

(2004) 06 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No.2598 of 2004, W.V.P.M.P. No. 971 and W.P.M.P. No. 2977 of 2004

S. James David

APPELLANT

Vs

The Headmaster-cum-Correspondent, St. Mary's Hr. Sec. School, V. Rajagopalan, The Enquiry Officer, St. Mary's Higher Secondary School and The Chief Educational Officer

RESPONDENT

Date of Decision : 24-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 305

Citation : (2004) 06 MAD CK 0031

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : K.M.Vijayan, for N. Ananda Kumar, for the Appellant; Nalini Chidambaram, for S. Silambanan, For 1st respondent and R. Rajasekaran, Government Advocate For 3rd respondent, for the Respondent

Final Decision : Dismissed

Judgement

1. At the stage when miscellaneous petitions for stay and vacate stay are listed, the writ petitions themselves are taken up for final hearing, in view

of the fact that the arguments in the miscellaneous petitions and the writ petitions are one and the same. Since the issue involved in both the writ

petitions are connected, they are taken up together for disposal.

2. The petitioner who filed the above writ petitions, is a Post Graduate Assistant employed in the first respondent school during the relevant period.

On 4.9.2003, a XII Standard student, by name Mohamed Nazar Ali, was alleged to have committed suicide. It appears that he has left a suicide

note kept in his pocket. The father of the said student, on seeing the suicide note, lodged a complaint on the same day. >From the suicide note, it is

seen that the petitioner has compelled the said student to join the tuition and since the student was not interested in joining the tuition, the petitioner

scolded the student daily in the class room and for the said reason, the student had committed suicide. In the suicide note also, he has stated that

the petitioner, under the guise of teacher, is minting money by compelling the student to join the tuition. Based on the F.I.R., a case was registered

and charge sheet was also filed against the petitioner.

3. By Charge Memo dated 27.1.2004, the petitioner was asked to explain for nine charges. The first two charges are in respect of the alleged

misconduct on the part of the petitioner, running a tuition without the permission of the management and compelling the student to join the tuition.

Of course, in the charge memo also, the allegation as to the suicide committed by the student, was included. In response to the charge memo, the

petitioner has submitted his explanation on 2.2.2004. Not satisfied with the explanation, the first respondent issued the impugned notice dated

5.2.2004, appointing an Enquiry Officer for the conduct of the enquiry. The said notice is questioned in W.P.No.2598 of 2004. As the disciplinary

proceedings are pending against the petitioner, by the subsequent impugned order dated 5.6.2004, the petitioner was transferred from the first

respondent school to De-Britto Higher Secondary School, Devakottai. The said order is questioned in W.P.No.15888 of 2004.

4. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner, would challenge the impugned notice dated 5.2.2004 on the ground that

criminal charges that are pending against the petitioner on the basis of the First Information Report lodged by the father of the deceased student

and the charge memo on which the enquiry is sought to be held, are one and the same. In that event, the judgment of the Apex Court in Capt. M.

Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, will come to the rescue of the petitioner. Learned Senior Counsel would draw my

attention to paragraph No.22 of the judgment which reads as follows:-

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted

simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against

the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental

proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will

depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against

him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be

given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on

account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee

is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

5. Of course, by the said judgment, the Supreme Court had laid down the law that if the departmental proceedings and criminal case are based on

identical and similar set of facts and the charge in the criminal case against the delinquent employee is of grave nature which involves complicated

questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. For application of the

said law, the facts narrated above are relevant. In so far as criminal case is concerned, which is on the basis of the complaint given by the father of

the deceased student for an offence u/s 305 I.P.C. viz., abetting a person to commit suicide. Of course, the said complaint was based on the

suicide note left by the deceased student. On the other hand, the charge memo dated 27.1.2004 relates not only to the facts relating to the suicide

committed by the student, but also the conduct of the petitioner in conducting tuition outside the school premises without permission of the first

respondent management and also compelling the students to join the said tuition. Though the charges are only due to the suicide note left by the

deceased student, from the proceedings of the first respondent dated 5.9.2003, while placing the petitioner under suspension, it is seen that after the suicide committed by the student, a preliminary enquiry was conducted and the Plus Two students were enquired and the first respondent came to know of the fact that the petitioner is running a Tuition centre in the name of Christ for the students appearing for the Entrance Examinations to the Professional Courses and the petitioner had compelled his students to join in the Tuition Centre. This charge in my view is independent and in addition to the charge relating to the suicide committed by the student. The charge memo and the enquiry for the Criminal case pending are not identical and on same set of facts, though the charge memo also included two charges relating to the suicide note. On the face of the charge memo also, I do not find any involvement of complicated question either on law or on facts. Moreover, the Apex Court had laid down the law only to stay the departmental proceedings if it is desired and not in all cases. For the above reason, I am not inclined to accept the contention of Mr.K.M.Vijayan, learned Senior Counsel that in view of the fact that the departmental proceedings are identical and similar set of facts, the departmental proceedings shall be stayed.

6. So far as the challenge to the order of transfer in W.P.No.15885 of 2004, Mr.K.M.Vijayan, learned Senior Counsel has submitted that without there being prior approval of the Educational Authorities, the question of transfer cannot be sustained. He has also submitted that without approval, transfer could not be effected as the Educational Authority is empowered either to grant approval or refuse the same.

7. On the other hand, Mrs.Nalini Chidambaram, learned Senior Counsel for the first respondent school would submit that the petitioner was employed initially in the School under the same management at Nagercoil and was transferred to Madurai, the first respondent School. The petitioner, being a Christian Teacher and the first respondent School also is a Christian institution, the student who committed suicide, is a Muslim.

The first respondent, in anticipation of communal disturbance, closed the school immediately after the suicidal of the student. In order to avoid law and order problem, the petitioner had been transferred to De-Britto Higher Secondary School, Devakottai, which is under the same management.

In so far as the power of the first respondent to transfer a teacher to another school run by the same management at a different place, is concerned, from the facts it is seen that the petitioner himself has got transferred from Nagercoil to Madurai on the ground that both schools are run under the same management. The contention that the transfer of the petitioner from Madurai to Devakottai is bad, cannot be now accepted. Moreover, transfer under the same management has been approved by the Apex Court, provided there is no reduction in the rank or salary. That apart, the reason adduced by the first respondent for the transfer cannot be taken lightly, as the student who committed suicide, belongs to a Muslim community and the petitioner is a Christian and the student has allegedly left the note that the petitioner was the cause for his death. Such reason can be a ground for sustaining the order of transfer. Hence, I am not inclined to agree with the challenge made to the order of transfer.

8. For all the above reasons, I do not find any merit in both the writ petitions and accordingly they are dismissed. No costs. Connected miscellaneous petitions are closed as unnecessary.