

(2007) 06 MAD CK 0066

In the Madras High Court

Case No : Writ Petition (MD) No's. 3738 and 8249 of 2005 and WPMP No's. 3948 and 8934 of 2005

Punithavalli

APPELLANT

Vs

Saiva Bhanu Kashtriya Girls Higher Secondary School

Saiva Banu Kshatriya Girls, Higher Secondary School
Vs The Joint Director, Director of School Education, The
District Educational Officer, Mrs. Punithavalli and The Special
Tribunal for Private Schools, The Subordinate Judge

RESPONDENT

Date of Decision : 28-06-2007

Acts Referred:

Constitution of India, 1950 — Article 23
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 19(1), 37
Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 22, 22(1),
22(3), 41
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 17(3), 29

Citation : (2007) 06 MAD CK 0066

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.S. Bala Subramania Iyer, in W.P.MD No. 3738 of 2005 and M. Mariappan, in W.P.MD No. 8249 of 2005, for the Appellant; M.S. Bala Subramania Iyer, in W.P.(MD) No. 8249 of 2005, M. Mariappan, in W.P.(MD) No. 3738 of 2005 and V. Chellammal, Special Government Pleader for Respondent Nos. 2 and 3 in W.P.(MD) No. 3738 of 2005 and for Respondent Nos. 1 and 2 in W.P.(MD) No. 8249 of 2005, for the Respondent

Judgement

K. Chandru, J.—Heard the learned Counsels appearing for the respective parties and have perused the records.

2. Writ Petition (MD) No. 3738 of 2005 is filed by a non-teaching staff against the orders of the Private School Tribunal/the 4th respondent dated

15.3.2004 made in C.M.A. No. 1 of 2001, claiming salary for the period from 10.6.1991 till 6.3.2001.

3. Writ Petition (MD) No. 8429 of 2005 is filed by the School Management against the very same order of the Private School Tribunal insofar as

it ordered that the termination of the non-teaching staff will come into effect only from 23.5.1995 and for the period from 10.10.1991 till

24.3.1995, the School Management should pay the monetary benefits as directed by the Joint Director of School Education (the appellate

authority) after giving credit to the subsistence allowance for the period from 10.6.1991 to 9.10.1991.

4. The petitioner in W.P.(MD) No. 3738 of 2005 (hereinafter referred to as ""non-teaching staff"") was employed by the writ petitioner in W.P.

(MD) No. 8249 of 2005 (hereinafter called the School Management)and was working as a Junior Assistant in the School with effect from

12.6.1964. She was charged with misappropriation of money belonged to School teachers, which was to be deposited in the post office towards

the savings made by the teachers. Instead of remitting these amounts into the recurring deposits in the post office, the petitioner misappropriated

heavy amounts. It is also stated that the said staff later has paid Rs. 4,00,000/- to cover up her fraud.

5. Disciplinary proceedings were taken by the Secretary on behalf of the School Committee. The non-teaching staff accepted her complicity in not

paying the amount and as the consequence of the same, she was placed under suspension with effect from 10.6.1991. An enquiry in respect of the

charge was not completed beyond 4 months. Therefore, she filed a Writ Petition being W.P. No. 14208 of 1992 before this Court. This Court did

not order her reinstatement. However, by order dated 21.9.1992, a direction was given to the School Management to pass final orders within a

period of two months from the date of the order. However, in the other writ petition being W.P. No. 20906 of 1992, seeking for challenging the

disciplinary action, no relief was granted except merely stating that the matter can be gone into the Second Appeal pending before the Private

School Tribunal in C.M.A. No. 1 of 2001.

6. In the mean while, the non-teaching staff was given a show cause notice as to why she should not be dismissed and also after her reply, prior

approval was sought for from the District Educational Officer, Virudhunagar for her dismissal. The said approving authority/C.E.O, Virudhunagar

refused to grant approval by his order dated 22.2.1993. Aggrieved by the same the School Management filed a first appeal dated 31.3.1993 to

the Joint Director of School education, who is the appellate authority u/s 41 of the T.N. Private Schools (Regulation) Act, 1973. The Joint

Director by his order dated 8.3.1995 set aside the order of the C.E.O., Virudhunagar and granted approval to the School Management for

dismissal of the non-teaching staff. In his order, the appellate authority viz., the Joint Director held that the order of the Chief Educational Officer

dated 22.2.1993 being set aside, permission is granted to the School. However, he held that there was no provision for dismissing any person with

retrospective effect and that the suspension of the said non-teaching staff cannot be extended beyond two months in view of the Section 22(3)(b)

of the said Act. Therefore, he had held as there was no final order during the period of suspension, subsistence allowance for the period of four

months shall be paid from the Government grant and the monetary benefits for the remaining period till the date of dismissal should be paid by the

School Management from their own funds.

