

(1984) 08 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No. 3167 of 1984

Sivanarul

APPELLANT

Vs

State of Tamil Nadu and Vijaya Ananda

RESPONDENT

Date of Decision : 07-08-1984

Acts Referred:

Citation : (1986) ILR (Mad) 159 : (1985) 2 LLJ 133

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

1. The writ petition is for certiorarified Mandamus to call for the records relating to the impugned order, dated 30th August, 1983, passed by the

third respondent, to quash the same and direct the third respondent to continue the petitioner in service.

2. The petitioner is employed as a whole time teacher from the year 1980 under the third respondent. She completed her Bachelor degree in Tamil

in April 1980 and obtained her Master's degree in Tamil in 1983. She took her B.Ed. examination and was awaiting for the results, at the time of

filing of the writ petition. It is only on the footing that she is a whole time teacher, a certificate was issued to her to in the B.Ed. course for the

academic year 1982-83. Even though the petitioner was a full time teacher, she was made to sign a letter declaring her willingness to continue her

profession as a teacher in the said school at the commencement of every academic year.

3. In her affidavit the petitioner would stated that during her employment as a teacher instructing for standard IV and VIII from the year 1980, the

authorities of the School wanted her to embrace Christianity, should she desire to

continue as a teacher. The petitioner refused to do so. Therefore, a resignation letter was demanded of her and she was called upon to leave the School. She did not comply with this demand. She got married on 21st August, 1983. Thereupon, on 29th November, 1983, a letter, dated 30th August, 1983, was served on the petitioner terminating her services. It is the validity of this letter that is questioned. Aggrieved by the same she filed O.S. 633 of 1983, in the court of the District Munsif of Chidambaram seeking an injunction restraining the 3rd respondent from terminating her services. The petitioner was asked to report for duty every day, but she was not permitted to take any class. On 12th March, 1984 the learned District Munsif of Chaidambaram dismissed I.A. 2200 of 1983, in O.S. No. 635 of 1983, stating that he had no jurisdiction no entertain the suit.

4. Stating that she proposes to withdraw the suit and that her fundamental right under Art. 13 of the Constitution has been violated, she has come

forward with this writ petition on the following among other grounds :-

(i) The order of termination states that it has come to be done only because the petitioner got married. There is no prohibition under the Code of Regulation for Matriculation Schools, Tamilnadu, that a teacher's services, if the gets married, would stand terminated. Therefore, the order is illegal.

(ii) The management shall have the power to terminate the service of teacher only on the grounds enumerated in S. 20(B)(a) and (b) or for the violation of the Code of conduct prescribed under Appendix VII of the Code of Regulations for Matriculation Schools, Tamilnadu. As none of the provisions is violated, the termination on the ground of the marriage is illegal and void.

(iii) Even assuming that the marriage is a ground for termination, the order is mala fide because there is yet another teacher in the school, who is married. Her services had not come to be terminated because she is a Christian by religion. Therefore, the order of termination is violative of Arts. 14 and 16 of the Constitution.

(iv) Under proviso (i) to (iv) to S. 20(B) the petitioner should be given sufficient opportunity to put forth her case and an enquiry ought to have been conducted. No such enquiry was adopted. Therefore, it is violative of the

principles of natural justice.

(v) The bye-law under which the action is purported to have been taken is not sanctioned either by the Director of School Education or by the

Government of Tamilnadu. Therefore, the action of the 3rd respondent is illegal.

5. Mr. V. R. Venkataraman, learned counsel for the petitioner, submits, in support of the grounds raised in the affidavit, as follows :- No doubt, a

contract was entered into between the petitioner and the institution, but if such a contract is opposed to public policy, certainly, the court will (sic)

not deny the relief merely on the ground that the matter falls within the realm of contract. First of all, if the Educational Code gives right to the

petitioner, those rights can be enforced. Then again it is not a matter for which evidence is required for the petitioner to be denied a relief under

writ jurisdiction. In support of this submission P. M. John v. A. L. Pande 1965 2 S.C.R. 725, is cited. Then again Harijander Singh Vs. Selection

Committee, Kakatiya Medical College, Warrangal and Another, and C.T.I. College v. Chandra Mohan AIR 1971 All, 93, it has been held that

the Committee of management of an aided educational institution will be amenable to writ jurisdiction.

