

(1999) 11 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 11596 of 1999 and W.M.P. No's. 16373 and 16374 of 1999

Sir M. Venkata Subba Rao Matriculation Higher, Secondary
School, Staff Association

APPELLANT

Vs

Sir. M. Venkata Subba Rao Matriculation Higher Secondary
School

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Constitution of India, 1950 — Article 25, 30, 30(1)

Citation : (1999) 11 MAD CK 0079

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : K. Chandru, for Mr. D. Hariparanthaman, for the Appellant;

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—In this writ petition, the Staff Association of Sir M. Venkata Subba Rao Matriculation Higher Secondary School, represented by its Secretary has prayed for the issue of a writ of certiorari calling for the records relating to the order dated 9.6.1999 passed by the respondent ordering for a levy of penalty of Rs. 25/- per day from teachers for not adhering to Dress Code and recovery of the penalty from the salary of the teachers and quash the same. Heard Mr. K. Chandru, learned Senior Counsel appearing for Mr. D. Hari Paranthaman.

2. The Madras Seva Sadan is a registered Society running five schools in Chennai. The respondent is one of the five schools, which is located at T. Nagar. The respondent school is run on Matriculation Pattern and it has also an Higher Secondary Wing. In all, about 1400 students are studying in the school. There are 58 teachers and 11 non teaching staff working in the said school. The school is making enormous profits since it is a Higher Secondary School and affiliated to Tamil Nadu State Board of Higher Secondary Education.

3. According to the petitioner, the respondent school is a private school as

defined u/s 2(7) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. Further, the respondent-school has also been recognised by the Matriculation Board and the school is bound by the Code of Regulations framed for Matriculation Schools in Tamil Nadu. As the Scales of pay of the teachers was not revised, the Writ Petitioner, Association filed W.P.No:20488 of 1998 praying for the pay and allowance to be revised and fixed in conformity with the rates of pay fixed by the State in respect of Teachers employed in the Government Schools. This Court ordered notice of motion on 24.12.1998 and the writ petition is pending. Ever since the filing of the writ petition, the respondent school came down heavily on all teachers by taking various vindictive measures and as a climax, the Secretary of the petitioner-Association has been dismissed on 16.6.1999. The said dismissal, it is stated, is in flagrant violation of principles of natural justice. In this writ petition, we are not concerned with the revision of pay scales on par with Government institutions, nor with the dismissal of Asraf Ali, the Secretary of the Staff Association.

4. The respondent by Circular No. 1/99, dated 12.2.1999 while modifying the Clause-I of the Code of Conduct issued revised Dress Code, which is to come into force immediately. The Circular reads thus:-

"Masters should wear full trousers, full sleeve shirts and shoes with socks, ties are optional.

Lady teachers should wear sarees, blouses with sleeves or salwar kamiz with duppata.

T-Shirts, shirts without collars, Jeans and Hawaiian Chappals will not be allowed for both ladies and gents. All the Masters and Lady Teachers should strictly adhere to this Dress Code, whenever and wherever they may be on the School campus.

5. Subsequently, the Staff Association while referring to the said circular dated 12.2.1999 pointed out that the circular is not in accordance with the norms and Code prescribed for the teachers besides contending that half-sleeves slacks suit the Indian climatic condition and requested the respondent management not to insist as to wear only full sleeves shirts.

6. The petitioner also pointed out that as regards the lady teachers, there are few Anglo-Indian teaching staff and they have been coming in their traditional dress, which shall not be interfered. The respondent-school, by its reply dated 4th March, 1999 replied that the dress Regulations issued in Circular No. 1/99 dated 12.2.1999 has been considered in depth and the circular was issued for honouring the same. The implementation is, therefore, mandatory and rejected the request of the petitioner Association to revise the circular. Once again the petitioner Association took up the matter by its representation dated 22.2.1999. Though the Learned Counsel for the petitioner has filed a typed set containing various correspondences which relate not only to the issue relating to Dress Regulation, but also other regulation, with which we are not concerned in this

writ petition.

7. Once again, the respondent by a notice dated 19.6.1999, brought to the notice of the teaching staff, the requirement to follow the Dress Code, warned against the tendency to flout the modified Dress Code by some of the staff members and also added that in case of violation, a sum of Rs. 25/- will be levied as penalty for each day to such of those teachers who are not adhering to the Dress Code. The said notice dated 9.6.1999 reads thus:-

"It is seen that the tendency to flout the modified, Dress Code persists among many of the teaching staff and in spite of repeated instructions issued to adhere to the modified Dress Code many of the teaching staff are not following the instructions. Today, on 9.6.1999, many of them have attended the classes in half sleeves. As this amounts to deliberate act of indiscipline, and as the teachers are expected to set an example in maintaining discipline in the school, it is hereby modified that a sum of Rs. 25/- will be levied as penalty each day to such of the teachers as are not adhering to the Dress Code. The penalty will be recovered from their salary every month after recording the number of days on which the teachers flout the Dress Code during the month."

