
(2010) 03 MAD CK 0109

In the Madras High Court

Case No : Writ Petition No's. 10592 and 17284 of 2009 and M.P. No's. 1 and 2 of 2009

The Chairman SSM Institute of Textile Technology and
Polytechnic College

APPELLANT

Vs

The Principal Secretary/Commissioner of Technical Education
Directorate of Technical Education and K.B. Krishnakumar

K.B. Krishnakumar Vs The Director, Directorate of
Technical Education and The Chairman and Correspondent
SSM Institute of Textile Technology and Polytechnic College

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 20, 37
Tamil Nadu Private Colleges (Regulation) Rules, 1976 — Rule 14

Citation : (2010) 03 MAD CK 0109

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Prabhakaran, for T.N. Sugesh, in W.P. No. 17284/09, for the Appellant; S. Muthukumaraswamy, SC for B. Raviraja, for R-2 in W.P. No. 10592/09, S. Muthukumaraswamy, SC for B. Raviraja, for R-2 in W.P. No. 17284/09, S. Prabhakaran, for T.N. Sugesh, for R-2 in W.P. No. 10592/09 and E. Ranganayaki, GA (Edn.) for R-1, for the Respondent

Judgement

T. Raja, J.—As both the writ petitions are interconnected, they were heard together and disposed of by this common order.

W.P. No. 17284 of 2009 has been preferred by the petitioner (hereinafter referred to as the "petitioner"), K.B. Krishnakumar, for the issuance of

a writ of certiorarified mandamus to call for the records relating to the impugned proceedings of the 2nd respondent, the Chairman &

Correspondent, SSM Institute of Textile Technology Polytechnic College, Komarapalayam, (hereinafter referred to as the "Institute") in

proceedings No. 11 dated 6th July, 2009, quash the same with further direction to the 2nd respondent to pay the arrears of salary and other attendant benefits w.e.f. 13th June, 2005.

The other writ petition, W.P. No. 10592 of 2009 has been filed by the petitioner/2nd respondent in W.P. No. 17284, Chairman &

Correspondent, SSM Institute of Textile Technology Polytechnic College, Komarapalayam, challenging the order passed by the 1st respondent,

the Principal Secretary/Commissioner of Technical Education in proceeding No. I1095/C4/2005 dated 13th March, 2009 and quash the same.

2. It is the case of the petitioner in W.P. No. 17284/09 that he was originally appointed as Lecturer in the year 1979 in the 2nd respondent

Institute and, subsequently, was promoted as Associate Lecturer on 6th Sept., 1985. Immediately within one year he became a Senior Lecturer in

August, 1986 and he was promoted as the Head of the Department in the year 1999. Finally, when the post of Principal fell vacant, he was

nominated as Principal (In-Charge) by order of the Director of Technical Education dated 26th Dec., 2003 with retrospective effect from 7th July,

2003 and, thereby, he has put in more than 19 years of continuous service in the Institute.

While so, there was some internal dispute in the management of the 2nd respondent Institute and the petitioner was also aware of the same. In

view of the said dispute between the two groups of people, there was an allegation of misappropriation of huge amounts under various heads

against the petitioner. Therefore, the petitioner was issued with a charge memo and enquiry notice dated 29th July, 2004, by listing out the various

irregularities committed by the petitioner, and the same was served upon the petitioner calling upon him to submit his explanation therefore. The

main allegation levelled against the petitioner in the said charge memo is that, the petitioner, taking advantage of the dual management setup, is said

to have taken undue advantage of the same and participated in the process of abducting and confining the actual principal, one Mr. G.S.

Jayaprakasam, in illegal custody of those, who attempted to take over the institution. Subsequently, the then principal, Mr. G.S. Jayaprakasam was

compelled to abstain from work from 7th July, 2003, much before the date of his superannuation, which fell on 31st Oct., 2003 and, subsequently,

the petitioner was appointed as Principal (In-charge) on 26th Dec., 2003. By the time he was appointed as Principal (In-charge), he was not

having the requisite qualification for the said post. Therefore, he was not confirmed in view of his not having the requisite basic qualification

prescribed for the post. However, the management, by appointing him as Principal (In-charge), allowed him to acquire the requisite qualification.

