

(1991) 10 MAD CK 0006
In the Madras High Court

V.R. Palanisamy

APPELLANT

Vs

The Private Colleges Appellate Tribunal and Others

RESPONDENT

Date of Decision : 07-10-1991

Acts Referred:

Tamil Nadu Private Colleges (Regulation) Act, 1976 — Section 14, 20, 22, 55

Citation : (1992) 1 MLJ 598

Hon'ble Judges : Govindasamy, J

Bench : Single Bench

Judgement

Govindasamy, J.—The petitioner joined the services of C.B.M. College, Kovaiputhur, Coimbatore, ever since its inception. While so, due

to certain unpleasant developments in the College, the petitioner initially submitted a letter of resignation on 31.8.1979 to the Secretary of the

College. It is alleged that on persuasion Of the staff members of the College, the petitioner withdrew the said letter of resignation on the very same

day in the evening. It is further alleged that the petitioner had handed over the said letter of withdrawal personally to the Secretary of the College.

In view of the withdrawal of the letter of resignation, the petitioner continued in service of the College-2nd respondent. However, the Secretary of

the 2nd respondent-College by letter dated 23.3.1981 informed the petitioner that since the College could not get suitable personnel to look after

the affairs, the petitioner was not relieved then and that since the College has made alternative arrangements, the College was relieving the

petitioner of his duties with effect from the afternoon of 31.3.1981 and consequently directed the petitioner to hand over charge to the Principal.

The very next day, "the petitioner submitted a representation to the Secretary of the 2nd respondent-College stating that the petitioner had already

withdrawn the letter of resignation on the date on which the petitioner had submitted the letter of resignation and that if the Management had not received the letter of such withdrawal, nothing prevented the Management from relieving the petitioner then and there itself. It was also represented that after a lapse of 1 1/2 years the Secretary of the 2nd respondent-College issued a notice of relief based on the resignation letter dated 31.8.1979 and consequently requested that orders issued by the Secretary directing the petitioner to hand over charge might be cancelled and that the petitioner should be permitted to continue in service. Thereafter, the petitioner made representations to the Director of Collegiate Education. Having received no relief from the aforesaid representations to the Secretary as well as to the Director of Collegiate Education, the petitioner preferred an appeal before the Government, the third respondent herein and the 3rd respondent by G.O.Ms.No.1278, Department of Education, Science and Technology, dated 18.6.1982, considered all aspects of the matter and set aside the order of the Secretary dated 23.3.1981 relieving the petitioner from service and also directed that the petitioner should be reinstated in service with immediate effect. However, while passing the said order, the Government observed as follows:

The Government have examined the appeal in detail in consultation with the Director of Collegiate Education. It is seen that the management did not take any action either to accept or reject the resignation letter of Thiru V.R. Palaniswami. If the real intention of the management was to continue him in service indefinitely till they secure a suitable hand they should have informed the appellant in writing that his resignation would be accepted only when suitable person was available. There is no (sic.) written order produced by the management in having done so. There is also no evidence in support of their contention that the resignation of Thiru V.R. Palaniswami was postponed with his consent. Thiru Palanisamy tendered his resignation on 31.8.1979 and is reported to have withdrawn the same on the same day. The management has issued orders on 23.3.1981 relieving from service based on the above resignation letter. If the individual withdraws his resignation should not be relieved from service (sic.). In as much as (sic.) it is stated that without considering his withdrawal letter of resignation the management has passed orders

relieving him from service or interprets (sic.) to his disadvantage, an appeal could lie u/s 20 of the Tamil Nadu Private Colleges Act, 1976. In view of this, the management should have followed the procedure followed in the Tamil Nadu Private Colleges (Regulation) Act, 1976 and Rules. Since the management has not done so, before inflicting the punishment of the individual its order is not maintainable in law. The Government therefore direct that the orders of C.B.M. College, Coimbatore relieving Thiru V.R. Palanisamy, Head clerk be set aside and he should be reinstated in service with immediate effect.

