

(1982) 02 MAD CK 0045
In the Madras High Court
Case No : W.A. No. 59 of 1981

T. Chengalvarayan

APPELLANT

Vs

The Muthialpet High School, Madras and Others

RESPONDENT

Date of Decision : 11-02-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : AIR 1983 Mad 66 : (1982) 95 LW 693

Hon'ble Judges : V. Ramaswami, J; Singaravelu, J

Bench : Division Bench

Advocate : U.N.R. Rao, for the Appellant; S. Chellaswami and A. Sivaji, for Govt. Pleader, for the Respondent

Judgement

Ramaswami, J.—This is an appeal by a teacher whose services have been terminated by the first respondent-school management. On 24th July 1969 a memo of charges was issued to the appellant to show cause why appropriate disciplinary action should not be taken against him. The memo set out the charges and called for an explanation. The appellant submitted his explanation on the 23rd Aug. 1969. On 8th Sept. 1969, the Chairman of the Board of Directors of the school management informed the appellant that the Committee was not satisfied with his explanation on the charges and he was further called upon to be present for an oral enquiry if he so desired with such oral or documentary evidence. To this the appellant replied stating that since his explanation is held not satisfactory in the memo dated 8th Sept. 1969, he was certain that he may not be meted out the justice in the proposed enquiry by the Committee and that therefore, he was not willing to subject himself to further enquiry. He then made a request to the Committee to communicate its decision early so as to enable him to take further necessary action for the redressal of his grievances "from the accepted judicial body". On 17th Sept. 1969 the Committee again sent a notice informing him that the Committee still desires to give an opportunity to him to appear in person and substantiate his statement

given in reply to the charge memo. But the appellant reiterated his contention that he will not appear before the Committee. The Board then perused the Disciplinary Committee records and the findings, and agreeing with the findings, the Committee terminated the services of the order of termination. They also stated that by generous view the Board also grants the teacher three months salary in lieu of three months' notice of termination. This order of the Board was communicated by letter dated 29th September, 1969, by the co-respondent to the appellant herein enclosing a cheque for Rs. 751-50, representing three months salary. This letter was served on the appellant on 29th September, 1969, itself as seen from the local tapal register showing the acknowledged it though very late on 4th November, 1969. On the 10th November, 1969 the appellant preferred an appeal before the Chief Educational Officer, the 4th respondent herein. That appeal was dismissed by the 4th respondent on 8th January, 1970, on the ground that the appeal was barred by limitation under Clause 10 of the agreement, dated 25-2-1964, executed by the appellant and the school management. An appeal against the order of termination will have to be filed within one month from the date of receipt of the order and any appeal preferred after the expiry of the said period will be liable for summary rejection, However it appeared the Joint Director of School Education by his letter D. O. No. 32506/G7/70 dated 30-4-1970, directed the Chief Educational Officer to take the case on file for consideration on merits on the ground that the delay in the submission of an appeal is only negligible. Though the Chief Educational Officer could have stated that he could not be directed to take the appeal on file as his order dated 8th January, 1970, is in the nature of a quasi-judicial order, an authority subordinate to Joint Director seems to have simply submitted to the direction, took the appeal on file, considered the same on merits and held that the teacher had not been given an opportunity to show cause against the punishment and that therefore the order is liable to be set aside. He accordingly set aside the order and directed the management to reinstate him with immediate effect. The Management preferred an appeal to the Director of School Education on 17th August 1970 in which among the appeal was not maintainable. But all the same the Director rejected the appeal and confirmed the order. The management preferred a further appeal against this order to the Government but the Government dismissed the same without giving any reason. Thereafter the management preferred W. P. 1587 of 1972 and W. P. 3217 of 1973, praying for a writ of mandamus and a writ of certiorari respectively. As seen from the order of Ramanujam, J. in disposing of these two writ petitions the management has raised number of grounds of which one was that the appeal filed by the teacher against the order of the management, dated 29th October, 1969 was barred by time as per clause 10 of the agreement and that therefore the 4th respondent had no jurisdiction to entertain the appeal or direct the management to reinstate the appellant. However the learned Judge did not deal with this question since he agreed with the other contention that the Government order is liable to be set aside on the ground that it was not a speaking order. In that view, he set aside that order and directed the Government to consider the appeal afresh on merits.

