



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition (MD) No.2602 of 2015

J.Arun Amirtharaj

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Madurai District, Madurai.

2.The Assistant Elementary Educational Officer,
O/o. Assistant Elementary Educational Office,
Usilampatti, Madurai District.

3.The Chairman,
Elementary Educational Board,
M.Natchatraraj,
Tamil Evangelical Lutheran Church,
Post Box No.86,
Tranquebar House, Trichy 620 001.

4.The Secretary,
E.D.Charles,
Executive Committee,
Tamil Evangelical Lutheran Church,
Post Box No.86,
Tranquebar House, Trichy 620 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the 3rd respondent in connection with the impugned order of suspension passed in his proceedings in Ref.No.171 of 2015 dated 10.02.2015 and quash the same as illegal and ultra vires.

For Petitioner	: Mr.R.Singaravelan
For RR - 1 &2	: Mr.N.S.Karthikeyan Addl.Govt.Pleader.
For RR - 3 & 4	: Mr.C.Lawrence

ORDER

This writ petition has been filed assailing the impugned order of suspension passed by the third respondent in Ref.No.171 of 2015 dated 10.02.2015.



2.Mr.R.Singaravelan, learned counsel appearing for the petitioner submitted that the Secretary, the fourth respondent herein is the only competent officer to pass order of suspension whereas in the present case, the Chairman of the Tamil Evangelical Lutheran Church has wrongly passed the impugned order and therefore, the order of suspension is vitiated. He would further submit that the petitioner is a member of Tamil Evangelical Lutheran Church and the said Church is catering to the needs of the rural and different sects of people by providing education. The petitioner was appointed by the Correspondent as Secondary Grade Teacher on 01.08.2001 and the same was also entered into the service book by the second respondent. While so, for the reasons best known to the third respondent, alleging that the petitioner has involved in a criminal case passed the impugned suspension order. The third respondent has no authority to place the petitioner under suspension, because the third respondent is neither an appointing authority nor the Tamil Nadu Private Schools Regulation Act recognises the Chairman of Education Board to place the teachers under suspension and therefore, the impugned order of suspension has to be set aside.

3.In support of his submission, Mr.R.Singaravelan heavily relying on paragraph 4 of the counter affidavit filed by the District Elementary Educational officer, the first respondent herein submitted that it is an admitted case of the petitioner and the first respondent that the school is governed by the provisions of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, therefore, the Correspondent is the only competent authority to take disciplinary action against the teacher in the school in which the petitioner has been working and the Chairman of Elementary Education Board, TELC is not the authority to take any disciplinary action. He would further submit that while the petitioner is the Headmaster of the school as well as Correspondent of the institution, the technical issue raised in the writ petition is required to be answered on merits.

4.Placing reliance on the judgment of this Court in the case of **M.Joseph Vs.Union Christian High School, Madurai** reported in **(2002) 2 MLJ 565**, he would further contend that the competent person to take disciplinary action against a staff, whether teaching or non teaching is only the correspondent of TELC.

5.In reply, learned counsel appearing for the respondents 3 and 4, reiterating the stand taken by the respondents 3 and 4 in their counter would submit that the Tamil Evangelical Lutheran Church is a registered society under the Central Act XXI of 1860 and the administration and activities of TELC are governed by its Rules known as Church Rules. He would further submit that all the institutions are administered through the Educational Board. In this background, since the writ petitioner while working in the school has involved in criminal case in Crime No.79 of 2015, the third respondent being the appointing authority of the petitioner has got ample power to issue order of suspension. Taking support from the judgment of the Hon'ble Apex Court in the case of **H.A.Martin Vs.Moses Thambi Pillai and**



others reported in **2015(2) SCC 121**, learned counsel appearing for the respondents 3 and 4 would submit that the by-law framed by the TELC prevails over other rules and regulations, therefore, the suspension order passed by the third respondent exercising his power as a controller of institution cannot be found fault with. Again, placing reliance on the judgment of the Supreme Court reported in **2002 (8) SCC 541 [T.M.A.PAI Foundation Vs.State of Karnataka]**, learned counsel attempted to support the impugned order and further submitted that the third respondent, Chairman of the Tamil Evangelical Lutheran Church having been invested with power to take disciplinary action against the petitioner, has rightly exercised the power and placed the petitioner under suspension, therefore, no interference can be called for.

6.Concluding his argument, learned counsel for the respondents 3 and 4 submitted that the third respondent has power to issue order of suspension since he is the appointing authority and therefore, Section 14 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 is not applicable to the respondent institution.

7.Learned Additional Government Pleader appearing for the second respondent has also supported the case of the petitioner stating that the respondents 3 and 4 school are governed by the provisions of the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. In this scenario, it is necessary to extract paragraph 4 of the counter affidavit filed by the District Elementary Educational Officer which reads as follows:-

"4.It is understood that the petitioner has been kept under suspension by the Chairman Elementary Education, Tamil nadu Evangelical Lutheran Church Trichirappalli. The School is governed by the provisions of the Tamil Nadu Minorities Schools Recognition and Aid Rules. It has been clearly clarified by the Director of School Education, Chennai that the schools run by the TELC Management are not treated as Corporate body. The Correspondent is the competent authority to take disciplinary action against a teacher in the school. The chairman Education Board of TELC is not the authority to take any disciplinary action. As such there is a technical flaw in the proceedings of the chairman Education Board. The conflict between the teacher and the respondents 3 and 4 is to be decided in a court of law by both of the parties. This respondent cannot interfere in the inner conflicts".

