secretary appointed the Enquiry Officer, who is an outsider and the Petitioner was asked to submit his objections. On 30.12.2004, he submitted a detailed explanation to the Secretary.

ii) The Petitioner in his affidavit has referred to various acts and omissions on the part of the fourth Respondent, which according to the Petitioner amounts to acts of victimization. The Petitioner has averred that he has filed W.P. Nos. 2514 and 7248 of 1994 and W.P. No. 16558 of 1998 whenever the Petitioner was illegally punished. It is further averred in the affidavit that since the Petitioner sent representations regarding the Secretary's illegalities to the competent authorities, the Secretary with an ulterior motive of sacking the Petitioner from the college and that too when he was on the verge of retirement has foisted false charges.

iii) It is the further case of the Petitioner that the charge against the Petitioner that teaching was not done properly on 04.10.2004 by the Joint Director of Collegiate Education is not correct as he is not the regular visitor to the College. The unwarranted and adverse remark made by the Joint Director of Collegiate Education when he visited the college on 04.10.2004 has been used as one of the charges against the Petitioner. It is the further case of the Petitioner that he understood that the Joint Director of Collegiate Education has directed the Secretary not to act on the former's letter dated 05.10.2004. The Petitioner was to attain superannuation on 30.06.2005 and since it was during the middle of the academic year as per practice, the Petitioner should have been allowed to continue in service till the end of the academic year 2005-2006.

iv) But in the meantime as per the minutes dated 30.05.2005, the College Committee had decided to impose the punishment of stoppage of 3 months wages and treating the period of suspension from 01.12.2004 to 28.02.2005 as punishment. It is the case of the Petitioner that on the date of the filing of W.P. No. 31542 of 2005, the resolution passed by the College Committee was served on him.

v) It is the further case of the Petitioner that as per G.O.ms. No. 281 dated 13.02.1981, the Petitioner was entitled to continue in service till the end of the academic year 2005-2006, as he attained super-annuation during the middle of the academic year i.e. on 30.06.2005.

vi) It is the case of the Petitioner that the GO. does not specify that the pendency of the disciplinary proceedings or the in-flictment of punishment on a teacher will be a bar to continue the said teacher on reemployment till the end of the next academic year in case the teacher retires in the middle of the academic year. The Petitioner has further stated in the affidavit that one Ra-jagopalan, Head of the Department of Economics of the same college was deprived of the Service benefits available under the G.O. Ms. No. 281 dated 13.02.1981 and hence he filed W.P. No. 10192 of 1996 to permit him to continue in service till the

end of the academic year 1996-97 as he was to retire on 30.06.1996 and by an order dated 28.02.2002 this Court allowed the writ petition and the college was directed to pay wages for the said academic year as he was wrongly prevented from continuing in service. It is the further case of the Petitioner that during the academic year 2005-2006 three professors, including the Petitioner, were to retire, but while the two professors were permitted to continue till the end of the academic year, the Petitioner was deprived of that benefit. It is the case of the Petitioner that he has expressed his intention to continue in service till the end of the academic year 2005-2006 by his representations. But because he has challenged the illegal action of the fourth Respondent, the fourth Respondent relieved the Petitioner from service in the afternoon of 30.06.2005 by his letter No. 563-A2-2005, as the decision to retire him on that date had already been taken and the same finds place in the minutes of the college committee dated 29.04.2005. According to the Petitioner, the action of the fourth Respondent in relieving the Petitioner from service, denying reemployment till the end of the next academic year is contrary to G.O. Ms. No. 281 dated 13.02.1981 and also the order of this Court passed in W.P. No. 4251/1995 and W.P. No. 10192 of 1996.

vii) It is the further case of the Petitioner that one V. Venkatesan, Professor of Commerce who attained superannuation on 31.07.2005 and who suffered a punishment of increment cut has been given the benefit of reemployment and permitted to continue in service for the academic year 2005-2006 and therefore the action of Respondents 3 and 4 amounts to victimization and discrimination. It is also the case of the Petitioner that the fourth Respondent did not forward the Petitioner's pension papers as well as proposals for reemployment to the competent authorities. It is the further case of the Petitioner that since he was denied reemployment he filed W.P. No. 20613 of 2005 for a mandamus directing the third and fourth Respondents to continue in service in the fourth Respondent college and the writ petition was disposed of with a direction to the Director and Joint Director of Collegiate Education to consider his case as per Government Orders and also taking into account the proceedings of the second Respondent dated 30.06.2005 and the report of the fourth Respondent.

viii) It is the further case of the Petitioner that the fourth Respondent represented before the Court in the other proceedings that the proposal to continue the Petitioner in service on reemployment basis had been forwarded to the Joint Director of Collegiate Education, but no orders has been passed. But in the impugned order dated 05.09.2005 which denied the right of reemployment to the Petitioner, it is mentioned that the fourth Respondent has not forwarded the proposals for his reemployment.

ix) Being aggrieved by the impugned order dated 05.09.2005, W.P. No. 13542 of 2005 has been filed for the issue of a writ of certiorarified Mandamus to quash the impugned proceedings of the third Respondent bearing Na. Ka. No. 5539/Aa4-2005 dt.05.09.2005 as illegal and contrary to G.O. Ms. No. 281 dated 13.02.1981 and as clarified by the proceedings of the Commissioner of Collegiate

