
(1972) 07 MAD CK 0041
In the Madras High Court

T.N. Kamala

APPELLANT

Vs

The Director of School Education and Another

RESPONDENT

Date of Decision : 10-07-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1973) 1 MLJ 68

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The petitioner joined the service of the second respondent on 2nd July, 1959. Under the Educational Rules which are adopted more as guidelines for the management of schools like the second respondent, the teachers entertained by private schools are to enter into a contract of service with the management. It is not in dispute that on the date of the entry into the service of the second respondent the petitioner so entered into a contract. Inter alia the contract provided that if a teacher in service of a school of the kind in question is charge-sheeted on account of some misconduct or any violation, a higher hierarchy is prescribed for the purpose of scrutinising the regularity or propriety of the orders passed by the management in relation to such charges. For example, if a teacher's services are terminated she has a right of appeal to the Inspectress of Schools, and as against that a representation can be made to the Director of School Education and so on. In the instant case, after the petitioner was confirmed in her post on 2nd July, 1960 certain charges were levelled against her and the management called, upon the petitioner to explain and conducted thereafter an enquiry. At such an enquiry the services of the petitioner were terminated on 23rd April, 1965. On an appeal preferred by the petitioner to the Inspectress of Schools, the petitioner's appeal was allowed and she was directed to be reinstated. When the petitioner rejoined duty on 9th December, 1965, she was confronted again with certain other charges and on the basis of the said set of charges the petitioner's services were once again terminated on 11th April, 1966. The petitioner preferred an appeal to the

Inspectress of Schools who allowed the appeal and directed the reinstatement of the petitioner in her order dated 24th November, 1966. The petitioner, however, was not taken in service nor was her salary paid during the period when she was kept out of service. The petitioner, therefore instituted two suits, one O.S. No. 611 of 1969 in the Sub-Court, Tiruchi,,for a declaration that the termination of her services was not legal and that she was entitled to reinstatement and she also claimed incidentally damages. In another suit which was later brought to the Sub-Court, Tiruchi on transfer and numbered as O.S. No. 133 of 1970, the petitioner claimed salary for the period commencing from 23rd April, 1965 to 8th April, 1966. The second suit was decreed and the first suit was dismissed. In the course of the suit, but after the original pleadings were concluded, both the plaintiff (petitioner) and the defendant (second respondent) filed additional pleadings as a result of the supervening information by then obtained by them as a result of the Director of School Education allowing an appeal said to have been preferred by the management against the order of the Inspectress of Schools dated 24th November, 1966. It is common ground that the Director of School Education without hearing the petitioner by order dated 29th January, 1970 reversed the order of the Inspectress of Schools and sustained the order of termination of services made by the second respondent. It is not clear whether the petitioner has followed up the decree of the lower Court where-under her suit for declaration that her services were wrongly terminated was dismissed, by filing an appeal against it. But, the learned Counsel for the petitioner states that the time for appeal is not yet over. It is in such circumstances that the petitioner has filed this writ petition questioning the order of the Director of School Education passed on 29th January, 1970.

2. The petitioner's case is that the first respondent, when he disposed of the representation or further appeal filed by the second respondent ought to have given her an opportunity and thereafter considered the case on merits and passed an order. In the absence of such a just or a fair hearing it is stated that the challenged order suffers from the violation of the principles of natural justice. On the other hand, the learned Counsel for the second respondent states that it cannot be disputed that any right which the petitioner had in relation to the services here with the second respondent sprung from a contract of service, and the procedure for redress contemplated in the said contract of service was not formulated by reason of any statutory provision or rule but as a result of administrative convenience. It is therefore said that as the order of termination of services was one passed in the administrative capacity of all the authorities who were called upon to adjudicate on the grievance of the petitioner, and as such an order is not derivable from any statutory rule, this Court cannot issue a rule under Article 226 of the Constitution. In the alternative it is stated that as the grievance is referable to a contract of service as between a servant and a master, such matters can be effectively adjudicated in civil Courts and that remedy having been already availed of by the petitioner by filing two civil suits above referred to, the petitioner cannot once over invoke the extraordinary

jurisdiction of this Court for the issuance of a rule in the nature of *certiorari*.

3. It is not in dispute that the so-called rights of the petitioner vis-a-vis the second respondent sprung from the contract of service which by itself does not spring from or is attributable to any provision statute or rule therein. In those circumstances it has to be considered whether a rule under Article 226 of the Constitution can issue. No doubt the march of law has been very fast in the matter of the issue of rules under Article 226 to quash the orders of Tribunals exercising power and dealing with the rights of two parties before it. In all such cases rules have been issued ever since the adoption of the extraordinary writ jurisdiction by Courts either on the ground that the authority dealing with the subject-matter failed to act in accordance with the guidelines set under the Act or the rules concerned, or while exercising such power failed to observe the elementary principles of natural justice such as hearing the aggrieved party before coming to a conclusion. But all such rules have been invariably issued only in cases where the rights slope from the exercise of statutory power or a power attributable to a rule framed under the statute. But as long as such a power is not referable to any such provision of law and if it is not in dispute, as in this case, that such rights sprung only from a contract of service, then it is rightly contended by Mr. Nambiyar, learned Counsel for the second respondent that no rule in the nature of *certiorari* or any other rule under Article 226 of the Constitution can issue so as to set right grievances which arise from contracts simpliciter.

