

(2008) 01 MAD CK 0060
In the Madras High Court
Case No : W.A. No. 1001 of 2007

Swami Sadananda, Secretary, Vivekananda Higher Secondary School APPELLANT

Vs

The Chief Educational Officer, The Joint Director of School Education, Higher Secondary and M. Panneer Selvam, Head Master (under suspension) RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 15, 16, 17, 18, 2(3)
Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 12, 13, 13(3), 13(4), 14

Citation : (2008) 01 MAD CK 0060

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Muthukumaraswamy for A. Sankarasubramanian, for the Appellant; S. Rajasekar, Additional Government Pleader for respondents-1 and 2 and C. Selvaraju, for N. Subramani, for 3rd respondent, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1973) provides for

the regulation of recognised private schools in the state of Tamil Nadu. The Act seeks to regulate the establishment, management and control of

private schools, apart from providing for regulation of the conditions of service of teachers and other persons employed in private schools. The Act

further provides for the constitution and functions of the Managing Bodies of the private schools. Sub-section (8) of Section 2 of the Tamil Nadu

Recognised Private Schools (Regulation) Act, 1973, defines ""School Committee""

as the School Committee constituted u/s 15. Sub-section (3) of

Section 2 defines ""Educational Agency"" as any person or body of persons which has established and is administering or proposes to establish and

administer such minority school. In relation to any other private school, it means any person or body of persons permitted or deemed to be

permitted under the Act to establish and maintain such other private school. Chapter IV (Sections 15 to 18) of the Act contains provisions relating

to the constitution of the School Committee and the various functions of the School Committee. Section 15 of the Tamil Nadu Recognised Private

Schools (Regulation) Act, 1973, provides for the constitution of the School Committee. Section 16 of the Act stipulates that the Committee shall

have a Secretary who shall exercise such powers and functions as may be prescribed. Section 17 deals with meetings of the School Committee. It

prescribes that the Committee shall meet at such times and places and observe rules and procedures in regard to the transaction of business at its

meetings as may be prescribed. As per Sub-section (2), the President of the School Committee has to preside over the meeting of the Committee.

However, where the President is absent, any member chosen by the members present, shall preside at the meeting of the School Committee. Sub-

section (3) states that all decisions of the meeting of the School Committee shall be by a majority of the votes of the members present and voting.

In the case of equality of votes, the President or, in his absence, the member presiding, shall have the second or casting vote. Section 18 outlines

the functions of the School Committee and the responsibility of the educational agency under the Act. The functions entrusted are:

(a) carrying on the general administration of the school;

(b) to appoint teachers and employees of the school, fix their pay and allowances and define their duties and the conditions of their service;

(c) to take disciplinary action against teachers and other employees of the private school. Sub-section (3) states that any decision or action taken

by the School Committee in respect of any matter over which it has jurisdiction, shall be deemed to be the decision or action taken by the

educational agency.

Chapter V (Sections 19 to 28) deals with the terms and conditions of service of teachers and other persons employed in private schools. Section

19 deals with qualifications and conditions of services etc. of teachers and other persons employed in private schools. Section 20 is on the appointment of teachers and other employees in private schools. Section 21 states that teachers and other persons employed in private schools are to be governed by the Code of Conduct as may be prescribed. The School Committee has to define the standards of conduct to be observed by the teachers and other persons employed in the private school. The standards are to be consistent with the provisions of the Act and the Rules made thereunder. Section 22 contains the provisions relating to the dismissal, removal or reduction in rank or suspension of teachers and other persons employed in private schools. Sections 23 and 24 relate to the appeal and second appeal as against the punitive action taken. Section 56 of the Act empowers the Government to make rules to carry out the purpose of the Act.

2. In exercise of the power thus conferred, the Tamil Nadu Private Schools (Regulation) Rules, 1974 is formulated, providing for matters relating to the recognition as well as the constitution of the School Committee, meetings of the committee and the procedure relating to appeal as regards the punishment imposed. Rule 12 deals with the constitution of the School Committee. Rule 13 deals with the nomination of one of the representatives of the educational agency as the Secretary of the School Committee and the functions of the Secretary. Under the said Rule, the term of office of the Secretary is prescribed as three years. Sub-rule (4) stipulates that the Secretary shall function for and on behalf of the School Committee and the educational agency. The Secretary is required to act on the basis of the resolutions in the meetings of the School Committee.

Rule 14 deals with the meetings of the School Committee. This is in furtherance of Section 17 of the Act dealing with the meetings of the School Committee. As per Rule 14, the meetings of the School Committee shall be convened by the Secretary of the School Committee with the approval of the President of the School Committee. Sub-rule (2) states that the meeting of the committee shall be conducted after giving seven clear days' notice in writing to the members of the Committee and the quorum for the meeting is given as 50% of the total members of the Committee present.

