

(2011) 12 MAD CK 0124

In the Madras High Court

Case No : Rev. Aplc. No. 59 of 2011 and M.P. (MD) . No. 1 of 2008

Secretary Devasagayam Chettiar Middle School, 225, North Masi Street, Madurai APPELLANT

Vs

Rexline Mary and The District Elementary Educational Officer, R.M.S. Road, Madurai RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 14, 18A, 19(3), 22, 22(1)

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 16, 17(3)

Citation : (2011) 12 MAD CK 0124

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T.A. Ebenezer, for the Appellant; S. Xavier Rajini for R1 in Rev. Aplc No. 59 of 2011, for R3 in W.P. (MD). No. 6173 of 2008, Mr. M. Govindan, Spl. GP. for R2 in Rev. Aplc No. 59 of 2011 and for R1 and R2 in W.P. (MD). No. 6173 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner claiming to be the Secretary of the Devasahayam Chettiar Middle School, 25, North Masi Street, Madurai, has filed the writ petition challenging an order dated 01.07.2008, passed by the District Elementary Educational Officer, Madurai. By the impugned order, the District Elementary Educational Officer, Madurai informed the petitioner that the petitioner's school application for approving the punishment imposed on the third respondent, school teacher cannot be considered by the Department since she had already filed a Writ Petition being W.P.(MD). No. 9314 of 2007, which is pending. Therefore, the authority refused to consider the application filed u/s 22(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

2. Since the Department referred to W.P. (MD). No. 9314 of 2007, it is necessary to refer to the said writ petition in detail. In that writ petition, the school teacher by name Ms. Rexiline Mary working as a Secondary Grade Teacher challenged an order of the School Committee dated 11.10.2007, by which she was placed under suspension for certain misconduct and in order to enquire into those charges. She was informed that she should not move from the headquarters and that she will be paid subsistence allowance as per the Rules in force.

3. The order of suspension came to be challenged by the school teacher after waiting for a period of one month in W.P.(MD). No. 9314 of 2007. In that writ petition, the school teacher contended that she had already resigned from service and the suspension order came to be passed subsequent to her resignation. The charges levelled against her were not grave enough warranting suspension and she had already refuted the allegations made by the management.

4. In that writ petition i.e. W.P.(MD). No. 9314 of 2007, notice was ordered to the management. The management filed a counter affidavit dated 20.11.2007. In the counter affidavit it was stated that there were 18 charges against the school teacher and even under the guise of giving explanation, she has made grave allegations against the management. Her suspension cannot be set aside on the grounds raised by her and there were no legal infirmity in the order passed. The management also did not accept the resignation submitted by the petitioner.

5. The writ petition came to be disposed of on 21.07.2008 after hearing the counsel for both sides. This Court in the final order in paragraphs 4 and 5 has held as follows:

4....

But, when the enquiry was also over and apart from this, proposed punishment was also not approved by the authorities concerned, in my opinion, the continuation of the suspension of the petitioner is not warranted. Since, the stand of the respondent management is that they are not willing to reinstate the teacher, but however, according to the learned counsel for the respondent management, the management is willing to pay all the benefits including the pay to the petitioner, revoking the impugned order of

suspension. Taking note of these facts, so far as the suspension order is concerned, it is set aside, but in view of the undertaking given by the learned counsel appearing for the respondent management, the respondent management is directed to pay all the monetary benefits to the petitioner.

6. Since as per Section 22(3)(b) of the Tamil Nadu (Recognized) Private School Regulation Act, 1973, a teacher cannot be placed under suspension for more than a period of two months from the date of such suspension and with the permission of the respondent department, for another period of two months. But, in the case in hand, even as per the management, permission was not given for

extending the period of suspension. The said teacher is deemed to have been restored to service without prejudice to the enquiry on the completion of four months and as far as the present case is concerned, the enquiry was completed on 11.01.2008 i.e. after the lapse of two months. In view of this fact, u/s 22(3) (b) of the Tamil Nadu (Recognized) Private Schools Regulation Act, 1973, the petitioner is entitled for the salary with effect from 12.12.2007 and other benefits.