Education in Rc. No. 48914/G/3/1995 dated 14.09.1995 and consequently direct the fourth Respondent to continue the Petitioner in service till the end of the academic year 2005-2006.

x) Aggrieved by the above said charge sheets dated 28.10.2004 and 29.11.2004 and the consequential suspension order dated 01.12.2004, the Petitioner has filed W.P. No. 1809 of 2005 for the above said reliefs.

xi) The impugned proceedings are challenged on the following substantial legal grounds:

(a) As per Section 14(1)(C) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (hereinafter referred to as "the Act") the College Committee alone can take disciplinary action against teachers and other persons of the private College and in this case, the Secretary has usurped the disciplinary powers of the College Committee and has initiated disciplinary action against the Petitioner on his own volition and hence the impugned charge sheets dt. 28.10.2004 and 29.11.2004 and the order of suspension dt. 01.12.2004 are without jurisdiction and liable to be quashed.

(b) When there is no provision under the 1976 Act or the Rules made thereunder for the College Committee to delegate its disciplinary powers or to ratify the disciplinary action taken by the Secretary, the action taken by the fourth Respondent Secretary is illegal and hence unsustainable.

(c) The College Committee has failed in discharging its statutory duties by ratifying the disciplinary actions taken by the Secretary who had issued letters to him calling for explanations and then delegating its disciplinary powers to the Secretary to proceed further and take whatever action he deemed fit in this matter. Hence the two charges sheets dated 28.10.2004 and 29.11.2004 and the order of suspension dated 01.12.2004 are without legal backing.

2. Though no counter affidavit has been filed by the fourth and fifth Respondents in W.P. No. 1809 of 2005, a detailed counter affidavit has been filed in W.P. No. 31542 of 2005. The Learned Counsel for the fourth and fifth Respondents submitted that since W.P. No. 1809 of 2005 has been filed mainly on the ground that the fourth Respondent viz., the Secretary of the College initiated the disciplinary action against the Petitioner on his own and therefore the said proceedings are without jurisdiction and the said ground is based on the relevant provisions of the Act and since a counter affidavit has been filed in W.P. No. 31542 of 2005 no separate counter affidavit is being filed in respect of the averments and allegations made in the affidavit filed in W.P. No. 1809 of 2005. On behalf of Respondents 1 to 3 also, no counter affidavit has been filed in Writ Petition No. 1809 of 2005, but a detailed counter affidavit has been filed in W.P. No. 31542 of 2005. Written submissions have been filed on behalf of the fourth Respondent.

3. Respondents 1, 2, 3 and 5 in W.P. No. 31542 of 2005 have filed a common

counter affidavit. In the counter affidavit it is stated as follows:

i) The Petitioner in his representation, dated 14.03.2005 requested the fourth Respondent-College Management to take steps to enable him to continue in service on reemployment scheme till the end of the academic year 2005-2006. The fourth Respondent-college management did not forward the said representation of the Petitioner with its recommendation to the third Respondent who is the competent authority to sanction permission for reemployment of teachers in aided private colleges. The fourth Respondent college is an aided private college run by the educational agency, viz., Sri Sowdeswari Mahajana Charitable Trust and the said college is governed by the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Rules framed there under. In the counter affidavit it is further stated that for any teacher of the college to be considered for reemployment, a proposal has to be forwarded by the college committee to the educational authorities so as to consider the request of the institution considering past service and the previous records of the said individual.

ii) The paramount considerations, according to these Respondents, for reemployment of the teachers is the unblemished service of an individual and his previous records. The reemployment of the Petitioner was not considered by the institution itself. The Petitioner has to retire from services on 30.06.2005 and the college has relieved the Petitioner from his responsibilities and since the college management was not inclined to consider the Petitioner's case for reemployment and in the absence of any such proposal being forwarded, these Respondents cannot individually assess the merits or the requirements of the college and grant extension of service for reemployment. Further, the management by letter dated 31.08.2005 informed the Respondents that they are not recommending the Petitioner for reemployment. Therefore, the request for reemployment of the Petitioner was not considered by the authorities.

iii) Pursuant to an order dated 10.08.2005 passed in W.P. No. 20163 of 2005, the Petitioner's representation dated 02.09.2005 as well as the proposal of the management was considered by the third Respondent/the Joint Director of Collegiate Education and passed orders rejecting reemployment. It is the case of these Respondents that reemployment is not automatic and for reemployment there should be a proposal from the college and the past record of the individual is a relevant consideration.

iv) In the case of the Petitioner more than one disciplinary proceedings have been initiated by the college and therefore the conduct of the Petitioner will definitely spoil the administration of the institution in particular the mind of the students. These Respondents have further stated that non-forwarding of the candidature of the Petitioner by the institution cannot be found fault with. It is the specific case of these Respondents that considering the overall requirement of the institution as well as conduct of the Petitioner, the request for reemployment was rightly rejected by the authorities. It is the further case of these Respondents that numerous Government Orders have been passed

superceding G.O. Ms. No. 281 issued and reemployment of a teacher has to be decided only by the individual college management. It is the further case of these Respondents that the Petitioner has no statutory right to avail the benefit of reemployment scheme; that it is not necessary for the third Respondent to be present when the Petitioner's case was examined but, however, the third Respondent has taken into account all relevant matters and materials placed before him for taking the final decision. It is also stated in the counter affidavit that these Respondents would have taken a decision in favour of the Petitioner had the college management forwarded a proposals for his reemployment, duly recommending his case.

v) Before passing the impugned orders the relevant material facts have been considered and examined in detail and the allegations of malafidies is denied.

