
(2013) 02 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No's. 19869 and 23932 of 2012 and M.P. No's. 1 and 1 of 2012

R. Santhakumari

APPELLANT

Vs

The Joint Director (Higher Secondary), The Chief Educational Officer, The District Educational Officer and Secretary

Moongibai Goenka Girls' Higher Secondary School Vs
The Joint Director (Higher Secondary), The Chief Educational Officer, The District Educational Officer and R. Santhakumari

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Constitution of India, 1950 — Article 124, 124(7)
Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 19

Citation : (2013) WritLR 439

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Annamalai in W.P. No. 19869 of 2012 and Ms. K. Subhashini for M/s. Chennai Law Asso. in W.P. 23932/2012, for the Appellant; P.S. Sivashanmugasundaram, AGP for RR1 to 3 in both writ petitions and Ms. K. Subhashini for M/s. Chennai Law Asso. in W.P. No. 19869 of 2012 for R-4 and Mr. G. Annamalai in W.P. No. 23932 of 2012 for R-4, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—In W.P. No. 19869 of 2012, the petitioner is an Headmistress of a private aided school at Chennai. In this writ petition,

she has sought for setting aside an order placing the petitioner under suspension pending approval by the education department with reference to

the demand of the school for dismissing the petitioner from service. When the writ petition came up on 27.07.2012, this court had ordered notice

of motion. In the meanwhile, the management of the school represented by its Secretary filed the second writ petition being W.P. No. 23932 of

2012 seeking to challenge an order dated 17.08.2012 passed by the District Educational Officer, North Chennai taking exception to placing the

Headmistress under suspension pending approval by the department. Since the rules regarding the conduct of domestic enquiry as found in the

provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules framed thereunder were not followed, the approval

was refused by the District Educational Officer. That writ petition when it came up for admission on 03.09.2012, it was directed to be posted

along with the earlier writ petition filed by the Headmistress. Hence both the writ petitions were grouped together and a common order is passed.

2. On notice from this court, a counter affidavit has been filed by the third respondent District Educational Officer, Chennai North, dated

29.01.2013. For the sake of convenience, parties are referred to as teacher, management and educational authorities, as the case may be.

3. Admittedly, the school is run by a non minority and that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973

and the rules framed thereunder will squarely apply to the school. It is seen from the records that the teacher was having M.Sc., M. Phil and B.Ed.

degrees. She was appointed as Headmistress of the school with effect from 01.08.2009. After her taking charge as headmistress, it is claimed by

her that in respect of higher secondary examinations, the result of the school was 100% for the years 2009-2010 and 2010-2011 and 99% in

2011-2012. When the Secretary of the School started interfering with the internal administration, the teacher informed him that the Secretary has

no right to interfere with the internal administration of the school. But notwithstanding the same, the Secretary started giving several charge memos

without being approved by the school committee. On 22.03.2012, the Secretary gave a notice of enquiry together with a charge memo framed

against her. It was stated that the list of charges referred to in the annexure to the memo, dated 22.3.2012 supersedes the previous charges

levelled against her. Without asking for any explanation on the charge memo and without giving reasonable time for giving an explanation, the

management had informed her that the school committee by a resolution, dated 12.03.2012 had appointed a retired Judge of the Supreme Court

(Justice S. Mohan) as an enquiry officer. She was directed to appear either in person or through an Advocate to defend the charges, at Nani

Palkhivala Arbitration Centre, Mylapore. The retired Supreme court judge, who was appointed as a domestic enquiry officer by the management, had conducted the domestic enquiry, examined 11 witnesses on 02.05.2012 and also marked 13 documents. By his report, dated 25.5.2012, he found the petitioner guilty of all charges. After holding her guilty of charges and after making a sermon as to how the educational institution should be considered as temple, in the last paragraph, he had made the following observations:

The respondent HM can hardly hold the position. Trying to be autocratic fomenting indiscipline will amount to a character unworthy of the chair. It pains one to note that how she could indulge in character assassination and spread canards against the petitioner publicly among the members of the staff, forgetting that virtue and character are the valuable possession of everyone. The respondent sullies the image in the presence of teachers and students. She has always been unkind to the students and beat them and behaves rudely forgetting her position. In this institution, there is no instruction worth the name, much less is there any inspiration or illumination because of the mal administration of the Head Mistress.

