

(2002) 07 MAD CK 0122

In the Madras High Court

Case No : Writ Petition No. 30058 of 2002 and W.P.M.P. No's. 43923 and 43924 of 2002

S. Chattanatha Karayalar College

APPELLANT

Vs

The Joint Director, Tamil Nadu Collegiate Education,
Tirunelveli Region, Tirunelveli, T.M. Balasubramaniam, R.
Mahalakshmi, S. Mariyappan, S. Kalyana Sundari, M.
Malarvizhi, S. Mari Murugan, D. Veeralakshmi, A. Santhi, V.
Thilagavathy and A. Alagarsamy

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 19, 19(1), 19(2), 20

Citation : (2002) 07 MAD CK 0122

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : S. Doraisamy, for the Appellant; P.S. Sivashanmughasundaran, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The challenge in this writ petition is to the order of the first respondent dated 11.07.2002, in and by which, the first respondent has held that the termination of the services of the respondents 2 to 11 by the petitioner having been made without the prior permission of the first respondent, the petitioner should reinstate the respondents 2 to 11 and report the same to the first respondent.

2. According to the petitioner, the appointment of respondents 2 to 11 came to be made on a temporary basis on the understanding that they would qualify themselves to hold the post. In order to continue them in employment, a notice dated 10.12.2001 was issued to each one of the respondents 2 to 11 pointing out that they failed to qualify till that date and that if they were to be continued in service, they should qualify themselves before 30-04-2002. According to the petitioner, as the respondents 2 to 11 failed to qualify themselves till 11.3.2002,

the petitioner made an application before the Director of Collegiate Education seeking its permission for the removal of respondents 2 to 11, on the ground that they failed to qualify themselves in order to continue them in the services of the petitioner. Thereafter, by an Order dated 30.4.2002, the petitioner stated that the services of the respondents 2 to 11 were terminated and that they were relieved from their respective posts on and from the afternoon of 30-4-2002. The petitioner also claimed that a paper publication was made on 1.6.2002, wherein, for six out of the respondents 2 to 11, an intimation was made that since the order of termination dated 30-04-2002 was not received by them, that publication itself should be construed as the order of termination confirming the issuance of such order on 30-04-2002.

3. In the abovesaid background, Mr. S. Duraisamy, learned counsel appearing for the petitioner would contend that first and foremost the first respondent was not the competent authority to pass the order impugned in this writ petition, that in any event prior to the passing of the impugned order dated 11.07.2002, the petitioner was not put on notice and thereby the first respondent violated the principles of natural justice before the passing of the order impugned in this writ petition. Learned counsel for the petitioner vehemently contends that when once the order of termination dated 30-04-2002 came to be issued and when the said order of termination can be validly challenged before the appropriate authority, under the provisions of the Tamil Nadu Private Colleges (Regulation) Act, 1976, there is absolutely no jurisdiction for the first respondent to pass the order impugned in the writ petition and thereby set at naught the termination order issued to the respondents 2 to 11 in a manner unknown to law.

4. I am unable to accept any of the contentions raised on behalf of the petitioner. Section 19 of the Tamil Nadu Private colleges (Regulation) Act, 1976 provides the manner in which an order of dismissal in relation to any teacher or other person employed in any private College can be effected. Since the said Section is very relevant for our purpose the same is extracted:

"19. (1) Subject to any rule that may be made in this behalf, no teacher or other persons employed in any private college 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 college 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."

5. u/s 20 of the said Act any teacher or other person employed in any private college is dismissed or otherwise terminated, can file an appeal to the prescribed authority. Therefore, when u/s 19(1) of the Act it has been mandatorily provided

that prior to the issuance of the order of dismissal or termination, prior approval of the competent authority should be obtained and in the case on hand, when the petitioner has, as a matter of fact, preferred on 11.03.2002 necessary application seeking for permission before the Director of Collegiate Education, I am of the view that the issuance of the subsequent order dated 30.4.2002 being patently illegal, the same will have to be construed as non-est in law. When once the petitioner has chosen to flout the legal provision while passing the order of termination dated 30-04-2002 as against the respondents 2 to 11 it cannot lie in the mouth of the petitioner to contend that irrespective of the position that the said order is in total contravention of the statutory provisions, it should be held that the first respondent who is the concerned competent authority exercising powers over the Private Colleges situate within his jurisdiction, to be so powerless and that he should be a silent spectator in spite of such illegal order having been passed by the petitioner as against respondents 2 to 11. I am of the view that the petitioner being an educational Institution ought to have, in the event of the concerned authority not having passed any orders on the petitioner's application seeking for permission, should have moved the concerned authority for expeditious disposal of its application for permission instead of taking the law into its own hands and pass an order which is in total violation of the provisions of the Act. By the impugned order, the first respondent has only set right the legal position by directing the petitioner to restore the status quo anti in order to enable the petitioner to pursue its application for permission u/s 19(1) and (2) of the Act. I am not, therefore, able to find any serious lacuna in the action of the first respondent, when it had only tried to restore the position to a situation where the petitioner can pursue the proceedings in a lawful manner before attempting to terminate the services of the respondents 2 to 11. In my considered opinion, such an action of the first respondent cannot be construed as an illegal one especially as against the petitioner, who had no regard for law when it came to pass the order of termination dated 30.4.2002, which is on the face of it illegal and is liable to be struck down for the contravention of the legal provision. Therefore, the petitioner cannot be heard to say that it is open to it to pass legally unsustainable order and still allow it to contend that such an order can only be challenged by way of an appeal u/s 20 of the Act and till such time it is set aside by the appellate authority, the first respondent lack jurisdiction to interfere with the illegal action of the petitioner in having passed the order of termination dated 30.04.2002. Therefore, looked at from any angle, I do not find any bonafides or justification in the claim of the petitioner when seeking to interfere with the proceedings impugned in the writ petition. The writ petition totally lacks in bonafides and merits and therefore, the same is dismissed. No costs. Connected W.M.Ps are also dismissed.