3. Rule 15 relates to the qualifications and conditions of service of teachers and other persons. Under this provision, School Committee of every

school has to enter into an agreement with the teacher or other person appointed. If a person is appointed for a period exceeding three months, the agreement has to be in Form VII-A or VII-B. In respect of Junior Grade teachers, the agreement shall be in Form VII-C.

4. Form VII-A, which is the agreement to be executed by the School Committee of a private school in respect of permanent teachers, stipulates the terms of appointment and the responsibilities of the teacher appointed. Clause 6 therein states that the teacher and the School Committee shall conform to all the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Clause 7 deals with situations of dismissal, removal and reduction in rank or termination of services of the teacher. The said clause reads as follows:

7. That the School Committee shall not dismiss, remove or reduce in rank or terminate the services of the said teacher without informing him/her in writing on the grounds on which they intend to take action and shall adopt the following procedure before taking any final decision regarding the punishment to be imposed.

(a) The memorandum of charge shall be communicated to him/her in writing giving him/her reasonable time to send his/her explanation to the School Committee.

(b) After considering his/her explanation, the School Committee shall communicate to him/her findings and if so desired by the said teacher conduct a personal hearing or enquiry, wherein he/she shall be given the opportunity to examine or cross-examine any or all the witnesses and also produce witnesses.

(c) After the conduct of the personal hearing or enquiry by the School Committee the report of such personal hearing or enquiry shall be furnished to the teacher and a notice shall be issued to him/her setting out the proposed punishment and he/she shall be given a reasonable time to defend himself/ herself against the proposed punishment.

(d) After the receipt of the statement of defence from him/her and taking into consideration the School Committee shall inform him/her in writing about its final decision.

5. A reading of the said clause clearly shows the role of School Committee in matters of disciplinary action. The elaborate procedure given thereto

leaves no doubt that none other than the School Committee is empowered to deal with matters relating to punishment of the teacher or the

employee. The said clause contemplates the memorandum of charge to be communicated to the delinquent teacher or the employee by the School

Committee to whom the explanation has to be submitted. It also contemplates an enquiry by the Committee. The report on the personal hearing

and enquiry has to be furnished to the teacher by the School Committee. The show cause notice setting out the proposed punishment has to be

given to the teacher granting the reasonable time to defend against the proposed punishment. Thereafter, the School Committee has to take a final

decision after considering the defence made by the teacher or the employee concerned. Under Clause 10, the School Committee is empowered to

impose major punishment such as dismissal, removal, reduction in rank or termination or any of the minor punishments set out therein for any

irregularity or breach of the code of conduct. Rule 17 deals with dismissal, removal or reduction in rank or suspension of teacher of other persons

employed in private schools. The Rule also contemplates payment of subsistence allowance to a teacher or person employed on a suspension

order issued. It also stipulates the period for which the suspension shall remain in force.

6. The conduct of the meeting in the manner prescribed in the Rules and in the Act assumes significance in every aspect of administration, which

includes disciplinary action taken against erring teacher or an employee. In particular reference to the facts of the case, we need to note one more

provision--Section 22 of the Tamil Nadu Private Schools (Regulation) Act. This deals with dismissal, removal or reduction in rank or suspension of

teacher or other persons employed in private schools. Sub-section (1) states that no teacher or other person employed in any private school shall

be dismissed, removed or reduced in rank nor his appointment be otherwise terminated except with the prior approval of the competent authority.

Sub-section (3)(a) states that no person or teacher employed in any private school shall be placed under suspension except when there is an

enquiry into the gross misconduct of such teacher or person within the meaning of the Code of Conduct prescribed under Sub-section (1) of

Section 21. As per Sub-clause (b), the suspension order shall remain in force for a period of two months from the date of suspension. If the enquiry is not completed within that period for reasons to be recorded in writing, the period of suspension could be extended for a further period not exceeding two months. There is further a qualification that the competent authority must form an opinion that the enquiry could not be completed within the said period of two months on grounds attributable to the teacher or other person. Section 23 provides for the appeal remedy against an order of dismissal, removal and reduction in rank. Section 24 refers to a second appeal as against the order passed in the appeal preferred u/s 23.

7. A reading of the provisions makes it clear that a valid punitive action contemplated must necessarily have its firm footing in the holding of an enquiry by the School Committee in the manner prescribed under the Act and the Rules. These provisions are not mere procedural ones to be taken for a substantive compliance. On the other hand, the scheme of the provision clearly show that they demand a strict compliance.