Subsequently, the petitioner is said to have submitted his explanation to the charge memo. Pending the enquiry, the petitioner was also placed

under suspension by the order of the 2nd respondent, dated 22nd July, 2004, and, subsequently, the 2nd respondent issued a charge memo dated

29th July, 2004 and on receipt of the said charge memo, the petitioner also submitted his explanation on 2nd Aug., 2004, denying all the charges

framed against him. Thereafter, domestic enquiry was initiated by appointing two persons as enquiry officers. In the meanwhile, the petitioner filed

W.P. Nos. 23605 and 23606/04 on the file of this Court challenging the said suspension and the charge memo respectively. This Court, by order

dated 20th Sept., 2004, directed to appoint a retired District Judge as enquiry officer to go into the allegations and, accordingly, one retired

District Judge, Mr. T.S. Palanisivagurunathan, was appointed to conduct the enquiry and to pass orders within a period of three months there

from. In view of the order passed by this Court appointing a retired District Judge, the petitioner was once again asked to appear for the enquiry.

Subsequently, the enquiry officer issued notice dated 28th Sept., 2004, calling upon the petitioner to submit his explanation in writing to the charge

memo dated 29th July, 2004, to which the petitioner also submitted his explanation on 9th Oct., 2004. Thereafter, after conducting the enquiry, the

enquiry officer submitted his report dated 25th Feb., 2005, holding the charges 1, 2 and 4 to 8 as proved and charge No. 3 was held not proved.

After submission of the enquiry report, the Chairman & Correspondent of the Institute, issued a further show cause notice dated 17th March,

2005, calling upon the petitioner to show cause against the findings of the enquiry officer. The petitioner, in reply to the second show cause notice,

also submitted his explanation on 21st March, 2005. Considering his explanation, the 2nd respondent has passed an order dated 13th June, 2005,

dismissing the petitioner from service. Aggrieved by the order of dismissal from service dated 13th June, 2005, the petitioner preferred an appeal

on 11th July, 2005, u/s 20 and 37 of the Tamil Nadu Private Colleges Regulation Act, 1976 and Rule 14 of the Tamil Nadu Private Colleges

Regulation Rules, to the 1st respondent, the Director, Directorate of Technical Education, Chennai.

3. Since the appeal filed by the petitioner was not disposed of, the petitioner filed W.P. No. 23297/05 before this Court challenging the dismissal

order. However, in view of the pendency of the appeal filed by the petitioner before the 1st respondent, the writ petition was withdrawn by order

dated 20th July, 2007. Subsequently, after waiting for a long time, the petitioner was constrained to file W.P. No. 27471/07 seeking a writ of

mandamus to direct the respondent to consider and dispose of his appeal dated 11th Sept., 2005 and in the said writ petition, this Court passed an

order dated 18th Aug., 2007, directing the 1st respondent herein to dispose of the said appeal filed by the petitioner in accordance with law within

a period of six weeks. In pursuance to the above said order passed by this Court in W.P. No. 27471/07, the 1st respondent finally allowed the

appeal setting aside the dismissal order with a direction to reinstate the petitioner back in service. Aggrieved by the order passed by the 1st

respondent, the 2nd respondent, Institute, has filed W.P. No. 10592/09.

4. After the order passed by the 1st respondent in the above said appeal directing the 2nd respondent to reinstate the petitioner in service, the

petitioner was reinstated and he also rejoined duty in the post of Head of Department on 23rd March, 2009. After the reinstatement of the

petitioner, the 2nd respondent, Institute, issued fresh charge memo calling upon the petitioner to submit his detailed explanation therefore. In

response to the said show cause notice, the petitioner, on 31st March, 2009, submitted his reply. Again in the month of April, 2009, the petitioner

submitted further reply to the proceedings dated 24th March, 2009 and also made a request for payment of arrears of salary and other allowances

as directed by the appellate authority in the order of reinstatement. Once again, a charge memo dated 6th July, 2009, was issued by the 2nd

respondent, Institute, containing 11 charges calling upon the petitioner to submit his explanation. In reply to that, on 20th July, 2009, the petitioner

submitted his explanation. Thereafter, on 31st July, 2009, an enquiry officer was appointed.