6. In this case the petitioner's services have come to be terminated purely on the ground of marriage. Therefore, such a discrimination is clearly

violative of Art. 14 of the Constitution of India, as laid down in Walter Alfred Baid Vs. Union of India and Others, and C. S. Muthaman v. Union

of India AIR 1979 S.C. 1869. In American Law also, such provision of termination of services of woman on the ground they became pregnant,

etc., had been held to be invalid as opposed to the 14th Amendment of the American Constitution. Vide : Cleveland Board of Education v. Laflour

39 Law Edn. 32, Turner v. Dept. of Employment Security 46 Law Ed. 182. Yet another case that was cited on behalf of the petitioner is

Harvinder Kaur Vs. Harmander Singh Choudhry, .

7. Lastly, it is submitted that the petitioner alone has been singled out for hostile treatment, because the 4th respondent though married, her services

are continued. This is because she happens to be a Christian.

8. Mr. M. Srinivasan, learned counsel for the 3rd respondent School. States first and foremost that the writ petition against the school is not

maintainable, because, it is a private school. The Code of Regulations for

Matriculation Schools does not apply, since temporary recognition for Standards I to VIII alone has been granted till 31st March, 1975.

9. Even otherwise, the parties are bound by the contract. The contract of service was for a period of one year for the academic year 1983-84.

The contract was prior to the recognition and hence that would remain unaffected.

10. There is contract of personal service. That cannot be enforced as against the school. It has been so laid down in *Kumari Regina Vs. St.*

Aloysius Higher Elementary School and Another, . If it is a non-statutory body, as laid down in *Executive Committee of Vaish Degree College*,

Shamli and Others Vs. Lakshmi Narain and Others, , no writ will lie. This is not a case in which even personal liberty is affected so as to enable the

petitioner to invoke Art. 21, because life does not include "livelihood". It has been so laid down in *Raza Pasha alias Kamar Miyan Vs. State of*

Madhya Pradesh, , *AIR India Vs. Nergesh Meerza and Others*, an *In Re: Badri Narayan Thakur*, :

11. In view of the above arguments, the following questions emerge for consideration :-

(1) Whether the writ petition is maintainable.

(a) because the third respondent school is a private institution.

(b) because the matter relates to the realm of contract ?

(2) If maintainable, whether the termination of the petitioner's services could be held to be legal ?

12. Question No. 1 - The admitted facts in this case are that the petitioner was employed from August, 1983, as a whole time teacher in the third

respondent school. That is evident from the following service certificate issued to her :-

SERVICE CERTIFICATE

I hereby certify that Thiru/Tmt/Selvi S. Sivanarul is employed as a wholetime teacher in Nirmala Matriculation School from August, 1980. She has

the permission of the management to join the B.Ed. degree course through correspondence during the academic year 1982-83.

I further certify that the applicant has on 30th June, 1982, put in a total service * of 2/two years and 5/five months as a wholetime bona fide

teacher in recognised institutions, as stated in column No. 10. Teaching Experience (State only the service put in recognised schools).

(total service in all recognised schools should be given)

School seal

Date

Signature of Headmaster/Headmistress

(Signature of the Secretary/Correspondent)

Sd. St. Valentine Mary,

Correspondent, Nirmala Matriculation School, Chidambaram.

Office Seal :

Office of the Inspector of Matriculation School,

Madras.

13. On 4th September, 1982, by the proceedings of the Director of School Education, made in Rc. No. 13594/B3/82, permission was granted to

the 3rd respondent to open a new matriculation school at Chidambaram in the name of "Nirmala Matriculation School", with Standards I to VIII

(English medium), under the management of the Immaculate Heart of Mary Society of Pondicherry and Tamil Nadu during 1982-83, subject to the

fulfilment of the conditions specified in the annexure to those proceedings.

14. The school was required to satisfy these conditions. As many as 10 conditions were imposed. The details of the same are not necessary for

our purpose. Suffice it to note that the management was called upon under Clause 7 to enter into an agreement with the teacher or a member of the

non-teaching staff, in the prescribed form. By proceedings, dated 3rd August, 1983, temporary recognition was accorded for Standard I to VIII in

Nirmala Matriculation School, Chaidambaram (3rd respondent) upto the period ending 31st May, 1983. Here again, the 3rd respondent was

required to create the balance if endowment of Rs. 50,000 in five annual instalments, to provide adequate and suitable buildings, laboratory

equipment, etc. No doubt, the 3rd respondent is private management. On that score, could it be said that it goes out of the purview of writ

jurisdiction ? I think not. On the mere fact that recognition is sought at the hands of the Government and the Government imposes several

conditions as a prelude to recognition, it cannot be stated that it is in the nature of such a private authority having no public duties to perform.

