

(2012) 11 MAD CK 0155

In the Madras High Court

Case No : Writ Petition No. 26343 of 2009 and M.P. No. 1 of 2010

Secretary School Committee, General Cariappa Higher
Secondary School

APPELLANT

Vs

Joint Director (Secondary Education), Chennai and Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Citation : (2013) 1 LLJ 556

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : G. Annamalai, for the Appellant; R. Ravichandran, Additional Government Pleader and G. Nagarajan, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing on behalf of the respondents. It has been stated that, R. Kasi, the Fourth Respondent herein was working in the General Cariappa Higher Secondary School, Saligramam, Chennai, as a Junior Assistant. While so, certain charges had been framed against him, by the School Committee, which is the statutory disciplinary authority. The Fourth Respondent was given an opportunity to submit his explanation. Thereafter, by following the necessary procedures, it had been decided to dismiss him from service. After passing the necessary resolution, the School Committee had submitted the proposed punishment for the prior approval of the competent authority, namely, the Chief Educational Officer, Saidapet, Chennai, the Second Respondent herein, as prescribed in the Tamilnadu Recognised Private Schools Regulation Act, 1973, and the Rules made thereunder. However, as the Fourth Respondent had approached this Court and had obtained an order of stay of the said proposal, in W.M.P. No. 5086 of 2003, in W.P. No. 4039 of 2003, the Second Respondent was not in a position to pass any orders on the proposed punishment. The order of stay was in force till a final order had been passed by this Court, on 15.12.2008,

dismissing the writ petition.

2. It has been further stated that the Fourth Respondent had filed another writ petition, in W.P. No. 11997 of 2006, claiming his salary for the period, from 1.8.1998 to 27.1.2002. The said writ petition had been disposed of by this Court, by its order, dated 15.12.2008, with certain directions. After the disposal of the said writ petition the Second Respondent had passed an order, on 3.4.2009, rejecting the proposal of the School Committee to dismiss the Fourth Respondent from service. Challenging the said order of the Second Respondent the petitioner had preferred an appeal before the First Respondent. While so, the Third Respondent had passed an order, on 21.4.2009, directing the school management to pay the salary for the period, from 1.8.1998 to 27.1.2002. Challenging the said order the petitioner had filed an appeal before the First Respondent.

3. It has been further stated that, on 30.7.2007, the School Committee had framed another set of charges against the Fourth Respondent. Since the Fourth Respondent had not submitted his explanation to the said charges he had been suspended from service, for a period of sixty days, pending enquiry, as per the resolution passed by the School Committee. Thereafter, the Fourth Respondent was given an opportunity to submit his explanation to the charges levelled against him. He had appeared before the School Committee and had submitted his explanation. The School Committee, having considered the explanation submitted by the petitioner, had come to the conclusion that all the charges levelled against the petitioner had been proved. Therefore, it was resolved to impose the punishment of dismissal on the petitioner. The said resolution had been submitted to the Second Respondent for his prior approval, as prescribed u/s 22 of the Tamilnadu Recognised Private Schools Regulation Act, 1973. The final decision had been communicated to the Fourth Respondent, as stipulated by the said Act and the Rules framed thereunder. However, the Joint Director had passed an order, dated 19.10.2009, rejecting the request of the school management, for approving the resolution of the School Committee to impose the punishment of dismissal on the Fourth Respondent, who was working as a Junior Assistant in the said school.

4. The main grounds on which the First Respondent had rejected the request are that the school management had not followed the relevant rules before taking action against the Fourth Respondent. It had also been stated that the same charges had been repeated for the second time, based on which disciplinary proceedings had been initiated against the Fourth Respondent. The First Respondent had also stated that, after imposing a minor punishment, the school management ought not have re-opened the matter, especially, when the Fourth Respondent had offered his voluntary retirement from service, even though it had been withdrawn, subsequently. Further, the school management had passed orders, without obtaining the prior approval, from the authority concerned.

5. It has been further stated that the grounds found in the order of the First

Respondent, for rejecting the request of the school management, for approval of the resolution to dismiss the Fourth Respondent from service, were related only to the appeals made against the order of the Chief Educational Officer rejecting the request for approval of the punishment proposed by the resolution of the School Committee, which is the disciplinary authority, as per the provisions of the Tamilnadu Recognised Private Schools Regulation Act, 1973, and the rules framed thereunder. It has also been pointed out that, with regard to the appeal filed against the order of the District Education Officer, Chennai South, Egmore, Chennai, the First Respondent had not given any reason in respect of the points raised in the said appeal, pertaining to the payment of salary to the Fourth Respondent. The grounds found in the impugned order of the First Respondent, dated 19.10.2009, for rejecting the request of the school management to grant approval for imposing the punishment of dismissal on the Fourth Respondent are not sustainable in the eye of law. The school management had followed all the necessary procedures, as per the Tamilnadu Recognised Private Schools Regulation Act, 1973, and the Rules framed thereunder. Principles of natural justice had also been followed before the decision had been made to impose the punishment of dismissal from service on the Fourth Respondent. While so, it is not open to the First Respondent to reject the proposal of the school management to dismiss the Fourth Respondent from service, based on the charges, levelled against him. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

6. In the counter affidavit filed on behalf of the Respondents 1 to 3, it had been stated that the School Committee of General Cariappa Higher Secondary School, Chennai, had framed certain charges against the Fourth Respondent. Based on the enquiry conducted, it had been decided by the School Committee to dismiss him from service. The proposal had been submitted before the Second Respondent, for getting his prior approval. While so, the Fourth Respondent had obtained an order of stay against the action of the school committee. Final orders had been passed in the writ petition, in W.P. No. 4039 of 2003, filed by the Fourth Respondent, on 15.12.2008. As per the order of this Court, the Chief Educational Officer, Chennai, had passed orders, on 3.4.2009, rejecting the proposal of the school committee, imposing the punishment of dismissal from service on the Fourth Respondent.

