

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.04.2017
CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
THE HONOURABLE DR.JUSTICE S.VIMALA
Writ Appeal No.219 of 2017 and
C.M.P.Nos.3623 of 2017
Writ Petition No.42435 of 2016 &
WMP No.36312 & 36313 of 2016

Palaniammal Higher Secondary School,
rep. By its Secretary,
Kaliyapuram,
Pollachi Taluk,
Coimbatore District.

..Appellant in
WA 219 of 2017
..Petitioner in
WP 42435 of 2016

versus

1.Government of Tamil Nadu,
rep. By its Principal Secretary
School Education Department,
Fort St.George,
Chennai-600 009.

2. Joint Director of School Education (Higher Education),
Chennai-600 006.

3. The Chief Educational Officer,
Office of the Chief Educational Officer,
Coimbatore.

4. The District Educational Officer,
Office of the District Educational Officer,
Pollachi.

5. M.Subramaniam

..Respondents in
Writ Appeal & W.P.

Prayer in Writ Appeal:

Writ Appeal is preferred under Clause 15 of the Letters Patent against the order of the learned single Judge dated 22.4.2016 in W.P.No.3838 of 2015 insofar as directing the first respondent to rehear the appeal dated 7.2.2013 is illegal, arbitrary and liable to be set aside.

Prayer in Writ Petition:

Writ Petition filed under Article 226 of the Constitution, praying to issue a writ of Certiorari, to call for the records

from the respondents No.1 to 3 and quash the G.O.(1D) No.383, School Education 6(1) Department dated 5.10.2016 issued by the 1st respondent and the consequential order dated 21.10.2016 bearing Na.Ka.17703 W/E3/2011 issued by the 2nd respondent and the order of the 3rd respondent dated 11.11.2016 bearing Na.Ka.No.0578/B2/2010 as illegal, arbitrary and contrary to law without jurisdiction.

For Appellant/Petitioner : Mr.Balan Haridas
For respondents : Mr.P.S.Sivashanmugasundaram-
R1toR4
Mrs.Dakshyani Reddy for R5

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

For the sake of convenience, the parties will be referred to as per their rank in the Writ Appeal.

2. Since the subject matter and the issues involved in both of the matters are common, they are taken up together and being disposed of by this common judgment.

3. The fifth respondent, who was working as Head Master in the appellant school was placed under suspension on certain lapses and initiated disciplinary proceedings against him, which ended in imposing major penalty of his dismissal from service. This was also confirmed by the 3rd respondent, Chief Educational Officer, Coimbatore. Aggrieved by the same, the 5th respondent preferred an appeal before the Joint Director of School Education (Higher Education), 2nd respondent herein, which also came to be rejected. Thereafter, the 5th respondent also preferred an appeal before the Private Schools Tribunal, Tiruppur and also before the 1st respondent. The first respondent, while setting aside the order of dismissal, remitted the matter to the respondents 2 and 3 for fresh consideration. Challenging these orders, the appellant has filed the Writ Petition.

4. The learned Judge, after adverting to the rival submissions of the parties and after taking note of the submission made on behalf of the 5th respondent that the appeal before the Private Schools Tribunal would be withdrawn, disposed of the writ petition, setting aside the impugned order dated 16.9.2014 and also directed the 1st respondent to re-hear the appeal filed by the 5th respondent and pass appropriate orders on merits and in accordance with law, after affording an opportunity to the parties. Aggrieved by the same, the appellant has filed the present writ appeal on the ground that under the Tamil Nadu Recognized Private Schools (Regulations) Act, 1973, as against the order of the 2nd respondent rejecting the appeal

preferred by the 5th respondent, there would be no further appeal before the 1st respondent and as such, the appeal before the 1st respondent is not maintainable and therefore, the order of the learned single Judge directing him to rehear the appeal does not arise.

5. However, pursuant to the orders of the learned single Judge, it appears that the 1st respondent sent notice of hearing of the appeal and passed orders on 5.10.2016, setting aside the order of dismissal inflicted against the 5th respondent by the 3rd respondent. The 1st respondent also directed the 3rd respondent to commence the proceedings from the stage of proposing the punishment after giving an opportunity to the 5th respondent and also indicated that after receiving the report from the 2nd respondent, orders will be passed on the review petition. Pursuant to the orders of the 1st respondent, dated 5.10.2016, the 2nd respondent issued instructions vide order dated 21.10.2016 to the 3rd respondent to comply with the order of the 1st respondent. Challenging these orders, the appellant has come forward with the present Writ Petition.

6. Heard the learned counsel for the appellant/petitioner and the learned Special Government Pleader for the respondent Nos.1 to 4 and the learned counsel for respondent No. 5.

7. Though as against the order of the 1st respondent, the 5th respondent preferred an appeal before the Private Schools Tribunal/Principal Subordinate Judge, Tiruppur, the learned Judge, after taking note of the submission made on behalf of the 5th respondent that the said appeal would be withdrawn by the fifth respondent, directed the 1st respondent to re-hear the appeal of the fifth respondent after affording an opportunity of personal hearing to the parties and pass appropriate orders. In compliance to the said order of the learned Judge, the Government passed order vide G.O.Ms.No.383 dated 5.10.2016 to the following extent:

"4. In the above circumstances, in order to execute the decree dated 22.4.2016 in W.P.No.3838 of 2015, in the midst of having given opportunity for direct enquiry to the concerned persons, the following orders have been issued on the Review Petition dated 7.2.2013 of Mr.M.Subramaniam having served as Head Master in Kaaliapuram Palaniammal Higher Secondary School, Coimbatore District and removed from services.

