

(2002) 08 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 12363 of 1995 and W.M.P. No. 19715 of 1995

Swami Hariharananda, Secretary School Committee,
Vivekananda Hr. Sec. School

APPELLANT

Vs

Educational Appellate Tribunal (Principal Subordinate Judge),
Joint Director of Schools, (Secondary Education) and V.
Krishnamurthy

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 08 MAD CK 0041

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : A. Sankara Subramaniam, for the Appellant; R. Rajasekaran,
Government Advocate (Education) for RR1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The petitioner has filed the above petition seeking for a Writ of Certiorari o call for the records of the 2nd respondent

in K.Dis.11279 G7/88 dated 23-11-1988 confirming the order of the 1st respondent dated 17-04-1995 in C.M.A. No. 2 of 1989 and quash the same.

2. Heard both sides. The petitioner herein issued a charge memo to the 3rd respondent herein, who was employed as Junior Assistant in the

petitioner's school. After receipt of the charge memo, the 3rd respondent submitted his explanation within the stipulated time. Thereafter, the 3rd

respondent wrote a letter dated 07-02-1986 requesting Tamil translated version of the charge memo, which was also furnished to him on 05-03-

1986. Even after receipt of the Tamil version of the charge memo, the 3rd

respondent failed to submit his explanation till 07-04-1986 and he was placed under suspension with effect from 17-04-1986. The 3rd respondent submitted his explanation dated 10-04-1986 which was received by the petitioner/Management on 19-04-1986. However, the 3rd respondent failed to appear for the enquiry conducted by the School Committee and it on 23-04-1986 based on the explanation of the 3rd respondent held the charges against the 3rd respondent as proved. Ultimately, the 3rd respondent was dismissed from the services. Thereafter, petitioner/Management sent a letter dated 04-05-1986 to the Chief Educational Officer, requesting him to accord approval. It is also alleged by the petitioner that after several reminders, the Chief Educational Officer has passed orders in his proceedings R.C. No.15512 C2/86 dated 05-09-1986 rejecting the approval sought for by the petitioner. As against the order of the Chief Educational Officer, the petitioner/Management has filed an appeal before the Joint Director of School Education/2nd respondent herein. It is also alleged by the petitioner that after several reminders, the Joint Director granted approval by his proceedings K.Dis. 356975 87 dated 27-01-1988. After receipt of the permission from the Joint Director of School Education, the 3rd respondent was dismissed from his service by order dated 22-02-1988 with effect from 17-04-1986 namely the date in which he was placed under suspension.

3. The 3rd respondent has also filed an appeal before the 2nd respondent herein on 28-03-1988 and it after considering the evidence on record has dismissed the appeal on 23-11-1988 with a direction to the petitioner/Management to pay salary to the 3rd respondent for the period from 17-06-1986 to 21-02-1988.

4. Aggrieved by the said order, the Petitioner has filed an appeal before the 1st respondent/Tribunal. The 3rd respondent has also filed an appeal against the order of the 2nd respondent before the 1st Respondent to the extent which was adverse to him. The 1st respondent has taken both the appeals together namely Appeal Nos. 1 of 1989 and 2 of 1989 filed by the 3rd respondent and Petitioner respectively. The 1st respondent has found that inspite of opportunities afforded by the petitioner, the 3rd respondent has not appeared for the enquiry, hence, the order of dismissal passed by the Management was justified. Ultimately, the appeal preferred by the

3rd respondent herein in Appeal No. 1 of 1989 was dismissed.

The 1st respondent also found that as per Section 22 (3) of Tamil Nadu Recognised Private School Regulations Act an employee cannot be

placed under suspension for a period exceeding two months, if enquiry is not completed within the said two months nor the competent authority

extended the period of suspension as such employee shall be deemed to have been restored in service. The Tribunal further held that the order of

dismissal was passed by the Petitioner only on 22-02-1988 as such the 3rd respondent was entitled to salary for the period from 17-06-1986 to

21-02-1988 and ultimately the appeal preferred by the Petitioner in Appeal No. 2 of 1989 was also dismissed by the 1st respondent. The present

writ petition has been preferred by the petitioner against the order of the Tribunal.

5. Now, we look into the relevant provisions of the Tamil Nadu Recognised Private School Regulations Act:-

22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private Schools:-

(3)(a) No teacher or other persons employed in any private school shall be placed under suspension except when an enquiry into the gross

misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of Section 21, of such teacher or other person is

contemplated.

(b) No such suspension shall remain in force for more than a period, of two months from the date of suspension and if such inquiry is not

completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or

other employee;

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months for a further period not

exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for

reasons directly attributable to such teacher or other person.

6. Mr. Sankara Subramaniam, learned counsel appearing for the petitioner submitted that the dismissal order was passed as early as on 23-04-

1986; that approval was belatedly granted by the authority namely 2nd

respondent on 22-02-1988 as such it shall be deemed that approval taken effect from the date of order of dismissal. It is also argued by the learned counsel that Section 22 of the Act does not contemplate any prior permission from any authority to dismiss an employee.

7. The said arguments are untenable in law. In this case, the original authority has refused to grant approval by its order dated 05-09-1986.

Thereafter, the petitioner herein has filed an appeal before the 2nd respondent herein, who has accorded approval to the order of termination. The

intention of the legislature is that permission should be obtained before an order of termination or dismissal is passed. A close reading of the section

makes it clear that there is no post-facto approval. Hence, the order passed by the 1st respondent directing the petitioner to pay arrears of salary

to the 3rd respondent from 17-06-1986 to 21-02-1988 is perfectly in order as such, no interference is warranted.

In the result, the writ petition is dismissed. No costs. However, considering the circumstance of the case, there shall be no order as to costs.

Connected WMP is also closed.