4. A common counter affidavit has been filed by Respondents 4 and 6 in W.P. No. 31542 of 2005. In the counter affidavit it is stated as follows:

i) The college never had any animosity against the Petitioner and the allegations made by the Petitioner are totally misleading and false; the college committee in its resolution dated 18.10.2004 in Resolution No. 3 unanimously resolved to suspend the Petitioner and to take disciplinary actions and pass final orders and the college committee has authorised the fourth Respondent to initiate disciplinary proceedings including suspension against the Petitioner. Subsequently without prejudice to the disciplinary proceedings as per the advice of the Joint Director of Collegiate Education, the Petitioner was reinstated in service.

ii) It is further stated in the counter affidavit that the college committee in its meeting dated 30.05.2005 decided and imposed punishment i.e. 01.12.2004 to 01.02.2005 as substantial punishment. Till date he has not challenged the proceedings dated 30.05.2005 and therefore the punishment has become final. The Petitioner refused to receive the impugned proceedings dated 30.05.2005 of the college committee. However, the Petitioner took a xerox copy of the said proceedings from the office by using his influence, but yet he has not chosen to challenge the same and hence the same has become final.

iii) It is the further case of Respondents 4 and 5 that Government has issued orders in G.O. Ms. No. 325 dated 29.11.2002 withdrawing the scheme of extension of service of the principal and teaching staff of the Government and aided colleges. The Government has issued G.O. Ms. No. 363 Higher Education Department, dated 19.11.2003 withdrawing the scheme of extension of service and therefore the Petitioner cannot claim any "benefit of extension of service. It is further contended that once the scheme itself has been withdrawn and unless the said order withdrawing the scheme is challenged, the Petitioner cannot have any right to ask for reemployment. The college management has got every right to decide whether the Petitioner is entitled for extension of service and the college committee has rightly considered the past record of the Petitioner and

sent proposal to the third Respondent and the third Respondent has rightly issued the impugned order on 05.09.2005 rejecting the claim of the Petitioner for extension of service. As the Petitioner never discharged his duties diligently for development of the institution and also in the interest of the students and the same was even personally watched by the third Respondent, the Petitioner has no right to claim, as a matter of right, extension of service. It is further contended in the counter affidavit that Professor V. Venkatesan corrected himself after the disciplinary proceedings taken and therefore he was given extension of service, whereas the Petitioner never corrected himself inspite of several opportunities and hence the college committee decided not to grant reemployment for the Petitioner. The allegations of victimization and discrimination are denied. It is the further case of these Respondents that proposal and the decision of the college committee have been forwarded to the third Respondent and it is admitted in the counter affidavit that one of the grounds stated in the impugned proceedings for denying reemployment to the Petitioner was that the management has not recommended the case of the Petitioner for extension of service. The decision of the college committee has been forwarded to the third Respondent and therefore the question of recommending and forwarding proposal for extension of service cannot be done contrary to the decision of the college committee. The other allegations made by the Petitioners have been denied by these Respondents and these Respondents have questioned the maintainability of the writ petition itself.

5. The Petitioner has filed a common reply affidavit in W.P. Nos. 1809 and 31542 of 2005:

It is stated in the reply affidavit that no punishment whatsoever has been inflicted on the Petitioner in the past disciplinary proceedings and earlier charges were dropped. The other allegations made against the Petitioner have been denied by the Petitioner.

6. Heard the Learned Counsel for the Petitioner, learned Government Advocate appearing for Respondents 1 to 3 and the Learned Counsel appearing for Respondents 4 and 5.

7. Since the Learned Counsel on either side place reliance on various provisions of the "Act" and "Rules", it will be useful to refer to the above said provisions and the same are set out below:

Section -12. Secretary of the College Committee -(1) Every college committee shall have a secretary who shall exercise such powers and perform such functions as may be prescribed.

(2) Every person holding office as president, secretary, manager or corRespondent of a pri-vate college or exercising the powers of secretary under this Act on the date of its commencement shall be deemed to be a secretary under this Act".

Section - 14. Functions of the college committee and responsibility of educational agency under the Act - (1) Subject to the provisions of this Act and the rules made thereunder, the college committee shall have the following functions, namely:

(a)...

(b)...

(c) to take disciplinary action against teachers and other persons of the private college.

Rule 9. Secretary of the Committee -(1) The educational agency shall nominate one of its representatives as Secretary of the committee:

Provided that it shall be open to the educational agency to nominate the Principal as Secretary of the committee.

(2)...

(3) The Secretary shall function for and on behalf of the committee and the educational agency.

(4) The Secretary shall act according to the resolutions passed at the meeting of the committee.

(5) The Secretary shall not interfere in the internal administration of the college such as admission, examination, promotion of student and other academic matters as also the administration of special fee funds, which shall be made the exclusive responsibility of the Principal.

(6) The Secretary shall be responsible for the maintenance of proper and accurate accounts and the administration of college funds, except special fee funds

FORM 7-A.