(Emphasis added)

6. Notwithstanding the direction issued by this Court, the school management did not comply with the said direction. On the contrary, they have filed a writ appeal before a Division Bench of this Court. A Division Bench of this Court in W.A.(MD). No. 5554 of 2008, initially granted an interim stay on 13.10.2008. Subsequently, the matter was disposed of by a final order on 20.10.2009, which is as follows:

The Writ Appeal is at the instance of the Secretary, Devasahayam Chettiar Middle School, 255, North Masi Street, Madurai and it relates to suspension of the first respondent, who was placed under suspension on 11.10.2007 upon certain charges and pending enquiry. As the enquiry could not be completed, it appears that the appellant management had written to the Educational Authorities seeking permission for extension of further period of three months to complete the enquiry. However, no such permission was granted and the enquiry was completed and an Order of punishment of dismissal was imposed on the first respondent. Even then, the order of dismissal has not been so far approved. The first respondent has approached this Court questioning the Order of suspension on the ground that the enquiry proceedings were not completed. In the said Writ Petition, the learned Single Judge of this Court has directed the reinstatement of the first respondent in service and also payment of eligible salary. The said Order was made on the basis of undertaking given by the appellant management.

2. The said Order is put in issue in this Writ Appeal. The learned counsel appearing for the appellant would submit that the appellant management has not given any undertaking, and therefore, the said Order is bad. In our opinion, such an argument of the learned counsel for the appellant cannot be allowed to stand before the appellate forum and if it is the stand of the appellant management that no such undertaking was given, the appellant management should approach the Single Judge seeking for clarification of the Order. When this was pointed out, the learned counsel for the appellant sought permission of this Court to withdraw the Writ Appeal with liberty to approach the learned Single Judge.

3. Accordingly, the Writ Appeal is dismissed as withdrawn giving liberty to the appellant to approach the learned Single Judge seeking for clarification of the said Order. Consequently, interim order of stay granted by this Court is vacated and connected Miscellaneous Petitions are closed. No costs.

(Emphasis added)

7. In the grounds of appeal filed by the school management in paragraph number 9 it was stated as follows:

The Learned Judge wrongly recorded that the counsel for the management undertakes to pay the monetary benefits to the delinquent employee.

The Division Bench did not deal with the submissions made by the counsel for the school management, but allowed the counsel to appear before this Court with an appropriate application.

8. Taking advantage of the liberty given by the Division Bench, the school management filed a Miscellaneous Petition. In that petition they once again stated that the counsel never made any undertaking before this Court. It came before the very same Judge and on 27.08.2010, the learned Judge found fault with the stand of the school management as they openly expressed they were not willing to comply with the order passed by this Court, but wanted to wriggle out of the undertaking given by them during the writ petition. In paragraph 9 it was observed as follows:

9. The learned counsel appearing for the petitioner management has submitted that even now the petitioner management is not willing to take back the teacher in spite of rejection of approval sought for by the petitioner management. But, at the same time, the learned counsel for the petitioner management has submitted that without undertaking, the management is willing to pay salary to her. However, I am not willing to accept the said submission of the learned counsel for the petitioner management.

For the foregoing reasons, I do not find any merit in the Miscellaneous Petition and the same is dismissed.

(Emphasis added)

9. Having filed in the application for clarification filed before the same Judge, the petitioner once again came before this Court with the Review Application No. 59 of 2001. It is not clear as to how such an application is maintainable since the Division Bench in the earlier occasion had merely observed that the management should approach the learned Single Judge seeking for clarification. Therefore, the Writ Appeal was withdrawn with liberty to move the learned Judge. Having moved the learned Judge with such liberty, review cannot be done on the said order.