8. Section 22 stipulates that any order of dismissal, removal or reduction in rank would be effective only on the satisfaction of the competent authority that there are adequate and reasonable grounds for such proposal for dismissal, removal or reduction in rank. Dealing with the expression "adequate and reasonable ground" required for the authority to approve the action contemplated, in the decision reported in 2003 (2) CTC 175 (Secretary School of Committee v. Government of Tamil Nadu), the Apex Court held that "While considering whether adequate and reasonable ground exist for giving approval, the authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it.

9. Touching on the scope of interference with the decision of the competent authority, the Apex Court further pointed out that "when after consideration of the material, it comes to a conclusion that then proposed punishment is harsh or disproportionate to the proved charges, the scope of interference with the finding is rather limited. This is because the approving authority has to consider whether the proved charges on the facts and the materials justify a particular action.

10. Dealing with the nature of authority exercised by the competent authority, in the decision reported in *M. Rukmani Devi Vs. The Chief*

Educational Officer and Others, a Division Bench of this Court held that the power of approval is given to the statutory authority as an essential

check on the arbitrary exercise of powers of a school management. The Division Bench viewed, the said provision really concerns a substantial

restriction on the power of the management to dispense with the services of the teacher or any person employed therein.

11. It is seen that in the decision reported in 2002 (3) CTC 553 (*Swamy Sadananda v. State of Tamil Nadu*), a Division Bench of this Court

rejected the challenge made to the vires of Section 22 on the ground that it gave unbridled power to the competent authority as regards the order

passed by the School Committee. The said appeal was preferred by the present appellant herein. Following the decisions of the Supreme Court

rendered in connection with a similar provision u/s 36 of the Gujarat Secondary Education Act, 1972 reported in (1988) 4 SCC 51 (*Bharat*

Sevashram Sangh v. State of Gujarat) and *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, this Court rejected

the challenge to the provisions of Section 22 of the Act and held that the language of Sub-section (2) of Section 22 clearly showed that the

competent authority has to give reasons to the satisfaction that there are adequate and reasonable grounds to confirm or reject the order passed by

the School Committee.

12. Dealing with Sections 17 and 18 and Rule 17, in the decision reported in 1998 W.L.R. 769 (*Management of M.G.R. Higher Secondary*

School etc. v. Nag Balaji Singh and 3 Ors.), learned single Judge of this Court (Justice P. Sathasivam as His Lordship then was), pointed out that

the object of the Act was to provide for the regulation of the conditions of service of teachers employed in private schools. The said decision

relates to a case where the show cause notice was issued by the Secretary who framed the charges, conducted the enquiry and acted as one of the

School Committee members. Referring to the decisions of the Apex Court, this Court held that the right to impose penalty carries with it the duty

to act justly and in accordance with the provisions of the Act; that the School Committee could not authorise the Secretary to perform its functions.

It was further held that as per the Rules, the Secretary has to act on the basis of the resolutions passed in the meeting of the School Committee and

that he could not take the role of the School Committee. Pointing out to Section 21 on the Code of Conduct and Rule 16 that teachers and other

persons employed in private schools are governed by the Code of Conduct as specified in Annexure-II to the Tamil Nadu Private Schools

(Regulation) Rules, 1974, and that as per Clause 7 in Form VII-A, it is for the School Committee to take action against the delinquent teacher, this

Court held that the functioning of the Committee could not be performed by the Secretary even by an authorisation and hence, he could not take

the role of the School Committee. Referring to the decision of this Court in P.S. Venkataramanujam v. National High School Tambaram and Anr.

in W.A. No. 170 of 1978 dated 13.11.1979, this Court held that the provisions of the Act and the Rules must be complied with in toto. Where the

enquiry conducted is not in accordance with law, the termination order could not be sustained. This Court referred to the unreported decision of

the Division Bench in extenso which may usefully be extracted here too:

...Thus a perusal of paragraph 7 of Form VII-A makes it clear that a personal hearing or enquiry has to be conducted by the School Committee,

and there is no provision in Form VII-A for the School Committee delegating its power to conduct an enquiry to any other person or body.

13. Dealing with the question as to whether the School Committee could ratify the order of suspension issued by the Secretary, in the decision

reported in K.M. Valliappan Vs. The Madras Seva Sadan Higher Secondary School and Others, , learned single Judge of this Court (R.

