

(2011) 03 MAD CK 0625

In the Madras High Court

Case No : Writ Petition No. 30058 of 2008 and M.P. No. 1 of 2008

The Secretary Balakrishnavilas Aided Primary School

APPELLANT

Vs

The Joint Director of Elementary Education, The Chief Educational Officer, The District Elementary Educational Officer and V. Jayanthi

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 18, 22(1), 22(2), 22(3)

Citation : (2011) 03 MAD CK 0625

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : P. Godson Swaminath, for Isaac Mohanlal, for the Appellant; A. Edwin Prabhakar, AGP for R1 to R3 and S.N. Ravichandran, for R4, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This writ petition has been filed, seeking an order in the nature of writ of mandamus or any other appropriate writ or direction in the nature of writ, directing the third Respondent herein to consider and pass appropriate orders on the Petitioner's proposal for prior approval to the proposed dismissal of the fourth Respondent u/s 22(1) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973.

2. The Petitioner herein is the recognized primary school providing education from standard 1 to 5. It is an admitted fact that the private school is receiving aid from the Government of Tamil Nadu. According to the Petitioner, the school was established as an Elementary School, in the year 1953. There are totally 19 teachers including one Headmaster and on the date of filing of the writ petition, the strength of the school was 810 and the medium of instruction is Tamil.

3. The Petitioner has further stated that Tmt. V. Jayanthi, fourth Respondent herein was employed as Secondary Grade teacher in the school since 1983-86 and the school took disciplinary proceedings on her. As per the charge memo, dated 10.01.2006, (i) for beating students severely (ii) refused to value the examination paper (iii) leaving the school during working hours without the permission from the Headmaster (iv) ringing the school bell before the time (v) sending students outside the school for her personal work (vi) trying to gather other teachers to protest against management (vii) boycotting the staff meeting (viii) non submission of "notes of lesson" in time (ix) making the students to sleep instead of taking classes and (x) not maintaining discipline while the National Anthem was sung. According to the Petitioner, after the enquiry, on the aforesaid charges, the management placed the fourth Respondent under suspension by order, dated 27.01.2006.

4. It is seen that the fourth Respondent had submitted her explanation, denying the charges levelled against her as false, by her letter, dated 21.02.2006. The school committee, by a resolution, dated 28.04.2006, resolved to dismiss the fourth Respondent from service and the same was communicated to the fourth Respondent, by the Petitioner, by proceedings, dated 28.04.2006 and sent the proposal, dated 28.04.2006 to the District Elementary Educational Officer, the third Respondent herein, seeking for approval to the dismissal of the fourth Respondent and as there was delay, the Petitioner sent reminders. The fourth Respondent filed W.P. No. 16366 of 2006 in the High Court, challenging the order of dismissal and the same was dismissed by order, dated 21.06.2006 passed in the writ petition and directed the third Respondent to consider and pass orders on her representation. The fourth Respondent appeared and made representation to the third Respondent on 30.06.2006 and 20.07.2006. In pursuance of the orders passed by this Court, the third Respondent considered the representations made by the fourth Respondent and also the proposal sent by the Petitioner herein and passed an order in Na. Ka. No. 845/B1/2006, dated 31.07.2006, whereby gives approval for her dismissal. Aggrieved by which, the fourth Respondent filed an appeal to the Joint Director of School Education, the first Respondent herein, who passed the order, dated 13.05.2008 by his Proceeding No. Mu. Mu. No. 26187/H2/2006, setting aside the order of dismissal, on the ground that the management had not obtained prior approval of the third Respondent before dismissing the fourth Respondent.

5. The Petitioner has filed writ petition in W.P. No. 13219 of 2008, challenging the said order, dated 13.05.2008 passed by the first Respondent, stating that the first Respondent has no competency to decide the said matter and no notice or opportunity was given to the Petitioner. This Court, by order, dated 07.07.2008 was pleased to dismiss the writ petition, on the ground that the Petitioner/management had not obtain prior permission from the third Respondent before issuing the order of dismissal against the fourth Respondent and accordingly, the order passed by the first Respondent was not set aside. With the above pleadings, the Petitioner has sought an order, allowing the writ petition.

6. The counter filed by the third Respondent is adopted by the Respondents 1 and 2. The fourth Respondent has also filed her counter.

