

(1992) 11 MAD CK 0047
In the Madras High Court

V. Ganesan

APPELLANT

Vs

Sakthimani and Another

RESPONDENT

Date of Decision : 25-11-1992

Acts Referred:

Citation : (1994) 2 MLJ 258

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—The plaintiff is the appellant. He filed the suit O.S. No. 87 of 1978 on the file of Sub Court, Ramanathapuram for a declaration that the order dated 17.10.1973 of the 2nd defendant Chief Educational Officer, Ramanathapuram, is not valid and for consequential injunction.

2. The abovesaid order of the 2nd defendant directed reinstatement of the 1st defendant in the employment of the plaintiffs school as teacher therein. The suit was dismissed and the first appeal filed by the plaintiff was also dismissed. The suit was dismissed by both the courts below on the ground that the suit was not maintainable in view of Sections 53 and 54 read with Section 25(2) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as "the Act").

3. The brief facts are as follows: The plaintiff, who runs the school in question in which the 1st defendant was a teacher, framed as many as 14 charges against the 1st defendant and referred the matter to the Deputy Inspector of Schools, Ramanathapuram for approval for the issue of three months notice to terminate the services of the 1st defendant. The Deputy Inspector of Schools by order Ex. A-3 dated 20.10.1972 accorded sanction for the issue of three months notice to terminate the services of the first defendant. As against the said order the 1st defendant filed an appeal to the District Educational Officer, who dismissed the same on 1.5.1973 by the order Ex. A-1. Thereafter, the 1st defendant took the matter in second appeal to the 2nd defendant. But the 2nd defendant allowed the second appeal by his order Ex. A-2 dated 17.10.1973 and directed

reinstatement as stated above. Aggrieved by the said order, the plaintiff filed W.P. No. 5912 of 1973 in this Court. The writ petition was admitted. But, however, subsequently by order dated 13.7.1977, the High Court dismissed the said writ petition holding, "the petitioner has a remedy by way of civil suit which he has not availed of. The jurisdiction of this Court under Article 226 of the Constitution of India is barred in such cases." At the time when the writ petition was disposed of, in view of the emergency provisions then existing in the Constitution, this Court held so. Hence, the plaintiff subsequently filed the suit in 1978, after sending a notice u/s 80, C.P.C. But, as stated above, both in the suit as well as in the first appeal, the court below have held that the present suit is not maintainable. The courts below also relied on the decision in *K. Rajeswari v. T.P. Sankaran* 1977 T.L.N.J. 537.

4. In the above circumstances, the point that is argued by the learned Counsel for the appellant initially, is that the present suit is maintainable. On the other hand, both the learned Counsel for the respondents argue that the suit is not maintainable, as held by the courts below. So, I shall first deal with this question taking into account the rival submissions in this regard.

5. Sections 53 and 54 of the Act run as follows:

53. Civil Court not to decide questions under this Act : No civil court shall have jurisdiction to decide or deal with any question which is by or under this Act required to be decided or dealt with by any authority or officer mentioned in this Act. 54. Finality of orders, etc., passed under this Act:

(1) Any order made, decision taken or direction issued by any authority or officer in respect of matters to be determined for the purposes of this Act, shall, subject only to appeal or revision, if any, provided under this Act, be final,

(2) No such order, decision or direction shall be liable to be questioned in any court of law.

The Act came into force only on 1.12.1974, while the above referred to impugned order was passed earlier on 17.10.1973. But, the courts below have relied on Section 25(2) of the Act. Section 25 makes special provisions regarding appeal in certain past disciplinary cases and the Sub-section (2) therein runs as follows:

If any such appeal as is referred to in Sub-section (1) has been disposed of before the date of the commencement of this Act the order made in any such appeal shall be deemed to be an order made under this Act and shall have effect accordingly.

Relying on this legal fiction provided u/s 25(2), the courts below have held that even to the abovesaid order dated 17.10.1973, Sections 53 and 54 of the Act would apply and that hence the present suit is barred.

6. But the learned Counsel for the appellant relies on the decision in *Lala Ram*

Swarup and Others Vs. Shikar Chand and Another, and Sankarammal, President, Pachayappa K.N. Committee v. Ganapathy Chettiar (1991) 2 L.W. 605, to contend that the present suit is not barred, despite Sections 53 and 54 of the Act. In Lala Ram Swarup and Others Vs. Shikar Chand and Another, at 896, I find the following observations:

In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity.