Jayasimha Babu, J.), held that Section 16(1) of the Act empowers the Secretary to exercise powers and perform such functions as may be

prescribed. Rule 13(3) requires the Secretary to function for and on behalf of the School Committee. Sub-rule (4) empowers the Secretary to act

on the basis of the resolutions passed in the meeting of the School Committee. Hence, as per Section 18, the power to take disciplinary action

against the teachers and employees is vested only with the School Committee. Rejecting the contention of the Management that certain amount of

flexibility is essential in internal management and a rigid view of the sub-rule should not be taken, learned Judge held that the powers of the

Secretary are limited by the Rules framed and the statutory provisions do not empower the Secretary to suspend the officials or teachers pending enquiry and that the principles of ratification by the Committee on the action done by the Secretary has no application in regard to the exercise of powers conferred under the statutory provision. The statutory authority could not act beyond the powers conferred and any action done without power suffers a legal infirmity that it is ab initio void and cannot be ratified.

14. We are in entire agreement with the view expressed in the aforesaid decision of this Court.

15. In the background of these decisions laying down the law on the scope of the provisions relating to the appointment, disciplinary proceedings

to be taken, the role of the school committee, the extent of authority of the Secretary and that of the competent authority, covered u/s 17, 18 and

22 and Rules 14, 15 and 17, the following position emerges:

(i) The meetings of the School Committee have to be in strict compliance of Section 17;

(ii) The Secretary of the School Committee cannot assume the role of the School Committee and that in terms of Rule 13, the Secretary has to

carry out the resolutions of the School Committee;

(iii) The disciplinary proceedings have to be conducted only by the School Committee in terms of Rule 16 and Form VII-A;

(iv) The charge memo has to be issued by the School Committee;

(v) The enquiry has to be conducted by the School Committee;

(vi) The copy of the enquiry report has to be furnished to the delinquent officer.

(vii) The decision on the disciplinary action taken must be by the School Committee after observing the procedure of giving an opportunity to the

teacher or the employee to defend himself;

(viii) The School Committee cannot authorise the Secretary to perform its functions nor can it validate the action taken by the Secretary;

(ix) Where the procedure contemplated are not followed, which are mandatory in character, any order passed in violation thereof would be void

ab initio;

(x) The competent authority is required to look into the gravity of the proved charges whether the punishment as proposed is commensurate with

the charges established and the competent authority has to record whether there are adequate and reasonable grounds existing for giving his approval to the action taken;

(xi) Where the competent authority applies his mind to the materials to the proposed action and records his reasons for approval or disapproval, the scope of interference with the finding is limited.

The above-said position of law flowing from the settled principles of law, from the various decisions referred to above and relied on by the learned

senior counsel for the third respondent, certainly tilt the case in favour of the third respondent. Before considering the merits of the contentions of

the appellant herein, the facts leading to the filing of the writ petition need to be noted and are as follows:

16. The third respondent was appointed as Headmaster in the appellant/writ petitioner - Vivekananda Higher Secondary School, Thiruvudagam

West, Madurai District. The allegation is that the third respondent had issued transfer certificates to five students who had failed in their respective

annual examinations as though they had passed their respective annual exams. The Chief Educational Officer visited the school on 30.3.1995. After

going through the counterfoils of the respective candidates' transfer certificates, the Chief Educational Officer pointed out that though the

candidates had failed in their exams, the third respondent had issued the Transfer Certificates as though they had passed their exams. Hence in the

letter dated 18.4.1995, addressed to the school management, the Chief Educational Officer directed that stringent disciplinary action be taken

against the third respondent. The third respondent was placed under suspension on 5.4.1995. A show cause notice dated 5.4.1995 was issued

framing four charges for enquiry. After receiving the explanation from the third respondent, the Secretary issued a revised charge memo dated

5.5.1995, containing five charges.

17. The charges under the first show cause notice dated 5.4.1995 framed were that the third respondent had entrusted the work of preparing the

Transfer Certificates to the Watchman of the school instead of entrusting the work to a Clerk. The second, third and fourth charges related to the

certificate of transfer issued to three students as though they had passed their respective exams, whereas, as per the school records, they had failed

in their final exams. Apart from including the first four charges, the second charge memo dated 5.5.1995 included a fifth charge that the letters

given by two students G. Ramaswamy and Kasilingam were unauthorisedly kept by the Headmaster, the third respondent herein, in his custody. It

is seen that an enquiry was held on 16.6.1995, wherein, the third respondent participated. After conducting the enquiry and furnishing a copy of

the evidence recorded and giving an opportunity to the third respondent, the School Committee decided to dismiss the third respondent from

service. An order dated 8.8.1995 was passed to that effect under the signature of the Secretary as the Secretary and President of the Committee.