[See Sub-rule 2 (i) of Rule 11 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976]

Form of Agreement to be executed by a college committee of a college in respect of permanent teachers.

Agreement made this.... Day of... One thousand nine hundred.....between the college committee of.... College of the One part and (teacher) of the other part;

Whereas the college committee has agreed to engage the said Thiru/Thirumathi/ Selvi.... Hereinafter referred to as the said teacher to serve in the ... college in the capacity of a teacher and on the pay and allowance hereinafter mentioned.

Now these presents witness and the parties hereunto do hereby agree as follows:

1. That the college committee shall employ the said teacher as a In the college at.... From the date of his / her taking charge of such appointment until such employment is determined as hereinafter provided.

2....

3....

4. ...

5....

6. That the said teacher and the college committee shall conform to all the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the Tamil Nadu Private Colleges (Regulation) Rules, 1976.

7. (a) That the college committee shall not dismiss, remove or reduce in rank or terminate the services of the said teacher without informing him/her in writing of the grounds on which they intend to take action and shall follow the following procedure before taking any final decision regarding the punishment to be imposed on him/her and giving him/her in writing reasonable time to send his / her explanation to the college committee.

(b) After considering his/her explanation the college committee shall communicate to him/her its findings and, if so desired by the said teacher, conduct a personal hearing or enquiry, wherein he / she shall be given the opportunity to examine or cross-examine or any of the witnesses and also produce witnesses.

8. The Learned Counsel for the Petitioner apart from reiterating the various contentions raised in the writ petition submitted that since u/s 14(1)(c) of the Act, the College Committee alone can initiate the disciplinary action against the teachers and admittedly the Secretary has usurped the powers of the College Committee, the impugned proceedings are vitiated for want of jurisdiction on the part of the Secretary and therefore the above writ petition is maintainable. It is further contended that there is no provision either in the Act or the Rules, authorising the college committee to delegate the disciplinary powers or ratify the decision of the Secretary. It is further submitted that if the suspension order and the charge sheets are illegal, nothing more need to be gone into and W.P. No. 1809 of 2005 has to be allowed.

9. The Learned Counsel relied upon the decision of the Honourable Supreme Court of India reported in 1985 (2) LLJ 165 (Chief of the Army Staff and Ors. v. Major Dharam Pal Kukrety) and submitted that the Petitioner can approach the Court under Article 226 of the Constitution of India when the impugned proceedings are passed without jurisdiction. The Learned Counsel referred to Sections 14 (I)(c), Clause 7(a) of Form 7-A viz., form of Agreement to be executed by the college committee of a college in respect of permanent teachers under Rule 11 (2) (i) of the Tamil Nadu Private Colleges (Regulation) Rules 1976

and relied upon the following decisions:

- i) P. Pon Kailasam, Saraswathi Narayanan College Vs. The Secretary, Saraswathi Narayanan College and Others,
- ii) Management of M.G.R. Higher Secondary School Vs. Nag Balaji Singh and Others, .
- iii) 1990 (1) L.L.J. 73 (P. Kasilingam v. Bharathiar University and Ors.).
- iv) 2004 (3) C.T.C. 1 (Pitchumani, P. v. The Management of Sri. Chakra Tyres Ltd.)
- v) Marathwada University Vs. Seshrao Balwant Rao Chavan,
- vi) Director General, E.S.I. and another Vs. T. Abdul Razak, etc., .
- vii) C. Ranganathan Vs. The President/Secretary of School Committee of Maruthamalai Sri Subramanya Devasthanam Higher Secondary School and Another, .

10. Since the maintainability of the writ petition filed against the charge sheets is challenged by Respondents 4 and 5 as premature, it is appropriate to deal with the same before taking up for consideration the other issues involved. The Honourable Supreme Court of India in Chief of the Army Staff and Ors. v. Major Dharam Pal Kukrety reported in 1985 (2) L.L.J. 165, in paragraph 5 has held as follows:

It was the Respondent's case that the Chief of the Army Staff had no jurisdiction to issue the impugned show cause notice after he had been again found not guilty by the court-martial on revision. The said notice expressly stated that the Chief of the Army Staff was of the opinion that the Respondent's misconduct as disclosed in the proceedings rendered his further retention in service undesirable and asked him to submit his explanation and defence, if any, to the charges made against him. If the Respondent's contention with respect to the jurisdiction of the Chief of the Army Staff to issue the said notice were correct, the Respondent was certainly exposed to the jeopardy of having his explanation and defence rejected and he being removed or dismissed from service. Where the said notice issued without jurisdiction, the Respondent would have then suffered a grave, prejudicial injury by an act which was without jurisdiction. Where the threat of a prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the Court's protection. If, on the other hand, the Chief of the Army Staff had the power in law to issue the said notice, it would not be open to the Respondent to approach the Court under Article 226 of the Constitution at the stage of notice only and in such an event his writ petition could be said to be premature. This was, however, not a contention which could have been decided at the threshold until the Court had come to a finding with respect to the jurisdiction of the Chief of the Army Staff to issue the impugned notice. Having held that the impugned notice was

issued without any jurisdiction, the High Court was right in further holding that the Respondent's writ petition was not premature and was maintainable.

