

(2011) 07 MAD CK 0178
In the Madras High Court
Case No : Writ Petition (MD) No. 9520 of 2005

S. Akbar Ali

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Limitation Act, 1963 — Section 14

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 11(1), 12(1), 14, 15, 16

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 10, 11, 12, 13, 14

Citation : (2011) 07 MAD CK 0178

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : T.C.S. Thillainayagam, for the Appellant; D. Muruganandham, Addl. Govt. Pleader for Respondents 1 to 3, D. Rajendran, for Respondent 4 and 5 and S. Kadarkarai, for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner prays for the issuance of a Writ in the nature of Certiorari, to quash the order dated 7.8.2005 ordering dismissal of the Petitioner, on the ground of misconduct.

2. The Petitioner had joined as B.T. Assistant (History) in Hajee B. Syed Mohammed Higher Secondary School, Virudhunagar on 06.11.1978 and works there till 19.07.1979. Thereafter, he was appointed in the Ilayankudi Higher Secondary School on 04.06.1987 as Tamil Pandit. The petitioner is possessing the qualification of M.A(Tamil). The Petitioner thereafter acquired the qualification of M. Phil in the year 1977.

3. The Petitioner was awarded Selection Grade on 07.08.1989, which entitle him to special grade on 07.08.1999.

4. The Petitioner therefore being aggrieved by the promotion of one Kamal

Batcha, said to be junior to him, filed a Writ Petition No. 34806 of 2002 which is pending in this Court.

5. The wife of the Petitioner is also challenged the promotion of one A.E. John Mohammed by ignoring her.

6. This Court issued directions to the management to consider the claim of the Petitioner. The Petitioner has also pleaded in detail the allegations of malafide to allege that the charge-sheet as well as the punishment against the Petitioner was motivated for extraneous consideration.

7. The case of the Petitioner is that due to mala-fide intention, charge-sheet was issued on the allegation of dereliction of duty, Gross insubordination, absent and indecent behaviour etc.

8. The Petitioner contested the allegations. The enquiry officer found that the Petitioner guilty of all the charges levelled against him.

9. On consideration of the representation of the Petitioner submitted in response to notice, the Petitioner was ordered to be dismissed from service.

10. The other facts are not being noticed, as the Petitioner has an alternative statutory remedy of appeal under Rule 18 of the Tamil Nadu Recognized Private Schools(Regulation) Rules, 1974.

11. Rule 18 of the said Rules reads as under:

18. Appeal against orders of punishment imposed on teacher and other person employed in private schools: The competent authorities to whom an appeal u/s 23 of the Act shall be from any teacher or person employed in a private school against any order of dismissal, removal or reduction in rank or whose appointments otherwise terminated or whose pay and allowances or any of whose conditions of service are altered shall be the following, namely-

(a) In respect of teachers and other persons employed in Pre-primary, Primary and Middle Schools -The Chief Educational Officer.

(b) In respect of teacher and other person employed in High School (***) or Higher Secondary Schools(other than Headmaster, Post-Graduate Assistants (both Academic and Languages) or Physical Director, the Joint Director of School Education, (Secondary Education).

(c) In respect of Headmaster, Post-Graduate Assistant) both Academic and Languages) or physical Director employed in Higher Secondary School, the Joint Director of School Education (Higher Secondary).

((d) In respect of teachers and other persons employed in "Teachers Training Institutes -The Deputy Director (Teacher Education).

12. The learned Counsel for the Petitioner contends that the statutory remedy of appeal is not available, as Ilayankudi Higher Secondary School is a minority

institution there fore, the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 not applicable.

13. In support of this contention, reliance has been placed on the judgement of the Honourable Division Bench of this Court in W.P. No. 1755 of 1975, decided on 26.10.1972.

14. The operative part of the judgment on which the reliance has been placed by the learned Counsel reads as under:

The Respondents herein and your subordinates be all are hereby directed not to give effect to the provisions of Sections 8(1),(a), 11(1)(b),12(1),14 to 18, 21(2),22 to 26,31 to 33,39(4) and 41 to 45 of the Tamil Nadu Private Schools (Regulation) Act, 1973 (Act 29 of 1974) and Rules 7,9, except Clause (e) and (k) of Sub-rule (2) Rules 10 to 14, 16 to 18 and 22 to 24 of the Tamil Nadu Recognized Private Schools (Regulation) Rules,1974 framed under the said Act 83 of 1974 with regard to the Educational Institution of the Petitioner in Tamil Nadu State.

Witness the Hon"ble Thiru Palapatti Sadaya Gounder Kailasam, Chief Justice of the High Court of Judicatureat Madras,this 24 thday of September in the year one thousand nine hundred and seventy six.

15. A reading of the judgement of the Honorable Division Bench shows that the contention raised by the learned Counsel for the Petitioner is misconceived.

16. While restraining the Respondent from giving effect to the Sections 8(1),(a), 11(1)(b),12(1), 14 to 18, 21(2), 22 to 26, 31 to 33, 39(4) and 41 to 45 of the Tamil Nadu Private Schools (Regulation)Act, 1973 (Act 29 of 1974) and Rules 7,9 the Hon"ble Division Bench specifically made the following rules applicable to the employees of the minority institution i.e., clause E and K of Sub-rule (2) Rule 10 to 14, 16 to 18 and 22 to 24 of the Tamil Nadu Recognized Private Schools(Regulation)Rules 1974.

17. The object of the Division Bench judgment was to lay down that there should be No. interference with the management of the minority institutions, but, the rights of the employees and the rights of the minority institution was protected.

18. Rule 18 referred deals with appeal. Therefore, it cannot be said that the Petitioner does not have alternative statutory remedy of appeal, so as to entitle him to invoke the writ jurisdiction.

19. It is settled principle of law, that normally the High Court should not exercise writ jurisdiction, when a party has an equal efficacious statutory remedy. It is also not in the interest of the party, as finding of fact are not open to examination in exercise of writ jurisdiction and an order can only be interfered with if it is contrary to the provisions of the Act, opr the findings are perverse, on the other hand jurisdiction of the appellate authority is much wider, as in appeal it is also open to reconsider the evidence so as to reverse the findings of fact.

20. Consequently, the Writ Petition is dismissed, by relegating the Petitioner to ordinary statutory remedy of appeal.

21. In view the fact that the Petitioner has been bona-fide prosecuting the writ in this Court, He is entitled to the benefit of Section 14 of the Limitation Act. Consequently it is ordered, that in case, the Petitioner files a statutory appeal within 30 days from the date of receipt of a certified copy of this order, the appellate authority shall treat it to be within limitation and decide the appeal on merits.

22. The Petitioner was terminated from service in the year 2004. The appellate authority therefore is directed to dispose of the appeal, if filed, as expeditiously as possible, but, in any case, not later than 6 months of the date of receipt of a copy of the certified copy of this order. No. costs.