

(2006) 07 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No. 21360 of 2006 and M.P. Nos 1 and 2

R. Mark

APPELLANT

Vs

The District Elementary Educational Officer, The Bishop and
Manager, CSI Diocesan Schools and The CIS Primary School

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2006) 4 MLJ 1173

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; C.K. Vishnupriya, Government Advocate for 1st Respondent and T.S. Sivagnanam, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—In this writ petition, petitioner seeks to quash the order of the third respondent dated 30.6.2006 and

consequently direct the respondents to re-employ him as Headmaster in the 3rd respondent School from 1.7.2006 till the end of the academic year

20 007 i.e., 31.5.2007.

2. Petitioner who was serving as Headmaster in the third respondent School was not given re-employment from 1.7.2006 to 31.5.2007 and he

was relieved on 30.6.2006 on attaining the age of superannuation. In the affidavit filed in support of the petition, petitioner contends that he had put in

28 years of service as Headmaster besides 10 years of service as Secondary Grade Teacher and his entire service was without blemish.

According to the petitioner, the impugned order does not say any reason for not giving the benefit of re-employment, which has to be given to the

petitioner in terms of various Government Orders.

3. The respondents 2 and 3 have filed counter affidavit wherein it is stated that the petitioner's conduct and character are not good and that the

petitioner had submitted an application on 8.3.2006 stating that he is reaching the age of supra on 30.6.2006 and due to his health condition he is

unable to continue beyond the said period and he may be relieved on the afternoon of 30.6.2006. It is also stated in the counter affidavit that

pursuant to the said request petitioner was relieved by passing the impugned order dated 30.6.2006 even though he had sent a representation

enclosing a medical certificate on 29.6.2006 and requested for re-employment. The said request was considered by the Management and the

petitioner having not satisfied the first and foremost condition stipulated under the various Government Orders dealing with the re-employment of

teachers, namely, the character and conduct, he was not given re-employment and he was relieved on 30.6.2006. In the Counter affidavit in

paragraph 6 the conduct of the petitioner is narrated, which reads thus,

6. The following are the instances which show and establish that the petitioner's conduct and character was not satisfactory:

(a) On 20.06.2003 the petitioner declared = day leave to the School just for the purpose of attending a private betrothal function of a person who

has no connection with the School. For the said misconduct the petitioner was issued with notice ugh his letter dated 4.7.2003 he has admitted the

guilt and apologized for the same with an assurance that he would not conduct himself in such a manner in future.

(b) The petitioner was irregular in attending the school and performing his duty as the Headmaster on several occasions. On 07.04.2004 a show

cause notice was issued by the Correspondent of the School intimating as to why action should not be t inst him for his unauthorised absence on

24.03.2004 and 05.04.2004 thereby causing great difficulty for the students to get their proper education. Even in the said show cause notice it

was pointed out that the petitioner had not dispersed the whole amount to the concerned teachers received from Government under the scheme

called ""Education to all"". It was also pointed out in the said notice that the petitioner had not taken any steps to get the maintenance aid to the

school from the Government and co nsequently allowed the management to face

financial difficulties in running the School. To this said notice the petitioner through his explanation dated 16.4.2004 informed the 3rd respondent that he will not allow the said lapses to occur again in future.

(c) It is submitted that the petitioner had never participated in any of the monthly meeting convened by the Educational Officer or the

Correspondent of the C.S.I. Schools or the meeting to be convened by the Headmaster under education to all schenever he was questioned for

such absence, the petitioner used to say that he was not feeling well. His letter dated 7.2.2006 and 14.2.2006 would amply prove that he was not

discharging his duty as Headmaster in a satisfactory manner.

(d) It is submitted that the petitioner was absent on the following dates when the inspection was made by the Correspondent of the School.

07.08.2002, 17.10.2002, 13.03.2003, 29.07.2003, 27.08.2003, 24.03.2004, 05.04.2004, 10.11.2004, 14.11.200 .2004, 29.06.2006. A

report of inspection of those dates would prove that the petitioner was absent on all those days without any proper application of leave.