Therefore where the threat of prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for the injury to be caused to him before seeking the Court's protection. It is pertinent to point out here that Respondents 4 and 5 in their written arguments have conceded that if the impugned proceedings had been issued by an authority having no jurisdiction to issue then certainly a writ petition is maintainable under Article 226 of the Constitution of India. The Learned Counsel submitted that the impugned proceedings, in this case, were issued by the fourth Respondent-Secretary, who has no authority or jurisdiction under the provisions of the Act or the Rules and therefore the writ petition is maintainable.

11. A careful reading of the above said decision of the Apex court makes it clear that the question of jurisdiction is not a contention which can be decided at the threshold, but it can be decided only after the Court comes to a conclusion with respect to the jurisdiction of the Secretary of the College Committee to issue the impugned proceedings one way or the other. Therefore, only if the impugned proceedings are found to have been issued without any jurisdiction, this Court can hold that the writ petition is not premature and the same is maintainable.

12. (i) The Learned Counsel relied upon the decision rendered in the case of P. Pon Kailasam, Saraswathi Narayanan College Vs. The Secretary, Saraswathi Narayanan College and Others, , wherein in paragraph 4, it is held as follows:

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

(italics supplied).

(ii) The Learned Counsel submitted that the provisions contained in the Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1973 are in pari materia with the provisions contained in Tamil Nadu Recognised Private Colleges (Regulation) Act 1976 and the Tamil Nadu Recognised Private Colleges (Regulation) Rules 1976

and as such the decision of this Court rendered in the case of Management of M.G.R. Higher Secondary School Vs. Nag Balaji Singh and Others, , which was a case that arose under the Tamil Nadu Recognised Private Schools (Regulation) Act 1973, squarely applies to the facts of this case. The Learned Counsel referred to paragraph 9 of the said judgment which reads as follows:

9. It is clear from the above referred provisions that it is only the school committee to initiate action against the teacher and impose appropriate punishment. In this case, the show cause notice dated 20.01.1986 was issued only by the Secretary of the school and not by the school committee. The said show cause notice finds place at page 1 of the typed-set of papers. It is clear that the school committee cannot authorise the Secretary to perform its functions. As per the Rules, the Secretary has to act on the basis of the resolution passed at the meeting of the school committee. He cannot take the role of the school committee.

The Learned Counsel on the basis of the above said decision submitted that in the instant case also the Secretary had issued the charge sheets and apart from that it is only the Secretary who framed the charges and issued the suspension order and as such the impugned proceedings have been issued by a person having no jurisdiction.

(iii) The Learned Counsel further relied on the Division Bench decision of this Court reported in P.S. Venkataramajunam v. National High School, Tambaram and Anr. in W.A. No. 170 of 1978, dated 13.11.1979, wherein the Division Bench dealt with the statutory force that can be given to the agreement in Form 7-A, and held as follows:

... Form VII-A has been prescribed by the rules made by the Government in exercise of their rule-making power. Consequently, the form of agreement has as much force as any rule contained in the rules....

(iv) The Learned Counsel further relied upon the decision of the Honourable Division Bench of this Court rendered in P. Kasilingam v. Bharathiar University and Ors. and reported in 1990 (1) L.L.J. 73. Paragraph 12 of the decision reads as follows:

12 - 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 proceedings and take the final decision thereon by looking into the merits of the matter. Form 7-A framed under Rule H(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

disciplinary 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.

Relying upon the above said decision the Learned Counsel for the Petitioner submitted that the impugned charge sheets having been issued by an authority (Secretary of the College Committee) without jurisdiction, it is liable to be set-aside. The Learned Counsel further submitted that the said decision of the Honourable Division Bench has been confirmed by the Honourable Supreme Court in the SLP (Civil) No. 5693 of 1989 which is reported in 1990 (1) L.L.J. 86.

(v) The Learned Counsel for the Petitioner relying upon the decision of the Honourable Supreme court of India in *Marathwada University Vs. Seshrao Balwant Rao Chavan*, submitted that it is the settled principle of law that when an Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. On the above said premise, the Learned Counsel submitted that a statutory power must be exercised only by the body or officer in whom it has been confided, unless the sub-delegation of the power is authorised by express words or by necessary implication. He further submitted that neither the Act nor the Rules authorised either by express words or by necessary implication, the sub-delegation of the power vested with the college committee to the Secretary.

(vi) The Learned Counsel for the Petitioner relied upon the decision of this Court rendered in the case of *Valliappan v. The Madras Seva Sadan Higher Secodary School* and reported in 1995 (2) M.L.J. 485, which is a decision rendered under the Tamil Nadu Private Schools (Regulation) Act. Paragraphs 11, 13 and 14 of the said decision reads as follows:

11. The statutory scheme therefore, is that the power to take disciplinary action against teachers and other employees of the institution is vested in the school committee. The power to suspend being a power which is incidental to the taking of such disciplinary action, has also to be held to be a power which is vested in the school committee and not in any other individual. Suspension can only be made when the person against whom an enquiry is contemplated has committed not any misconduct, but gross misconduct in relation to the Code of Conduct prescribed under Sub-section (1) of the Section 21 of the Act.

13. ... The Act has vested the power in the school committee and not in the Secretary of the school committee, who is only required to act for and on behalf of the committee, and on the basis of the resolution passed in the school committee, Section 16 of the Act, specifies the powers and functions of the secretary of the school committee with reference to the rules, that may be framed under the Act. The Rules so framed clearly shows that the primary duty of the Secretary is to act on the basis of the resolutions passed at the meeting of the school committee. The action of the Secretary can only be for and on behalf

of the school committee to the extent authorised by the committee.