7. The fourth Respondent has specifically stated that the Petitioner has no locus standi to file the writ petition and that the writ petition itself is not legally maintainable. The fourth Respondent further averred that originally the school was started in the year 1953 as Balakrishna Vilas Aided Primary School. The management of the private school was purchased from the erstwhile correspondent by Tmt. Santhakumari in the year 2005 and the management was transferred to the Petitioner only in the year 2007. The fourth Respondent was appointed as Secondary Grade Teacher, as per order, dated 19.08.1996 by the school management. According to the fourth Respondent, Tmt. Santhakumari had borrowed a sum of Rs. 1,10,000/- from the fourth Respondent for the purpose of purchasing the school from the erstwhile management, in the year 2005. Subsequently, the fourth Respondent demanded to return the amount borrowed from her, due to which, there was misunderstanding between Tmt. Santhakumari and the fourth Respondent herein. Hence, with the ulterior motive, the order, dated 27.01.2006 was passed and the fourth Respondent was placed under suspension. She has further stated that there is violation of principles of natural justice against the fourth Respondent, since without furnishing copies of the documents relied on, the Petitioner herein ordered for enquiry on 28.04.2006. Though the fourth Respondent appeared for the enquiry, order of dismissal was passed by the then Secretary, without following principles of natural justice. According to the fourth Respondent, she was abused by the management with filthy language, against which, she made a complaint before the police and also gave a complaint to the State Commission for Women to take appropriate action against the members of the school management, thereafter, they served the order of dismissal, dated 28.04.2006.

8. Learned Counsel appearing for the fourth Respondent submitted that the order passed by the Petitioner dismissing the fourth Respondent is illegal, violative of Section 22(1) of Tamil Nadu Private Schools (Regulation) Act, whereby the management should have obtained prior permission from the third Respondent.

9. It is not in dispute that the fourth Respondent preferred appeal before the third Respondent and subsequently, filed the writ petition in W.P. No. 16366 of 2006 before this Court, challenging the order of dismissal passed against her.

10. The third Respondent in the counter has stated that the Petitioner school is an aided recognized school, receiving grants from the State Government and as such, the management of the school should obey the Rules and Regulations of the Government.

11. Learned Additional Government Pleader appearing for the Respondents 1 to 3 submitted that as per the Tamil Nadu Aided Schools Act, private schools should get prior permission from the District Elementary Educational Officer for dismissing or suspending any teacher. However, without getting prior permission

from the said authority, the Petitioner, suspended the fourth Respondent, a secondary grade teacher on 27.01.2006. The third Respondent, immediately informed the Petitioner that he should not suspend the teacher, without prior permission. However, subsequently charges were framed against the fourth Respondent and the teacher was dismissed from service. On appeal preferred by the fourth Respondent, the third Respondent conducted enquiry on 20.07.2006. After the disposal of the aforesaid writ petition, as directed by this Court, the second Respondent, the Chief Educational Officer, passed the order in Na. Ka. No. 845/B1/2006, dated 13.12.2008 stating that the correspondent and his son were working improperly and not obeying the orders of the higher officials and the records were not maintained properly by them and also not submitting proper Reports to the Department.

12. It is not in dispute that the Petitioner, being an Aided Primary School has to obtain prior permission from the Government authorities. In the instant case, without getting the permission from the State Government, it is seen that the order has been passed violative of principles of natural justice. As per the counter filed by the third Respondent, it is clear that the second Respondent has passed the order, dated 13.12.2008, stating that the correspondent and the son of the correspondent were acting improperly and not obeying the orders of the higher officials of the Elementary Education Department and the records were also not maintained properly and they were not submitting proper Reports to the Department and also not permitting the department officials to visit the school.

13. The aforesaid attitude indicated by the second Respondent in his order would show that the Petitioner management is functioning improperly against the Rules and violating principles of natural justice. When the management is acting in such a manner, so as to get adverse comments from the Chief Educational Officer of the District, the Court can lightly view the attitude of the management towards the fourth Respondent, secondary grade teacher working in the school, being a subordinate of the school. As Tamil Nadu Private Schools (Regulation) Act, 1973 and the Rules clearly stipulates that there should be prior permission, to appoint, dismiss, suspend any teacher from the concerned authority, without following the mandatory procedures, as required under law, the Petitioner cannot justify the order of dismissal passed against the fourth Respondent.

14. The following decisions were relied on by both sides on the legal issue involved in the writ petition:

1. Tata Coffee Limited v. The State of Tamil Nadu 2010 (6) CTC 262
2. Little Flower Primary School Vs. The Joint Director of Elementary Education, The District Elementary Education Officer, The Assistant Elementary Education Officer and G. Jothi,
3. RV Thevar Memorial Girls High School v. The Director of School Education 2002 (4) CTC 129

4. Ranganathan, C. v. The President/Secretary of School Committee, etc. and Anr. 1997 WLR 489

5. K.M. Valliappan Vs. The Madras Seva Sadan Higher Secondary School and Others,

15. A Division Bench of this Court in RV Thevar Memorial Girls High School v. The Director of School Education, reported in 2002 (4) CTC 129, has held that termination of teacher without obtaining prior approval from competent authorities is illegal and ab initio void, as per Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, since requirement of prior approval before termination from competent authority is mandatory. It was further held that the order of the appellate authority, setting aside the order of termination of teaching and non-teaching staff by the management with prior permission is valid and which cannot be interfered with under Article 226 of the Constitution. The aforesaid decision is squarely applicable to the facts and circumstances of this case, since the fourth Respondent herein, secondary grade teacher was terminated by the Petitioner, without obtaining prior permission from the authorities, as contemplated under the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973.