7. As against this portion of the order, the School Management did not prefer any appeal and allowed the order to become final. The appeal filed

by the non-teaching staff came to be dismissed by the Subordinate Court, Aruppukkottai in C.M.A. No. 1 of 2001 by judgment dated 15.3.2004.

As stated already, the Special Tribunal confirmed the order of the appellate authority but modified the relief portion so that the interregnum period

of salary from 10.10.1991 till 24.3.1995 should be paid by the School from the Government grant. As against this order dated 15.3.2004, both

the staff and the School Management have filed the aforesaid two Writ Petitions.

8. The learned Counsel for the School Management contended that the order of the Private School Tribunal is liable to be set aside and the staff is

not entitled to get reinstated. The Special Tribunal in fact found that the charges against the petitioner have been proved and the staff is guilty of

serious misconduct and there was nothing wrong in the order passed by the appellate authority and the said order of the appellate authority was

confirmed. Therefore, this Court has no necessity to interfere with the concurrent finding of the appellate authority dated 18.3.1995 as well as the

Special Tribunal's order dated 15.3.2004 and hence the Writ Petition No. 3738 of

2005 is liable to be dismissed.

9. However, the learned Counsel for the non-teaching staff contended that under the T.N. Private Schools (Regulation) Act, 1973, there was no

provision for the School Management to file an appeal once approval is rejected by the competent authority (the Chief Educational Officer,

Virudhunagar). According to him, if any appeal is filed u/s 22 of the said Act and only when it is dismissed or allowed, the parties can have a right

of Second Appeal to the Tribunal and there is no appeal provision against the order refusing to grant approval u/s 22(1) of the said Act.

10. The learned Counsel has overlooked the fact that Section 41 of the said Act provides for an appeal against orders of various authorities and

the corresponding Rule 29 of the T.N. Private Schools (Regulation) Rules, 1974 clearly provides that in a case of orders passed u/s 22(1), the

appellate authority in respect of Higher School is the Joint Director of School Education (Secondary Education).

11. In any event, in construing Section 37 of the T.N. Private Colleges (Regulation) Act, which is in pari materia to Section 41 of the T.N.

Recognised Private Schools (Regulation) Act, 1973, the Hon'ble Supreme Court had an occasion to consider a similar issue vide its Judgment

reported in (1984) 1 SSC 158 S. Jagadeesan v. Ayya Nadar Janaki Ammal College and Anr. and held that in a case of refusal to grant approval,

the College Management should file an appeal u/s 37 of the Act. The following passage found in para 3 is as follows:

3. Without entering into the controversy as to the meaning to be given to the words "otherwise terminated in Sub-section (1) of Section 19 of the

Tamil Nadu Private Colleges (Regulation) act, 1976, we set aside the judgment of the High Court and dismiss the writ petition filed by respondent

No. 1 with a direction that respondent No. 1 may prefer an appeal to the prescribed authority u/s 37 of the Act, if so advised....

12. Therefore, the controversy that remains to be answered is whether the staff was entitled to get salary from the date of dismissal till the date of

appellate authority's permission and if the answer is affirmative, then as to whom the liability to pay the said salary will fall is to be considered.

13. Undoubtedly, the language of Section 22(1) of the T.N. Recognised Private Schools (Regulation) Act clearly states that no teacher or other

person can be dismissed except with prior approval of the competent authority. Therefore, in the present case, the School Management had not

only suspended but also dismissed the said staff subject to approval by the competent authority. It is axiomatic that the school cannot dismiss until

prior approval of the competent authority is obtained. In the present case, even before the approval of the competent authority was obtained, the

said staff was kept outside the School, thereby preventing her from discharging her duties.

14. This Court has held in W.P.(MD) No. 457 of 2006 by order dated 2.3.2007, that while granting approval, it cannot take any retrospective

effect and it can only be prospective. But the position is different when against the order refusing to grant approval by the competent authority

whether the appellate authority's order can take retrospective effect from the date of approval or it can be prospective. In the present case, the

appellate authority held that the staff can be removed only from the date of the appellate order. In normal circumstances, the law applicable u/s

22(1) of the T.N. Private Schools (Regulation) Act viz., the requirement of prior approval will have no application while the appellate authority

decides an issue in a particular way. However, if one looks at the scheme of the T.N. Private Schools (Regulation) Act, teachers and non-teaching

staff are protected from being kept out of the School until an approval is obtained from the competent authority or in the alternative from the first

appellate authority or the Second Appellate Tribunal.