14. Having regard to the statutory scheme, it must be held that the action of the Secretary in suspending the Petitioner was one which the secretary was not authorised to do under the terms of the statute. The Secretary has no independent power to suspend the teachers or other persons, even when an enquiry is contemplated into a misconduct.

The Learned Counsel for the Petitioner submitted that the provisions of the Tamil Nadu Private Schools (Regulation) Act, 1973 being in pari materia with the provisions contained in the Tamil Nadu Private Colleges (Regulation) Act, 1976, the said decision squarely applies to the facts of this case and the fourth Respondent- secretary could not have issued the charge sheets or passed the suspension order.

(vii) The Learned Counsel for the Petitioner has placed reliance on the following observations contained in paragraph 17 of the decision reported in 1997 W.L.R. 496, which reads as follows:

It is fundamental, that the school committee being a creature of the statute has to act according to the Rules and it cannot act in a different manner than what has been prescribed by the statutory provisions. When a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all and the other methods of performance are necessarily forbidden.

13. In the written submissions submitted by the fourth Respondent it is contended as follows viz:

that u/s 14 (1) (c) of the Act it is only the College Committee which has got power to take disciplinary action against the teachers and the other staff of the private colleges and as per the said provision, resolution has been passed by the College Committee on 18.10.2004 to take disciplinary action against the Petitioner and it was also resolved to suspend the Petitioner; to discharge the functions of the College Committee, the Secretary has been authorized in the said resolution as per Rule 9(3) of the Tamil Nadu Private Colleges (Regulation) Rules. It is further contended that the Secretary shall function for and on behalf of the College Committee and the Educational Agency and under Rule 9(3) the Secretary shall act according to the resolution passed in the meeting of the College Committee. Therefore, the impugned orders have been issued only on the basis of the Resolution of the College Committee at the meeting held on 18.10.2004, and the rules authorise the Secretary to do so and that therefore the contentions of the Petitioner that the Secretary has acted on his own accord is factually incorrect. It is further contended that the disciplinary proceedings have been initiated by following due process of law; final orders have been passed on 30.05.2005 by the College Committee imposing punishment on the Petitioner treating the suspension period from 02.12.2004 to 31.01.2005 as substantial punishment; and it was sent through the Record Clerk of the College to the Petitioner on 01.06.2005 but after knowing the contents of the orders,

the Petitioner refused to receive the same. Subsequently, the final orders have been sent by Registered Post Acknowledgement Due on 22.02.2006. It is further contented that as against the charge memo and suspension, no writ petition will lie unless the Petitioner makes out a case of want of jurisdiction and since the competent authority has initiated the disciplinary proceedings and final orders have been passed nothing survives in the writ petition and therefore the writ petition is liable to be dismissed.

14. The Learned Counsel for Respondents 4 and 5 referred to Sections 12 and 14 (1) (c) of the Act and Rule 9 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 and relied upon the decisions reported in K.M. Valliappan Vs. The Madras Seva Sadan Higher Secondary School and Others, and P. Pon Kailasam, Saraswathi Narayanan College Vs. The Secretary, Saraswathi Narayanan College and Others, .

(i) The Learned Counsel for Respondents 4 and 5 relied upon the following observations contained in paragraph 13 of the decision reported in K.M. Valliappan Vs. The Madras Seva Sadan Higher Secondary School and Others, viz:

13.... who is only required to act for and on behalf of the committee, and on the basis of the resolution passed in the school committee, Section 16 of the Act, specifies the powers and functions of the secretary of the school committee with reference to the rules, that may be framed under the Act. The Rules so framed clearly shows that the primary duty of the Secretary is to act on the basis of the resolutions passed at the meeting of the school committee. The action of the Secretary can only be for and on behalf of the school committee to the extent authorised by the committee.

On the basis of the above said observations, the Learned Counsel submitted that the college committee has passed resolution dated 18.10.2004 and only to give effect to the said resolution, the secretary has issued the impugned charge sheets and therefore the contention of the Petitioner that the impugned proceedings issued by the Secretary of the college committee is without jurisdiction has to be rejected.

(ii) The Learned Counsel for Respondents 4 and 5 also submitted that the law laid down in P. Pon Kailasam, Saraswathi Narayanan College Vs. The Secretary, Saraswathi Narayanan College and Others, is not applicable to the facts of this case since in that case the action was taken by the Principal as the member of the College Committee and to take action the Principal was not the Secretary of the College Committee and hence that judgment has no relevance to the facts of the present case. He further submitted that the question of delegation or authorisation by the college committee in favour of the secretary is not considered in that decision and so the law laid down therein is not applicable to the facts of this case.