10. On the question of undertaking given by the petitioner before this Court, which was recorded and when that undertaking was refused to be cancelled by the very same learned Judge, the Review Application is thoroughly misconceived. Notwithstanding the same, the counsel for the petitioner started making elaborate submissions and also given written submissions. The contentions raised by the school management are as follows:-

The teacher sent the resignation letter on 03.09.2007 maligning the Secretary

that she apprehends kidnap and rape at his hands. Charges were framed against her and explanation was called for. Since the enquiry was not completed during the suspension period, time extension was sought for from the department for extending the suspension. But, the same was not forthcoming. Within the period of three months i.e. 11.01.2008 the enquiry was completed and final show cause notice was sent on 21.01.2008 and school committee passed a resolution proposing to dismiss the teacher, and sought for permission from the competent authority. Since the proposal was not considered, a direction to consider the proposal was also made before this Court. On 21.10.2009, the resignation sent by the teacher was accepted. But, the authority had returned the approval proposal stating that a writ petition filed by the teacher is pending. Since the writ petition, subsequently writ appeal and thereafter clarification applications were dismissed as early as on 27.08.2010, there is no impediment for the department to consider his proposal. The management cannot wait indefinitely for the approval, especially when the enquiry was conducted within 3 months.

11. The counsel for the petitioner relied on the judgment reported in 1985 WLR 30 (Sarada Balakrishnan, Mrs. Dr. v. The Secretary, Seethalakshmi Achi College for Women) in support of his contention.

12. In that case, the learned Judge of this Court while dealing with the Tamil Nadu Private Colleges (Regulation) Act, 1976, wherein similar provisions were found u/s 19(3)(b), held that the powers conferred must be exercised with reasonable diligence to avoid absurd and inconvenient situations ensuing on account of undue delay and to obviate persons putting forth resultant claims on that basis. Extension of suspension is not a matter of volition on the part of one agency alone. It is a matter of one agency applying for it and the other agency according it. If undue delay has occurred between the lapse of the original period of suspension and the grant of extension of suspension and, in the interregnum, the person suspended got restored to the post pursuant to the implication of Section 19(3)(b) and there are factors and features which demonstrate prejudice and hardship to the person concerned.

13. It is not clear as to how that judgment will have any assistance, because in that case this Court was concerned only about the extension sought for by the College management which was not considered by the department. Thereby, the court did not find any fault on the part of the management. Even assuming that there was a prejudice, the Act contemplates only a further extension of two months and not beyond that. All in all, whether it is a Private College or Private School, initial period of suspension can only be two months by the school management and thereafter, if approval granted by the competent authority a further period of two months the suspension can be extended. In any event if approval is granted or any approval is rejected in other case, the School teacher will be deemed to have restored to the services without prejudice to the enquiry. Therefore, the management of the present school cannot make an hyper-technical stand and file all kinds of petitions to forestall the restoration of the

teacher back to the school.

14. In fact at the time of clarification application, the stand taken by the management was a open defiance of the earlier order passed by this Court, for which already a contempt petition is pending. The conduct of the management will be dealt with suitably in the contempt petition. If even after a period of four months the management's proposal is not accepted by the competent authority, then what follows is a question no longer resintegra. The statutory power of approval like the one conferred on the competent authority u/s 22(1) of the Act to approve or refuse of the action taken by the management, has been devised as an essential check on the arbitrary exercise of powers by a school management.

15. The authority to whom such an application was made is entitled to exercise the statutory power in terms of Section 22(1) and (2) of the Tamil Nadu Recognised Private Schools (Regulation) Act. Therefore, it is necessary to refer Sections 22(1) and (2) of the Act:

22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools.-(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school 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 school 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.

(Emphasis added)

16. Once a proposal is received, the authority has to satisfy that there are adequate and, reasonable grounds for such approval and thereafter approve the proposal for such dismissal. The purpose of Section 22(1) of the Act and the nature of power to be exercised by the competent Authority came to be considered by the Supreme Court vide its judgment in Secretary, School Committee, Thiruvalluvar Higher Secondary School Vs. The Govt. of Tamil Nadu and Others, it was observed as follows:

10. Though attempt was made to contend that at the stage of consideration under Sections 22(1) and 22(2) and Rule 17(1), there is no scope for looking into the proportionality of the punishment aspect, the same is clearly without any substance. What an authority is required to do at that stage is to see whether the proposed punishment is to be approved. Obviously, it has to consider whether the punishment as proposed is a proper one; otherwise there is no need for seeking its approval. The crucial words used in sub-section (2) of Section 22 are

"adequate and reasonable grounds" for the proposal. The proposal relates to dismissal, removal or reduction in rank or otherwise termination of appointment of any teacher or any other person employed in a private school. While considering whether adequate and reasonable grounds exist for giving approval, the authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it. Any other interpretation would make the question of approval an exercise in futility.