5. The main thrust of argument advanced by Mr. Prabhakaran, learned Counsel appearing for the petitioner are three-fold. Firstly, after the

initiation of disciplinary proceedings against the petitioner, which culminated into the order of dismissal and, subsequently, the said order of

dismissal was set aside by the appellate authority by order dated 13th March, 2009, fresh charge memo cannot be issued and the disciplinary

authority is not empowered to proceed once again in respect of any of the allegations that formed part of the earlier proceedings and, therefore, it

was contended that the allegations pertaining to the very same incident cannot be proceeded with afresh in the guise of a fresh enquiry.

Secondly, the impugned proceedings are actuated by mala fides, since the petitioner was issued with various memos one after the other. The

subsequent enquiry proceedings are vitiated on account of mala fides. On this account, he prayed for setting aside the impugned order by allowing

the present writ petition.

Thirdly, the impugned proceedings of the 2nd respondent dated 6th July, 2009, are vitiated by unreasonable delay from the date of alleged incident

and the conduct of the disciplinary proceedings, and on that basis, by relying upon several judgments, prayed for quashing the impugned order.

6. Refuting the submissions, Mr. Muthukumarasamy, learned senior counsel appearing for the respondents submits that the petitioner has

committed several financial irregularities taking advantage of the dispute between two groups for the control of the management, which has given

rise to filing of several criminal proceedings against the petitioner. Some of the FIR's will indicate how far the petitioner has really misused his

position by misappropriating the funds of the 2nd respondent Institute. It was also mentioned that FIR No. 12/06 was filed, which was referred

back to the Judicial Magistrate, Tiruchengode. Admittedly, the petitioner, till date, is not attending the said enquiry. In another matter, for

misappropriation of funds of co-operative stores to a sum of Rs. 18,50,000/- and for misappropriation of laboratory funds of Rs. 1,05,000/-, one

FIR was registered and a third FIR has also been filed at Komarapalayam Police Station in Complaint No. 134/05, which has reached the stage of

filing of charge sheet in the court of Judicial Magistrate, Tiruchengode, as C.C. No. 4/07 and the same is pending due to non co-operation of the

petitioner for conducting the trial. Apart from the above mentioned criminal proceedings pending against the petitioner before the Court, the

petitioner has involved himself in misappropriation of Government funds for which also the petitioner was charged and enquiry is also admittedly

pending. Since the 1st respondent has allowed the appeal preferred by the petitioner by setting aside the dismissal order by passing a cryptic order

without considering the available records mentioned above, including the various FIRs, the 1st respondent Institute has filed W.P. No. 10592/09

challenging the correctness of the order passed by the 1st respondent.

Learned senior counsel further submitted that the question of delay and mala fide cannot be stated as reasons for setting aside the impugned order,

because the petitioner himself has contributed to the delay by not participating in the enquiry initiated by the 2nd respondent Institute by writing

various letters. One such letter written by the petitioner addressed to the enquiry officer dated 26th Aug., 2009, categorically mentions that he was

not able to attend the enquiry proceedings in view of the pendency of the writ petition and, therefore, the enquiry could not be completed. Since

the petitioner had refused to participate in the enquiry, the petitioner should be penalised for his own delay. Therefore, the judgments cited by the

petitioner cannot have any relevance. On the basis of the above submissions, learned senior counsel, while prayed this Court to dismiss W.P. No.

17284/09, further prayed this Court to allow W.P. No. 10592/09.

7. Heard the learned Counsel appearing on either side and perused the records.

8. Admittedly, the 2nd respondent Institute has issued three charge memos to the petitioner on three different occasions in respect of different

allegations and irregularities said to have been committed by the petitioner during the course of his duties as Principal (In-charge). Charge Memo

dated 29th July, 2004, issued by the 2nd respondent was the subject matter of appeal before the 1st respondent. The said charge memo dated

29th July, 2004, related to misappropriation of Rs. 2,30,000/-, another charge of misappropriation of AICTE grant of Rs. 1,00,000/-, charge

relating to bouncing of cheque for Rs. 1,00,000/-, charge relating to illegal collection of money of Rs. 5,29,500/-, unlawfully retaining cheques and

Demand Drafts, etc. In respect of the above said charge memo, enquiry was conducted and the enquiry officer held 7 charges as proved out of the

8 charges. On the basis of the enquiry report submitted to the 2nd respondent Institute, an order of termination was passed by the 2nd respondent

Institute and the same was also duly ratified by the Governing Council. In view of the order passed by the appellate authority, setting aside the

dismissal order, the petitioner was reinstated in service. Aggrieved by the order passed by the 1st respondent, the 2nd respondent Institute, has

already filed W.P. No. 10592/09. This Court, while entertaining the above writ petition, passed an order of interim stay on disbursement of salary

and arrears and the same is also the subject matter for consideration by this Court.

