

(2011) 11 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No. 22960 of 2011 and M.P. No's. 1, 2, 4 and 5 of 2011

S. Daniel Easter Raj

APPELLANT

Vs

The Joint Director Higher Secondary School Education, The
Chief Education Officer Panagal Building Saidapet, The
District Education Officer and Tamil Evangelical Lutheran
Church

RESPONDENT

Date of Decision : 10-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0173

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : S. Siva Shanmugam, for the Appellant; I. Arokiasamy, Government Advocate for Respondents-1 to 3 and No Appearance for Respondent-4, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M.M. Sundresh

1. Even though, the interim applications are listed before me, by consent, the writ petition itself is taken up for final hearing.

2. This writ petition has been filed by the petitioner who was appointed as a Head Master of E.L.M. Fabricius Higher Secondary School, Purasaiwalkkam, Chennai, seeking a writ of Mandamus, directing the respondents 1 to 3 to approve the petitioner as Head Master, by taking into consideration of the recommendation made by the fourth respondent. An application has been filed by the petitioner in M.P. No. 3 of 2011 to amend the prayer seeking a writ of Certiorarified Mandamas, to call for the records of the third respondent dated 30.09.2011, by which, the approval sought for by the petitioner was rejected, with a consequential direction to the respondents 1 to 3 to approve the petitioner's tenure as Head Master of E.L.M. Fabricius Higher Secondary School, Purasaiwalkkam, Chennai.

3. The petitioner herein has got appointed as a Head Master by the fourth respondent. The Bishop by exercising the emergency powers appointed various Correspondents in the place of those who have been functioning already in pursuant to the appointments made by the Church Council. This Court in C.R.P. (MD) Nos. 2385 and 2386 of 2010 dated 14.12.2010 issued several directions by appointing a man of great repute Honourable Mr.Justice J.Kanakaraj, (Retd.) as Administrator. A complaint has been given by the then Correspondent who has been appointed in pursuant to the order of the Bishop, which was found to be improper by this Court against the petitioner and one E.D.Charles, who was the earlier Correspondent and who has been appointed once again by the Church Council in pursuant to the action taken by the learned Administrator. In pursuant to the complaint, which has been registered in Crime No. 86 of 2011, the petitioner was suspended by the then Correspondent who was appointed as per the orders of the Bishop.

4. However, the then Correspondent by the subsequent order dated 17.03.2011 has cancelled the order of suspension issued against the petitioner. In the said order, it has been stated that the complaint has been given suspecting the involvement of the petitioner and the petitioner's services are very much required for the Institution and hence he has been reinstated. The learned Administrator subsequently passed an order restoring the earlier appointment of the Correspondent, by name, E.D.Charles and he was also appointed by the meeting of the Church Council. The third respondent has also given approval for the said appointment.

5. In the meanwhile, the petitioner attained the age of superannuation. A request was made by the petitioner to redeploy him thereby permitting him to continue upto the academic year ending 31.05.2012 as per the Government Order passed in G.O. Ms. No. 1643, Education Department, dated 27.10.1988. The petitioner's request was rejected by the order impugned on the ground that inasmuch as a complaint has been given in Crime No. 86 of 2011 against the petitioner, his request cannot be considered. Challenging the same, the petitioner has come forward to file this writ petition.

6. The entitlement of the petitioner to continue till the end of the academic year as per the Government Order passed in G.O.Ms. No. 1643, Education Department, dated 27.10.1988 is not in dispute. The object behind the said Government Order has to be seen by taking into consideration of the interest of the students more than that of the institution and the teacher concerned. The only reason by which the request of the petitioner was not considered by the third respondent is on the ground that there is a criminal complaint given against the petitioner.

7. As seen from the records there is neither an objection from the defacto complainant nor from the management for the redeployment of the petitioner. In fact, the Management wants the continuance of the petitioner till the end of the academic year. A mere pendency of a criminal complaint by itself cannot be a

ground for rejecting the request for redeployment when the institution itself seeks extension on the ground that the presence of the teacher concerned is very much required till the completion of the academic year and such a request cannot be rejected solely on the ground of pendency of the complaint. The records would reveal that the defacto complainant himself has stated that the said complaint has been given on a suspicion regarding the involvement of the petitioner. Further, the complaint has been given while the learned Administrator was in control over the administration in pursuant to the orders passed by this Court in C.R.P. (MD) Nos. 2385 and 2386 of 2010. Moreover, it is very pertinent to note that the complaint has been made also against the Correspondent, by name, E.D.Charles. However based upon the recommendations of the learned Administrator his appointment has been approved by the third respondent.

8. Therefore, when the person against whom the charges have been made substantially has been given approval to function as a Correspondent, a person who is said to have been involved in the said offence cannot be treated differently. Merely because the petitioner was arrested his request cannot be rejected and he cannot be treated differently from the Correspondent. Further no final report and charge sheet has been filed after investigation. It is seen from the narration of the above said facts, the petitioner appears to have been caught in between two different groups. As discussed above, there is absolutely no objection from the Management regarding the continuance of the petitioner as the Management itself wants his continuation by way of redeployment till 31.05.2012. Moreover it is also seen from the records that apart from the pending case in Crime No. 86 of 2011 against the petitioner his performance has been satisfied through out his career.

9. Hence in the light of the discussions made above, this Court is of the view that the order impugned passed by the third respondent will have to be set aside and the said respondent will have to be directed to pass appropriate orders, permitting the redeployment of the petitioner till 31.05.2012. Accordingly, the writ petition is allowed and the order impugned is set aside, with a direction to the third respondent to pass appropriate orders, permitting the redeployment of the petitioner to work till 31.05.2012. The said order will have to be passed by the third respondent, within a period of eight weeks from the date of receipt of a copy of this order.

10. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.