Aggrieved by the said order of the Government, the 2nd respondent herein preferred an appeal before the Private Colleges Appellate Tribunal,

Madras, and the said tribunal by its order dated 29.7.1983 in T.A.C.No.6 of 1982, considered the matter and ultimately came to the conclusion

that the order of the Government could not be sustained on the grounds on which the Government allowed the appeal and consequently, set aside

the order of the Government and allowed the appeal. The tribunal has said,

So far as the question of withdrawal of the resignation submitted by the 2nd respondent, it is to be said that the Government has not acted on any

established fact of the withdrawal. It is stated in its order that the 2nd respondent is reported to have withdrawn the resignation on the same day

i.e., on 31.8.1979. It is to be observed that there is not an iota of evidence to show that the 2nd respondent has withdrawn his resignation

submitted by him on 31.8.1979. Simply because the management of the College has not accepted the resignation till after 1 1/2 years will not by

itself go to establish that the 2nd respondent has withdrawn the resignation. The 2nd respondent, if at all has withdrawn the resignation, he should

have sent the withdrawal letter separately, or got back the letter of resignation and made an endorsement on that with regard to his withdrawal. He

has not done any of these acts. Even if the withdrawal was only oral, he could have taken steps for getting back the letter of resignation. There is

no evidence to show that he has taken even this step of getting back the resignation letter that he has submitted. The allegation is that the college

authorities have not accepted his resignation during the period of about 1 1/2 years. It is all the more necessary, there (sic.) that the second

respondent should have issued a notice to the College requesting them to give

him back the resignation letter that he has submitted, if in fact he has withdrawn his resignation. In the absence of any one of these acts on the part of the second respondent and in the absence of any evidence showing that his letter of resignation had been withdrawn, I am of the view that the second respondent has not withdrawn his resignation....In our case, the second respondent has submitted his resignation letter on 31.8.1979. From the wordings of that letter, it is apparent that he was resigning the post of Head Clerk, not because of any force given by the college, but on the other hand he was resigning due to his own violation (sic,). He has not whispered that he was dissatisfied with the conditions of service or with the altitude of the management of the college towards him. But on the other hand, he has thanked the governing body of the college for - their co-operation and help given to him for the past five years. This expression of gratitude and thanks by the 2nd respondent to the college authorities in his resignation letter will not by any stretch of imagination go to show that the resignation has been involuntary or forced by the college. The resignation submitted by the second respondent is only voluntary, pure and simple. In *Jagadeesan v. Ayya Nadar Janaki Ammal College* (1981)1 M.L.J. 415, the High Court of Madras has observed that, the order passed against the appellant does not ex facie disclose any stigma or penal consequences against the appellant. It is merely a termination order simpliciter. The order is not based on any misconduct or stigmatic conduct on the part of the appellant. Therefore, he could not come within the meaning of "otherwise terminated". The words "otherwise terminated" should be read with preceding words "dismissed, removed, or reduced in rank". Above all, His Lordship Justice Mohan in *Selvaraj v. R. Jesudasan*, 96 L.W. 349, has stated that "in a case of voluntary resignation it is not the management which puts an end to the services. The concerned teacher states that he does not want to serve any longer. The management says, if that be so, they have no objection. Strictly speaking, it is not a case of an offer or acceptance as is stated in common parlance. This will be equally so in spite of the fact that the resignation comes into effect only on acceptance. It cannot be contended that it is by the acceptance the resignation becomes complete and therefore, it is the management that puts an end to the services. This will be stretching the idea unduly. As

observed above, the employee, by his act, desires that he be relieved to which the management has no objection. In other words, that termination is brought about by the employee's own volition". Under these circumstances, it cannot be said by any stretch of imagination that the management of the appellant's College has terminated the services of the 2nd respondent by way of any punishment. It is only as a result of the voluntary resignation submitted by the 2nd respondent that he has been relieved of the post of Head Clerk. Therefore, it is not necessary that the College authorities should have followed the procedure prescribed under the Act. It is only in a case of dismissal, removal or reduction in the rank or otherwise terminating the service of the employee that the College authorities should follow the procedure prescribed under the Act. I am therefore of the opinion that the order of the Government could not be sustained on the second ground also.

Under these circumstances, the petitioner has filed the above writ petition for the issue of a writ of certiorari to quash the aforesaid order of the

Private Colleges Appellate Tribunal Madras, in T.A.C. No. 6 of 1982, dated 29th July, 1983.

