

(2026) 02 MAD CK 1665

In the Madras High Court

Case No : Second Appeal No. 421 Of 2010

Rozario Savari Daniel

APPELLANT

Vs

Principal and Correspondent And Others

RESPONDENT

Date of Decision : 02-02-2026

Acts Referred:

Tamil Nadu Private Schools (Regulation) Act, 2019 — Section 22, 23, 53

Citation : (2026) 02 MAD CK 1665

Hon'ble Judges : Dr. R.N.Manjula, J

Bench : Single Bench

Advocate : V. Srimathi, C.Prabakaran, V.Anand

Final Decision : Dismissed

Judgement

Dr. R.N.Manjula, J

1. This Second Appeal has been preferred challenging the judgment and decree of the Court of the Sub Judge, Neyveli in A.S.No.32 of 2008 dated 07.11.2009 in confirming the judgment and decree of the Court of the District Munsif cum Judicial Magistrate, Neyveli in O.S.No.132 of 2004 dated 18.08.2008.

2. The appellant is the plaintiff. The suit has been filed by the plaintiff seeking the relief of declaration that the impugned proceedings dated 04.06.2003 issued by the first defendant is illegal and contrary to the principles of natural justice and for a consequential relief of mandatory injunction directing the first defendant to reinstate the plaintiff to the same post with continuity of service. The Trial Court had dismissed the suit. The First Appeal preferred by the plaintiff challenging the judgment of the Trial Court had also got dismissed by confirming the judgment of the Trial Court. Now, the present Second Appeal has been filed by the plaintiff challenging the judgment of the First Appellate Court.

The short facts pleaded in the plaint are as follows:

3. The plaintiff has been working with the first respondent School as a teacher

from 11.08.1997 and he has been made permanent after a year and was working as a B.T.Assistant on and from 07.06.1999. The performance of the plaintiff has been appreciated by his superiors. The first defendant is the Correspondent of the School which is a minority institution managed by the Arch diocese of Pondicherry. The first defendant had issued a charge memo to the plaintiff on 25.03.2003 stating that there was a shortage of Rs.10,000/- in the accounts during the inspection held on 05.12.2002 and that, he had collected a sum of Rs.38,800/- for issuance of Transfer Certificate between the period from 01.05.2002 to 09.08.2002. The plaintiff has given a suitable reply and stated that he has not done anything wrong and one Albert Mary was incharge during his absence and he was only responsible, if at all there is any error. But without prejudice, the plaintiff had repaid the amount by owing moral responsibility for the loss. The amount collected towards issuance of transfer certificate had been properly handed over by him to the previous Principal Rev.Fr.John Boro.

3.1. On 12.05.2003, the second defendant sent a memo by mentioning the first charge alone and called upon the plaintiff to appear on 20.05.2003. But the notice has been served upon the plaintiff on 22.05.2003 at 3.30 p.m. Immediately on 27.05.2003, the plaintiff has sent a suitable reply to the first defendant. Thereafter, the plaintiff was asked to appear on 28.05.2003 at 9.00 p.m. and this notice has been served upon the plaintiff at 2.30 p.m. on 28.05.2003. Thereafter, the impugned proceedings have been passed on 04.06.2003 by holding that the plaintiff was blameworthy for both the charges.

3.2. Again on 07.04.2003, the plaintiff was given with another memo on the allegation of conducting professional coaching classes. As the first defendant's predecessor called upon the plaintiff to help in view of the absence of the Accountant, the plaintiff out of loyalty collected and accounted the amount. He had not done the task of integrating the accounts. The second defendant was appointed as Enquiry Officer who was a person worked purely on daily basis under the control of the first defendant and hence, any enquiry conducted by him will not be fair. However, the plaintiff was imposed with the punishment of dismissal from service. The defendants did not adhere to the principles of natural justice and the plaintiff was not even given with the copy of the enquiry report along with the show cause notice. He has been punished without being heard. Hence, the order of dismissal is illegal and contrary to law and manifestly erroneous.

3.3. The plaintiff issued a registered notice to the first defendant asking for the copies of the entire proceedings commenced from 06.05.2003 in order to enable him to prepare an appeal. Despite that was received by the first defendant on 11.06.2003, he has not given any copy of the proceedings. Hence, the plaintiff has filed the suit to declare the proceedings dated 04.06.2003 as illegal and contrary to natural justice.