15. In a case where the School Management fails to get approval, then the staff is deemed to be in service and entitled to get salary either from the

School Management or from out of the teaching grant available with the School. The said position continues even thereafter until the appellate

authority reverses the order of the approving authority. If only the School Management had retained the staff as per the mandatory provisions of

the T.N. Private Schools (Regulation) Act, there would not have been any liability for them towards payment of salary for the period of alleged

non-employment. In the present case, such a situation has been brought out by the School Management itself by preventing the staff from

continuing in service until the finality is reached in the case viz., the dismissal of the staff in question. Therefore, there is nothing wrong in both the

appellate authority as well as the Appellate Tribunal holding that the Staff is entitled for salary from the date of suspension till the date the appellate authority decided the case against the staff.

16. The last question that comes for consideration is to the liability of making payment.

17. In the present case, Rule 17(3) of the T.N. Private Schools (Regulation) Rules 1974 clearly fixes the liability, which is as follows:

17. Dismissal, removal or reduction in rank or suspension of teacher or other persons employed in private school-

(1) ...omitted....

(2) ...omitted....

(3)(i) Where after enquiry, including the appeal, a suspension is found to be not justified, the management shall remit the amount of subsistence

allowance paid to the teacher or other person, employed in that private school to the Government in one lumpsum under the appropriate head of

account. The Educational Agency shall however, pay such teacher or other person the full pay and allowances he would have drawn but for his

suspension less the amount of subsistence allowance already paid to the teacher or other person for the suspension period from the funds of the

management without any claim from grant.

18. In the present case, the conduct of the management is to be blamed. In the absence of a second appeal filed by the School Management, the

Second Appellate Tribunal cannot collaterally decide that the Management can pay the arrears from the teaching grant. Such a modification of the

appellate authority's order is not only permissible but contrary to the rules.

19. A Division Bench of this Court while considering the liability of the management to pay salary, considered the very issue, (to which I am party)

vide its Judgment reported in Bharath Primary School Vs. A. Pauldurai, The District Elementary School Educational Officer and Alda, It was held

in paragraph Nos. 8 to 10 as follows:

8. However, our attention was brought to the decision of the Supreme Court Andl Mukta Sadguru Shree Muktajee Vandas Swami Suvarna

Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, wherein the question with reference to the liability of the Management to

pay salary for a teacher appointed by them, was answered by the Supreme Court and the relevant portion of the order found in paragraph 10 of

the judgment is extracted below (at p. 327 of L.L.J.):

10. ...We are only concerned with the liability of the management of the college towards the employees. Under the relationship of master and

servant, the management is primarily responsible to pay salary and other benefits to the employees. The management cannot say that unless and

until the State compensates, it will not make full payment to the staff. We cannot accept such a contention.

9. We do not know as to how the earlier judgment of the Division Bench cited by the learned Counsel for the appellant is helpful to him. On the

contrary, as authoritatively pointed out by the Supreme Court, when there is a contract between the management and the teacher, the liability to

pay the salary completely vests on them. If the stand of the Management is accepted, then the poor teacher, who worked as a Head Master for

the period between 23.9.1998 and 7.6.2000, will have to go without any salary notwithstanding the fact that his appointment was not approved by

the Department.

10. Article 23 of the Constitution of India prohibits forced labour. It is not as if the Management took a contra stand before the learned Judge with

reference to the appointment of the first respondent. On the contrary, they have supported the appointment throughout and only when they were

mulcted with financial liability, they have come forward to file the present appeal. Therefore, the stand of the Management cannot be approved.

20. In view of the above pronouncement, the settled legal position is that the order passed by the Special Tribunal under appeal is clearly illegal

insofar as it had directed the staff should be paid out staff grant. While upholding the order of the Tribunal insofar as it justifies the dismissal of the

staff, with reference to the monetary liability arising out of payment due to the staff from the date of suspension till the appellate authority's order is

concerned, the same shall be paid by the School Management. Such payment should be made within a period of eight weeks from the date of

receipt of copy of the order.

21. With the above direction both the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.