(emphasis added)

4. After obtaining such a report on 6.7.2012, the School committee meeting was convened by the management. The petitioner was given a notice

of agenda for the meeting as she was an Ex-officio member of the school committee. The notice of agenda stated in item No. 3 as follows:

3. Bringing on record the findings of the One-man commission of enquiry by Retired Justice Sri. S. Mohan into the charges against the

Headmistress and deciding on future course of action.

5. The teacher was given a copy of the enquiry report only at the school committee meeting. Thereafter the minutes of the committee was recorded

as follows:

3. The Secretary read out the findings of Justice S. Mohan and a copy of the findings were given to the HM.

In less than the three years that this HM has been in school, she has brought the school to a boil with everything in total disarray. Treating the

Management with open contempt and disobedience and at loggerheads with the teachers, this HM will ruin the school if she is left to continue in

office. The Management cannot be a mute and impotent spectator to all her acts of mud-slinging, character assassination, slander and forgery, filthy

language, pilferage of government funds, dirty politics and no work. The Management is well within its rights to do whatever is necessary to save

the school from further degradation and hence is unanimous in its view that she should be removed from office. The HM did not express any views

when asked by the Chairperson about what she thought of the findings. She also did not respond when asked by the Chairperson why she did not

attend the enquiry.

a) It is with a deep sense of sorrow and regret the School Committee accepts all the findings of the One-man-commission of enquiry headed by

Retd. Supreme Court Judge, Justice S. Mohan to go into the charges against the Headmistress Mrs. R. Shanthakumari, and proceeds to take it on

record.

b) It is therefore resolved that Mrs. R. Shanthakumari be dismissed from service pending approval from a competent authority from the Education

Department. This provisional dismissal is to take effect immediately.

c) It is further resolved that in order to safeguard the school from further mischief by her in terms of destroying or tampering with school documents

during the pendency of departmental approval, she be suspended immediately.

6. Based upon the decision of the school committee, the management also on the same day had passed an order dated 6.7.2012 keeping the

petitioner under suspension. In that order, the teacher was informed by the management as follows:

This is to inform you that as per the School Committee Resolutions of 06/07/2012, the findings of the One Man Commission of enquiry by Rtd.

Justice S. Mohan has been accepted and taken on record.

As per the above mentioned resolutions, it has been decided that you be dismissed from service pending approval from a competent authority from

the Education Department. This provisional dismissal is to take place immediately.

It is also resolved that during the pendency of departmental approval regarding your dismissal, you be suspended immediately.

Hence you are under suspension with immediate effect pending approval by the Education Department regarding your dismissal.

7. It is for this proposal, the District Education Officer had refused to grant permission since while conducting the enquiry, the principles underlying the enquiry were not followed and there was no scope for suspending the teacher pending approval by the competent authority.

8. In the counter affidavit filed by the school authority, it was stated that u/s 22(1) of the Tamil Nadu Private Schools Act, prior approval from the competent authority is a must and therefore, the question of placing the teacher under suspension pending approval is not contemplated.

9. In the light of the above contentions, the following questions arise for consideration by this court:

- i) Whether the enquiry conducted against the school teacher is valid?
- ii) Whether the retired Judge of the Supreme Court can accept the post of domestic enquiry officer in a private school and whether it is barred by the constitutional restriction imposed under Article 124(7) of the Constitution?
- iii) Whether the action of the management in placing the teacher under suspension pending approval from the competent authority is legally valid?

10. u/s 19 of the Private Schools Act, the State Government is empowered to frame rules including regarding disciplinary action taken against the school teacher. The State has framed the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Under Rule 15, in respect of

permanent teacher, a statutory agreement has been prescribed in Form VII-A. Term 7 of Form VII-A reads as follows:

7. That the School Committee shall not dismiss, remove or reduce in rank or terminate the services of the said Teacher without informing him/her in

writing on the grounds on which they intend to take action and shall adopt the following procedure before taking any final decision regarding the

punishment to be imposed:

(a) The memorandum of charge shall be communicated to him/her in writing giving him/her reasonable time to send his/her explanation to the

School Committee.