Further, the Supreme Court also relied on the decision in Secretary of State v. Jatindra Nath Choudhary AIR 1924 P.C. 175, where it has been held that the finality of the orders specified in the relevant statutory provision had to be read subject to the two conditions; the first was that the said orders should not suffer from any fundamental irregularity, that is to say, "a defiance or non-compliance with the essentials of the procedure" and the second condition was that the alleged defiance or non-compliance with the essentials of the procedure must be strictly proved by the party alleging it. The Supreme Court also relied on another Privy Council decision in AIR 1940 105 (Privy Council) where it has been held that despite the statutory provisions excluding the jurisdiction of civil courts, the civil courts will have jurisdiction "to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure." This point was also considered by this Court in Sankarammal, President Pachayappa K.N. Committee v. Ganapathy Chettiar (1991) 2 L.W. 605, where this Court relied on the following passage in another Supreme Court decision in Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, :

Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. So, the contention of the learned Counsel for the appellant is that in the present case, the above said second appeal before the 2nd defendant, has been disposed of by the 2nd defendant, not acting in conformity with the fundamental principles of judicial procedure. To substantiate this contention, he took me initially to the first appellate order of the District Educational Officer, Ex. A-1, dated 1.5.1973 and then contracted it with the impugned order Ex. A-2, dated 17.10.1973 of the 2nd defendant.

7. In Ex. A-1 the District Educational Officer, after holding that the 1st defendant's suspension is proper since he has quarrelled with the manager, using unparliamentary words, disobeyed the orders of his superiors and also misbehaved with a lady teacher, proceeds to deal with each of the 14 charges for terminating the service of the 1st defendant. I shall mention about some of the

charges dealt with by him. The first charge relates to the 1st defendant's writing two love letters. With reference to the first love letter, the explanation given by the 1st defendant was that a story written by him for a magazine, had been misused by the manager as love letter. Dealing with this explanation, the said order finds that if it was a story, then the characters in the story should be fictitious and should not in any way coincide with the names of the lady teachers in the school. Then the order deals with the next love letter and points out the memo issued by the Manager of the school in regard to this second letter and concludes that it is true that the then manager had issued oral instructions to the 1st defendant at the time when the love letter affair was brought to his notice, with the main intention of safe-guarding the reputation of the institution and correcting the appellant. Regarding the 3rd charge, that the 1st defendant entered unwanted remarks in the circular notebook, the District Educational Officer finds that the 1st defendant should not have written such remarks in the circular note-book. Then, regarding the 4th and 5th charges, the explanation by the 1st defendant was that whatever criticism the Headmaster had to pass on his subordinates, he should not do it in the presence of the pupils and members of staff. But, the District Educational Officer finds that the Headmaster had not criticised the 1st defendant in the presence of pupils but simply asked him why he had not taught any lesson to the pupils, and that the 1st defendant's reaction then led the pupils to laugh at the Headmaster which amounted to mockery. It was also found by the District Educational Officer that from the enquiry report dated 2.1.1971 of the Deputy Inspector of Schools, the 1st defendant was not in the habit of replying to the questions of Headmaster with politeness, but used to reply in careless and in sarcastic manner. Therefore he finds that the 1st defendant was in the habit of ridiculing the Headmaster and questioning his superiority and authority. Then, dealing with the 9th charge it is stated that the 1st defendant deposed that the Headmaster and manager failed in their duty to remit the four days' pay into the Sub Treasury. In this regard the order concludes that the 1st defendant had given a false statement to the Manager and proved himself a liar and cheat. Then, regarding the 10th charge, the conclusion reached by the District Educational Officer is that the 1st defendant had received his salary on 5.10.1970 and signed in the Masters' Attendance Register on 8.10.1970, even though he stated that he received the salary on 8.10.1970 only. The District Educational Officer also concludes that the school records have been tampered with by the 1st defendant. Regarding the 12th and 13th charges, the officer concludes that the marking of false attendance clearly proved the wilful neglect of duty, and the refusal to receive the memo amounted to insubordination. It has also been observed in the said order that instead of giving reply to the charges, the 1st defendant had made certain observations against the Headmaster and Manager, which were uncalled for. Regarding the 14th charge, the District Educational Officer observes that the statement of the teachers clearly revealed that the 1st defendant had misbehaved with Sulochana, Assistant of the school.

8. As against such an elaborate discussion of different charges, I find that the impugned Ex. A-3 order dated 17.10.1973 of the 2nd defendant, does not deal with specifically any of the abovesaid charges, excepting the first charge, and, even with reference to the first charge, there is only a discussion regarding the first love letter and not the second one and regarding the other charges, the 2nd defendant boldly states in one sentence as follows:

The other charges are flimsy and they have not been proved beyond doubt.

There is absolutely no discussion as to how he came to this conclusion with reference to those other charges. Many of the other charges cannot be termed flimsy at all. That is evident from what I have narrated above regarding the findings given by the District Educational Officer on those charges. Further this is not a criminal case where only the criminal charge has to be proved beyond reasonable doubt.