The approval of the first respondent, namely, the competent authority, was sought u/s 22 of the Act. By order dated 6.12.1995, the first

respondent refused to grant the approval, holding that the School Committee meeting was not properly conducted and that the Secretary was not

competent to hold the enquiry and to preside over the meeting of the School Committee. Even on merits, the Chief Educational Officer rejected the

prayer. On a further appeal preferred by the Secretary, by order dated 25.6.1996, the Joint Director of School Education confirmed the order of

the Chief Educational Officer by dismissing the appeal. Aggrieved by the said order, the appellant preferred a revision before the Government u/s

45(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. It is stated that by letter dated 8.9.1996, the first respondent,

namely, the Chief Educational Officer, directed the appellant herein to restore the third respondent to the post of Headmaster. Since no orders

were passed by the Government on the representation, writ petition was filed before this Court by the Secretary of the School, the writ appellant

herein, challenging the order of the second respondent herein that there was no violation to the provisions of the Act or the principles of natural

justice in giving an adequate opportunity to the third respondent to defend himself. The writ petitioner/appellant stated that the third respondent had

not denied the fact of having issued the transfer certificates indicating that the candidates had passed, whereas, the counterfoils clearly stated that

the candidates had failed; as such there was a breach of the Code of Conduct warranting termination of the services of the third respondent.

18. By order dated 29.1.2007 in W.P. No. 16064 of 1996, learned single Judge rejected the writ petition holding that the School Committee had

not been constituted as contemplated by the provisions of the Act and that the findings of fact by the appellate authorities could not be disturbed.

Learned single Judge rejected the plea of the writ petitioner, taking the view that no specific ground was raised either in the appeal before the

second respondent or in the writ petition that the petitioners were not afforded an opportunity to defend their case. Consequently, this Court

rejected the writ petition. Aggrieved of the same, the present appeal is filed before this Court by the writ petitioner.

19. Mr. R. Muthukumaraswamy, learned senior counsel appearing for the appellant/writ petitioner, referred to the scheme of the Act and the

provisions relating thereto extensively, particularly to Section 17, and contended that in the absence of the President, the Secretary in charge

chaired the meeting with the approval of the President. He insisted that the requirement of the President presiding over the meeting or, in his

absence, a person chosen by the members present at the meeting, could not be viewed as a mandatory requirement. Consequently, there is no

illegality in the conduct of the proceedings. Learned senior counsel pointed out that there has been a substantial compliance of the provisions of the

Act and the Rules made thereunder and that it could not be denied that the meeting was held by the School Committee. He submitted that on the

mere score of the president not presiding over the meeting or a member chosen by the members present not presiding over, the decision of the

Committee could not be faulted with or be held as void and in contravention of the provisions of the Act.

20. Learned senior counsel submitted that in the absence of the President, rightly the Secretary took the chair. In any event, the requirement u/s

17(2) that in the absence of the President, any member chosen by the members present shall preside over the meeting should not be read as a

mandatory requirement and that the Secretary presiding over the meeting was in fitness of things; as such, the view of the authorities below and of

the learned single Judge were erroneous.

21. We do not agree with the line of submission of the learned senior counsel appearing for the appellant.

22. A reading of Section 17 does not give any room for such interpretation. As already noted in the preceding paragraphs, the decisions of this

Court are to the effect that as per the statutory scheme, the power to take disciplinary action is vested only with the School Committee. The role of

the Secretary is clear-cut and laid in the Rules framed under the Act. Learned senior counsel appearing for the appellant could not point out any

provision which empowers the Secretary to preside over the meeting of the School Committee, more so in a case dealing with disciplinary action.

A reading of the Rules relating to the role of the Secretary makes it plain that the Secretary functions for and on behalf of the School Committee

and the educational agency. He acts on the basis of the resolutions passed at the meeting of the School Committee. Although the Secretary is

nominated from out of the representatives of the educational agency, it does not automatically make him a second in command in the absence of

the President being present and a member authorised to preside over the meeting of the School Committee. A reading of Section 17 leaves no

room for any doubt, but only to reveal the anxiety and a note of caution intended, that in the absence of the President presiding over the meeting,

the person to preside over the meeting shall be a member chosen by the members present and none else. Admittedly, no materials were placed

before the authorities below or before this Court at any stage of the proceedings to show that the Secretary was authorised to preside over the

meeting in the absence of the President. The role of the Secretary thus circumscribed by the provisions of the Act and the Rules, and in the

absence of any material to substantiate the submission as regards the compliance of Section 17(2), we do not find any ground to accept the plea of

the learned senior counsel on this score. As such, any action or resolution emanating from the Secretary certainly affects the legality of the

proceedings, be it at the stage of the show cause notice or in the matter of presiding over the Committee meeting.

23. As regards the merits of this case, learned senior counsel appearing for the appellant pointed out that disciplinary action was taken pursuant to

the Chief Educational Officer's letter dated 7.4.1995 pointing out to the issuance of the transfer certificate stating that the candidates had passed

their exams which is contrary to the noting in the counterfoils that the students had failed in their exams.