15. For better appreciation of the rival contentions it is appropriate to refer to the scheme of the Act and Rules. Rule 8 of the Tamil Nadu Recognised Private

Colleges (Regulation) Rules 1976 (herein after referred to as "the Rules") deals with constitution of the College Committee and Rule 9 refers to nomination of Secretary of the College Committee. As per Rule 9(4) of the Rules, the Secretary has to act on the basis of the resolution passed at the meeting of the College Committee. Section 14 speaks about the functions of the College Committee etc., as per Rule 11(2)(i), the college committee of every Private College has to enter into an agreement with the teacher in Form 7-A, if the appointment is in respect of a permanent teacher. As per Clause 7 in Form 7-A, it is for the College Committee to take disciplinary action against the teacher. The procedure has been enumerated in Sub-clause (a) to (d) of Clause 7 in Form 7-A. Clause - 10, which enables the College Committee to impose major punishments such as dismissal, removal or reduction in rank or termination of services or any of the minor punishment as detailed in the said clause on the teacher for any irregularity or breach of the code of conduct on the part of the said teacher and Section 18 speaks about the code of conduct. Rule 12 states that the teachers and other persons employed in a private college are governed by the code of conduct as set out in Annexure -1.

16. A reading of the Section 12 of the Act makes it clear that the Secretary of the College Committee shall have to exercise only such powers and perform such functions that have been prescribed in the Act and in the Rules. The decisions referred to and relied upon by the Learned Counsel for the Petitioner clearly lays down that the statutory scheme is that the power to take disciplinary action against teachers and other employees of the institution is vested only with the College Committee. The power to suspend being a power which is incidental to the taking of such disciplinary action has also to be held to be a power which is vested in the College Committee and not in other individuals. Suspension can only be made when the person against whom an enquiry is contemplated or has committed any misconduct in relation to the Code of Conduct prescribed under the Act. The Act, u/s 14(l)(c), has vested the power in the College Committee and not in the Secretary of the College Committee, who is only required to act for and on behalf of the committee and on the basis of the resolution passed in the college committee.

17. Similarly, as per Clause 7 in Form 7-A, it is for the College Committee to take disciplinary action against the teacher. The procedure has been enumerated in Subclause (a) to (d) of Clause 7 in Form 7-A. Clause 10 enables the college committee to impose major punishments such as dismissal or termination of services or any of the minor punishment as detailed in the said clause on the teacher for any irregularity or breach of the code of conduct as set out in Annexure -1 on the part of the said teacher. As laid down in the decision rendered in W.A. No. 170 of 1978 in the case of P. S. Venkataramanujam v. National High School, Tambaram the agreement in Form 7-A has as much force as any rule contained in the rules and therefore as per Clause 7(a) of the agreement Form 7-A, for issuing the impugned proceedings, the secretary has no authority and the college committee alone is the competent authority to initiate

any disciplinary proceedings including the issue of charge sheets.

18. But, in the case on hand, I have already pointed out that the Secretary alone had issued the show cause notices and apart from that it is only the secretary who has framed the charges.

19. As rightly contended by the Learned Counsel for the Petitioner, College Committee being a creature of the statute has to act according to the Rules and it cannot act in a different manner than what has been prescribed by the statutory provisions. It will be useful to refer to the decision of the Apex Court rendered in the case of Managing Board of The Milli Talimi Mission, Bihar, Ranchi and Others Vs. State of Bihar and Others, wherein it has been reiterated and held that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. It has been held thus:

It is unnecessary to refer to the long line of decisions commencing from Taylor v. Taylor; Nazir Ahmed v. King Emperor and ending with Chettiam Veettil Ammad v. Taluk Land Board, laying down hitherto un-controverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

It has also been reiterated by the Apex Court in Union of India and Another Vs. Tulsiram Patel and Others, and held thus: "The maxim *expressum facit cessare taciturn* (when there is express mention of certain things, then anything not mentioned is excluded) applies to the case. As pointed out by this Court in B. Shankara Rao Badami and Others Vs. The State of Mysore and Another, at P.459, this well known maxim is a principle of logic and common sense and not merely a technical rule of construction".

In the light of the said pronouncements, this Court holds that where the Act requires the College Committee to exercise its powers available under the Act and Rules in respect of disciplinary proceedings, it is for the College Committee to take a decision and which alone can initiate disciplinary proceedings and it cannot delegate its powers to the Secretary.

20. The Learned Counsel for the Respondents referred to Section 12 of the Act and submitted that u/s 12 the Secretary of the College Committee shall exercise such powers and perform such functions as may be prescribed, and elaborated the contention by submitting that the Secretary shall exercise such powers and perform such functions that may be assigned by the College Committee by its resolutions and referred to the contents in Resolution No. 3, dated 18.10.2004, issued by the College Committee which reads as follows:

and submitted that the College Committee by the above said resolution has ratified the charge memos already issued and authorised, the secretary to initiate the disciplinary proceedings, to frame charges against the Petitioner and if necessary to suspend the Petitioner. Therefore, according to the Learned

Counsel, the secretary in obedience to the said resolution of the college committee has performed his functions as contemplated under the Act and Rules. But this Court is unable to accept the said contention of the Learned Counsel for Respondents 4 and 5. u/s 12 of the Act the secretary can exercise only such powers and perform only such functions that have been prescribed under the Act and Rules and shall not exercise such powers and perform such functions which have not been prescribed under the Act and Rules. The scheme of the Act as referred to above clearly lays down that u/s 14(I)(c), the disciplinary power is vested only with the College Committee and as such the college committee alone can perform that function and as laid down by the Apex Court in the above said rulings, the College Committee cannot delegate its power to take disciplinary proceedings against the teacher to its secretary.

