

(1995) 11 MAD CK 0033
In the Madras High Court
Case No : W.A. No. 1141 of 1995

R. Saravanamuthu

APPELLANT

Vs

The School Committee of Sengunthar Higher Secondary
School and Another

RESPONDENT

Date of Decision : 14-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 22, 23, 24,
41, 45
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 29

Citation : (1996) 1 CTC 59 : (1996) 1 MLJ 498

Hon'ble Judges : K.A. Swami, C.J.;Raju, J

Bench : Division Bench

Advocate : A.L. Somayaji, for Aiyar and Dolia, for the Appellant; R. Singaravelan, for V.S. Jagadeesan and R. Thangamani for 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is preferred against the order dated 28-9-1995 passed by the learned single Judge in W.P. No. 13404 of 1995. Learned single

Judge has rejected the writ petition in which the petitioner/appellant sought for issue of a writ of prohibition prohibiting the Educational Tribunal

(Principal Sub Court, Tiruchirapalli) from entertaining the appeal preferred u/s 24 of the Tamil Nadu Recognised Private Schools (Regulation) Act,

1973 (hereinafter referred to as "the Act") and under the Tamil Nadu Recognised Private Schools (regulation) Rules, 1974 (hereinafter referred to

as "the Rules").

2. Learned single Judge has declined to consider this request of the petitioner/appellant on the ground that it is open to the petitioner/appellant to

put forth all the contentions before the Educational Tribunal which can decide the question as to whether it has jurisdiction to entertain the appeal

or not. No doubt, the statutory authority or the tribunal exercising the quasi-judicial function is entitled to decide the question as to whether it has

jurisdiction to entertain the appeal preferred before it or the appeal before it is maintainable. In such case, it would be open to this Court to decline

to entertain the jurisdiction and direct the petitioner to urge all the contentions before the very same authority before which the appeal is preferred.

But, in a case where the facts are not in dispute, and on reading the relevant provisions of the enactment, if it is found that the Tribunal before

which the appeal is preferred is competent to entertain the appeal or such an appeal could not be entertained, the petitioner cannot be denied of

the relief. In the case of writ of prohibition, the relief could be granted, but, no doubt, in the case of writ of prohibition, subsequent to the decision

of the Tribunal, if it is found that the Tribunal lacks jurisdiction, the party need not be made to undergo the proceedings before the Tribunal which

lacks jurisdiction. In the instant case, the facts necessary to decide the question whether the appeal preferred before the Educational Tribunal u/s

24 of the Act is maintainable or not are not at all in dispute. The first respondent school committee has preferred the appeal before the second

respondent u/s 24 of the Act against the order dated 13-5-1995 passed by the Joint Director of School Education (Higher Secondary) confirming

the order passed by the Chief Educational Officer dated 30-9-1994.

3. The appellant was working as Headmaster under the first respondent school. His services came to be terminated by the school as per Section

22(1) of the Act. Termination of service of a teacher can be made only with the prior approval of the competent authority. In the instant case, the

competent authority, the Chief Educational Officer by order dated 30-9-1994 refused to accord approval to the order of termination of the

petitioner passed by the first respondent. Aggrieved by that order, an appeal was preferred before the Joint Director of School Education (Higher

Secondary) according to the first respondent u/s 23 of the Act and the same was dismissed. Now, the present appeal is preferred u/s 24 of the

Act. Therefore, the question that arises for consideration is whether u/s 23 of the Act, the first respondent could have preferred an appeal or

whether the appeal preferred by the first respondent would be construed as the one filed u/s 23 of the Act and not u/s 41 of the Act. Section 23 of

the Act reads thus:

Appeal against orders of punishment imposed on teachers and other persons employed in private schools. Any teacher or other person employed

in any private school-

(a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or

(b) whose pay or allowances or any of whose conditions of service are altered or interpreted to the disadvantage,

by any order, may prefer an appeal against such order to such authority or officer as may be prescribed; and different such authorities or officer as

may be prescribed for different classes of private schools,

Explanation.- In this section, the expression "order" includes any order made on or after the date of the commencement of this Act in any

disciplinary proceeding which was pending on that date.

Thus, from the aforesaid provisions contained in Section 23 of the Act, it is clear that an appeal can be preferred only by a teacher or other

person, as the case may be, employed in any private school whose services were either terminated or who was dismissed, removed or reduced in

rank or whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage. Therefore, it is clear that the

management/first respondent which had terminated the services of the petitioner/appellant could not have preferred an appeal u/s 23 of the Act as

against the order passed by the competent authority refusing to accord approval to the order of termination passed by the first respondent.