24. It is seen that the first charge sheet was issued on 5.4.1995, containing four charges which are as follows:

(i) Contrary to entrusting the work of preparing T.C. to a clerk in the school, he actually entrusted the work to one Thiru S. Manoharan, a

Watchman of this school.

(ii) G. Ramasamy, a student of Standard VIII during 1993-94 did not get the required percentage of marks for a pass. According to request of

that student, a T.C. informing that he is eligible for promotion was issued by the Headmaster.

(iii) During the year 1993-94, a student by name S. Kasilingam who studied in Standard IX actually failed in the class. But a T.C. was issued to

him enabling him to join in Standard X.

(iv) During 1993-94, students by name S. Suresh Kumar, M. Kumarasamy Raja and R. Sivakumar failed in the classes in which they studied. But

T.C. were given to them as if they have been promoted to the next classes.

25. This first charge sheet was issued on 5.4.1995 by the Committee under the signature of Swami Sadananda, as President and Secretary of the

School Committee. Admittedly, the said Swami Sadananda is the Secretary of the School Committee.

26. Learned senior counsel appearing for the third respondent pointed out that for the first charge memo issued on four grounds, the third

respondent had already replied seeking permission to peruse the records of the school; but after considering the explanation issued, a fresh charge

memo dated 5.5.1995 containing five charges was issued, which are as follows:

(i) That Thiru M. Pannirselvam, Headmaster, Vivekananda Higher Section School, Tiruvudagam West under suspension, when he was acting as

the Headmaster of the school entrusted the responsible work of preparing the Transfer Certificates of pupils to one Thiru Manoharan who was

working as the Watchman of the school, instead of entrusting this work to the Junior Assistant of the school.

(ii) Since one Thiru G. Ramaswami who was studying in Standard VIII during 1993-94 and who did not secure the required marks was in the

range to continue his studies in Standard VIII only. But accepting the request of Ramaswami, Transfer certificate has been given to G.

Ramaswami, as if he has passed Standard VIII.

(iii) S. Kasilingam who studied Standard IX during the year 1993-94 did not secure the required percentage of marks for promotion to higher

standard. In the counterfoil of the transfer certificate maintained in the school, it is noted as ""Detained"" against column 11. But in the Transfer

Certificate given to S. Kasilingam, it is noted as ""promoted"" to IX standard.

(iv) That in the counterfoil of the Transfer certificate relating to S. Suresh Babu, S. Kumaraswamiraja and R. Visvakumar who studied in Standard

IX during the year 1993-94 and failed in the same standard has been noted in Col. 11 of the Transfer certificate given to the student that they are

promoted to the next standard.

(v) That instead of keeping the two letters said to have been given by G. Ramaswami and Kasilingam in the school, the Headmaster has

unauthorisedly taken the letters at his custody.

27. Learned senior counsel appearing for the third respondent has a serious objection to the kind of proceedings taken and submitted that in terms

of Form VII-A, read with Rule 15, the Secretary, as such, has no authority under any one of the provisions of the Act, to issue the charge memo.

Learned senior counsel appearing for the third respondent pointed out that no resolution of the meeting had been placed as regards the second

charge memo. The fundamental absence of authority for the Secretary to issue the show cause notices goes to the root of the matter and hence, the

very notice was rightly held to be contrary to the provisions of the Act. The absence of authority goes even as regards the conducting of an

enquiry. We agree with the submission of the learned senior counsel appearing for the third respondent as well supported by the decision of this

Court in the decision reported in K.M. Valliappan Vs. The Madras Seva Sadan Higher Secondary School and Others, . In the face of the

admitted position that the charge memo had not emanated from the School Committee presided over by the President or in his absence, by a

member chosen by the members present in the meeting, but by the Secretary and under his signature, and further there appears no deliberation of

the School Committee on the charges levelled under the second show-cause notice, we are not in a position to accept the contention of the

appellant herein as to the validity of the initiation of the proceedings against the third respondent.

28. Learned senior counsel appearing for the appellant pointed out that the third respondent had not denied the fact that the transfer certificates

were issued in respect of the candidates who had failed in the examinations. The counterfoils support this fact. It is further pointed out that the third

respondent had not denied that preparing of the transfer certificates was entrusted to the Watchman instead of being done by a Clerk in the school.

In view of the total violation and breach of the Code of Conduct, the interest, prestige and the name of the school needs to be protected. He made

particular reference to the decision of the Apex Court reported in *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, as to

the role of the Principal in maintaining the prestige of the institution and in the proper conduct of the affairs of the school. In the face of the admitted

facts on the violation, he submitted that no exception could be taken to the disciplinary proceedings taken.