9. Therefore, it is clear that the impugned order of the 2nd defendant certainly suffers from fundamental irregularity in procedure, spoken to by the above referred to decisions. In fact, in relation to the abovesaid charges other than the first charge, the above referred to finding given by the 2nd defendant, cannot be termed a "judgment" or a legal adjudication at all. It is more so when the 2nd defendant chooses to reverse the order of the District Educational Officer. It has also been held in *Ganthakoru Mangamma and Others Vs. Dulla Paidayya and Others*, relying on *Rani Hemanta Kumari Devi v. Maharaja Jagadindra Nath Roy Bahadur* 16 M.L.J. 272, that where the first appellate court fails in its judgment, reversing the finding of the trial court, to come into close quarters with the evidence in the case or to meet the reasoning of the trial court in support of its conclusion, the judgment of the appellate court must be deemed vitiated by an error in procedure and hence can be interfered with in second appeal. Therefore, there is no difficulty in holding that the present suit is maintainable in view of the abovesaid irregularity in procedure. Further, on the very same ground, viz., the 2nd defendant's order suffers from the abovesaid fundamental error in procedure, the said order has to be set aside and the present suit has to be decreed.

10. The learned Counsel for the appellant also points out that though the abovesaid impugned order is prejudicial to the plaintiff, the plaintiff was not given any personal hearing before such adverse order was passed. According to the counsel, no doubt remarks were called for from the plaintiff and he furnished the remarks it was incumbent on the 2nd defendant to have given a personal hearing to the plaintiff, if really, the 2nd defendant was going to reverse the order of the District Educational Officer. I see force in this submission also.

11. The learned Counsel for the appellant also sought to distinguish the above referred to *K. Rajeswari v. T.P. Sankaran* 1977 T.L.N.J. 537, based on Section 25(2) of the Tamil Nadu Recognised Private School (Regulation) Act, 1973. I have already extracted Section 25(2). In 1977 T.L.N.J. 537, it was held as follows:

Looking at the language of Section 25(2), I have no doubt that the legislature intended to create a fiction whereby orders passed prior to the Act have become indistinguishable from orders passed subsequent to the Act in point of their efficacy. As if the words "shall be deemed to be" occurring in the sections were not enough to lead to this result, the section further proceeds to declare that such orders "shall have effect accordingly". These words provide a further internal aid to the constructions of the statutory fiction, and they provide with the other provisions of the Act especially those in Sections 53 and 54. In my view, the intention of the legislature could not have been expressed in clearer words than we find in Section 25(2). In the result, I am unable to accept the argument of the respondents counsel that Section 54(2) cannot be applied to the present case.

The learned Counsel for the appellant however argues that the second appeal in which the impugned order was passed cannot be said to have "disposed of within the meaning of that term in Section 25(2) of the Act, since as stated above, a writ petition had been filed in 1973 itself attacking the impugned order and not only *rulenisi* was issued in the writ petition in 1973 itself, the interim stay of the abovesaid order was also granted by this Court in the said writ petition. So, according to the said counsel, it cannot be said that the said appeal in which the impugned order was passed was disposed of before the date of commencement of the abovesaid Act, viz., 1.12.1974. The writ petition was dismissed only on 13.7.1977. Till then the interim stay was also in force. In this connection, I asked the learned Counsel whether he could cite any authority, which had interpreted the term "disposal" of an appeal in such a fashion. But, no authority was placed before me in this regard. So, I leave this matter open particularly because, even assuming that the present case is not distinguishable from *K. Rajeswari v. T.P. Sankaran* 1977 T.L.N.J. 537 and Section 25(2) applies to the present case, I have already held that the present suit is maintainable in view of the above referred to Supreme Court and Privy Council decisions.

12 Further, the said counsel also argues that as per the non-statutory rules existing prior to the Act, the Chief Educational Officer had no competency at all to pass an order directing reinstatement. In this connection, he drew my attention to *Kumari Regina Vs. St. Aloysius Higher Elementary School and Another*, . But I do not think that, once on the above mentioned reasoning I have set aside the order of the 2nd defendant in toto, there is any necessity to go into this question whether the reinstatement ordered by the 2nd defendant is enforceable or not, and give a finding thereof. However, it is open to the appellant to agitate this question if and when the 1st defendant chooses to file a fresh second appeal against the abovesaid order of the District Educational Officer as per the present law relating to preferring such second appeals.

13. In the result, the second appeal is allowed, the judgments and decrees of the Courts below are set aside and the suit is decreed as prayed for. However, in the circumstances of the case, there will be no order as to costs.