The averments made in the written statement of the defendants in brief:

4. The remedy available for the plaintiff is to file an appropriate appeal against the order of dismissal and the Civil Court has no jurisdiction to entertain the suits of this nature. The Civil Court cannot act as a court of appeal against the findings of the Domestic Tribunal. The plaintiff failed to appear on 12.05.2003 for a preliminary enquiry. The appointment of the second defendant as Enquiry Officer is valid in law and the plaintiff has no right to question the nomination of Enquiry Officer. The second defendant Enquiry Officer has observed all the procedural formulation contemplated under law while conducting the enquiry. The principles of natural justice was followed. It was the plaintiff who avoided to participate in the enquiry. The Enquiry Officer is not an interested person. The findings of the domestic enquiry cannot be questioned in the Civil Court.

5. During the course of the trial, one witness was examined as P.W.1 and Exhibits A1 to A23 were marked. Two witnesses were examined as D.W.1 and D.W.2 and Ex.D1 has been marked.

6. The First Appeal preferred challenging the judgment of the Trial Court has also got dismissed by confirming the judgment of the Trial Court. Now, the Second Appeal has been preferred and the same is admitted by raising the following substantial questions of law:

"1. Whether the Courts below have erred in holding that the jurisdiction of the Civil Court stands ousted when it is pleaded that there was gross violation of principles of natural justice?

2. Whether the suit is not barred under Section 53 of Tamil Nadu Private Schools Regulation Act, as the applicability of Section 22 of the said Act is sub judice before the High Court?

3. Whether the Courts below have erred in dismissing the suit as not maintainable when it is pleaded by the plaintiff that there is violation of statutory provision under which exemption is claimed?"

7. The learned counsel for the appellant / plaintiff submitted that when the plaintiff alleges violation of principles of natural justice, the bar to entertain the civil suit will not be applicable. The Trial Court ought to have considered the submissions of the plaintiff that there is a violation of fundamental principles of natural justice and hence, the plaintiff is entitled to maintain the civil suit. It is further submitted that the order of dismissal has been passed without getting approval from the appropriate authority and that, the plaintiff has pleaded that there is a violation of statutory provisions. The Trial Court ought to have brought the suit under exceptional circumstances and exercised the jurisdiction and rendered a positive finding as to the jurisdiction of the Civil Court.

8. The learned counsel for the first respondent / first defendant submitted that the plaintiff has got the remedy of preferring a statutory appeal to challenge the dismissal order, if he is aggrieved. It is submitted that under Section 53 of the Tamil Nadu Private Schools Regulation Act, no Civil Court shall have the

jurisdiction to decide or deal with the questions which have to be decided and dealt by the authority or the officer mentioned in the Act. It is further submitted that as per Section 23 of the Act, the plaintiff has got an appeal remedy, but the plaintiff has filed a suit without exercising the statutory remedy available to him. Both the Trial Court and the First Appellate Court have taken the question of jurisdiction and got convinced that the suit is not maintainable against the proceedings issued by the first defendant.

9. No doubt, the Civil Court cannot exercise the jurisdiction as it cannot sit on appeal over the orders passed by the disciplinary authority or substitute its own punishment. The plaintiff has sought exemption by alleging that there is violation of principles of natural justice. One of the pleadings made by the plaintiff is that he was not given with the enquiry report along with the show cause notice. On perusal of the list of documents filed by the plaintiff which were marked as Exs.A1 to A23, it is seen that the plaintiff has marked the enquiry report as Exs.A5 and A6. Even the documents Exs.A1 to A4 would show that the plaintiff has been given with the show cause notice by the first defendant and that the plaintiff has given a reply.

10. The plaintiff has been given with show cause notice and called upon to submit a reply and the reply given by the plaintiff has been marked as Ex.A2 and Ex.A4. During the course of enquiry also, the plaintiff was given with an opportunity to make his appearance. However, according to the plaintiff, the above said opportunity was a name sake one and it has been sent to him belatedly. He was asked to appear at 9.00 p.m. On 28.05.2003 and for which, he has been served with the notice at about 2.30 p.m. within same day. No doubt, such notice given to him without sufficient time cannot be considered as a proper notice. But, the plaintiff has not made his appearance or submitted any request to give a fresh date. Because, no order has been passed against him on the same date.

