

**(1988) 01 MAD CK 0028**

**In the Madras High Court**

**Case No : Writ Petition No. 13881 of 1986**

|                                                             |            |
|-------------------------------------------------------------|------------|
| Sengunthar Higher Secondary School Committee, Thuraiyur     | APPELLANT  |
| Vs                                                          |            |
| The Principal Subordinate Judge, Tiruchirappalli and Others | RESPONDENT |

**Date of Decision : 07-01-1988**

**Acts Referred:**

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 22, 22(2), 23, 41, 44(5)

**Citation : (1989) 1 LLJ 252**

**Hon'ble Judges : T. Sathiadev, J**

**Bench : Single Bench**

## **Judgement**

T. Sathiadev, J.—The petitioner is the committee of management of Sengunthar Higher Secondary School at Thuraiyar. It files the writ

petition to quash the order of the first respondent dated 5th November 1986 and to direct the third respondent to approve the order of dismissal

of the 4th respondent dated 21st August 1982. The forth respondent was working as Grade-I Tamil Pandit in the petitioner school. It was found

that he had started a parallel association and therefore he was asked to explain for this conduct on 22nd March 1982. He sent a reply on 29th

March 1982. Charges were framed on 12th April 1982. In the meanwhile, as he had abused and beat the Headmaster, a notice was issued to him

on 7th June 1982 and additional charges were framed against him on 8th June 1982 itself. He sent his reply on 10th June 1982 to the notice dated

7th July 1982. He was asked to appear for an enquiry on 12th July 1982. On 7th July 1982 he stated that as proper procedure was not being

followed, he was not partaking in the enquiry. On the date fixed for enquiry he did not appear. Hence on 16th July 1982 a show cause notice was

issued calling upon him to state as to why he should not be removed from service. Thereafter on 7th August 1982 the school committee by a

resolution resolved to remove him from service with effect from 25th August 1982. u/s 22(2) of Tamil Nadu Recognised Private Schools

(Regulation) Act, petitioner sent an application for approval of the resolution to remove the fourth respondent from service. As there was no

prompt response, by order dated 21st August 1982 the fourth respondent was removed from service, with effect from 25th August 1982.

Aggrieved against the said order, fourth respondent preferred an appeal to the Joint Director of School Education u/s 23 of the Act on 30th

August 1982. It is only thereafter on 15th October 1982 the Chief Educational Officer refused approval for removing him from service. W.P. No

4561 of 1983 was filed by fourth respondent to direct the appellate authority to dispose of the appeal within a time fixed by Court. Based on the

order passed by this Court, on 1st August 1983 the Joint Director allowed the appeal, directing the re-instatement of fourth respondent with back

wages. Aggrieved with such order, the petitioner preferred W.P. No. 7702/1983 on the file of this Court which directed the petitioner to seek for

remedies provided under the Act. Hence an appeal was preferred u/s 41 of the Act to the first respondent Tribunal, which by order dated 5th

November 1986 had dismissed the appeal, on the ground that the petitioner management had not secured the required prior approval u/s 22(2) of

the Act. Hence, it has preferred the present writ petition.

2. Mr. V. Krishnan, learned counsel for the petitioner, made an ingenuous submission that, when the appellate authority found that the order of

removal from service was not a valid order because of failure to obtain prior permission as required u/s 22(2) of the Act, the fourth respondent

could not have preferred an appeal against such an order. According to him u/s 22, an appeal could be preferred only against orders of dismissal,

removal or reduction in rank etc. Once in law, it is found that there was no valid order of dismissal, there was no scope for the fourth respondent

to prefer any appeal against or the dated 21st August 1982 passed by the petitioner. There is no need to subscribe any elaborated reasons for

rejecting such a plea, because factually on passing the order dated 21st August 1982 the fourth respondent had been prevented from functioning as

Tamil Pandit. Petitioner had passed the order with an intention to remove him from service. It is when such an order of removal is passed, it entitles the affected party to prefer an appeal u/s 23 of the Act. Later on, if it is found that such an order is either illegal or inoperative or passed without jurisdiction, it would not mean that the order so passed was neither an order of dismissal or removal. Illegality in an order of dismissal or removal would not make such order anything less than an order of dismissal or removal. The right to prefer an appeal is provided, when the order served professes to be one which results in the teacher being dismissed or removed from the service and that would suffice for the purpose of preferring an appeal u/s 23 of the Act. Therefore the plea that the order dated 21st August 1982 could not be treated as an order of dismissal at the behest of the petitioner, will have to be rejected. Hence, the appeal preferred by the fourth respondent to the Joint Director was a valid appeal u/s 23 of the Act.

3. The other contention taken up by Mr. Krishnan, learned counsel for the petitioner, is that, on the Tribunal being moved u/s 41 of the Act, it was obliged not only to consider the legal contentions, but should also go into the merits of the matter, and decide whether factually, as claimed by the management, the fourth respondent was guilty of the charges or not. He states that, merely because prior approval had not been obtained u/s 22(2) of the Act, the Tribunal cannot dispose of the matter without rendering findings on merits, and therefore, there being failure to exercise proper jurisdiction u/s 41, and that being an error apparent on the face of the order, the matter requires to be remitted back to the Tribunal with a direction to dispose it on merits.

4. Undoubtedly the Tribunal would have jurisdiction to go into the merits of the matter. Yet in a case wherein the order as such, is infested with any illegality or any statutory non-compliance, then it has the necessary discretion to dispose of the matter on such patent illegality being made out, without going into the merits of the matter. It found, and in fact admittedly on the day when the order of removal was passed by the management, it had not obtained the approval. On 9th August 1982 it sought for approval and on 21st August 1982 itself the order of removal having been passed, there has been a patent omission to comply with the statutory

requirement in passing the order of removal. The Chief Educational Officer refused to grant approval on 15th October 1982. Hence when the statutory requirement had not been complied with, the Tribunal had rightly held, that the order of removal was illegal, and had left to the Management to seek for an approval from the appropriate authority. No exception could be made to such disposal of the matter of this nature. As to whether there had been a proper opportunity extended by the management to fourth respondent or not, will be an aspect which the approving authority will take into account. Hence, the contention that the Tribunal ought to have gone into merits of the matter, irrespective of an omission to comply with the statutory requirement, cannot be accepted.

5. Hence, on both the points the petitioner management has failed, and it results in the writ petition being dismissed, leaving it for the Chief

Educational Officer to take up the matter relating to approval and pass suitable orders thereon.

6. It is stated that, during the pendency of the appeal before the Tribunal, the Management had deposited certain amounts. The learned counsel for

the fourth respondent by relying on Section 44(5) of the Act submits that the amount due to him as deposited shall be paid when final order is

passed by the Tribunal. Petitioner having not obtained prior approval, and there being no valid order of removal as on date, the fourth respondent

is entitled to be treated as continuing in service. Therefore fourth respondent would be entitled to draw the entire amount deposited in the Tribunal,

on production of steno copy of this order, and without prejudice to the contentions of the parties in the proceedings that may be pursued by them

later on. No precondition could be imposed upon him, in seeking for withdrawal of the amount.

7. The order of reinstatement passed by the Joint Director on 1st August 1983 is available to him, and it would be in the interests of the petitioner

Management to permit him to join duty without prejudice to the proceedings already taken, and which would now be pending before the Chief

Educational Officer. No useful purpose would be served by continuing to pay the fourth respondent without extracting work from him. Hence, he

would be entitled to join duty. Hence, this writ petition is dismissed with the aforesaid directions. No costs.