

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2017

DELIVERED ON : 30.10.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.p.No.15366 of 2007
and
M.P.Nos.1 and 2 of 2007

I.AbhishekRayar ... Petitioner

Vs.

1.The Chief Educational Officer,
Perambalur.

2.The District Educational Officer,
Udayarpalayam Taluk,
Udayarpalayam,
Perambalur District.

3.The Correspondent,
Don Bosco Higher Secondary School,
Varadarajanpet,
Perambalur District.

4.The Headmaster,
Don Bosco Higher Secondary School,
Varadarajanpet,
Perambalur District.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the third respondent pertaining to the issuance of the order of termination dated 09.04.2007 in F.05/2007, to quash the order and thereby direct the respondent to reinstate the petitioner to the post of the Secondary Grade Teacher and pay all amounts including the salary and other benefits payable to the petitioner from January, 2006.

For Petitioner : Mr.A.Kalaivanan

For Respondents: Mr.R.Govindasamy (for R1 & R2)
Special Government Pleader

Dr.Fr.XavierArulraj (for R3 & R4)
Senior Counsel
For Mr.S.M.Edward Stanley

ORDER

Aggrieved by the proceedings of the third respondent dated 09.04.2007, in and by which the services of the petitioner were terminated, the petitioner has filed this writ petition seeking to quash the same and to consequently direct the respondents to reinstate the petitioner and pay all the amounts due and payable to him.

2. The facts in a nutshell are as under: According to the petitioner he was appointed in the third respondent/School as teacher with effect from 04.06.1973 and the said school is an institution aided by the State Government.

3. It is claimed that while the petitioner was discharging his duties as Grade II Teacher, he fell ill and was admitted in the Government Headquarters Hospital, Kumbakonam on 20.3.2006 and was under treatment till 22.04.2006. It is the case of the petitioner that on 20.03.2006 itself, he made an application to the fourth respondent seeking medical leave till 30.03.2006 and a copy of the said application was also forwarded to the third respondent.

4. It is alleged that the previous Correspondent and some retired teachers were inimical towards him on account of certain Nithi created by them qua money lending business. It is claimed that even though the petitioner obtained loan from the said Nithi and repaid the same, the members of the said Nithi were demanding exorbitant interest and there were civil disputes on that score, nowhere relevant to his employment.

5. It is averred that the petitioner was under treatment till 22.04.2006 and thereafter obtained necessary fitness certificate from the Medical Board on 23.04.2006 and since the school was closed for summer vacation between 22.04.2006 and 05.06.2006, he did not resume duty. It is his plea that the petitioner had undergone Polling Officer's Training on 27.04.2006 and 05.05.2006 and was on polling duty on 08.05.2006.

6. It is the case of the petitioner that on 05.06.2006, when the school reopened, the petitioner submitted his joining report with all medical certificates and fitness certificate issued by the Medical Board. The petitioner claims that he was allowed to sign the attendance register in the morning session without any objection from the management, but was not allowed to sign the register in the afternoon session and he was not allowed to continue his work.

7. It is the case of the petitioner that no show cause notice or any correspondence was sent to him during his period of absence, but the respondents 3 and 4 in a vindictive manner stated that he would not be paid salary from January, 2006. It is claimed that under such circumstances, the petitioner sent a lawyer's notice to the second respondent with a copy to various other officials and school authorities, however the same did not evoke any response. Hence, the petitioner filed W.P.No.24816 of 2006 seeking to direct respondents 3 and 4 to pass orders on his leave letter dated 20.03.2006.

8. It is claimed that the petitioner sent a representation to the second respondent on 29.12.2006 and he, in turn, vide proceedings dated 04.01.2007 directed the third respondent to take all steps to immediately admit the petitioner to school. It is alleged that the said letter from the second respondent also did not find favour with respondents 3 and 4.

9. It is averred that at this stage respondents 3 and 4 initiated enquiry proceedings and even though the petitioner attended the enquiry proceedings, in the interregnum there was change of the Enquiry Officer, which was not even intimated to the petitioner and thereafter only a paper publication was made in respect of the proceedings before the Enquiry Officer and even though the petitioner stated that a writ petition was pending before this Court, a charge memo was issued and at the time of hearing of the writ petition, it was informed that the third respondent by order dated 09.04.2007 terminated the petitioner from service. It is the specific plea of the petitioner that the said termination order was not at all communicated to him, but was only produced by the 3rd respondent before this Court during the course of hearing of the writ petition in WP.No.24816 of 2006.