2. Mr. Chandru, learned Counsel appearing for the writ petitioner contended that it is not disputed that the petitioner had submitted a letter of

resignation on 31.8.1979, but had contended that on the very same day in pursuance of the persuasion of the staff members of the college, the

petitioner had withdrawn the said resignation by giving a letter to the Secretary. The learned Counsel further contended that if really the petitioner

had not withdrawn the resignation letter, nothing prevented the college from relieving the petitioner from service immediately. On the other hand,

the 2nd respondent college did not take any step in pursuance of the letter of resignation, presumably by the reason of the fact that the petitioner

had withdrawn the letter of resignation on the very same day. The learned Counsel further contended that the Government have considered this

aspect of the matter and also found that the procedure prescribed with reference to the submission of letter of withdrawal and acceptance of

withdrawal had not, the Government allowed the appeal. Learned Counsel further contended that the tribunal without considering the materials

placed before the Government proceeded on the basis that there was no evidence on record to show that the petitioner had withdrawn the letter of

resignation and in the absence of any material evidence on the side of the 2nd respondent-college, the tribunal could not come to the conclusion

that the letter of resignation was not withdrawn by the petitioner. The learned Counsel further contended that the tribunal proceeded on

misappreciation of the facts that the letter of resignation had not been withdrawn and erred in holding that in so far as the letter of resignation was a

voluntary one, the procedure prescribed under the Act need not be followed.

3. Learned Counsel appearing on behalf of the respondents contended that the letter of resignation given by the writ petitioner was not withdrawn

as alleged by him and the tribunal after having considered this aspect in detail found that in the absence of any evidence to show that the

petitioner's letter of resignation had been withdrawn, it cannot be said that the petitioner had withdrawn his resignation. Once when the tribunal has

given a clear finding on fact, this court exercising jurisdiction under Article 226 of the Constitution could not conduct a roving enquiry on the

findings on facts. Learned Counsel for the respondents further contended that in the instant case, the petitioner had submitted the resignation

voluntarily and in such a case, the question of following the procedure prescribed does not arise. Learned Counsel further contended that the

petitioner was relieved as a result of his resignation and it cannot be said that the act of the respondents would amount to termination of the

services of the petitioner.

4. Considering the relevant contentions of the parties, it cannot be disputed that the petitioner has submitted his resignation on 31.8.1979. It is the

case of the writ petitioner that immediately thereafter, on persuasion of the staff members, the petitioner had withdrawn the letter of resignation.

The Appellate Authority third respondent herein had taken note of all the materials available on record and proceeded on the basis that the

petitioner had withdrawn the letter of resignation and ultimately allowed the appeal filed by the petitioner. Further, the tribunal has found that there

is no satisfactory evidence on record to show that the petitioner had withdrawn the resignation submitted by him. Even assuming that the petitioner

had not withdrawn the resignation letter submitted by him, it is for the 2nd respondent-College to follow the procedure prescribed before the

petitioner was relieved from service. It is relevant in this context to consider the

statutory provisions contained in the Tamil Nadu Private Colleges (Regulation) Act, 1976 and the rules framed thereunder.

5. Section 14 read with Section 55 of the Act provides that the college committee shall have the power to take disciplinary action against teachers

and other persons of the private college. Rule 11(2)(i) of the rule framed therein provides that the committee of every college shall enter into an

agreement in Form 7-C in the; case of employees other than teachers and in the instant case, the petitioner is an employee employed as per Rule

11(2)(i) of the Rules, which requires that the committee should enter into an agreement in Form 7-C framed under the Rules. Clause (9) contained

in Form 7-C agreement framed as per Rule 11(2)(i) of the rules provides that such employee shall be entitled to have his/her services terminated

either by giving to the college committee, three months' notice thereof in writing or by paying the college committee three months' pay and

allowances in lieu of such notice. It is the contention of the learned Counsel for the writ petitioner that the petitioner had withdrawn the letter of

resignation on the very same day and that the appellate authority proceeded on the basis that the petitioner had not withdrawn the letter of

resignation based on the materials available on record. Even assuming that there is no letter of resignation, the 2nd respondent-college could have

followed the procedure prescribed as per Clause (9) contained in Form 7-C framed under Rule 11(2)(i) of the Rules. In the instant case, the said

procedure was not followed. It is the case of the writ petitioner that he has forwarded the letter of resignation only to the Secretary of the college

and not to the college committee. The college committee had not taken any decision on the letter of resignation given by the petitioner and it is only

the college committee that has to take a decision in the event of any letter of resignation is given by any employee.

