
(1998) 03 MAD CK 0110

In the Madras High Court

Case No : Writ Petition No. 10711 and 11252 of 1986

S. Thirumalaiswamy and another

APPELLANT

Vs

Commissioner and Secretary Education Department
Government of Tamil Nadu and three others

RESPONDENT

Date of Decision : 18-03-1998

Acts Referred:

Army Act, 1950 — Section 27

Penal Code, 1860 (IPC) — Section 148, 307

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 12, 14, 22,
23, 24

Citation : (1998) 3 CTC 408 : (1999) WritLR 447

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : Mr. P.R. Manoharan, Mr. Vijaya Narayanan, for the Appellant;

Final Decision : Allowed

Judgement

K. Sampath, J.—W.P. No.10711 of 1986 has been filed by the Secretary, School Committee, Gandhi Kala Nilayam Higher Secondary

School, Pungamathur, Udumalpet Taluk, Coimbatore District, for the issue of a writ of certiorarified mandamus or any other appropriate writ

direction or order calling for the records relating to order bearing No.7736-U 1/8676, dated 16.7.1986 on the file of the first respondent, quash

the same and direct the first respondent to dispose of the revision petition dated 27.1.1986 on merits.

2. The allegations in the affidavit in support of the writ petition are as follows:

The second respondent was the Headmaster of Gandhi Kala Nilayam Higher Secondary School, Pungamuthur. His behaviour and conduct were

unbecoming He was involved in an offence under Sections 307 and 148 I.P.C.

read with Section 27 of the Armed Act. He was convicted and sentenced to undergo rigorous imprisonment for three years in B.C. No.134 of 1982 on the file of the Assistant Sessions Judge, Udumalpet.

However, on appeal he was acquitted and at the time of filing the writ petition, a civil revision petition had been filed and was pending in the High Court. The school committee took disciplinary action against the second respondent and decided to dismiss him from service. Pursuant to such decision, the committee applied to the competent authority for approval u/s 22 of the Tamil Nadu Recognised Private Schools Regulation Act, 1973, hereinafter referred to as the Act. The competent authority refused permission by its order dated 22.4.1985. The School Committee filed an appeal u/s 41 of the Act to the Joint Director, Tamil Nadu School Education, Madras. The appeal was rejected on 12.12.1985. Against the dismissal of the appeal the School Committee preferred a revision to the first respondent u/s 45 of the Act. The first respondent by his order dated 16.7.1986 held that the revision was not maintainable and only an appeal would lie u/s 42 of the Act to the Tribunal. Aggrieved, the present writ petition has been filed.

3. A counter has been filed by the first respondent justifying the order of the Joint Director. The counter also justifies the stand of the first respondent that only an appeal would lie to the Tribunal.

4. A careful reading of the relevant provisions would show that the stand of the first respondent is not correct. A second appeal to the Tribunal constituted u/s 42 would lie only as per the provisions of Section 24 of the Act. Section 24 runs as follows:

If the appeal u/s 23 was against the dismissal, removal or reduction in rank or the termination otherwise of the appointment of any teacher or other

person employed in any private school, such teacher or other person or the educational agency aggrieved by any order made in any such appeal,

may prefer an appeal against that appellate order to the Tribunal.

Now going to Section 23 it runs as follows:

Any teacher or other person employed in any private school- (a) who is dismissed, removed or reduced in rank or whose appointment is

otherwise terminated; or (b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage.

by any order, may prefer an appeal against such order to such authority or officer as may be prescribed; and different such authorities or officer as

may be prescribed for different classes of private schools.

Explanation: In this section, the expression "order" includes any order made on or after the date of the commencement of this Act in any

disciplinary proceeding which was pending on that date.

4. The order of the Joint Director, School Education, Madras, against which the revision was filed by the writ petitioner to the Government was

not an order in appeal u/s 23. It was one u/s 41(1) of the Act and therefore a revision u/s 45 was maintainable.