8. Being aggrieved by the said notice and insistence for compliance of Dress Code the present writ petition has been filed by the Staff Association contending that the respondent has no authority to change the Dress Regulation, nor it has got the power to insist for such a code of conduct.

9. Mr. K. Chandru, learned senior counsel appearing for the writ petitioner Association referred to the Code of Conduct in respect of Matriculation Schools as well as the provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act, which also provides for Code of Conduct; The learned senior counsel referred to Section 21 of the Tamil Nadu Recognised Private Schools (Regulations) Act, as according to the learned senior counsel, the respondent is a private school as defined in Section 2(7) and it runs Higher Secondary Classes and to that extent, the provision of the Tamil Nadu Recognised Private Schools (Regulations) Act alone will apply and govern the relationship.

10. The learned Senior Counsel also referred to the Code of Conduct prescribed for Matriculation Schools and after referring to the same, the learned Senior Counsel contended that in so far as there is no provision with respect to the Dress Regulations for the teaching staff either in the Tamil Nadu

9. Recognised Private Schools (Regulations) Act or in the Code provided for Matriculation Schools. The respondent has neither the authority, nor the power to impose such Dress Regulation, nor it has got the power to levy a penalty in case of non-adherence to Dress Regulation.

11. The learned senior counsel also contended that the statutory provisions of the Tamil Nadu Recognised Private Schools (Regulations) Act alone will apply and any Code of Conduct which is not provided for in the Act is inapplicable and

unenforceable. It is also contended that no disciplinary action could be taken by the respondent if the teachers do not adhere to the Dress Regulations or Code prescribed by the respondent school. The learned senior counsel also pointed out that three of the teachers are Anglo-Indian teachers and they are entitled to follow their own dressing pattern and they cannot be compelled to change their custom and adhere to the Dress Regulation prescribed by the respondent school.

12. Here and now it has to be pointed out that the regulation of dress is neither onerous nor it is impossible of compliance, nor it is an arbitrary or onerous or an extraordinary condition which is sought to be introduced for the first time. It is also the contention of the learned senior counsel for the writ petitioner that such a regulation interferes with the fundamental rights of the Teaching Staff employed in the second respondent school, besides amounting to introduction of a new condition.

13. The learned senior counsel also contended that the respondent school has no Authority to introduce a new condition or change on the conditions of service. Such a provision to impose penalty is penal in nature and therefore, the circular is liable to be quashed by this Court.

14. The Tamil Nadu Educational Rules were referred, which Rules classify the institutions and also provides disciplinary regulations. Appendix to the Rules prescribes the form of agreement to be adopted by all the aided management schools in respect of teachers employed. Clause VI of the agreement reads thus:-

"That the said teachers shall conform to all the rules and regulations for the time being in force of the said school and obey all lawful orders and directions as he shall from time to time receive from any authorised officer of the said school".

15. The Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 came into force on 20th June 1974. Section 2(7) defines Private School. The respondent School with respect to Higher Secondary classes falls within the definition of Private Schools as defined in Section 2 (7) of the Act. Chapter V of the Act provides the terms and conditions of service of Teachers and other persons employed in the Private School. Section 21 provides that teachers employed in private schools are governed by the Code of Conduct. Section 21(1) provides, if any teacher violates any provision of such Code of Conduct, he shall be liable to such disciplinary action as may be prescribed.

16. Sub-Section (2) of Section 21 provides that the School Committee may define the standard of Code of Conduct to be observed by teachers and other persons employed in the private schools which are not being inconsistent with the provisions of the Act and the Rules framed thereunder. It is clear from the sub section (2) of Section 21 that the School Committee may define the standard of conduct to be observed, which are not inconsistent with the provisions of the Act and the Rules framed thereunder. This statutory provision enables a School Committee to detune the standard of conduct.

17. The Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 had been framed by exercise of powers conferred u/s 56 of the Act. Rule 15 prescribes the qualification, condition of service of teachers. Rule 16 provides that teachers and other persons employed in the Private Schools are to be governed by the Code of Conduct specified in Annexure II Sub Rule (2) of Rule 16 provides that a teacher employed in private School shall be liable to disciplinary action and punished when he violates any provision of the Code of Conduct which may include dismissal or removal or termination of service or reduction in rank. Annexure II prescribes the Code of Conduct for the teachers. Despite that there is no provision, much less a specific provision in the said Annexure which stipulates a particular dress or with respect to the Dress Regulation in the Code of Conduct for teachers employed in a private school. In terms of Rule 15 standard format has been provided with respect to the agreement to be executed by a School Committee of a Private School in respect of very-many teachers.