4. Section 24 of the Act only deals with appeals filed u/s 23 of the Act. This is clear from the very opening words contained in that Section. The

said section reads thus:

Second appeal in case of dismissal, removal or reduction in rank or termination of appointment of teachers or other persons employed in private

schools.- If the appeal u/s 23 was against the dismissal, removal or reduction in rank or the termination otherwise of the appointment of any

teacher or other person employed in any private school, such teacher or other person or the educational agency aggrieved by any order made in

any such appeal, may prefer an appeal against that appellate order to the Tribunal.

A the appeal preferred by the first respondent was not the one preferred u/s 23 of the Act or at any rate could not have been the one legally

preferred u/s 23 of the Act, Thus, a second appeal could be maintained against the order passed in such an appeal. However, learned counsel for

the first respondent is not right in contending that the appeal preferred by the first respondent before the Joint Director of School Education (Higher

Secondary) was the one filed u/s 23 of the Act, whereas such an appeal could have been preferred only u/s 41 of the Act which specifically

provides for such appeals, Section 41 of the Act reads thus:

Appeal against orders of competent authority.- (1) Any person aggrieved by any order, decision or direction of the competent authority under

Sections (Section 29 or under any other provision) (other than section 24) of this Act may prefer an appeal against such order, decision or

direction, to such authority or officer as may be prescribed; and different such authorities or officers may be prescribed for different classes of

private schools.

5. Therefore, it is clear from the aforesaid provision contained in Section 41 of the Act that as the order passed by the Chief Educational Officer

refusing to accord approval for the termination of the service of the petitioner/ appellant did not fall u/s 23 of the Act for the purpose of the appeal,

it could only file u/s 41 of the Act which uses the expression that any person aggrieved by any order, decision or direction of the competent

authority u/s 29 or under any other provision other than section 34 of the Act may prefer an appeal against such an order, decision or direction. In

addition to that Rule 29 of the Rules prescribes the competent authority to whom an appeal can be preferred according to the category of staff and

under the different provisions of the Act which reads thus:

Appeal against orders of competent authority. Any person aggrieved by any order, decision or direction of the competent authority, under any

provision (other than section 34) of the Act, may prefer an appeal, u/s 41 of the Act, against which order, decision or direction to the following

authorities, namely:-

Section Category of Competent Appellate
under the Schools Authority authority

Act passing orders

(1) (2) (3) (4)

....

....

Higher Secondar Chief Joint

Schools (in respect Educational Director

Section 22 of Headmasters, Officer of School

Post-graduate Education

Assistants (both (Higher
academic and Secondary)

languages and

Physical

Directors.

Therefore, according to Rule 29 of the Rules, the competent authority was the Chief Educational Officer and the Appellate Authority was the Joint

Director of School Education (Higher Secondary). In the instant case, the first order refusing to accord approval passed by the Chief Educational

Officer and the appeal preferred against that before the Joint Director of School Education (Higher Secondary) was rejected. As against the order

passed in an appeal preferred u/s 41 of the Act, there is no second appeal provided under the Act. However, there is a revision provided under

the Act and that revision u/s 45 of the Act lies to the State Government which reads thus:

Revision,-(1) The Government may call for and examine the record of any authority or officer prescribed for the purpose of section 41 in respect

of any proceedings to satisfy themselves as to the regularity of such proceeding, or the correctness, legality or propriety of any order made,

decision taken or direction issued therein: and, if, in any case, it appears to the

Government that any such order, decision or direction should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Government may, pending the exercise of their power under sub-section (1), pass such interlocutory orders as they deem fit.

6. Therefore, the contention of learned counsel for the first respondent that the first appeal preferred was the one u/s 23 of the Act and therefore, the second appeal is maintainable as it falls u/s 24 of the Act is untenable. Consequently, on the undisputed facts of the case and on reading of

Section 23, 24, 41 and 45 of the Act, r/w. Rule 29 of the Rules we come to the conclusion that the second appeal preferred before the

Educational Tribunal against the order passed by the Joint Director of School Education (Higher Secondary) refusing to accord approval for

termination of the services of the petitioner/appellant passed by the first respondent is not maintainable. Further, the Educational Tribunal has no

jurisdiction to entertain such an appeal. Thus, it is a case in which the Tribunal lacks jurisdiction. As such, it cannot be permitted to proceed to hear

and decide the appeal.

7. The writ appeal is allowed. The order dated 28-9-1995 passed in W.P. No. 13404 of 1995 is set aside. The writ petition is allowed. A writ of

prohibition is issued to the Educational Tribunal refraining it from considering the appeal preferred by the first respondent u/s 24 of the Act and the

Tribunal is directed to return the memorandum of appeal to the first respondent to enable the first respondent to avail the remedy of revision or any

other remedy as is open to it in law. No costs.