10. It is stated that considering the fact that the petitioner had been terminated from service, this Court dismissed the above said writ petition as infructuous giving liberty to the petitioner to challenge the termination order. In such backdrop, the present writ petition is filed for the relief stated supra.

11. The main plank of the argument of the learned counsel for the petitioner is that the termination order was passed in gross violation of the elementary principles of natural justice and moreover, the same was not served on him, but was for the first time produced before this Court in another writ proceedings, referred supra.

12. It is further contended that even assuming that the petitioner is found guilty of the charges, the punishment inflicted on the petitioner is disproportionate and the same is in violation of Section 22 of the Tamil Nadu Recognized Private School (Regulation) Act, 1973 and in any event, the third respondent school has not obtained prior approval from the competent authority.

13. It is vehemently contended that when the second respondent by proceedings dated 04.01.2007 directed the third respondent to take all steps to allow the petitioner to report duty, respondents 3 and 4, without challenging the said proceedings, have passed the impugned order.

14. It is further pleaded that when the paper publication stipulates that enquiry would be at the staff room of third respondent/School, the enquiry report dated 30.03.2007 states that enquiry had been held at Chennai and the Enquiry Officer has also signed at Chennai on 30.03.2007, and termination order was passed about 45 days before the date of superannuation, only with malice aforethought to wreak vengeance on the petitioner.

15. Per contra, the learned Senior Counsel appearing on behalf of respondents 3 and 4, refuting the arguments advanced by the learned counsel for the petitioner, submitted that even though the petitioner was directed to participate in the enquiry proceedings, he chose not to participate and preferred frivolous complaints against the management and his colleagues and, therefore, he cannot complain about violation of principles of natural justice.

16. He further submitted that the allegation that the petitioner owes sums to his colleagues and the Teachers Mutual Fund is evident from the decree passed in O.S.No.13 of 2006 on 18.01.2007 by the District Judge, Perambalur, in a suit filed by one I.Periyanayagasamy against the petitioner for an amount of Rs.11,69,217/- and, therefore, the charges levelled against the petitioner are justiciable.

17. He further submitted that Section 22 of the Tamil Nadu Private Schools (Regulation) Act, 1973 is not applicable to the respondent minority school and there is no need to obtain prior permission from the competent authority for imposing punishment.

18. It is also submitted that the second respondent, who directed the third respondent to admit the petitioner, had been duly replied by the management and such reply was accepted by the second respondent. He also submitted that enquiry was conducted at the school premises only and not at Chennai as alleged by the petitioner.

19. I heard Mr.A.Kalaivanan, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents 1 and 2 and Dr.Fr.XavierArulraj, learned Senior Counsel for Mr.S.M.Edward Stanley, learned counsel appearing for respondents 3 and 4 and perused the entire records.

20. At the outset, with regard to the suit filed by one Perianayagasamy in O.S.No.13 of 2006 on the file of the Principal District Judge, Perambalur, it is to be noted that the trial Court has categorically held that the suit filed by the said individual, in his individual capacity, is not maintainable. The said order passed by the trial Court was also confirmed on appeal by this Court, by judgment dated 10.01.2017 passed in A.S.No.133 of 2010. Therefore, the said ground raised by the respondent/management, in my considered opinion, does not hold water.

21. With regard to the plea that the departmental enquiry was conducted in gross violation of the principles of natural justice, it is to be noted that the entire exercise of conducting a departmental enquiry is to ensure that reasonable opportunity of hearing is afforded to a delinquent employee before an adverse action such as dismissal or removal from service is taken against him. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the employee to vindicate his rights. Bearing this theory in mind, let us analyse the decision-making process involved in this case.