i) Government Letter (1d/t) No.226 School Education Department, dated 16.09.2014 is cancelled with a view to execute decree dated 22.4.2016 of High Court of Madras on Writ Petition No.3838 of

2015.

ii) With regard to Mr.M.Subramaniam having served as Head Master in Kaaliapuram Palaniammal Higher Secondary School, Coimbatore District, the publication proceedings of School Management dated 01.07.2011 vide Na.Ka.No.997/Kattu/2/2011, followed by the approval of such actions released vide Na.Ka.No.00578/A3/2011 dated 21.06.2011 by the Chief Educational Officer and further that the rejecting the Review Petition by the Joint Director of School Education published vide Pa.Mu.No.62153/WO5/E3, dated 08.12.2011 are repealed and in the absence of not following the procedures laid down under Rule 15, Form VII-A, Section 7(c) of the Tamil Nadu Recognized Private Schools (Regulations) Act 1974, it is directed that the Director of School Education to advise the concerned official (Chief Educational Officer, Coimbatore) suitably to continue the disciplinary procedures from the inception of erring as mentioned in the above rules and to send notice in respect of proposed penalty and to provide due opportunity for the individual to defend himself and to receive his explanation with necessary time limit for further review for appropriate decision."

8. Based on the above, the Joint Director of Tamil Nadu School Education passed orders on 21.10.2016 to the following effect:

"In this Government Order on the disciplinary action initiated against the individual, order was issued directing the Director of School Education to advise Chief Educational Officer, Coimbatore suitably to continue the disciplinary proceedings from the inception of erring and to send notice in respect of proposed penalty and to provide due opportunity for the individual to defend himself and to receive his explanation for further review along with necessary time limit and to decide appropriately, as procedure laid down in Rule 15, Form VII-A, Section 7(c) of the Tamil Nadu Recognized Private Schools (Regulations) Act 1974 were not followed.

Therefore, based on the above advise, it is hereby informed to District Chief Educational Officer, Coimbatore to take continuous action and to send a detailed report with remarks. Further, the Government Order related to the subject in reference 1 cited is enclosed herewith in original in order to serve the same to Mr.M.Subramaniam and the

Secretary, Palaniammal Higher Secondary School. It is informed that the details of this Government Order served on to the above mentioned persons along with relevant documents may be sent to the Director, School Education."

9. Pursuant to the above, the Chief Educational Officer, Coimbatore also passed orders dated 11.11.2016, serving the Government Order dated 5.10.2016 on the 5th respondent, issued notice enabling him to give explanation in order to take final decision in respect of proposed penalty.

10. A perusal of the above orders would reveal that the authorities have rightly passed the orders in compliance to the orders passed by the learned Judge, wherein, absolutely we do not find any infirmity or irregularity in order to interfere with the same. Consequently, we also do not find any merit in the contention raised on behalf of the appellant that when an appeal preferred by the 5th respondent was pending before the Tribunal, the learned Judge ought not to have passed the orders directing to rehear the appeal by the 1st respondent.

11. In nutshell, the above said orders would reveal that the Chief Educational Officer was directed to continue the disciplinary proceedings from the inception of erring and to send notice in respect of proposed penalty and to provide due opportunity for the individual to defend himself and to receive his explanation with necessary time limit for further review for appropriate decision. We are unable to understand as to how the appellant has been aggrieved with the above orders. In fact, an opportunity of hearing was provided to the Management of the appellant school on 14.6.2016 by the Government before passing the G.O. 383 dated 5.10.2016, but for the reasons best known to it, the Management did not participate in the enquiry, as could be seen in para 3 of the G.O.

12. In view of the foregoing discussion, we do not find any infirmity or irregularity in the order of the learned Judge as well as the orders impugned in the Writ Petition. Accordingly, both the Writ Appeal and the Writ Petition are dismissed. No costs.

13. In view of the above, now it is for the authorities to proceed and conclude the disciplinary proceedings after following due procedure as contemplated in law and also the instructions issued in the above said G.O. However, considering the charges which are minor in nature, we are of the view that leniency should be shown by the authorities while imposing the punishment on the 5th respondent rather than harsh punishment disproportionating to the alleged misconduct. We feel it

appropriate and suffice if the authorities inflict a minor punishment by imposing a censure. The 5th respondent, having realized the consequences of the departmental proceedings, shall be very diligent and careful in future without involving in any kind of lapses.

14. It is represented by the learned counsel appearing for the 5th respondent that right from the inception, the 5th respondent has been humiliated by the Management of the appellant school which made him to discharge his duties peacefully. Therefore, the authorities are directed to do the needful and transfer the 5th respondent from the appellant school to any nearby school.

With the above observation, both these Writ Appeal and the Writ Petition are disposed of. No costs. Consequently, connected CMPs and WMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Government of Tamil Nadu,
rep. By its Principal Secretary
School Education Department,
Fort St. George,
Chennai-600 009.

2. Joint Director of School Education (Higher Education),
Chennai-600 006.

3. The Chief Educational Officer,
Office of the Chief Educational Officer,
Coimbatore.

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4. The District Educational Officer,
Office of the District Educational Officer,
Pollachi.

+1cc to Mr.Balan Haridass, Advocate, S.R.No.22588
+1cc to Mr.Dakshayani Reddy, Advocate, S.R.No.22567
+1cc to the Government Pleader, S.R.No.22828

sks (CO)
md(27/04/2017)

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