29. A reading of the order of the first respondent shows that there was no material to indicate approval from the Committee as regards the second

charge sheet formulating the fifth charge. The first respondent pointed out that the Secretary acted on his own in violation of Section 12(3). Dealing

with the allegation on the four charges that the students who had not passed out of their exams were granted transfer certificates stating that they

had passed their examinations, the Chief Educational Officer pointed out that the said certificates were issued, taking into consideration the

statement of the District Educational Officer based on the circular that students who had secured 25% in the quarterly and half yearly exams would

get a pass certificate, even though they might not have secured 25% marks in the final examination. The Chief Educational Officer further pointed

out that the allegations levelled against the third respondent could not be solely placed on the third respondent alone. The members of the School

Committee were also responsible for that. It was stated by the third respondent that the certificates were issued on account of the pressure from

one Narasimhan, Member of the School Committee. The definite case of the third respondent is that the said Narasimhan insisted the third

respondent to issue the transfer certificates indicating that the students had passed and he wrote in a small paper without his signature dated

25.4.1994 and insisted on the issuance of the certificate. The noting by the said Narasimhan reads as follows:

H.M. for all decision taken by the Swamiji, it is enough if yourself and Swamiji sign. I need not sign.

It was seen that the signature tallied with the signature of Narasimhan found in the School Committee resolution.

30. Learned senior counsel appearing for the appellant pointed out that no evidence was let in to examine the said Narasimhan and that the copy of

the circular was also not given; as such, the authorities below erred in deciding the issue by mere acceptance of the statement of the third

respondent. It may be noted that there is no denial of the fact that the writing in the hand of the said Narasimhan and signature tallied with the

signature of Narasimhan in the School Committee resolution. It is not stated by the appellant that the signature was somebody else's signature or

that Narasimhan was not a School Committee Member. No steps were taken by the appellant herein to disown this letter or the signature. It is

seen that no allegations were also made against the third respondent alleging that the noting was a created document to suit the purpose of the third

respondent. In the face of the uncontroverted fact that the said writing was by Narasimhan, and with a substantial proof available on the

compulsion exerted over the third respondent, we do not find any reason to accept the submission of the appellants that in the absence of any

examination of the said Narasimhan, the plea of the third respondent on the pressure exerted could not be accepted. The facts clearly show that

the explanation by the third respondent as regards the course of conduct adopted by him could not be rejected. It is no doubt true that the said

Narasimhan was not examined by either of the parties. Yet, the substantial proof available in the noting, and that it is in the handwriting of the said

Narasimhan, supports the case of the third respondent in a fair measure that the pressure exerted by one of the Members of the School Committee

was the cause for issuance of the Transfer Certificates stating that the candidates had passed the exam. Quite apart from this, the circular issued by

Deputy Inspector of Schools dated 20.6.1994 that the marks obtained in the quarterly and half yearly exams could be taken for promoting a

student, strengthens the case of the third respondent. In the background of the facts available as stated above to lend support to the contention of

the third respondent, we do not find any merit in the contention of the appellant as to the reasoning of the authorities below on the issuance of the

transfer certificates.

31. The third respondent pointed out that there was no material to show that the enquiry was conducted in the presence of the School Committee.

There are no records to show that the signature of the School Committee Member was also obtained as regards the conduct of the enquiry. He

also alleged that no enquiry report was furnished to the third respondent. Learned senior counsel appearing for the appellant was fair enough to

admit that except for furnishing a copy of the evidence recorded, no enquiry report was furnished to the third respondent. The order of the first

respondent show that the third respondent was not granted sufficient opportunity to produce his witnesses to support his cause and there was a

denial of fair opportunity to the third respondent. It was further pointed out that the mistake committed by the third respondent was solely

attributable to the pressure exerted by the Management, for which, the third respondent could not be penalised, apart from the fact that the

conduct of the proceedings was not in tune with the provisions of the Act. Learned single Judge confirmed the view of the authorities that the

proceedings were in violation of the provisions of the Act. We agree with the view of the learned single Judge on this score too.

32. As regards the allegation on the Watchman filling up the Transfer Certificates, the third respondent submitted that although the said person was

appointed as a Watchman, right from the date of his appointment, he was not assigned the work of a Watchman. He had stated that in spite of his

bringing this to the attention of the administration as to the state of affairs, he was directed to act by the instructions of one Narasimhan, Member of

the School Committee. The competent authority accepted this plea of the third respondent as in the other charges relating to the issue of Transfer

Certificates. Considering the reasoning of the authorities below on this front, we do not find any ground to interfere with the findings in this regard.