7. It has also been stated that, as per the decision of this Court, dated 15.12.2008, made in W.P. No. 11997 of 2006, the Third Respondent had passed orders in favour of the Fourth Respondent, directing the management of the school to pay his salary for the period, from 1.8.1998 to 27.1.2002. Aggrieved by the said order, an appeal had been filed by the petitioner before the First Respondent, who is the appellate authority. The First Respondent, after scrutinizing all the relevant records, had passed orders, on 19.10.2009, rejecting the appeal filed by the petitioner, as it was devoid of merits.

8. It had also been submitted that the school committee had not followed the relevant provisions of the Tamilnadu Recognised Private Schools Regulation Act, 1973, and the Rules framed thereunder, while imposing the punishment of dismissal from service on the Fourth Respondent. The school committee had not obtained the prior approval of the competent authority to impose such a punishment on the Fourth Respondent. It had been admitted by the petitioner that the final order of dismissal had been served on the Fourth Respondent, on 26.11.2007, before obtaining the prior approval of the competent authority. Thus, the said order had been passed contrary to the procedures prescribed by the relevant provisions of the Tamilnadu Recognised Private Schools Regulation Act, 1973, and the Rules framed thereunder.

9. It has also been stated that the disciplinary action initiated against the Fourth Respondent, during the year, 1998, had concluded with the minor punishment of "censure" being imposed on him. Only thereafter, the Fourth Respondent had submitted an application to go on voluntary retirement. While so, it would not be proper on the part of the school management to impose an order of dismissal from service on the Fourth Respondent. Further, as per Rule 22 (3)(b) of the Tamilnadu Recognised Private Schools Regulation Act, 1973, no suspension shall remain in force for more than a period of two months from the date of such suspension, if the enquiry contemplated by the management had not been completed within the said period. In the present case the enquiry had been completed within the prescribed period. However, final orders had not been passed within the period prescribed in the said rule.

10. It had also been stated that, after the application of the Fourth Respondent, forgoing on voluntary retirement with effect from the month of October, 1998, had been accepted, it would not be open to the school committee to pass a resolution to dismiss the Fourth Respondent from service. As such, the said resolution of the school committee is arbitrary and illegal. It had also been stated that the Fourth Respondent, who had given the application, on 9.2.1998, to go on voluntary retirement, had withdrawn the said application, before the crucial date. In the meantime the school concerned came under the "Direct Payment System". On the basis of the appeal made by the Fourth Respondent, he had been reinstated in service, as per the instructions of the Director of School Education, dated 9.10.2001, and by the orders of the District Educational Officer, South, dated 15.10.2001. In such circumstances, the management of the school had been directed to pay the salary to the Fourth Respondent, from 1.8.1998 to 27.1.2002, as per the relevant provisions of the Act and the Rules framed thereunder. As such the writ petition filed by the petitioner is devoid of merits and therefore, it is liable to be dismissed.

11. In the counter affidavit filed on behalf of the Fourth Respondent it has been stated that he has been deprived of the lawful salary due to him for the period, from 1.8.1998 to 27.1.2002, by the school management and therefore, the authorities concerned were right in directing the school management to pay the

salary for the said period.

12. In view of the averements made on behalf of the petitioner, as well as the respondents and on a perusal of the records available, it is noted that the District Educational Officer was in charge of the management of the school concerned, during the relevant period. It is also noted that the school management had initiated action against the Fourth Respondent, based on certain charges levelled against him, as per the relevant provisions of law. Even though it has been stated in the impugned order of the First Respondent that the relevant rules had not been followed, while proposing to impose the punishment of dismissal from service on the Fourth Respondent, no specific rules have been mentioned in the said order. Further, it is not the case of the respondents that the order of dismissal from service had been imposed on the Fourth Respondent, in a mala fide manner. Even if it is found that the order passed by the school management was erroneous in nature, it is for the State government to pay the salary due to the Fourth Respondent for the period, from 1.8.1998 to 27.1.2002. In such circumstances, this Court finds it appropriate to set aside the order of the First Respondent, dated 19.10.2009, in so far as it relates to the direction issued by the First Respondent, directing the school management to pay the salary to the Fourth Respondent, from 1.8.1998 to 27.1.2002. However, the request of the petitioner to direct the Second Respondent, to grant approval for the proposed punishment to be imposed on the Fourth Respondent, stands rejected. The Third Respondent is directed to pass appropriate orders granting the salary due to the Fourth Respondent for the period, from 1.8.1998 to 27.1.2002, as expeditiously as possible. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.