18. The Code of Regulations for Matriculation Schools also been prescribed in the State of Tamil Nadu. Chapter VI of the said Regulation prescribes the qualification of the staff. Their salary and for retrenchment and the termination as the case may be. Regulation 22 prescribes the agreement to be signed between the management and the teaching staff. Appendix-VII prescribes the Code of Conduct for the teachers and others employed in matriculation schools. Annexure-VIII prescribes the form of agreement to be entered between the management of the Matriculation School on the one hand, and the Teachers on the other hand.

19. On a conjoint reading of the above provisions, it is clear that the School Committee or the management of the school has powers to issue certain directions with respect to the Dress Regulation both in respect of students as well as staff members. There is no provision in the Act or the Rules or the Education Code which restricts the powers of the school management or the School Committee with respect to issue of such directions or stipulating Dress Regulations either in respect of the students or in respect of the teaching staff to maintain discipline. There is nothing to inter from the rules that the management has no power to stipulate a Dress Regulation.

20. A Dress Regulation could be stipulated by the management even in terms of Section 21(2) which statutory provision enables a Private School to impose or frame such Regulations or conditions to enforce discipline in so far as they are not inconsistent with the provisions of the Act or the Rules framed thereunder. This Section 21(2) of the. Act enables the School Committee to define the standard of conduct to be observed by the teachers and other persons employed in a Private School, but such standards shall not be inconsistent with the provisions of the Act and the Rules framed thereunder.

21. Sub Section (2) of Section 21 enables the School Committee to define the standard of conduct which would very well include a Dress Regulation as well for

the teachers also. There is nothing in the Act or in the Rules which takes away the powers of the School Committee or management from imposing such restriction with respect to the Dress Regulation even in respect of the teaching staff.

22. It is to be pointed out that the issuance of the Dress Regulation or guidelines also in no way contravene any of the provisions of the Act or the Rules, nor it runs counter to Code of Conduct framed under the Act or Regulations framed thereunder, nor it runs counter to any of the stipulations in the agreement to be entered between the management and the teacher which is prescribed under the Regulations.

23. In the circumstances, this Court is of the considered view that the respondent school has the authority to frame Dress Regulations and regulate the conduct of the teaching staff, including their Dress Regulations. The regulation of dress which the respondent school had prescribed is of normal standards and it is decent and in no way interfere with the fundamental right or freedom, nor it in any way places the staff in an unpleasant situation or posture or appearance.

24. To maintain the decorum and to add glory to the teachers, such a Dress Regulation has been imposed by the respondent school and it cannot be said that such a Dress Regulation had in any manner contravened any of the provisions of the Act or the Rules, nor it infracts the fundamental rights guaranteed by the Constitutional provisions, nor it changes the conditions of service of teacher. It is also to be pointed out that wherever the Act has no application, the agreement entered into between the parties shall apply and wherever there is a gap, it is well open to the School Management to step in and fill up the gap.

25. In *Frank Anthony Public School Employees Assn. v. Union of India* (1986 - 4 SCC 707) their Lordships of the Supreme Court held thus:.

"In *State of Kerala v. Very Rev Mother Provincial*, it was conceded by the petitioners representing the minority communities (as indeed they were bound to do having regard to the authorities of the Court) that the State or the University to which these institutions were affiliated may prescribe standards of teaching and the scholastic efficiency expected from colleges. It was also conceded that to a certain extent conditions of employment of teachers, hygiene and physical training of students can be regulated. While administration was explained as "Management of the affairs" of, the institution and it was said that this Management should be free of control so that the institution could be moulded in accordance with the Management's ideas of how the interests of the community in general and the institution in particular would be best served, it was pointed out that there was an exception to this and it was that the standards of education were not a part of Management as such. It was said (SCC P. 42 para 10):

The standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special

subjects which the institutions may seek to teach, and to certain extent the state may also regulate the conditions of employment of teachers and the health and hygiene of students.. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards all allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of Management, to decline to follow the general pattern. While the Management must be left to them, they may be compelled to keep in step with others",

(emphasis added)

One of the questions in the case related to the validity of Section 36 Sub sections (2) and (4) of the Kerala University Act 1969 (9 of 1969) -Section 56 (3) provided that no teacher of a private college should be dismissed, removed or reduced in rank without the previous sanction of the Vice - Chancellor or placed under suspension for a continuous period exceeding fifteen days without such previous sanction. Section 56(4) provided that a teacher against whom disciplinary action was taken shall have a right of appeal to the syndicate, it was held that these provisions clearly took away the disciplinary action from the governing body and the managing council and conferred it on the university. The view of the High Court that sub-sections (2) and (4) were ultra vires Article 30(1) of the constitution in respect of minority institutions was upheld."