11. Stand of the learned counsel for the management is that if adequate and reasonable grounds exist for the action, then no other question needs to be looked into. This argument overlooks a vital aspect that the adequacy and reasonableness of grounds are relatable to the proposals for the enumerated actions. The proposed actions being punishments, there is an inbuilt requirement to see whether the quantum of punishment commensurates with the gravity of the proved charges. Therefore, clearly the authority has jurisdiction to decide the question as to whether the punishment proposed commensurates with the proved charges. One of the related pleas was that if the quantum of punishment is permitted to be considered, it would partake the character of an appeal. This plea is equally untenable. Sections 22 and 23 operate in different fields. At the stage of consideration u/s 22, the teacher does not get any opportunity for presenting his side of the case. This opportunity is provided u/s 23 or Section 24, as the case may be. The authority u/s 22 takes decision on the material placed before it by the management. So the question of action u/s 22 partaking appellate characteristics does not arise.

(Emphasis added)

17. In the present case, the writ petition filed by the school management is for passing appropriate order on their proposal to dismiss the teacher in terms of Section 22(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The authorities are yet to pass an order. In the impugned order they have indicated that the pendency of the writ petition filed by the school teacher is a ground for them not to take any decision.

18. Now, that writ petition had attained finality by the order of the Division Bench and the Clarification order was also issued by the learned Judge, there is no impediment for the authorities to consider the approval petition sent by the management. But on that ground, the management cannot forestall the teacher being restored to service. Section 22(1) and (2) of the Tamil Nadu Recognised Private Schools (Regulation) Act on the one hand and Section 22(3) of the Tamil Nadu Recognised Private Schools (Regulation) Act operate on different planes. In granting extension for suspension u/s 22(3) the authority only considers whether the enquiry was delayed due to the action of the teacher and then grants approval. That too, if it is granted it can rest only for another two months. There is no adjudication of the rights involved. But, in case of approval u/s 22(2), the authority discharges a different function as set out above.

19. So long as the approval is not obtained from the competent authority, no order can be final. If any order is passed imposing punishment of dismissal, such dismissal order without any approval will become void ab initio as held by this Court in *The Ayya Nadar Janaki Ammal College Vs. A. Pandian and Others*, which is as follows:-

23. Learned counsel for the first respondent is wellfounded in his submission that the order of termination of the service of the first respondent is void ab initio. As already seen, he relied on following decisions (1) *K. Rajeswari v. T.P. Sankaran and Another* (1997 T.L.N.J. 537); (2) *Selvaraj v. Jesudasan* (1983 (II) M.L.J. 406 : 96 LW 348); 3. *R. Jesudasan Vs. K. Selvaraj and Others*, ; 4. *Rajaji Middle School v. Mariapushpam* (1987 Writ.L.R.333); 5. *M. Committee v. S.D. Gupta* (1974 A.L.J.465 : 1974 L.I.C. 1036); 6. *Prabhu Narain v. Dy.Director, Education, Varanasi* (1977 Lab.I.C.1095) and 7. *Rama Bhadoor and another v. Thungabadra Sugar Works (P) Ltd* (1979 S.L.J.489). In these cases, it has been held that where there is a termination of violation of the provisions of the Act, the order of termination contrary to the provisions of the Act is only a null and void order and it has no effect at all.

(Emphasis added)

20. Pending such approval the power of the management to keep a teacher under suspension is restricted by Section 22(3) of the Tamil Nadu Recognised Private School (Regulation) Act. Only for two months that power can be exercised. Even assuming that an extension of time sought for from the competent authority and if it was granted, that too for two more months thereafter, there will be a deemed restoration of the teacher.

