

(2008) 11 MAD CK 0128

In the Madras High Court

Case No : Writ Appeal No. 1087 of 2000, Writ Petition No. 13463 of 2005, W.A.M.P. No's. 2338 and 2339 of 2004 in W.A. No. 1087 of 2000 and W.P.M.P. No. 14746 of 2005 in Writ Petition No. 13463 of 2005

The Correspondent, Sri Chakravarthy International
Matriculation Academy, The President, Sri Chakravarthy
International Matriculation Academy and Sri Chakravarthy
International Matriculation Academy

APPELLANT

Vs

Mrs. T.J. Manjuladevi, State of Tamilnadu and Inspector of
Matriculation Schools
Mrs. T.J. Manjuladevi Vs The
Government of India and Others

RESPONDENT

Date of Decision : 21-11-2008

Acts Referred:

Citation : (2008) 11 MAD CK 0128

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : C. Selvaraju for Selvi George in W.A. No. 1087 of 2000 and C. Panneerselvam, in W.P. No. 13463 of 2005, for the Appellant; C. Panneerselvam, for R-1 in W.A. No. 1087 of 2000, S. Rajasekar, A.G.P. for RR-2 to 4 in W.A. No. 1087 of 2000 and for RR-2 to 5, 14 to 17 and 22 in W.P. No. 13463 of 2005, R. Saseetharan, for RR-6 to 8, 11 and 12 in W.P. No. 13463 of 2005, Sathish Parasaran, for RR-18 and 19 in W.P. No. 13463 of 2005 and G. Nagarajan, for R-21 in W.P. No. 13463 of 2005, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.

W.A.No.1087 of 2000:

1. The Correspondent, President and the Management of Sri Chakravarthy International Matriculation Academy, have preferred this Writ Appeal against the order dated 20.4.2000 in Writ Petition No. 17346 of 1997, whereby the learned single Judge allowed the said Writ Petition preferred by the first respondent herein, namely Mrs. T.J. Manjuladevi and directed the appellants-Sri

Chakravarthy International Matriculation Academy to pay her all back-wages and attendant benefits and other monetary benefits in lumpsum in Demand Draft, treating her as she has been in continuous service of the appellants-Sri Chakravarthy International Matriculation Academy.

2. As the Writ Appeal can be disposed of on a short question, it is not necessary to discuss all the facts, except the relevant one.

3. The first respondent-T.J. Manjuladevi (writ petitioner) who was the Principal of the School in question (Sri Chakravarthy International Matriculation Academy), was placed under suspension on 22.1.1992 and a charge-memo was issued on 6.5.1992. According to the appellants, after receipt of her show cause reply, dated 15.5.1992, a domestic enquiry was conducted on 5.9.1992, in which the first respondent participated. On 15.9.1992, though she appeared before the enquiry officer, but left out of the enquiry proceedings, alleging that the enquiry was not conducted in accordance with law. Again, a notice was served on her to participate in the enquiry on 19.9.1992, but she did not choose to attend the enquiry. The charge(s) having been found proved, she was removed from service, vide order dated 23.9.1992, against which the first respondent herein preferred an appeal before the third respondent-Director of School Education.

The third respondent-Director of School Education, by order dated 21.4.1994, allowed the appeal on the ground that there was no opportunity given to the first respondent before issuance of the impugned order of removal from service. The Management of the School represented before the Director of School Education on 28.4.1994 bringing to his notice that the order was passed by him without hearing the Management of the School.

When the matter was pending, the first respondent preferred Writ Petition No. 19495 of 1994 for implementation of the appellate order dated 21.4.1994, and the learned single Judge passed the order dated 23.9.1996, directing to enforce the order dated 21.4.1994.

It appears that in the meantime, re-enquiry was conducted against the first respondent and the Management subsequently reinstated her and again suspended. This time, she did not submit her explanation and was dismissed by the Management of the School on 26.11.1996, against which the first respondent preferred another Writ Petition in W.P. No. 17346 of 1997, wherein, the learned single Judge allowed the prayer of the first respondent by the impugned order dated 20.4.2000.

4. Learned Senior Counsel appearing for the appellants submitted that though the first respondent only merely asked for implementation of the appellate order, but at paragraph 9 of the impugned order, the learned single Judge observed that the order of suspension dated 22.1.1992 and the charge-memo dated 6.5.1992 were issued by the Correspondent of the School (fourth respondent in the Writ Petition) to the writ petitioner and Mrs. Gajalakshmi, a self-styled authorised official, who has no connection with the School and there is no such

post as "authorised official", as per the Code of Regulations for Matriculation Schools of Tamil Nadu, and no such post was ever recognised by the competent authority, viz., the Director of School Education.

It was also submitted by the learned Senior Counsel appearing for the appellants that the aforesaid finding(s) of the learned single Judge were uncalled for, in the absence of challenge to the order of suspension dated 22.1.1992 and the charge-memo dated 6.5.1992.