4. The argument of the learned Counsel for the petitioner is that though apparently the grievance of the petitioner could be redressed only in accordance with the terms of the contract yet it was the duty of the authorities dealing with such situations to act judicially, and therefore, in accordance with the principles of natural justice. In the main it is stressed that as the first respondent disposed of the appeal without giving the petitioner any opportunity to make her representations, the challenged order has to be removed because of the violation of the principles of fair hearing. But our Courts have consistently held that in cases where Tribunals are not acting judicially or quasi-judicially but only interpreting the terms of a contract in juxtaposition to the material connected with it, then that body being purely an administrative body need not be bound by the principles of natural justice including the rule of fair hearing. Reliance, however, was placed by the learned Counsel for the petitioner on the decision in *D. F. O., South Kheri and Ors. v. Ram Saneshi Singh* (1970) 1 S.C.W.R. 194. That was a case where disputes arose out of the terms of the contract entered into between a contractor and a Divisional Forest Officer when the contractor complained of lack of observance of the principles of natural justice when the dispute was considered and disposed of by the concerned authorities. The Supreme Court said that a petition in the nature of a writ under Article 226 is certainly maintainable, even though the right to relief arose out of an alleged breach of contract provided further the action challenged was of a public authority invested with statutory power. Even if it is assumed that the first

respondent was acting as a public authority it cannot be said that he was invested with statutory power when he dealt with the contract of service and passed orders thereon. That such an investiture of power under a statute or a rule thereunder is the sine qua non for an aggrieved party to invoke the extraordinary jurisdiction of this Court or the Supreme Court under Article 226 or under Article 32 of the Constitution is well settled. The decision cited therefore does not apply to the facts of this case.

5. On the above broad principle it cannot be disputed that in respect of all rights springing from a contract of service, and particularly in contracts entered into between master and servant, this Court cannot interfere with the orders passed by the authorities who administratively function to deal with such situations and whose power is not derived from or attributable to any statute or statutory rule. On this ground alone the petitioner should fail.

6. Even the alternative argument of the learned Counsel for the 2nd respondent has force. The petitioner availed herself of the alternative remedy of filing a civil suit for the vindication of her rights, and particularly for the relief of setting aside the order of termination and for her reinstatement. In that suit though not directly but indirectly, the order of the first respondent also was brought into record. The learned Subordinate Judge, however, could not consider this aspect fully because of the pendency of this writ petition in this Court but has given the answer to the issue framed in the suit as follows. The main issues that were framed in addition to the issues already framed were, whether the termination of services of the plaintiff (petitioner) is wrongful for all or any of the reasons stated in the plaint, and whether the order of the Inspectress of Girls Schools, Thanjavur, dated 24th November, 1966 has become final and binding on the defendant (second respondent). On the second issue as above the Court found that the order of the Inspectress of Girls Schools, Thanjavur, has not become final. That the first respondent set aside that order was to the knowledge of the petitioner before issues were framed. That answer given to the second issue as above impliedly means that the learned Subordinate Judge was of the view that the first respondent's action in having reversed the order of the Inspectress of Schools was correct. I have already referred to the fact that the petitioner intends to take up the matter further in appeal to the appropriate Court. In those circumstances M. Nambiar laid stress on the fact that the present judgment as it stands between the same parties in a civil action which has concluded is res judicata and that decision until otherwise disturbed by the appellate Court, governs the issue. The Supreme Court has applied the principles of res judicata even in a case where the High Court considered a writ petition on merits and dismissed the same even at the admission stage. When the aggrieved party went up to the Supreme Court under Article 32 of the Constitution on the same issue the Supreme Court said in *Daryao and Others Vs. The State of U.P. and Others*, that the decision of the High Court on merits in such proceeding would operate as res judicata though not on the popular accepted technical basis of the rule of res judicata as found in Section 11 of the Code of Civil Procedure but under the

common law. The petitioner has chosen an alternative form. She could not obtain relief in the civil Court. She is agitating before me the question whether the first respondent's order is regular or proper. By necessary implication this matter has also been indirectly but effectively adjudicated by the civil Court in the suit referred to. In view of the decision of the Supreme Court referred to above as that decision is that of a competent jurisdiction, that decree in so far as it has not been disturbed or set aside otherwise would operate as res judicata and would bind the petitioner. In such circumstances, I am unable to exercise my discretion as at present and issue a rule in the nature of certiorari to remove the order of the first respondent.

7. I have already referred to the fact that such rules cannot be sued against orders which spring from a contract of service. For all these reasons the petition is dismissed. There will be no order as to costs.