(e) These Respondents received a complaint from the public on 28.6.2006 against the petitioner herein informing that i) he was irregular in

attending school; ii) often comes to school in drunken mood; iii) misusing the students for his persona iv) asking the students to massage his legs at

school hours. Based on the said complaint received an enquiry was conducted by one Mr. Stanley Padmaraj, and Mr. J. Selvam, Correspondents

of the other schools under the same corporate Management. They visited the school on 29.6.2006 and the petitioner was absent on 28.6.2006

and 29.6.2006. Since the petitioner was not available for enquiry those two persons made enquiry with all other 3 teachers and found that the

petitioner had been very irregular; coming late daily and leaving earlier; he used to sleep in the class room by asking the students to massage his

legs; he used to take ""Panparag""; he was not handling classes regularly; used to come to the school in the drunken mood. Though the Management

wanted to take disciplinary action based on the said report, since the petitioner had already submitted a letter on 08.03.2006 as he was ready and

willing to be relieved, it was decided not to take further action as he is not going to be in service after 30 .06.2006. In this connection the report

submitted by the enquiry officers dated 30.06.2006 may be read as part and

parcel of this affidavit for the proper appreciation of the facts of the case.

4. The learned Counsel appearing for the petitioner submitted that the petitioner was not punished at any time and at this stage, he cannot be denied re-employment on the alleged ground that his character and conduct are not satisfactory. Lear el also submitted that re-employment is a matter of right to the teaching staff as per various Government orders and the Management is bound to give re-employment to the petitioner from 1.7.2006 to 31.5.2007.

5. The learned Counsel appearing for respondents 2 and 3 submitted that the petitioner was issued with a memo on 7.4.2004 regarding three charges, for which he had submitted explanation on 16.4.2004 stating that he will not commit such mistakes. Again on 7.2.2006 the petitioner was issued with a memo for disobedience of the directions of the Correspondent and for the said memo also petitioner submitted his explanation on 7.2.2006 itself and pleaded for apology. The said memos issued to t he petitioner and the replies submitted by the petitioner are filed in the typed set of papers.

6. I have considered the rival submissions of the learned Counsel appearing for the petitioner as well as the respondents 2 and 3.

7. The issue in this writ petition is whether the denial of re-employment to the petitioner from 1.7.2006 to 31.5.2007 by the Management is proper or not.

8. In G.O.Ms.No.452 Education Department, dated 24.3.1970 the Government passed the following order, ""In Memo 52041 F1/69-1 Edn.

dt.8.10.1969 the Government have ordered that teachers who attain the age of superannuation in the middle of the School year should be

continued on re-employment terms till the date of closure of the school for summer vacn subject to the usual conditions.

Namely:- 1. That their work and conduct are satisfactory.

2. That they are physically found fit for further service.

3. That no disciplinary proceedings are pending against them.

The Director of School Education is informed that Teacher"s/Headmasters of aided Elementary and Secondary Schools who are continued in

service on re-employment terms till the closure of the school for summer vacation are eligible for full vacation s y." A reading of the above order

makes it clear that a Teacher, whose date of superannuation falls during the academic year is entitled for re-employment only if certain conditions are satisfied.

9. The first and foremost condition to be satisfied is that the character and conduct should be satisfactory. From the counter affidavit and from the

typed set of papers filed by the respondents 2 and 3 it is seen that the conduct and character etitioner is not satisfactory and that he had committed

dereliction of duty and disobedience, for which explanations were sought for and the petitioner also pleaded apology by submitting explanations.

Apart from that, petitioner had also submitted a representation dated 8.3.2006 requesting the Management to relieve him from the service from

30.6.2006.

10. In view of the above said facts, particularly on the basis of the averments contained in paragraph 6 of the Counter affidavit, extracted above,

which allegations are not denied by the petitioner, it has to be held that the character and cond he petitioner are not satisfactory during his service

and the Management rightly relieved the petitioner from service on 30.6.2006 without givingre-employment.