9. By the second charge memo dated 12th Aug., 2004, new allegations were levelled against the petitioner, namely, misappropriation of Rs.

3,14,610/- against part-time staff, allegation of payment of salary by using fictitious names, allegation relating to misappropriation of CPS salary for

a sum of Rs. 90,000/-, allegation relating to misappropriation of MODROBS fund from AICTE for about Rs. 4,00,000/-, allegation relating to

misappropriation of SC/ST students fees for Rs. 35,000/-, allegation of putting signature in the attendance even on the days when the petitioner

was absent, misappropriation of co-operative stores fund of Rs. 50,000/-, etc., which formed part of the 2nd enquiry. Since the enquiry had

already commenced, the petitioner, by writing letter dated 8th Sept., 2009, requested the enquiry officer, Mr. P. Balasubramanian, Retired District

Judge, not to proceed with the enquiry in view of the pendency of W.P. No. 17284/09 on the ground that stay has been obtained against the

enquiry proceedings initiated against the petitioner, and in view of the same, the matter could not be further proceeded with. Therefore, it was

contended that the scope of enquiry initiated vide charge memo dated 12th Aug., 2004, are in no way connected with the charge memo dated

29th July, 2004, which has become the subject matter in W.P. No. 10592/09. Therefore, as rightly contended by the learned senior counsel

appearing for the 2nd respondent Institute, the case of the petitioner that the 2nd respondent has once again reissued second charge memo on the

same set of charges will not hold good and, accordingly, this Court is not inclined to accept the case of the petitioner.

10. It could also be seen that the petitioner has given rise to several questionable developments in the administration, which can be seen from

various criminal cases filed by the college authorities and one of the complaints even culminated into the filing of a charge sheet. Few of the FIRs are pending in various police stations and some of them are at the stage of filing of charge sheet and in one case, charge sheet has been filed in the Court of Judicial Magistrate, Tiruchengode, vide C.C. No. 04/07. Another private complaint has been filed in the Judicial Magistrate Court, Tiruchengode in C.M.P. No. 3687/07. Most of the cases are relating to misappropriation of co-operative stores funds to the tune of Rs. 18,00,000/- and another charge relating to misappropriation of laboratory funds to the tune of Rs. 1,05,000/-. That apart, some of the charges are relating to departmental proceedings in respect of misappropriation of Rs. 3,14,610/- against non-payment of salary to part-time staff working in the 2nd respondent Institute. All the above would clearly reveal that the petitioner is answerable to all the allegations for which he has been issued with charge memos. Therefore, the question that the 2nd charge memo and 3rd charge memo are repetition of the 1st charge memo dated 29th July, 2004, are totally misconceived. In any event, even if they are repetition of the earlier charge memo, it is always open to the petitioner to participate in the enquiry headed by a Retired District Judge and bring the matter to the notice of the enquiry officer, but challenging the same and not allowing the enquiry to proceed further by obtaining stay of the enquiry proceedings will neither serve the purpose of the petitioner nor the 2nd respondent Institute. Therefore, this Court, having seen that the charge memo dated 12th Aug., 2004, and charge memo dated 17th Aug., 2004 are not repetition of the 1st charge memo dated 29th July, 2004, is not inclined to agree with the contention advanced by the learned Counsel for the petitioner and, accordingly, W.P. No. 17284/09 is dismissed. However, to meet the ends of justice, this Court directs the enquiry officer to proceed with the enquiry expeditiously, complete the enquiry and submit the report within a period of four months from the date of receipt of a copy of this order.