Suppose it were to merely impart private duties, it would be a different matter. But, where, by reason of recognition by the Government, the school

imparting education gets the advantage of admission from the general public, it cannot be stated that it is purely private and therefore no writ will

lie. In *Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another*, , it was held as follows :

The provisions of Ordinance 20, otherwise called the "College Code" have the force of law. It confers legal rights on the teachers of the affiliated

colleges and it is not a correct proposition to say that the "College Code" merely regulates the legal relationship between the affiliated colleges and

University alone. The provisions of the "College Code" relating to the pay scale of teachers and their security of tenure properly fall within the

statutory power of affiliation granted to the University under the Act.

Therefore, the College Code in that case created rights. Here Clause 7 of the Conditions creates rights.

15. In *Harijander Singh v. Kakatiya Medical College* (supra), the question arose whether a private college aided by Government and affiliated to

the Osmania University would be amenable to writ jurisdiction. In paragraph 84 and 85 it was observed thus :-

84. In so far as the first question is concerned it could not be disputed that the affiliation rules noted above are made in pursuance of the power

conferred on the University by S. 44(3) of the University Act. The rules therefore have force of law. It cannot be said that they constitute power of

management only. The rules requiring the governing body to be a registered body and that it should have on it representatives of the Government

and the University and the qualifications of the teaching staff and the conditions governing their tenure of office all lend support to a tripartite

contract between the governing body, the teacher and the approving authority i.e., the University and the Government. The teachers in such

colleges have status under the rules and in any case, they hold office. Apart from the express rules, the security of their tenure of office can easily

be spelt out from the various provisions of the rules of the University as well as the grant-in-aid Code of the Government. The rules relating to the

pay scales of the teachers and their security of tenure properly fall within the statutory power of affiliation granted to the University under the Act.

We have no manner of doubt that these rules create certain "rights" in the teachers of the affiliated colleges. They are not mere servants of the

college employed purely on contract by the managing committee of the college. They have a "status" although they enter in to a contract and in any

case they hold office. We are therefore satisfied that such cases are clearly governed by the decision in *Prabhakar Ramchandra Jeth v. A. K.*

Pande (supra).

85. Even otherwise, we think in an appropriate case a writ a certiorari can go against a private college although it is not a statutory body. The rules

of affiliation, even if taken to be non-statutory but mere administrative instructions issued by the University or the grant-in-aid Code by the

Government, they would not come in the way of issuance of such a writ. We thus come to consider the second question"".

In the light of the above decisions, in my considered view, the recognition accorded by Government is an important point to be borne in mind, as

that enables the school to gain certain advantages, the parents can also expected that their children, who undergo study in the school, will not be

left in lurch, if a transfer or promotion to some other school or college is sought. The fact that the 3rd respondent school obtains aid from the

Government or teaching grant from the Government also makes the position clear. If from out of the tax-payers money grants or aids are given,

can the school say that it is a private management and therefore it is not amenable to writ jurisdiction ? I should answer in the negative. Thus I hold

the writ petition is maintainable.

16. Contractual liability :- On 30th April, 1982, the petitioner wrote to the 3rd respondent school that she had served as a teacher for the past two

years from 1980 and that she would desire to continue her job next years onwards. Similarly, for the academic year 1983-84 she wrote another

letter. On 27th May, 1983 she was appointed as a teacher for the academic year 1983-84. In these state of affairs, the petitioner got married on

21st August, 1983. The governing body by its proceedings, dated 3rd June, 1981, had resolved as follows :-

.....

(b) The service of the teacher will be terminated with three months notice when she gets married for the following reasons -

(i) When she takes maternity leave, the small children's education will be affected without teacher for three months :

(ii) due to lack of funds a substitute cannot be appointed. So the class will suffer.

In exercise of the rights under the bye-law the impugned order of termination came to be passed stating that because of the marriage she was

required to leave the school by 30th November, 1983. It is true that as laid down in Regina v. St. A. H. E. School (supra), a contract of personal

service cannot be enforced. But, if a contract entered into between the parties is opposed to public policy and the termination is on an arbitrary or

flimsical ground, I should think that the Court cannot deny relief to the petitioner. No doubt, the petitioner has been entering into the contract every

year. If her services had come to a termination by efflux of time, that is a different matter. But during the currency of contract, viz., 8th March,

1984, if solely on the ground that she got married and therefore her services are to be terminated that has nothing to do with the contract of service

from year to year. Then again, normally the writ Courts negative the relief if the matter falls within the realms of contract, if it requires evidence, but

here no such evidence is required. The facts are admitted. In this case it seems to be a matter of practice to obtain letters of re-employment at the

end of every academic year. That is also reflected in the resolution (a). Therefore, I conclude the writ petitioner cannot be denied relief on the

ground that the parties are bound by the terms of the contract.