21. A reading of the Resolution No. 3 clearly shows that the College Committee has delegated its disciplinary powers to the Secretary which it could not have done. Therefore, the impugned charges sheets and the suspension order to issue are bad in law which have been issued by the Secretary who has no jurisdiction. Therefore the above writ petition is maintainable and the impugned proceedings are liable to be quashed and accordingly the impugned proceedings are quashed and W.P. No. 1809 is allowed.

22. Coming to the issue involved in W.P. No. 13542 of 2005, the Learned Counsel for the Petitioner submitted that as per G.O. Ms. No. 281 dated 13.02.1981, the Petitioner ought to have been allowed to continue in service during the academic year 2005-06. The learned Government Advocate for Respondents 1 to 3 submitted that the benefit conferred in G.O.ms. No. 281 dated 13.02.1981 have been withdrawn by subsequent Government Orders and submitted that the Petitioner is not entitled for reemployment with the fourth Respondent college. The Learned Counsel for Respondents 4 and 5 also reiterated the said contention. But the said contention is liable to be rejected in view of the proceedings issued by the Secretary to Government, Higher Education (F I) Department, in letter No. 29438 FI/2002-18 dated 21.06.2005. In the said communication, addressed to the Director of Collegiate Education, Chennai, it is stated as follows:

I am directed to invite a reference to your letter 6th cited and to state that reemployment may be sanctioned to the Principals and teaching staff including Librarians and Physical Directors working in the Constituent Colleges (erstwhile Government College) and Government Aided Colleges from the year 2005-06, subject to the result of the Writ Petition Nos. 45707/2002 and 46001/2002 pending before the Hon''ble High Court, Chennai.

The learned Government Advocate and the Learned Counsel for Respondents 4 to 5 submitted that since the disciplinary proceedings were pending against the Petitioner and punishment had been inflicted on him the Petitioner cannot, as a matter of right, seek reemployment with the fourth Respondent college. The disciplinary proceedings initiated against the Petitioner and the punishment imposed against him have been taken into account by the Joint Director of

Collegiate Education and thereafter only the impugned proceedings have been issued and as such the impugned proceedings are in conformity with the relevant Government Orders and guidelines issued on the subject.

23. The said contentions put forth by the Respondents are countered by the Learned Counsel for the Petitioner by pointing out that as per Resolution No. 5 passed by the college committee in its meeting held on 14.11.2002 all charges pending against the Petitioner were dropped and as such there were no charges pending against the Petitioner as on 14.11.2002. Therefore, the third Respondent / Joint Director of Collegiate Education should not have relied upon the stale charges and deny extension of service to the Petitioner. Further, the Learned Counsel submitted that if W.P. No. 1809 of 2005 is to be allowed, then the entire disciplinary proceedings, viz., charge sheets and suspension order will go and consequently the punishment imposed by the college committee by its order dated 30.05.2005 will become a nullity. The said contention of the Learned Counsel for the Petitioner has to be accepted. Now, that W.P. No. 1809 of 2005 has been allowed and the entire disciplinary proceedings, charge sheets and the suspension orders stand quashed, automatically the punishment imposed by the college committee on the Petitioner goes. When that being the position, the impugned proceedings of the Joint Director of Collegiate Education, the third Respondent herein, dated 05.09.2005 is liable to be quashed. A feeble attempt was made by the learned counsel for Respondents 4 and 5 stating that the conduct of the Petitioner will itself disentitle him to continue in service. The said contention of the Learned Counsel for Respondents 4 and 5 is countered by the Learned Counsel for the Petitioner by relying upon an order dated 28.02.2003 passed in W.P. No. 10192 of 1996 by Mr. Justice R. Jayasimha Babu. In the said order, in paragraph 6, the Learned Judge has held as follows:

6. The order states that such persons shall be permitted to continue till the end of the academic year". This does not imply that permission must be specifically sought. If there are no impediments otherwise to the continuance of the teacher; then, it is for the authorities to continue to treat him as member of the faculty, unless he himself decides not to avail the benefit.

24. The Learned Counsel for the Petitioner also relied upon another order dated 26.11.1997 passed by the same Learned Judge in W.P. No. 4291 of 1995. In the said order wherein the Learned Judge has held as follows:

5. ...The right of a teacher to continue till the end of the academic year has been recognised in that circular, that right is part and parcel of his right to continue in service till the age of retirement. The date of retirement of a teacher who attains the age of retirement during the course of an academic year get postponed to the end of the academic year. Such postponement is not a gift by the management to the Teacher. It is a right conferred on the teacher which he/she is entitled to exercise.

If the facts of this case is considered in the light of the above said decisions,

there will be no difficulty in holding that the Petitioner is entitled to continue in service till the end of the academic year 2005-2006. The allegations that have been leveled against the Petitioner have not been proved in a manner known to law and as such the allegations cannot stand in the way of the Petitioner getting reemployment till the end of the next academic year.

25. For the foregoing reasons, the impugned proceedings dated 05.09.2005 issued by the third Respondent is liable to be quashed and accordingly is quashed. Consequently, the Respondents are directed to pay to the Petitioner, the salary that he would have drawn for the period between the date on which he attained the age of superannuation and the last date of the academic year 2005-06 within two months from the date of receipt of a copy of this order.

26. With the above directions, W.P. Nos. 1809 and 31542 of 2005 are allowed. However there will be no order as to costs. Consequently, the connected WPM Ps are closed.