In the same judgment, it has been further held thus:

15. In the Nine Judge Bench, Ray C.J. and Paleker J as we have already seen, expressed the view that the conditions of employment of teachers was a regulatory measure conducive to uniformity, efficiency and excellence in educational courses and did not violate the fundamental right of the minority institutions under Article 30. Jaganmohan Reddy, J., and Alagiriswami J., who agreed with the conclusions of Ray, C.J. did not say anything expressly about salary, allowances and other conditions of employment of teachers. Khanna, J, expressed the view that to a certain extent, the State may also regulate the conditions of employment of teachers and added that it would be permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. The latter statement of Khanna, J., it was contended for the respondents, limited the extent of the right of the State to regulate the conditions of employment of teachers. We cannot agree with the contentions. The statement that the state may make regulations for ensuring the regular payment of salaries before a particular date of the month was in addition to what was said earlier that to a certain extent, the State may also regulate the conditions of employment of teachers. In fact, while dealing with the question of disciplinary control, Khanna, J, also said that provisions calculated to safeguard the interest of teachers would result in security of the tenure and that would inevitably attract competent persons for the posts of teachers. The same thing may be said about better scales of pay and decent conditions of service. Mathew,

J., with whom Chandrachud, J agreed also indicated that economic regulations; social welfare legislation, wage and labour legislation and similar measures where the burden was the same as that borne by others would not be considered on abridgement of the right guaranteed by Article 30(1) Thus, we see that most of the learned judges who constituted the Nine judge Bench were inclined to the view that prescription of conditions of service which would have the effect of attracting better and competent teachers would not be considered violative of the fundamental right guaranteed by Article 30 (1) of the Constitution. That would rightly be so because the mere prescription of scales of pay and other conditions of service would not jeopardise the right of the management of minority institutions to appoint teachers of their choice." ,

26. The learned senior counsel appearing for the writ petitioner relied upon a judgment of this Court in *Mukhtar Pasha B. v. The General Manager Personnel Administration, Electricals Ltd.* (1991 Writ L.R.654), where a Division Bench of this Court while reversing the judgment of Mohan J., reported in 1987 Writ. L.R. 486 held that neither the Standing Orders nor the Rules framed thereunder or any" other provision of the Act prohibits the members of the security force to keep a beard. The Division Bench while considering the disciplinary action that has been taken in that case held that if there is an executive or standing order prohibiting to keep beard by a member of the security force, the respondents would be well within their rights to take such action. In, that context it has been held thus.

"4. Undoubtedly, if there are any rules, regulations, standing orders or even executive instructions prohibiting the keeping of beard by members of the security Force, the respondents would be well within their rights to direct the employees not to keep a beard whether such rule or regulation, etc, would be sustainable in the face of Art. 25 of the Constitution of India is a different question. Therefore, in the first instance, it would be necessary to examine as to whether there are any rules, regulations, standing orders or executive instructions, having the force of rules/law of the department governing the matter under consideration which prohibit the members, of the Security Service serving Bharat Heavy Electricals Limited to keep a beard."

However, neither the Industrial Security force Act, nor the Rules framed thereunder or the Standing Orders prohibited a member of the Security Force from keeping a beard in that context, the Division Bench held thus:-

"Neither under the Act nor the Rules framed thereunder, or the Standing Orders, if there any provision which prohibits the members of the security force to keep a beard, Learned Counsel for the respondents was unable to refer to any provision prescribing the norms of personal appearance in the Act, Rules or Standing Orders. In vain did we search for even an executive instruction which could be supplemental" in character prohibiting the keeping of beard by the members of the Security Force. According to Learned Counsel for the respondents, however, it is open to the respondents to issue reasonable instructions to its employees

and their failure to carry out those instructions could invite disciplinary action. On principle, there can be no quarrel with the proposition that reasonable instructions can be given by the management to the employees."

27. The above pronouncement is far from supporting the contention of the Learned Counsel for the petitioner and supports the view taken by this Court that the respondent school has got the authority to frame Dress Regulation and enforce the same, and deviation from the said Regulation could very well be enforced by providing for such contingency which is also provided for in Sec. 21(2) of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

28. On a consideration of the said statutory provisions, this Court is of the considered view that the respondent school has got the authority to regulate the conduct of teachers even in respect of their dress and insist for the prescribed standard of dress being followed as stipulated by the School Committee/management and such a condition in no way runs counter either to the statutory provisions of the Act nor it in any manner infracts the constitutional provisions, nor it changes the conditions of service. As already pointed out Section 21 as well as Sub section (2) of Section 21 enables the School Committee to impose a penalty in case of violation of such Code of Conduct as may be prescribed by the School Committee or the management as the case may be. Hence, this Court is of the considered view that the impugned circulars are not liable to be quashed and they are valid and the said Circular in no way contravenes the contract of employment entered into between the teaching staff and the management. There are not merits. The writ petition fails and it is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are also dismissed.