21. Notwithstanding, whether the counsel for the petitioner gave an undertaking or not, the statutory obligation will have to be obeyed by the management, failing which, the school management will face action by the Education Department which can include even a suspension of the school management u/s 18-A of the Tamil Nadu Recognised Private Schools (Regulation) Act or take over the management of the school u/s 34 of the Tamil Nadu Recognised Private Schools (Regulation) Act. The disobedience of the order passed by this Court and violating the provisions of the Act, is a clear case of mismanagement and maladministration and it is made clear that the appropriate authority can consider the other options to enforce the provisions of the Act.

22. Apart from that, since the School is an aided private school, u/s 14 of the Tamil Nadu Recognised Private Schools (Regulation) Act a grant can be withheld if the management did not comply with the provisions of the Act or the Rules made thereunder or any directions issued. In this context, even after a statutory obligation on the part of the management, it is yet to obey the orders passed by this Court.

23. In the written submissions, the counsel for the petitioner pointed out the so called errors in the action of the department. It was contended that the delay

was caused by the school teacher and the counsel had never undertook to pay salary on behalf of the management. Further no default clause can be invoked. In the present circumstances, no award or reward to the erred employee is provided in law. If the order is permitted to stand, it is amounting to the punishment to the management and an award to the delinquent who committed misconduct. The management cannot be punished by way of direction to pay salary from its own fund. It was not the intention or wisdom of the legislation.

24. It is not clear as to how the petitioner can make such contentions calling the action as errors, when the said matter raised by the management was no longer res integra. A learned Judge of this Court (M. Srinivasan, J. as he then was) while interpreting Section 22(1) r/w proviso to 22(3)(b) of the Tamil Nadu Recognised Private Schools (Regulation) Act has held that if an enquiry is over and approval application is pending and no decision was taken by the Government, it will result in a deemed grant of approval. The matter was taken before the Division Bench of this Court vide its judgment in T. Ramamoorthy v. The Secretary, Sri Ramakrishna Vidyalaya High School, Tirupparaithurai, Tiruchirapalli District & Ors reported in 1998 WLR 641. In that case the Division Bench presided by D. Raju, J. (as he then was) held that the decision given by the learned Single Judge was not correct. In that context, the Division Bench held in paragraph 4 which is as follows:-

4. The decision in 1996(II) CTC 577 also arose under the Act which is under our consideration and the respondent before the Division Bench appears to have placed a strong reliance upon the decision of the learned single Judge which is under challenge in this appeal before us. The judgment which is the subject matter of appeal before us has also been reported in 1990 Writ L.R.62 (The Secretary, Sri Ramakrishna Vidhyalayam High School, Tirupparaithurai v. The State of Tamil Nadu and others.) In such circumstances, the Division Bench was obliged to consider the legality and propriety of the conclusions arrived at by the learned Single and ultimately came to the conclusion not only to disapprove the view taken, but also to over-rule the same in the following terms.

10) We have carefully considered the submission of the learned counsel for the 3rd respondent based on the ratio of the above decision. On the facts, we find that in the case before the learned Single Judge in the decision reported in Secretary, Sri Ramakrishna Vidhyalayam High School v. The State of Tamil Nadu and Others, 1990 Writ L.R.62, after a particular time the school management passed the order of termination itself and served it on the teacher concerned on the view that the management has waited for sufficient time and since the approval was not forthcoming they are entitled to serve the order of termination. On facts, it may be noticed that in the case before us no such final order has been passed and communicated to the appellant and consequently it cannot be contended that the disciplinary proceedings have been properly concluded culminating in an order of punishment. Even that apart, with great respect to the learned Single Judge, we are unable to either subscribe to or approve the view