5. In view of the discussion above, the writ petition has to succeed.

6. WP. No.11252 of 1986 has been filed by the second respondent in W.P. No.10711 of 1986 against the State of Tamil Nadu represented by

Commissioner and Secretary to Government, Education Department, the Joint Director of School Education (Secondary Education), Madras-6,

the Chief Educational Officer, Raja Street, Coimbatore, and the School Committee of Gandhi Kala Nilayam Higher Secondary School,

represented by the writ petitioner in the other writ petition, for the issue of a writ of mandamus directing respondents 1 to 3 to pass suitable orders

compelling the fourth respondent to restore the petitioner to service as Headmaster, Gandhi Kala Nilayam Higher Secondary School,

Pungamuthur, Udumalpet Taluk, within a period to be stipulated by this court and to further direct the fourth respondent School Committee to pay

all the arrears of salary and emoluments with effect from 10.12.1984.

7. The allegations in the affidavit in support of the writ petition are as follows:

The writ petitioner joined the school as an untrained B.T. Assistant on 22.6.1953. He was appointed as a trained B.T. Assistant on 6.6.1955 and

on 22.10.1956 he was appointed as Headmaster. He continued as Headmaster even after the school came to be governed by the Tamil Nadu

Private Schools Regulation Act, 1975 and the rules framed there under. He was implicated in a criminal case, which resulted in acquittal ultimately.

But, while the conviction was in force, the secretary of the fourth respondent School Committee placed the petitioner under suspension on

9.11.1983. This was without any legal sanction. No charges were framed and on the expiry of two months from the order of suspension the writ

petitioner demanded that he be reinstated as Headmaster. The fourth respondent had not applied to the third respondent for extension of the period of suspension. In the meantime, on 28.12.1983 the fourth respondent proposed to conduct an enquiry in respect of certain complaints allegedly received against the writ petitioner and called upon him to appear for an enquiry on 6.1.1984. Since the proposed enquiry was without jurisdiction and no charge amounting to misconduct had been specifically framed against the writ petitioner, he did not attend the enquiry on 6.1.1984, but gave a written explanation on 20.1.1984. After the acquittal by the Sessions Judge, Coimbatore, he brought the same to the notice of the fourth respondent on 31.3.1984 and demanded reinstatement. Faced with the difficulty in continuing with the petitioner's suspension, the secretary of the school Committee purported to pass an order dated 5.4.1984 terminating his service. The order dated 5.4.1984 referred to two letters dated 8.3.1984 and 19.3.1984 and also to a decision taken by the School Committee to terminate the services of the writ petitioner. The writ petitioner filed an appeal u/s 23 of the Act to the Appellate Authority, viz., the second respondent. At that stage, the writ petitioner received the order of the first respondent in his proceedings R.C. No.452465/E.Ni.Ka.G7/U2/83 dated 23.6.1984. It appeared from the order that the second respondent herein called for the remarks of the fourth respondent on the appeal and the fourth respondent had replied that it had not terminated the services of the writ petitioner, but placed him only under suspension. Accepting this statement the second respondent by his letter dated 23.6.1984 called upon the third respondent to state if the procedure under law had been followed in the matter of placing a teacher under suspension. As nothing happened for the next three months the writ petitioner approached this Court in W.P. No.9282 of 1984 for a mandamus directing respondents 2 and 3 to pass suitable order compelling the fourth respondent to restore the writ petitioner to service as Headmaster of the school, with effect from 9.11.1983 with continuity of service and backwages. It was filed on 17.7.1984 and was admitted on 19.9.1984 and in the petition for interim directions, notice was ordered returnable in ten days. By order dated 29.9.1984 the fourth respondent reinstated the petitioner in service, and when the petition for interim direction came up for further orders on 10.10.1984, this Court recorded the statement of the fourth

respondent that the writ petitioner had already been reinstated. The petition for directions was dismissed. So far as the reliefs of continuity of

service and backwages for the period of suspension were concerned, they still survive.

8. The writ petitioner and the Secretary of the fourth respondent School Committee were brothers-in-law and due to their personal family disputes, the Secretary of the School Committee used to unnecessarily interfere in the day-to-day administration of the school and harass the writ petitioner.