11. In respect of W.P. No. 10592/09, the short issue raised by the petitioner is that the 1st respondent, appellate authority, while disposing of the appeal filed by the petitioner in W.P. No. 17284/09, by non-reasoned order, has allowed the appeal by giving a peculiar reason stating that the

petitioner has not misappropriated Government money. When the charges levelled against the petitioner seem to be serious in nature, the 1st

respondent, appellate authority, even without referring to the relevant documents, which were available on record before it, by a cryptic order,

allowed the appeal holding that the charges levelled against the petitioner seem to be of no major criminal offence or misappropriation of

Government money, etc. In this context, learned Counsel for the 2nd respondent/petitioner, Institute took me through the order passed by the 1st

respondent stating that such an order is neither sustainable on fact nor on law and prayed for setting aside the same with a prayer to remand the

matter back to the 1st respondent for fresh consideration on the basis of the material available on record.

Therefore, the contentions of the learned Counsel appearing for the 2nd respondent/petitioner in W.P. No. 17284/09 that the 2nd respondent

Institute is not entitled to challenge the order dated 13th March, 2009, after having passed the consequential order and having reinstated the

petitioner in service, do not carry legal force because the 1st respondent has considered all the aspects relevant to the case, particularly by taking

into account the fact that the 2nd respondent Institute has not paid the subsistence allowance from February, 2005, till the date of dismissal from

service, which was in violation of the principles of natural justice.

Hence, in the considered view of this Court, when the 2nd respondent Institute has initiated various criminal proceedings by filing FIRs and some

of them are admittedly pending enquiry before the Judicial Magistrate, Tiruchengode, the 1st respondent, who is the appellate authority, should

have considered all the relevant materials on record. The non-speaking nature of the order of the appellate authority has given rise to the present

writ petition. The relevant portion of the said order of the appellate authority, is extracted hereunder:

After the oral enquiry, the Principal Secretary/Commissioner of Technical Education had examined all the available records carefully. According to

the findings of the Appellate authority, the charges levelled against him seem to be of no major criminal offence or misappropriation of Government

money, etc. There are procedural flaws in accounting the transactions. It is found that the punishment awarded is excessive as no major case is

made out warranting dismissal of the Appellant from service.

A bare reading of the above order passed by the appellate authority does not whisper how the appellate authority has exercised its appellate

power. If an order passed by the original authority is challenged by way of appeal before the appellate authority, the necessity to record reason is

greater, for without recording reasons, the appellate authority cannot dispose of the appeal either by confirming the order or cancelling the same.

The requirement of indicating reason by the appellate authority has been judicially recognised as imperative. Right to reason is an inalienable part of

a sound quasi-judicial system and it reflects the application of mind on the part of the authority dealing with the appeal.

It is a general principle of law that right to appeal is a valuable right and parties have a right to be heard both on question of law and on facts. The

judgment in the first appeal must address itself to all the issues of law and facts and decide the same by giving sound reasons to support its finding

while disposing of the said appeal. The appellate authority, while exercising appellate jurisdiction, is duty bound to discuss in detail all aspects

raised by the parties, which is not only imperative but also immensely necessitated. If the appellate authority wants to confirm the view taken by the

original authority, there may not be a necessity for repeating the same reasoning and the appeal could, in such circumstances, be disposed of by

giving brief reasons on the issue with which the appellate authority agreed with the reason given by the original authority. But, wherever the reason

and decision of the lower authority are intended to be upset, it is always desirable, more so mandatorily required that reasons should be ascribed in

support of the view and conclusion. But if this is not done, the order could certainly be characterised as perverse.

In the present case, since the appeal has been allowed with a cryptic order, practically without giving any reason and, more so, stating that the

amount misappropriated not being Government money, does not mean that people can misappropriate private funds, which will not constitute

major offence. Therefore, this Court is of the considered view that the order passed by the appellate authority is unsustainable and is liable to be

set aside. Accordingly, the impugned order No. I1095/C4/2005 dated 13th Mach, 2009, challenged in W.P. No. 10592/09 is set aside and the

matter is remanded back to the 1st respondent, appellate authority for fresh consideration in accordance with law. The 1st respondent shall

consider the appeal on the basis of the available records produced by both the sides and dispose of the appeal in accordance with law within a

period of two months from the date of receipt of a copy of this order.

12. In the result, W.P. No. 17284/09 is dismissed and W.P. No. 10592/09 is allowed. Consequently, connected miscellaneous petitions are

closed. However, there shall be no order as to costs.