(b) After considering his/her explanation, the School Committee shall communicate to him/her 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 any or all the witnesses and also produce

witnesses.

(c) After the conduct of the personal hearing or enquiry by the School Committee, the report of such personal hearing or enquiry shall be furnished

to the Teacher and a notice shall be issued to him/her setting out the proposed punishment and he/she shall be given a reasonable time to defend

himself/herself against the proposed punishment.

(d) After the receipt of the statement of defence from him/her and taking into consideration, the School Committee shall inform him/her in writing

about its final decision.

11. As can be seen from the above, at every stage of enquiry, i.e., framing of the charge memo, calling for an explanation, conducting an enquiry

and finally passing orders, the school committee has to be necessarily informed. In the present case, the charges were not framed by the school

committee and it was framed by the Secretary of the School. Though it was stated that the school committee by his resolution, dated 12.3.2012

had decided to appoint Justice S. Mohan, a retired judge of the Supreme Court, as an enquiry officer with his consent, nowhere any explanation

was called from the teacher in respect of the consolidated charge which was made after superseding the previous charges.

12. As to whether the school can appoint an outsider was concerned, the Act do not contemplate appointment of an outsider as an enquiry officer

even though in this case it was stated by the enquiry officer that in order to avoid the allegation of bias, the school had decided to appoint an

outsider. When a similar question came up for consideration before the division bench of this court in W.A. No. 170 of 1978, dated 13.11.1979

(P.S. Venkatramanujam Vs. National High School, Tambaram), it was held that under the provisions of the Act under Form VII-A, there is no

scope for delegation of appointment of some other officer. Even assuming that such an appointment is permissible, such an officer can only collect

materials and that findings will have to be rendered only by the school committee. The said view was also followed by P. Sathasivam, J. (as be

then was), vide judgment in Management of M.G.R. Higher Secondary School Vs. Nag Balaji Singh and Others, and in paragraph 11, it was

observed as follows:

11.....In this regard, Mr. K. Chandru has very much relied on a Division Bench decision of this Court rendered in P.S. Venkataramanujam V.

National High School, Tambaram and another (Writ Appeal No. 170 of 1978 dated 13.11.1979). After referring various clauses in Form VII-A,

Their Lordships have made the following conclusion:-

...Thus a perusal of paragraph 7 of Form VII-A makes it clear that a personal hearing or enquiry has to be conducted by the School Committee,

and there is no provision in Form VII-A for the School Committee delegating its power to conduct an enquiry to any other person or body.

Again their Lordships have observed thus;-

The attention of the learned Judge has not been invited to the other clauses of paragraph 7. We have extracted paragraph 7 of Form VII-A in full

in order to show that that paragraph expressly authorises only the School Committee to give a personal hearing or conduct an enquiry. This is

apparent from paragraph 7(b) as well as paragraph 7(c)..... In this case paragraph 7 of Form VII-A prescribed by the rules made under the Act

clearly contemplates the School Committee alone conducting the enquiry or giving a personal hearing.

Regarding the effect of "form of agreement", they have concluded 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....

The said procedure as pointed out by the Division Bench has not been followed in the case on hand. Hence I sustain the first objection made by

the learned senior counsel for the first respondent.

In the present case, the charges were framed by the enquiry officer and findings were given by the enquiry officer. He also had recommended

penalty by stating that the teacher was not to continue in the same school.