The Government again passed an order dismissing the petition filed by the management. Thereafter the management preferred W. P. No. 1358 of 1978, praying for the issue of a writ of certiorari to quash the orders of the Chief Educational Officer, Director of School Education and the Government. In the writ petition also the management had raised the question of limitation and contended that the appeal filed before the 4th respondent -- the Chief Educational Officer was beyond the time prescribed and that therefore the 4th respondent had no jurisdiction to entertain the appeal. As already stated even in the writ petition the management had also raised many other contentions including that the teacher had been informed of an opportunity of defending himself and there was no violation of any of the principles of natural justice. The writ petition was heard by Mohan, J., who also did not go into the question of limitation but straightway accepted the contention of the management that the teacher had ample opportunity of defending himself and no statutory or other provision has been violated and that the principle of natural justice had also been complied with. In that view, he did not go into the other questions and allowed the writ petition and set aside the orders of the authorities concerned. It is against this order the teacher has filed this appeal.

2. Mr. Chellaswami, learned counsel for the management raised a number of contentions including the contention that the appeal before the 4th respondent Chief Educational Officer, was not maintainable as it was filed beyond the period of one month. We are not dealing with all the contention raised by the respondents in this appeal could be dismissed of on the ground that the appeal before the 4th respondent was beyond time and therefore was not maintainable. Proviso to clause 10 of the agreement which is binding on the parties reads as follows:--

"Provided that an appeal under the provisions of Clause 10 shall be preferred within one month from the date of receipt of the orders to the appellate authority and any appeal preferred after the expiry of the above period will be liable for summary rejection."

There is no provision in the agreement for excusing the delay for filing an appeal nor Section 5 of the Limitation Act is applicable to the appeal as the proceedings are not in court nor can we say that the appeal preferred was under any special or local enactment. Therefore, the delay in filing the appeal could not have been excused either in an appeal preferred against the rejection of the appeal on the ground that it is barred by limitation. Therefore, even the Joint Director could not have directed the 4th respondent to take the case on file and dispose of the same on merits. The learned counsel for the appellant strenuously contended that this point of limitation was raised even in W. P. 1587 of 1972. But when the order of the Government was set aside and the matter was remanded for fresh disposal, Ramanujam, J., did not make any special observation relating to limitation and the order simply directed the Government to deal with the appeal on merits and that therefore as per the order of this court the Government had

jurisdiction to decide the matter on merits and the question of limitation could not be agitated thereafter. We are unable to agree with this contention of the learned counsel. Ramanujam, J., allowed the writ petition on the only ground that the order of the Government was not a speaking order. He did not go into the merits of the case at all though he had noticed the argument and the counter-argument of the petitioner and the respondents in the writ petition. Therefore, when the learned Judge directed the Government to dispose of the appeal before the Government on merits it should be considered by the Government and that had not been done by the Government. The matter also could be looked at from a different angle. The order in W. P. 1587 of 1972, is in the nature of a remand order and even if there was any finding that finding cannot be held to have reached finality and in the appeal preferred against an order made in the remanded proceedings it was certainly open to the aggrieved party to question any finding in the remand order provided the matter is of a higher jurisdiction or if it was made by a single Judge it was dealt with by a Bench. Since we are sitting in a Bench we could not consider any observation or finding made by the learned Judge while remanding is binding on us. In fact as already pointed out, the learned Judge had not made any observation or given any finding. We are only bringing this as a point of law so as to answer that even if it was supposed to be an implied finding that implied finding is not binding on us when we are sitting in a Bench. Mohan, J. also did not think it necessary to go into the question whether the appeal preferred before the Chief Educational Officer was beyond time and not maintainable as he found that even on merits the appellant had no case. In the circumstances, we cannot preclude the first respondent from raising this question even at this stage since he had never come up with a right nor his contentions stand concluded by any final order in any proceedings. Therefore we are unable to agree with the learned counsel for the appellant that it is not open to the first respondent to raise the question at this stage. Since we agree that the appeal before the Chief Educational Officer was not maintainable we do not think it necessary to consider all the other contentions raised by the learned counsel for the respondents. The appeal is accordingly dismissed, but there will be no order as to costs.

3. Appeal dismissed.