taken as expressed in paragraph 38 of the decision referred to supra. The statutory power of approval like the one conferred on the competent authority under Sec.22(1) of the Act to approve or refuse approval of termination of a teacher or other person has been devised as an essential check on the arbitrary exercise of powers by a school management. The stipulation of obtaining approval before termination has been made to safeguard the rights of a teacher or other person under the management of an aided private school and merely because a statutory authority conferred with a power of supervision and control commits a lapse or shows some indifference that by itself is no ground to totally deny and deprive the competent authority of the right to exercise such power for all times to come on account of the initial lapse or delay in so exercising the power of approval. The power conferred under Sub-sec(1) of Sec.22 of the Act which is not for the benefit of the competent authority or the department concerned, by the legislature must have thought of such a devise more in order to protect a teacher or other employee of an aided educational institution and while that be the position the lapse or the delay on the part of the competent authority in diligently exercising the power cannot have the effect of denying the protection and safeguard statutorily devised in favour of the teacher or other person employed in an aided educational institution. the reasoning of the learned single Judge that if the competent authority under sec.22 of the Act does not exercise the power combined with the duty to pass orders on an application for approval within reasonable time he loses his jurisdiction over the matter and he shall not exercise the same thereafter to the prejudice of the School management cannot be justified while dealing with the nature, purpose and character of the powers conferred upon the competent authority under the said provision which would appear to be meant more to protect the teaching or other staff or an aided school. Approving such a ratio merely on the basis of a possible prejudice to the School management would mean totally ignoring the prejudice and damage that may be caused to the teacher or other person concerned for whose protection such stipulation has been made providing for prior approval before termination of services. If there is any lapse or indifferent attitude exhibited by the competent authority, it is always open to the school management concerned to move the appellate or revisional authorities or this Court under Art.226 of the Constitution of India to direct the competent authority to discharge his duties expeditiously within a reasonable time. But that is not the same thing as to completely deny the statutory power of approval conferred upon the competent authority so as to efface the statutory stipulation once and for all. Doing so would amount to rewriting a specific statutory provision with a definite purpose in public interest. Further, we are also unable to approve the view expressed by the learned Single Judge that through Sub-sec.(1) is not fully satisfied in cases of the nature dealt with by the learned single Judge, it will be a case of substantial compliance with the provisions of Sub-sec.(1) which will be sufficient in the eye of law to uphold the validity of termination. The theory or principle of substantial compliance can be applied only in cases or situation which relates to more observance of certain procedural formalities. The provision

contemplated for securing the approval of the competent authority before effecting termination of services of a teacher or other person employed in an aided School is not a mere procedural formality, but really concerns a substantial restriction on the power of the management of an aided school to dispense with the services of a teacher or other person employed therein at its whim and a corresponding right in the teacher or other person employed in the institution. To put it more crisply it is a condition precedent contemplate by the statute for dispensing with the services of an employee and in respect of such a matter there is no scope for negotiating with rigor of law having recourse to the Principle of substantial compliance. Consequently, we do not approve the ratio contained in paragraph 38 of the decision reported in Secretary, Sri Ramakrishna Vidhyalayam High School v. The State of Tamil Nadu and others, 1990 Writ L.R.62 and over rule the same.

25. Apart from the passage quoted above, they referred to several other judgments under the Private Colleges and Private Schools and in paragraph 6 the Division Bench had observed as follows:-

6.....

We may also add that if the statutory provision enacted by the Legislature prescribed a particular mode for terminating the service or dismissing the teaching or a nonteaching staff of a school, it can and has to be done not only in that manner alone, but it cannot be done in any other manner too. This principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that other method of performance is necessarily precluded, is not only well settled, but squarely applies to this case also in construing the scope of the powers as also its exercise by the management u/s 22 of the Act.

26. The decision relied on by the learned counsel for the petitioner i.e. 1985 WLR 30 (cited supra) cannot said to be any good law in the light of the subsequent pronouncements of the Division Bench judgment in T.Ramamoorthy" s case (cited supra)

27. The next question that has to be decided if a teacher is kept out of the school beyond the period of suspension the liability to pay salary to the teacher. It is needless to say when a suspension is made and subsequently if it is extended by the department, the subsistence allowance that is for a period 4 months will be paid by the Department in terms of Rule 16 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. But, the payment of subsistence allowance shall be limited only to a period of maximum four months. It is because the statute itself prescribes an outer time limit of 4 months for suspending a teacher. After the expiry of 4 months, if the teacher is restored to her service, then naturally the management is entitled to get grant by the State Government and there wont be any obligation for the management to shell out from its own funds. But, a management like the present one which is determined to defy the

provision of law, then the question is answered by Rule 17(3) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, which is as follows:-

17. Dismissal, removal or reduction in rank or suspension of teacher or other persons employed in private school-

(1)...omitted...