Learned Senior Counsel appearing for the appellants further submitted that the appellate order dated 21.4.1994 was passed without giving any opportunity to the Management of the School and the order of removal from service passed by the Management of the School, was set aside by the appellate authority-Director of School Education.

On the contrary, the stand taken by the learned Counsel appearing for the first respondent-writ petitioner is that the authority who issued the order of suspension and the charge-memo had no such jurisdiction.

5. We have heard the learned Counsel appearing for the parties and noticed their rival contentions and also perused the records.

6. It has not been disputed that the appellate authority-Director of School Education of the Government of Tamil Nadu, passed the order in favour of the first respondent-writ petitioner and allowed her appeal on 21.4.1994 without notice and hearing the Management of the School.

7. It is also not in dispute that the first respondent-writ petitioner, while preferring the earlier Writ Petition No. 19495 of 1994 for implementation of the appellate order or the subsequent Writ Petition No. 17346 of 1997 challenging the dismissal order, had not challenged the order of suspension or the charge-memo, which were issued on her.

8. In view of such facts, while we hold that the appellate order dated 21.4.1994 is illegal being violative of the rules of natural justice, no opportunity having been given to the Management of the School to defend its case, we further hold that the learned single Judge erred in giving a finding with regard to the legality or propriety of the order of suspension dated 22.1.1992 and the charge memo dated 6.5.1992, the same having not been challenged in those Writ Petitions.

9. Learned Senior Counsel appearing on behalf of the appellants-Management of the School fairly conceded that proper opportunity is required to be given to the first respondent. It was also submitted that if she is reinstated and the Management of the School is allowed to proceed in the enquiry in accordance with law, there should not be any grievance on the part of either party.

10. In the facts and circumstances, we set aside the impugned order dated 20.4.2000 passed by the learned single Judge in Writ Petition No. 17346 of 1997, the appellate order dated 21.4.1994 passed by the Director of School Education

of the Government of Tamil Nadu, Chennai, and the order of removal from service of the first respondent, dated 23.6.1992 and the subsequent dismissal order dated 26.11.1996.

The first respondent-writ petitioner (T.J. Manjuladevi) shall stand reinstated as Principal of the School in question and it will be open for the Management of the School in question to proceed in the enquiry in accordance with law, after giving opportunity to the first respondent-Mrs. T.J. Manjuladevi.

So far as the arrears of salary are concerned, that will be depending upon the outcome of the enquiry, as the first respondent was under suspension, prior to the order of removal dated 23.6.1992/dismissal order dated 26.11.1996.

The first respondent is also given liberty to raise all the objections before the Management of the School and the enquiry officer, including the question of jurisdiction of the authorities who issued the order of suspension dated 22.1.1992 and the charge-memo dated 6.5.1992. If such objections are raised by the first respondent, it is expected that the enquiry officer, followed by the competent authority of the School, will decide such objections in accordance with law, before passing final orders in the departmental proceedings.

The first respondent-writ petitioner is directed to co-operate in the departmental proceedings.

In case the first respondent does not co-operate in the departmental proceedings, it will be open for the Management of the School to proceed ex-parte in accordance with law.

The Management of the School is directed to conclude the enquiry at an early date, preferably within three months from the date of receipt/production of a copy of this judgment.

11. The Writ Appeal is disposed of with the aforesaid observations/directions. No costs. W.A.M.Ps. are closed.

12. Writ Petition No. 13463 of 2005: The writ petitioner-Mrs. T.J. Manjuladevi, Principal of Sri Chakravarthy International Matriculation Academy (a Higher Secondary School) was the first respondent in Writ Appeal No. 1087 of 2000. She filed the present Writ Petition No. 13463 of 2005 prohibiting 21st respondent, namely the Central Board of Secondary Education (for short, "the CBSE"), Delhi, from continuing the proceedings to grant affiliation/approval, etc., to the proposed starting of the P.S.B.B. Millennium School, by 18th and 19th respondents or any other Management or any other person within the campus of 6th respondent-School.

13. From the year 2005 when the above Writ Petition was preferred, till now, nearly three years have passed, it is not stated by the petitioner as to whether the CBSE in the meantime, granted any affiliation/approval etc., to the PSBB Millennium School. Even if it is presumed that the CBSE has granted its affiliation/

approval etc., to the said School, the said order of affiliation/approval, etc., having been not challenged and there being no cause of action when Writ Petition No. 13463 of 2005 was preferred, we are of the view that no relief could be granted in the present Writ Petition No. 13463 of 2005.

14. This apart, we have already noticed above in Writ Appeal No. 1087 of 2000 that the Writ Petitioner-T.J. Manjuladevi is the suspended Principal of the Management of the School in whose campus it is stated that the PSBB Millennium School was to start. The Management of the School of the writ petitioner having not made any objection, at the instance of the writ petitioner-T.J. Manjuladevi, who was a suspended Principal, interference is not called for.

15. There being no merits, Writ Petition No. 13463 of 2005 is dismissed. No costs. W.P.M.P. is closed.

16. The Writ Appeal is disposed of and the Writ Petition is dismissed, as above. No costs. The Miscellaneous Petitions are closed.