13. The school committee will have to be associated at every stage of proceedings in terms of the statutory form of agreement under term 7 in form

VII-A also came to be considered by this court in a number of cases. The need for prior approval of the competent authority and the importance

of the same came to be considered by this court in *The School Committee Vs. The State of Tamil Nadu and Others*, and in paragraph 40, it

was observed as follows:

40. In the light of the above position, I am of the view that the stipulation of

obtaining approval before termination has been made to safeguard the rights of a teacher or other persons under the management of an aided Private School. Merely because there are provisions for appeal, revision before the Appellate and Revisional authorities, it is not open to the Management to terminate the teacher or other persons without the prior approval of the competent authority. By reading the entire provisions of the Act, including the Objects and Reasons, in order to protect and safeguard the service of the teacher or other persons, the Legislature in their wisdom have provided a device viz., "prior approval by the competent authority". No doubt, it is true that the request of the management to approve the proposed action of them has not been considered by the competent authority. However, that does not take away the power of the competent authority and enable the management to terminate the services of the teacher or any other person. If there is any lapse or delay or indifferent attitude exploited by the said authority, it is always open to the management either to approach the higher authorities or to this Court for redressal. Hence as stated earlier, I am unable to accept the contentions of the learned senior counsel that the issue "has to be decided by a larger Bench". On the other hand, I am satisfied that after taking into consideration the Objects and Reasons of the Tamil Nadu Recognised Private Schools (Regulation) Act and in the light of the various provisions, the Division Bench in the said decision have concluded that the prior approval of the competent authority is a mandatory one. Hence, I reject the first contention of the learned counsel for the petitioner.

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 Ayya Nadar Janaki Ammal College Vs. A. Pandian and Others*, Hence the

appointment of an outside authority for conducting the enquiry and also asking the very same authority to give findings including recommendation

for punishment is uncalled for and cannot be supported by this court. It is rather unfortunate that a retired Judge of the Supreme Court should

agree to be a domestic enquiry officer notwithstanding the constitutional bar under Article 124(7) of the Constitution.

15. It will be interesting to quote from an article written by Mr. Sudarshan Agarwal, former Governor of Uttarakhand and Sikkim under the

caption ""Do retired SC Judges violate the spirit of Article 124?"" and it is stated as follows:

The Supreme Court of India commands the highest respect both within the country and abroad. But one troubling feature that seems to take away

the sheen is the post-retirement engagement of the Supreme Court Judges and Chief Justices in remunerative legal work. Article 124 of the

Constitution forbids them to act or plead in any court or before any authority within the territory of India. It is a well-understood legal principle that

what cannot be done directly, cannot also be done indirectly.

It is now a known fact that retired Judges and Chief Justices (exceptions apart) have been engaging in chamber practice and giving written opinions

under their signature for a consideration, for use in any court or before any authority. This action violates the spirit of Article 124.

....

These nagging questions must find an answer if we have to maintain the dignity and majesty of our judicial system. The danger to the judiciary

which is responsible for preservation of the rule of law and which is the bedrock

of democracy is all from within and not from outside.

Anguish and concern have been voiced by two former Chief Justices of India - Justice M.N. Venkatachaliah and Justice J.S. Verma -and Justice

V.R. Krishna Iyer and some eminent lawyers like Mr. Fali S. Nariman about this disturbing phenomenon in public for a and in articles touching upon the subject.

[Bureaucracy Today - December, 2012]

16. Having held an high office in the Supreme Court, to accept the assignment of conducting a domestic enquiry should have been avoided, since

the very report given by such a person may put to criticism before the court at the instance of an aggrieved individual. Therefore, this court is not

inclined to accept the enquiry report, besides the legal flaws which are already set out above.

17. After getting the report of the domestic enquiry officer, the management had convened a meeting of the school committee on 6.7.2012 and

read out the report and accepted the same without giving any opportunity to the teacher to give her views on the said report and that the report

copy itself was given at the meeting itself. When the enquiry officer is different from the disciplinary authority, then certainly the charge sheeted

employee is entitled for a copy of the report and the views of the said employee has to be ascertained before the report is accepted by the

disciplinary authority. This position of law has also been clarified by the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar,

etc. etc., Therefore, even on this ground, the final order passed by the authority will have to fail.

18. Lastly, 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.

19. 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 teachers' 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.

20. 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 including suspending the teacher pending approval and any decision is contrary and is void ab initio. In the light of the above, the W.P. No. 19869 of 2012 filed by the teacher will stand allowed and the impugned order stands set aside.

W.P. No. 23932 of 2012 filed by the management will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.