6. Even if the petitioner has given a letter of resignation, his services can be terminated only by following the procedure as contemplated under

Clause 9 of Form-7C framed under Rule 11(2)(i). By reason of the fact that the 2nd respondent-college has not followed the procedure

prescribed under the statutory provisions, the impugned, order relieving the petitioner from service, is not sustained in law. In these circumstances,

the petitioner cited the decision of a division bench of this court in R. Jesudasan

v. K. Selvarajan (1989)1 L.L.J. 470, wherein it is held that when a statute provides that a particular act has to conform to a particular prescription, method other than the one prescribed, if adopted, will have no sanction in law and any other view to be taken will be tending to render the procedure prescribed negatory and meaningless. That was a case where the Division Bench had occasion to consider the case of a Headmaster of a school, who originally submitted his resignation and ultimately made a claim that such resignation was obtained by duress and coercion. The Headmaster was relieved of the post and accepting the resignation letter submitted by him. "While considering the question as to whether the service of the Headmaster was validly terminated or not, the Division Bench observed:

At the relevant point of time, condition 9 alone, on the aspect of resignation, remained in the Statute Book. Though it apparently looks as if it is intended to benefit only the private school, when it speaks about the teacher giving notice for prescribed periods of making payments in lieu of such notice, it is not apparently and inherently so. This condition has got to be viewed as the only meagre safeguard for the teacher against the capricious arbitrary conduct on the part of the private school, in cutting off the services of the teacher and throwing him out of employment overnight....

It is also observed that if the teacher could go out of service on his own volition only as per condition 9, that must be viewed at least as a slender safeguard against resignation taking place by force or coercion or undue influence. It is specifically observed by the Bench that if the teacher had not conformed to the statutory prescriptions, the private school ought to have ignored the letter of resignation and insisted for satisfying the statutory prescriptions. If it had not done so, it had to, and in fact it has run the risk and must face the wrath, consequent upon breach of law. It is also held that the resignation being no resignation in the eye of law, the non-entertaining or discontinuing the services of the headmaster will certainly fall within the ambit of the above set of expressions and if so, violation being patent with reference to non-obtaining of the approval as per Section 22 of the Act, the termination has got to be set aside. The Division Bench further observed that when the private school does not comply

with the statutory prescription and fulfil the conditions precedent to its action in dispensing with the services of the staff, its action will have to be held as ab initio void. Having regard to these expressions in the decision, once when the employee is governed by the service conditions as per the statutory provisions, either the employee or the college cannot escape by saying that they are entitled to overlook the provisions of the statute for the reason that the employee had submitted his resignation letter voluntarily. Even assuming that the employee has submitted the letter of resignation voluntarily, that has to be in conformity with the statutory provisions. If that does not conform to the statutory provisions, that cannot be treated as valid in law and has to be ignored. In the instant case, even assuming that the petitioner had not withdrawn the letter of resignation, it was addressed only to the Secretary of the College and not to the college committee, which is the competent authority to initiate action on the letter of resignation. Since the petitioner had not submitted his letter to the college committee, such letter, cannot be valid in law and that has to be ignored. It is also to be considered that in the instant case, the college itself has not taken any decision and that the college committee has not relieved the petitioner of his duties and consequently, the authority who is competent to relieve the petitioner of his duties, has not relieved the petitioner and therefore, it cannot be considered that there is a valid termination of service of the petitioner. In view of the aforesaid infirmity, the impugned order by which the petitioner was relieved from duties is not sustainable. The decision of the tribunal that in case of voluntary resignation, the authorities need not conform to the statutory provisions, cannot be sustained in the face of the decision of the Division Bench referred to hereinabove. Accordingly, this writ petition is allowed and the impugned order is quashed. There will be no order as to costs.