8.In the light of the above, obviously, the stand taken by the first respondent shows that the Correspondent is the competent authority to take disciplinary action against the teacher in the school. The first respondent has also made it clear that the Chairman of Educational Board of TELC is not the authority to take any disciplinary action.



9. In addition thereto, when a similar and identical issue namely, whether an order of termination issued by the Chairman of Tamil Evangelical Lutheran Church Educational Board is contrary to the rules, came up for consideration, the Hon'ble Division Bench of this Court in the case of **M. Joseph vs. Union Christian High School, Madurai**, reported in **2002 (2) MLJ 565**, has clearly held that appointment of teacher and other powers are within the purview of the correspondence of U.C. Sec. School, Madurai, therefore, the competent person to take disciplinary action against the teaching and non teaching staff is the Correspondent of that school only and not the Chairman of Tamil Evangelical Lutheran Church Educational Board, therefore, in this regard, it is relevant to extract the following paragraphs of the judgment in M. Joseph's case which are as under:-

5. The impugned order dated 30-12-1992 translated as follows:

"Madurai U.C. Hr. Secondary School is a Minority School, it is ran by Tamil Evangelical Lutheran Church people. But it is not coming under the corporate management of Tamil Evangelical Lutheran Church and it is a Single unit management. Hence the order of termination, issued by the Chairman of Tamil Evangelical Lutheran Church, Education Board is contrary to the rules. Appointment of teacher and other powers are with in the purview of the correspondence of U.C. Sec. School, Madurai. So it is informed to the correspondent of U.C. Hr. Sec. School, Madurai to reinstate the terminated teacher Thiru M. Joseph."

6. The original charge memo was in the year 1985. On 27-02-1986, the TELC, Education Board, Madurai has passed the order dismissing the appellant from service with effect from 01-03-1986. This is communicated by the Correspondent on 28-02-1986 stating that after deep consideration the Board has passed orders of termination. To this, a letter dated 07-03-1982, has been issued by the District Educational Officer seeking the following clarifications as to whether the Education Department had given any power to the Education Board Chairman to take disciplinary proceedings and if so, to forward such copies. The reply is given by the Correspondent that since the concerned school is a minority school, getting permission from the Education Department is out of the question.

7. On 23-06-1986, by the proceedings of the Director of School Education the following instruction is given:

PROCEEDINGS OF THE DIRECTOR OF SCHOOL EDUCATION, MADRAS - 6.

R.C.NO.324858/G/81 - DT.23.6.86 Sub : Secondary Education - Aided - U.C. Higher Secondary School Madurai - Thiru M. Joseph Inducted Teacher - Terminated from service - Madurai
District Educational Officer - Proposals - Issuance of Instructions - Regarding.



Ref: 1. Government Letter No.118603/D1/84-5 DATED 14.11.85

2. Government Letter No.840D1/86-2 dt.9.5.86

3. Letter from the District Educational Office Madurai
R.C.No.5090/A-86 dated 24.3.86

The letter from the Government cited in the 1st reference ordered that, it is unnecessary to declare the schools run by T.E.L.C. Management as "Corporate Body".

Hence it is informed to the D.E.O., Madurai that the Competent person to take disciplinary action against a staff member teaching or nonteaching is the correspondent of that school only and not the Chairman, Education Board of T.E.L.C.

B. GOPALAN Director of School Education True copy forwarded by order Sd/-

Selection Grade Superintendent To The D.E.O., Madurai Copy:
The C.E.O., Madurai."

8. On 16-07-1986, the District Education Officer has addressed a letter stating that the competent person to take action against the member of the staff whether teaching or non-teaching is only the Correspondent and reference is made to the above-mentioned proceedings dated 23-06-1986 and therefore, reinstatement is ordered. This order was passed on the appellant's application dated 08-03-1986. The Correspondent of the respondent-school, sought for reconsideration of the aforesaid order after giving an opportunity to the Management. On 14-05-1999, the Joint Director again passed an order of reinstatement. Aggrieved by this, Writ Petition No.12235 of 1992 was filed and this order was quashed only on the ground of failure to observe the principles of natural justice. Thereafter the order impugned in the present proceedings has been issued. The crucial paragraph is already extracted above. Though it is safe to infer that the conclusion arrived at by the second respondent is based on the order dated 23-06-1986 that only the Correspondent is the competent person, no reference is made to that.

10. In the light of the above findings and conclusions reached by the Hon'ble Division Bench I have no hesitation to hold that the impugned order of suspension passed by the Chairman of Tamil Evangelical Lutheran Church Educational Board is without any authority, hence, the same is liable to be set aside, accordingly it is set aside, however, it is left open to the competent authority to proceed against the petitioner afresh in accordance with law.



WEB COPY

6

11. In the result, the writ petition is allowed. The impugned order of suspension passed by the third respondent in Ref.No.171 of 2015 dated 10.02.2015 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (R)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Madurai District, Madurai.

2. The Assistant Elementary Educational Officer,
O/o. Assistant Elementary Educational Office,
Usilampatti, Madurai District.

+1cc to Mr.D.Selvanayagam, Advocate Sr.No.46278

+1cc to Mr.P.Arun Jayatram, Advocate Sr.No.46048

akm/16.09.2015 /6p-5c/

Writ Petition (MD) No.2602 of 2015
11.08.2015