(2)...omitted...

(3)(i) Where after enquiry, including the appeal, a suspension is found to be not justified, the management shall remit the amount of subsistence allowance paid to the teacher or other person, employed in that private school to the Government in one lumpsum under the appropriate head of account. The Educational Agency shall however, pay such teacher or other person the full pay and allowances he would have drawn but for his suspension less the amount of subsistence allowance already paid to the teacher or other person for the suspension period from the funds of the management without any claim from grant.

28. Even otherwise, the relationship between the teacher and the school management is that of a master and servant. The fact that the State Government pays grant is irrelevant. It is for the school management to fulfill its obligation under the Act including paying salaries of the teachers. The fact that the school was receiving aid does not alter the relationship. In the present case, both the power of suspension and proposal to impose a penalty was exercised by the management in the capacity of a Master. Therefore, the necessary corollary is that the payment of salary and other benefits are the obligation of the management only. The position of law has been clarified by a Division Bench of this Court in Punithavalli v. Saiva Bhanu Kshatriya Girls Higher Sec. School reported in 2007 5 MLJ 965, wherein in paragraph 19 it was held as follows:-

19. A Division Bench of this Court while considering the liability of the management to pay salary, considered the very issue, (to which I am party) vide its judgment reported in Bharath Primary School run by Sri Bathrakaliamman Trust rep. by its Bharath Primary School Vs. A. Pauldurai, The District Elementary School Educational Officer and Alda, . It was held in paragraph Nos.8 to 10 as follows at.1128 of MLJ:

8. However, our attention was brought to the decision of the Supreme Court *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, wherein the question with reference to the liability of the Management to pay salary for a teacher appointed by them, was answered by the Supreme Court and the relevant portion of the order found in paragraph 10 of the judgment is extracted below (at p.327 of LLJ):

10. We are only concerned with the liability of the management of the college towards the employees. Under the relationship of master and servant, the management is primarily responsible to pay salary and other benefits to the

employees. The management cannot say that unless and until the State compensates, it will not make full payment to the staff. We cannot accept such a contention.

29. Therefore, whether the management gives an undertaking or not, the legal preposition has already been clarified by the Act and under various judgments of this Court and Supreme Court. Even in the absence of the Government reimbursing the amount, it is for the management to pay salary to the teachers. In this case, the management has brought the above situation upon itself by making irrelevant contentions contrary to the legal precedents and binding nature of the decisions rendered by this Court on the very same issue. Therefore, they cannot be allowed to file a review application, after filing writ petition, writ appeal and also a clarification application, to get over the legal obligation imposed on them. Under such circumstances the review application filed by it is misconceived. Hence, the Review Application (MD). No. 59 of 2011 stands dismissed.

30. In normal circumstances, the writ petition in W.P.(MD). No. 6773 of 2008 would have been ordered, because the impediment faced by the Department due to the pendency of W.P.(MD). No. 9314 of 2007 is no longer survives and there was no difficulty for the department to pass orders on the proposal sent u/s 22(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act by the management. But, in the present case, this Court after referring to infraction of Section 22(3)(b) of the Tamil Nadu Recognised Private Schools (Regulation), Act also declared that the teacher was entitled to get salary from the date of deemed restoration without prejudice to the enquiry, the management, which filed a writ appeal and thereafter, withdrew the appeal and moved the same learned Judge for a clarification and in that the earlier order was confirmed, cannot be allowed to flout the orders of this Court. In the present case the school management on the one hand defying the orders passed by this Court is facing a contempt and on the other hand seeks for discretionary relief for a direction to dispose of their application pending before the competent authority. In essence any Writ in the nature of Mandamus is discretionary relief. If any person defies the orders passed by this Court will not be entitled to any discretionary relief. Hence, this Court is not inclined to entertain the writ petition. Hence, W.P.(MD). No. 6173 of 2008 stands dismissed for the defiance shown by the school management in not obeying the earlier orders passed by this Court in other writ petition. No costs. Consequently, the connected miscellaneous petition is closed.