11. A similar issue arose before this Court in W.P. No. 21220 of 2006 (R. Muthuswamy v. Joint Director of School Education (Higher

Secondary) Chennai, and Anr.) and by order dated 14.7.2006 I have dismissed the writ petition holding that the chand conduct of the petitioner

therein, who was a Teacher, were not satisfactory and therefore the Management rightly rejected the request for re-employment.

12. At this juncture, I feel it appropriate to mention the role of the Headmaster of a School as explained by the Honourable Supreme Court in the

decision reported in N. Ammad Vs. The Manager, Emjay High School and Others, . Paragraph 23 reads thus,

18. ... Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate

to generate result. A school is personified through its Headmaster and he is the focal point o outsiders look at the school. A bad Headmaster can

spoil the entire institution, an efficient and honest Headmaster can improve it by

leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

19. How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in *Aldo Maria Patroni*

and *Another Vs. E.C. Kesavan and Others*, . Chief Justice M.S. Menon has, in a style which itable, stated thus:

The post of the headmaster is a pivotal importance in the file of a school. Around him wheels the tone and temper of the institution; on him depends

the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching he right to choose the headmaster is perhaps the most

important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon except to the extent of prescribing

the requisite qualifications and experience can not but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To

hold otherwise will be to make the right "a teasing illusion, a promise of unreality".(of K.L.T.) : (at p.77 of AIR).

20. The importance of the key role which a Headmaster plays in the school cannot be better delineated than that. the Nine Judge Bench in *The*

Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, has highlighted the nce of the role of Principal of a

college. In support of the majority view in that decision K.K. Mathew, J. has observed thus:

It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its

reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal to have the teaching conducted by teachers

appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to

administer an educational institution.

21. H.R. Khanna, J. has adopted a still broader view that even selection of teachers is of great importance in the right to manage a school. Learned

Judge has stated thus:

The selection and appointment of teachers for an educational institution is one of

the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment with infringing Article 30(1). (p.242)(of SCR): (at p.1427 of AIR).

22. Krishna Iyer, J. who dissented from the majority view in *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, , has, nevertheless, emphasised the importance of the post of the Principal in the follords:

An activist principal is an asset in discharging these duties which are inextricably interlaced with academic functions. The principal is an invaluable insider - the Management's own choice - not an outsider answerable to the Vice-Chancellor. He is into the work of the Managing Committee that intimate acquaintance with educational operations and that necessary expression of student-teacher aspirations and complaints which are so essential for the minority institution to achieve a happy marriage between individuality and excellence.

23. Whatever is said about the importance of the post of Principal of a college vis-a-vis the administration of the institution would in pari materia apply to the Headmaster of a school with equal force." In AIR 2004 SC 499 (*Manager, Nirmala Senior Secondary School, Port Blair v. N.I.*

Khan and Ors.), the Honourable Supreme Court explained the role of the Teachers in paragraphs 1 to 3, which read thus,

A teacher affects the eternity. He can never tell where his influence stops; said Henry Adam. Any educational institution for its growth and acceptability to a large measure depends upon the quality of teachers.

2. Educational Institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student recere there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the

character of the teacher s are really important.

3. The case at hand has some unfortunate shades as it involves alleged misconduct of a teacher and the purported desire of the management of an educational institution to keep him out of the institution to maintain the purity in educational sphere atmosphere of the institution....

13. In view of the established fact that the petitioner's character and conduct are not satisfactory, which are the essential requirements as per the

Government Orders as well as the above referred decisions of the Honourable Supreme Court and t ioner's post being Headmaster, I hold that

the petitioner is not entitled to get re-employment and the impugned order dated 30.6.2006 passed by the third respondent, relieving the petitioner

from service with effect from 30.6.2006 is legally sustainable and there is no merit in the writ petition.

Consequently, the writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.