The writ petitioner complained to the Director of School Education and also reported that the Secretary had taken unauthorised donations. Since

the Secretary came to know about this, by order dated 10.12.1984 in proceedings Na.Ka.424 of 84 the writ petitioner was again placed under

suspension. The order of suspension did not also state that any enquiry into grave charges was contemplated. Since the enquiry was not completed

within the two months period, the third respondent herein by proceedings dated 2.2.1985 in R.C. 42602/G3/84 directed the fourth respondent to

reinstate the writ petitioner in service. The order also stated that the allegation of lack of cordiality between the writ petitioner and the secretary

would not form the subject matter of an enquiry, since there was no violation on the Code of Conduct in Annexure-II of the Tamil Nadu Private

Schools Regulation Rules. In spite of that order the fourth respondent by his letter dated 11.3.1985 stated that he could not obey the order dated

2.2.1985, since the enquiry was still pending. The third respondent thereafter in proceedings dated 15.3.1985 directed the fourth respondent to

reinstate the writ petitioner in service forthwith. In the meantime, the fourth respondent also filed an appeal to the third respondent. There was a

warning administered by the third respondent to the fourth respondent by letter dated 22.4.1985 that if the writ petitioner was not reinstated in

service forthwith, the third respondent would be constrained to take serious action against the fourth respondent. This was followed by another

letter dated 6.8.1985 to the same effect. By order dated 12.12.1985 the second respondent dismissed the appeal filed by the fourth respondent.

Among other grounds the appeal was dismissed on the ground of non-maintainability also. Instead of implementing the order of the second

respondent, the fourth respondent preferred an appeal to the Government and the Government by order dated 16.7.1986 dismissed the appeal on

the ground that it was not maintainable. Thereafter, by proceedings R.C.No. 2934/G4/86 dated 18.9.1986 the third respondent directed the fourth

respondent to reinstate the writ petitioner in service with all arrears of salary and other allowances. The fourth respondent had written to the third

respondent that he had preferred a writ petition in the High Court challenging the order of the Government dated 16.7.1986 and that the writ

petition had not yet been numbered.

9. Because of the action of the fourth respondent in not- reinstating the writ petitioner in service with backwages, the writ petitioner was gravely

prejudiced. He had not received any salary or other emoluments since 10.12.1984. He was due to retire in January, 1987. The first and the third

respondents had ample powers under Sections 12 and 14 of the Act to compel the fourth respondent to comply with the orders of the authorities,

but for some strange reasons they had not taken action. This necessitated the writ petitioner to come up with the present writ petition.

10. Respondents 1 to 3 have filed a common counter practically supporting the case of the writ petitioner and staling that action was being taken

separately to examine and enforce the possibility of invoking Sections 12 and 14 of the Act. According to the counter, Section 12 of the Act dealt

with the withdrawal of the recognition to the school by the competent authority and if it was implemented, it would result in not only disturbing the

studies of the children studying in the school, but also the other teachers as they would have to be transferred from the school and given alternative

appointments in suitable posts. As regards Section 14 of the Act, viz., withholding of the grant, if it was to be done permanently or temporarily as a

measure of punishment, the entire staff in the school would be affected and there would be objections from the teachers of the school. The

punishment contemplated under sections 12 and 14 would be implemented or resorted to only as a final course of action.

11. From the narration it would be obvious that the writ petitions have been the culmination of some private individual ego problem and a blatant

disregard of consideration for the welfare of the school going children and the teachers. When once there was a direction by the higher authorities

to reinstate the writ petitioner in W.P. No.10711 of 1986, there was absolutely no choice except to obey orders. From a reading of the counters

filed by the authorities, it would be amply clear that their attitude had been in favour of the reinstatement of the writ petitioner in W.P. No.11252 of

86 as Headmaster of the school concerned. The school Headmaster was honourably acquitted by the Sessions Court. No doubt, it is not known

as to what happened to the criminal revision case stated to have been filed. During the pendency of the writ petitions the Headmaster, viz., the writ

petitioner in W.P. No.11252 of 86 reached the age of superannuation and he should have retired in 1987. The emoluments and other benefits he

would be entitled to may have to be worked out subject to the decision of the Government in the revision filed by the writ petitioner in W.P.

No.10711 of 86. It is also not known as to what happened between the filing of the writ petitions and now. Since I have held that the revision by

the writ petitioner in W.P. No.10711 of 1986 is maintainable, the revisional authority will have to decide the revision on merits and communicate

the order to the concerned persons within a period of three months from today. The writ petition will stand allowed. The writ petitioner in W.P.

No.11252 of 1986 is at liberty to work out his rights independently before the appropriate forum.

12. The writ petitions are ordered accordingly. However, there will be no order as to costs.