
(2011) 04 MAD CK 0505

In the Madras High Court

Case No : W.P (MD) No. 9853 of 2007 and M.P. (MD) No. 1 of 2007

S. Backiaraj

APPELLANT

Vs

Joint Director of School Education, (Higher Secondary), The
Chief Educational Officer and Secretary, Karapettai Nadar
Higher Secondary School

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 23, 29, 34, 41, 43

Citation : (2011) 04 MAD CK 0505

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : C. Selvaraj, S.C. for V. Panneerselvam, for the Appellant; Pala Ramasamy, Spl. Govt. Pleader for Respondents 1 and 2 and Isaac Mohanlal, for Respondent-3, for the Respondent

Judgement

D. Hariparanthaman, J.—The writ petition could be disposed of on the ground that the first Respondent failed to give an opportunity while passing the order u/s 41 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (herein after referred to as "the Act"). I am not going into the merits of the matter.

2. The writ Petitioner was employed as Headmaster in the 3rd Respondent School. The 3rd Respondent issued a charge sheet dated 26.10.2006 making certain allegations against the Petitioner. In pursuant to which, the Petitioner has submitted an explanation. According to the 3rd Respondent, an enquiry was conducted. But, according to the Petitioner, no enquiry was conducted. Ultimately, the School has decided to dismiss the Petitioner and accordingly, sent a proposal seeking approval of the second Respondent. The second Respondent, by an order dated 31.07.2007, refused to approve the proposal for dismissal. Thereafter, the 3rd Respondent filed an appeal before the first Respondent u/s 41 r/w 43 of the Act. The first Respondent, being an appellate authority, passed the order dated 12.11.2007, reversing the order of the second Respondent, granting

approval for dismissal. Aggrieved by which, the Petitioner has filed the present writ petition to quash the aforesaid order of the first Respondent.

3. Sections 41 and 43 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 are extracted hereunder:

41. Appeal against orders of competent authority-(1) Any person aggrieved by any order, decision or direction of the competent authority under [Section 29 or under any other provision] (other than Section 34) 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.

(2) If the competent authority omits to communicate its decision to any applicant within the period specified in Clause (b) of Section 6 or in Clause (b) of Sub-section (2) of Section 8 [or in Sub-section(3) of Section 29], such applicant may prefer an appeal against such omission to the appellate authority prescribed under this section.

43. Time for appeal and powers of appellate authority - (1) No appeal under any provision of this Act shall be preferred after expiry of one month from the date on which the order, decision or direction appealed against, was received by the Appellant.

Provided that the appellate authority may, in its discretion, allow further time not exceeding one month for preferring any such appeal if it is satisfied that the Appellant had sufficient cause for not preferring the appeal in time.

(2) On receipt of any such appeal, the appellate authority shall, after (i) giving the parties an opportunity of making their representations, (ii) making, if necessary, such inquiry as it deems fit, and (iii) considering all the circumstances of the case, make such order as it deems just and equitable.

(3) The appellate authority may, pending the exercise of its power, pass such interlocutory orders as it deems fit.

(4) Every appeal under this Act shall be disposed of as expeditiously as possible.

4. Admittedly, the appeal is preferred u/s 41 of the Act. Section 43(2) makes it clear that the parties should be heard before disposing the appeal. But, the first Respondent has not complied with the mandatory Provisions of Section 43(2) of the said Act. Hence, the order of the first Respondent, impugned in this writ petition, is liable to be set aside.

5. At this juncture, the learned Counsel appearing for the 3rd Respondent submits that the Petitioner has an alternative remedy by way of filing an appeal u/s 23 of the Act and therefore, the writ petition is not maintainable.

6. I am not inclined to agree with the submission made by the learned Counsel appearing for the 3rd Respondent. Firstly, this argument is misconceived, since

the appeal provided u/s 23 of the Act is not against the order passed by the appellate authority u/s 41 r/w 43 of the Act. Even otherwise, the learned Counsel for the 3rd Respondent School admits that the first Respondent, being an appellate authority, passed the impugned order without hearing the parties. Thus, the first Respondent passed the impugned order in violation of principles of natural justice. Hence, this Writ petition is maintainable. The first Respondent passed the order in contravention to Section 43(2) of the Act. Therefore, the impugned order is liable to be set aside and accordingly the same is set aside and the matter is remanded back to the first Respondent to pass orders afresh, after hearing the parties and in accordance with law. The first Respondent is directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order.

7. The writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.