33. As already seen, the Tamil Nadu Private Schools (Regulation) Act, 1973, contains elaborate procedures to be observed in the matter of

disciplinary proceedings. The role of the School Committee and that of the competent authority clearly spell the rigorous procedure to be observed

before terminating or dismissing the services of the teacher/employee. The action of the School Committee goes for approval before the competent

authority, who has a duty to consider the action of the School Committee as justifiable to visit the teacher or the employee concerned with a

punishment, and further, whether the proposed punishment was proportionate to the charges proved.

34. In the background of the provisions, the jurisdiction of this Court under Article 226 of the Constitution of India needs to be seen.

35. It is a well settled principle of law that the scope of judicial review under Article 226 against the order of the lower authorities has been a

subject matter of numerous decisions of the Apex Court. The parameters for exercise of jurisdiction under Article 226 are well settled to declare

that this Court's jurisdiction under Article 226 is not that of a court of appeal; that however extensive the jurisdiction may be, it is not so large as to

enable the High Court to sit as a Court of appeal and examine for itself the correctness of the decisions challenged and to declare what would be

the proper view to be taken. The jurisdiction under Article 226 is only to correct errors of jurisdiction involving erroneous assumption of

jurisdiction or action in excess of jurisdiction, where there is erroneous assumption or excess of jurisdiction.

36. Dealing with the approach to be adopted in matters relating to orders made in disciplinary proceedings, in the decision reported in Lalit Popli

Vs. Canara Bank and Others, , the Supreme Court held

In the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of ""proof beyond doubt"" has no application.

Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed

misconduct.

While exercising jurisdiction under Article 226 of the Constitution, the High Court does not act as an appellate authority. Its jurisdiction is

circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of

natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

37. While dealing with orders relating to disciplinary action, in the decision reported in 2003 (2) CTC 175 (Secretary, School of Committee v.

Government of Tamil Nadu), the Apex Court pointed out that while considering whether there existed adequate and reasonable grounds for giving

approval, the authority concerned has to look into the gravity of the proved

charges and whether the punishment as proposed was commensurate with it. When on a consideration of the material, the fact finding authority comes to a conclusion that the materials do not justify a particular action and reasons therefore have been given by the competent authority on the consideration of materials, there is no scope of interference with such facts on a petition under Article 226 of the Constitution of India. Thus the jurisdiction under Article 226 not being that of an appellate Court, the power of judicial review is not concerned with the correctness of the findings of fact. So long as the findings are reasonable, supported by material evidence and are arrived at based on materials, it is not open to this Court to sift the evidence as an appellate Court to arrive at a finding by exercising jurisdiction under Article 226 of the Constitution of India. On the other hand, judicial review is confined to the examination of the decision making process. In the decision reported in Apparel Export Promotion Council Vs. A.K. Chopra, , the Apex Court held that ""while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

38. In the background of the jurisdiction of this Court thus explained in the various decisions of the Apex Court, we do not find any ground to persuade us to allow this appeal to interfere with the orders of the authorities.

39. Learned senior counsel appearing for the appellant pointed out that in the proceedings dated 18.7.1995, there is a specific reference that the third respondent was directed to appear before the School Committee on 16.6.1995 for an enquiry and that the School Committee had its meeting on 18.7.1995 to consider the evidence and explanation given by the third respondent. Hence, it is not open to the third respondent to contend, and for that matter, the authorities below, to hold that the proceedings were not conducted in accordance with the requirements of law. He submitted that even if the revised notice is ignored, the violation as framed under the first

notice could not be ignored. We do not agree with the said submission. A perusal of the records show that the show-cause notice was issued by the Secretary. Issuing show-cause notice is not part of the job of the Secretary. Quite apart, no materials were placed before this Court to show how the said Secretary was authorised by the School Committee to issue the said notices. There are no records to substantiate the contention that the enquiry was done by the School Committee. The copy of the deposition carry no reference to the enquiry conducted before the School Committee. Except for furnishing the copies of the deposition, admittedly, no enquiry report was given to the third respondent. There are no materials placed before this Court to show how the Secretary was authorised to preside over the School Committee meeting to deal with the disciplinary proceedings in the absence of the President presiding over the School Committee meeting.

40. In the light of the facts found by the authorities below, confirmed by the learned single Judge, we do not find any error in the order to call for an interference to allow this appeal.

In the face of the fundamental legal flaw in the conduct of the proceedings, whatever might have been the strength of the allegations made, even if there be one which we fail to see, we do not find any acceptable or convincing ground to allow the appeal. In the circumstances, the writ appeal stands dismissed. No costs. Connected M.P. No. 1 of 2007 is also dismissed.