11. There is a difference between lack of opportunity and no opportunity. The records do not reveal that the plaintiff has not been given with any opportunity at all. Even in such cases where proper opportunity is given, the plaintiff could have filed an appeal by taking the above aspect as a ground for appeal.

12. The Civil Court needs to be very cautious to exercise power in matters on which there is a bar. As rightly pointed out by both the Trial Court and the First Appellate Court, Section 53 bars jurisdiction of the Civil Court to entertain the suits on questions which needs to be decided by the statutory authorities contemplated under the Act. For the sake of clarity, Section 53 of the Tamil Nadu Private Schools Regulation Act is extracted as under:

“Section 53.--

No civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in this Act.”

13. It would have been a different scenario, if the plaintiff has been given with the order of punishment without even given with any show cause, charge memo or notice informing the date of enquiry. The plaintiff has simply not participated in the enquiry proceedings and he waited until the receipt of the dismissal order and then, approached the Court seeking the relief of declaration that the dismissal order is illegal. The grant of opportunity obligated under the principles of natural justice is no doubt a fair opportunity.

14. In the instant case, even after the plaintiff found that it was impossible to appear for enquiry on a short notice, he has not chosen to give a request for fixing another date by stating his inability. Even if it is presumed that the opportunity given to the plaintiff is not fair, such questions can still be determined by the appellate authority who can exercise power and sit over the orders passed by the disciplinary authority.

15. The plaintiff has not chosen to exhaust the statutory remedy before filing any proceedings before this Court challenging the authority of the person who passed the impugned order. The plaintiff had chosen a wrong forum for the right remedy which was open to him under Section 23 of the Act. The appellant has also raised a doubt as to the applicability of Section 22 of the Act and questioned whether the suit is not barred under Section 53 of the Act, when the applicability of Section 22 is subjudice before the High Court. However, this point has not been substantiated by producing any order of the High Court with regard to the applicability of Section 22. Thus, the substantial question of law No.2 is answered.

16. There is no straight jacket formula can be laid down for Courts to exercise jurisdiction on exceptional circumstances in respect of fair opportunity. The factual situation differs from each and every case. So what can constitute fairness of opportunity would depend upon the mode of enquiry adopted by the Enquiry Officer suiting to the circumstances of the case. Hence, the Courts cannot make a rush to arrive at any conclusion about denial of fair opportunity.

17. In the decision of the Supreme Court rendered in *State of Punjab Vs. Surjit Singh* reported in 1997 AIR Supreme Court 112, the Hon'ble Supreme Court has held that the Civil Court cannot assume the power of Court of appeal over the decisions taken by the disciplinary authority in the matter of imposing punishment. The facts of this case and the documents produced before the Court would show that there is no total deprivation of opportunity. Hence, it is right for the Trial Court and the First Appellate Court to arrive at a conclusion that the jurisdiction of the Civil Court is barred.

18. The appellant / plaintiff who had the opportunity to knock the doors of the enquiry authority to grant an another date for enquiry, had simply kept quiet and allowed the proceedings to pass from step to step until it is culminated into a punishment order. It is not the contention of the plaintiff that his request to fix a fresh date of enquiry has been rejected and that the enquiry has been conducted in a rush and the final order has been passed immediately.

19. Even though in matters where the jurisdiction of the Civil Courts is barred, the Courts can still exercise power to entertain such litigations, when it is shown before the Court that there is a gross violation of principles of natural justice. In the instant case, the appellant / plaintiff has also contributed by staying away from the enquiry proceedings without even giving any request to fix a fresh hearing date.

20. If the delinquent waits without choosing to make use of the above opportunity or to exploit the avenues to avail the opportunities by placing a proper request, he cannot be allowed to say later that there is a gross violation of principles of natural justice and hence, he is at liberty to invoke the jurisdiction of the Civil Courts. As the circumstances placed before the Court are not sufficient enough to hold that there is a gross violation of principles of natural justice or there are materials to show that the appellant / plaintiff is also contributory for not availing the due opportunity, the Courts below cannot be found fault for not holding that the jurisdiction of the Civil Court is ousted.

Accordingly, the substantial questions of law Nos.1 and 3 are answered.

21. In the result, this Second Appeal is dismissed. No costs.