17. Then comes the important question, viz., the resolution relating to marriage. I have already extracted the minutes of the meeting of the

governing body, dated 3rd June, 1981. To highlight the issue let me again extract Cls. (b) and (c) of resolution No. 3 :

(b) The service of the teacher will be terminated with three months notice when she gets married for the following reasons -

(i) when she takes maternity leave, the small children's education will be affected without teacher for three months.

(ii) Due to lack of funds a substitute cannot be appointed. So, the class will suffer.

The concept of "marriage" as viewed by Joseph Addison is as follows :-

Marriage enlarges the scene of our happiness and of our miseries. A marriage of

love is pleasant - of interest, easy and where both meet happy. A

happy marriage has in it all the pleasures of friendship, all the enjoyments of sense and reason, and, indeed, all the sweets of life"".

George Eliot says as under :

What greater thing is there for the human souls than to feel that they are joined for life - to strengthen each other in all labour, to rest on each other

in all sorrow, to minister to each other in all pain, to be one with each other in silent, unspeakable memories at the moment of the last parting.

No less than the father of our nation, Mahatma Gandhi, eloquently said :-

Marriage is natural thing in life, and to consider it derogatory in any sense is wholly wrong. The idea is to look upon marriage as a sacrament and

therefore to lead a life of self-restraint in the married state.

To say that a teacher will lose her services on her getting married to forget the fact that the bloom or blight of all life"s happiness consists in

marriage. It is nothing more than a civilized way of living. To tie it merely to sex is not only obnoxious but is untrue. No wonder Channing Pittock

said :-

Marriage is the greatest educational institution on earth.

18. What is the reason that is given in the resolution. It is stated that when a teacher takes maternity leave, the children"s education will be affected

and that due to lack of funds a substitute cannot be appointed. First of all this is full of assumptions; in these modern days, that one should

necessarily beget a child is an assumption unwarranted. Secondly, it is not mere physical union, but union between two spirits. As Frederick

William Robertson said :-

Marriage is not a union merely between two creatures - it is a union between two spirits, and the intention of that bond is to perfect the nature of

both, by supplementing their deficiencies with the force of contract, giving to each sex these excellences in which it is naturally deficient; to the one,

strength of character and firmness of moral will, to the other, sympathy, meekness, tenderness and just so solemn and glorious as those ends are

for which the union was intended, just so terrible are the consequences if it be perverted and abused, for, there is no earthly relationship which has

so much power to ennoble and to exalt. There are two rocks, in this world of

ours, on which the soul must either anchor or be wrecked - the one is God, and the others is the sex opposite.

19. In a case which arose in the Supreme Court of the United States on *Cleveland Board of Education v. Laflour*, (supra) *Cohen v. Chesterfield*

Country School Board 114 U.S. 632, the question was whether mandatory maternity leave policies which require all teachers in a system to stop

teaching five months before the expected birth of a child violate the teachers' right to due process. Justice Stewart held :

Freedom of personal choice in matters of marriage and family life is one of the liberties protected by the due process clause overtly restrictive

maternity leave regulations can constitute a heavy burden on the exercise of these protected freedoms. The due process clause requires that such

rules do not needlessly, arbitrarily, or capriciously impinge upon this vital area of a teacher's constitutional liberty.

The right to personal life and liberty enshrined in Art. 21 of the Constitution must receive its full scope and meaning and therefore the resolution of

this character would be violative of Art 21. No doubt in *B. Babiraju v. State of AP*. AIR A.P. 1073, it was observed :

The argument, that the word "life" in Art. 21 of the Constitution includes "livelihood" has only to be stated to be rejected.

But, in the case on hand it is not livelihood, but living a civilized life. In this connection it is appropriate to quote *Karvinder Kaur v. Harmander*

Singh (supra), wherein it was observed as follows :

Marriage is the very foundation of civil Society. The relation, once formed, the law steps in and holds the parties to various obligations and

liabilities. It is an institution in the maintenance of which the public is deeply interested, for, it is the foundation of the family and of society without

which there would be neither civilization nor progress *Meganatha Nayagar Vs. Shrimathi Susheela*, . Whether it is English law or the Indian Act,

marriage is a voluntary union for life of one man and one woman to the exclusion of all others. (*Hyde v. Hyde* 1866 LR I.P.& D. 130, per Lord

Penzance.

Thus I conclude that the termination of the services of the petitioner purely on the ground that she got married is not only obnoxious but also

opposed to public policy. From this point of view, it is unnecessary to decide the

question of discrimination.

20. In the result, the writ petition will stand allowed with costs. Counsel's fee Rs. 300.