16. In K.M. Valliappan Vs. The Madras Seva Sadan Higher Secondary School and Others, , this Court has held that under Sections 18, 21(1) and 22(3) (a) of the Tamil Nadu Recognized Private Schools (Regulations) Act (XXIX of 1973) that suspension of teachers by Secretary of School Committee is void. It cannot be ratified by School Committee and passing resolution to appoint enquiry officer to go into the charges levelled against teacher. Authorizing Secretary to take follow up action, would be void ab initio. In the decision, at page number 491, this Court has held as follows:

18. The impugned order has therefore to be declared as illegal and void ab initio. The Petitioner shall be entitled to all the consequential benefits flowing from the impugned order being declared as illegal. None of the observation made in this writ petition, in the course of this order are to be taken into account in the enquiry, that may be held against the Petitioner and the merits of the case have to be necessarily be gone into by the enquiry officer all that is decided in this writ petition is regarding the power of the Secretary to suspend the Petitioner and as to competence the school committee to ratify such an action.

19. It is necessary to advert to the arguments of the counsel for the Respondent-school that the resolution of the school committee passed in the month of May, 1995, directing the Secretary to take follow up action would include the power to suspend. It is not possible to agree with the contention, as the follow up action in that context necessarily refers to the following up of the enquiry and not to exercise substantive power to suspend the master and servant relationship, which has the effect of keeping the holder of the office away from his duties, and also deprives him to a substantial extent of his emoluments during the period of

suspension.

17. As contended by the learned Counsel appearing for the fourth Respondent, the order of dismissal passed by the Petitioner against the fourth Respondent, without getting prior approval is illegal. It is seen that principles of natural justice were not followed and therefore, as held by this Court in the aforesaid decision, it has to be construed that the action taken against the Petitioner is void ab initio and there is no justification on the part of the Petitioner, seeking direction against the Respondents 1 to 3, since the Petitioner has acted against the mandatory provisions of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. As the termination is against law, the fourth Respondent is also entitled to all consequential benefits, since the impugned order, being passed is illegal as decided by the Respondents 1 and 2, in the light of the ratio decendi laid down by the Hon''ble Apex Court and this Court.

18. In Ranganathan, C v. The President/Secretary of School Committee, etc and Anr., reported in 1997 Writ L.R 489, this Court allowed the writ petition filed by the Headmaster of a Private School, based on various decisions of the Hon''ble Supreme Court and this Court.

19. In Antulay v. Ramdas Srinivas Nayak, reported in 1984 SCC 4 (S.C) 500, the Hon''ble Supreme Court has held as follows:

It is unnecessary to refer to the long line of decisions commencing from Taylor v. Taylor, Nazir Ahmad v. King Emperor and ending with Chettiam Veetil Ammad v. Taluk Land Board, laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

20. In the instant case, when the statute requires prior permission from the authority, the Petitioner, without following the mandatory procedure, could not have terminated the fourth Respondent from service, which would be an arbitrary act on the part of the Petitioner and legally not sustainable.

21. In Little Flower Primary School Vs. The Joint Director of Elementary Education, The District Elementary Education Officer, The Assistant Elementary Education Officer and G. Jothi, , it was held by this Court that Section 22(2) of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 clearly states that Competent Authority should be satisfied about decision on adequate and reasonable grounds not only with regard to procedure followed but also can look into gravity of charge and whether proposed punishment is commensurate with such proved charges and it is an unbuilt mechanism provided under statutory rule. Therefore, Petitioner/School Management was not justified in its contention against the District Elementary Education Officer, refusing the approval for the dismissal of a teacher. In the aforesaid decision, this Court directed the writ Petitioner/school management to send proposal for sanction of pension and other terminal benefits to the second Respondent therein within a period of two weeks from the date of receipt of a copy of the order and the arrears of salary payable

was also ordered to be paid in favour of the teacher, within a period of six weeks from the date of receipt of a copy of the order.

22. In this case, it has been made clear that the termination of the fourth Respondent by the Petitioner, without getting prior approval from the concerned authority is against law, hence, the termination of the teacher, the fourth Respondent herein is legally not sustainable. On the aforesaid circumstances, the fourth Respondent is entitled to all the benefits, that are available, according to law, as decided by the Hon"ble Apex Court and this Court, in the decisions referred to above. The writ petition has been filed, seeking an order justifying an illegal termination of the fourth Respondent by the Petitioner, hence, this Court could find no error on the part of the Respondents 1 to 3 in rejecting the proposal sent by the Petitioner and therefore, the writ petition is liable to be dismissed.

23. In the result, this writ petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, no order as to costs.