22. It is beyond any cavil that the petitioner was deputed to attend the Polling Officers Training on 27.04.2006 and 5.5.2006 and he also discharged his official duty as Polling Officer on 08.05.2006. The said fact is fortified by the order of the District Election Officer, wherein it is specifically stated that the petitioner, who is a Secondary Grade Assistant, is appointed as Polling Officer. The allegation of the respondent school that the petitioner hoodwinked the law and got himself engaged in the said duty is not acceptable, nor supported by any materials. It is not known as to how anyone who is not in government employment can mislead the Election Officials and secure such duty. It is not the case of the respondent/school that any action has been initiated against the

petitioner for having so hoodwinked the Election Officials. This only fortifies the plea of the petitioner that only because the petitioner is employed in the respondent school, by virtue of such appointment, the petitioner was engaged by the Election Officials as Polling Officer.

23. On the one hand, the respondent school states that the petitioner had unauthorizedly absented himself from duty with effect from 20.03.2006, while, on the other hand, it is stated that the petitioner had sent a telegram on 20.03.2006 to the Headmaster of the respondent school, which even as per the counter is "actually the said telegram on 20.03.2006 has been addressed to the Headmaster". Therefore, it does not lie in the mouth of the respondent management to state that the petitioner had absented himself unauthorizedly, as even as per the Fundamental Rules, a Government Servant who has completed five years of service can avail leave for a continuous period of one year. Moreover, no document is placed on record to the effect that the medical records and fitness certificate submitted by the petitioner are forged. Nor any material has been placed to show that the said application of the petitioner for medical leave has been either accepted or rejected by the respondent/school. Therefore, the basis for passing the termination order, viz., unauthorized absence, does not hold water as the respondent/school has not passed any order one way or the other on the leave application of the petitioner. In any event, without passing any order on the leave application of the petitioner - either granting or denying leave, and inflicting a punishment of termination on that score is, in my firm view, shockingly disproportionate. Hence, it is clear that there is something more to it than meets the eye and the respondent/school had proceeded with the premeditated mind to terminate the services of the petitioner.

24. Before adverting to the plea of the petitioner that the respondent school has not obtained prior permission as contemplated under Section 22 of the Tamil Nadu Recognized Private Schools (Regulation) Act, it would be apposite to refer to the said provision, which is as follows:

"Section 22. (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority,

that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment and communicate its decision within 2 months, after getting all the relevant materials for taking a decision.

(3) (a) No teacher or other person employed in any private school shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of section 21, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee:

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months, for a further period not exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person."

(emphasis supplied)

25. With regard to the applicability of Tamil Nadu Recognised Private Schools (Regulation) Act to minority institutions, a Division Bench of this Court in Anwarul Islam Aided Primary School rep. by its Manager vs. Smt. M. Dilshad Begum, reported in MANU/TN/1527/2009, categorically held as under:

"It is not in dispute that the School in question is a recognised School of the State. It may be a minority institution, but in view of the fact that the said Rules is applicable to all the recognised Schools, the appellant cannot state that the same is not applicable to the minority Schools."

Therefore, the applicability of the provisions of the said Act cannot be disputed. Even though the learned Senior Counsel for the respondent School placed reliance on a decision of the Hon'ble Division Bench of this Court in T.Sanjeeva Rao v. The Director of School Education and another, 2012 WLR 463, to plead that obtaining sanction or approval for removal is not mandatory

for minority institutions and the same is only a condition precedent in respect of non minority aided schools, in view of the decision in Anwarul Islam Aided Primary School, supra, we do not propose to delve deep into the said contention, as this Court, had already observed that the decision making process is not fair and as contemplated under law in compliance of the principles of natural justice.

26. In this context, it is appropriate to refer to a decision rendered by a learned Single Judge of this Court in Punithavalli v. Saiva Bhanu Kshatriya Girls Higher Secondary School and others, (2007) 5 MLJ 965, wherein it is held as under:

"13. Undoubtedly, the language of Section 22(1) of the T.N. Recognised Private Schools (Regulation) Act clearly states that no teacher or other person can be dismissed except with prior approval of the competent authority. Therefore, in the present case, the School Management had not only suspended but also dismissed the said staff subject to approval by the competent authority. It is axiomatic that the school cannot dismiss until prior approval of the competent authority is obtained. In the present case, even before the approval of the competent authority was obtained, the said staff was kept outside the School, thereby preventing her from discharging her duties.

14. This Court has held in W.P.(MD) No. 457 of 2006 by order dated 2.3.2007, that while granting approval, it cannot take any retrospective effect and it can only be prospective. But the position is different when against the order refusing to grant approval by the competent authority whether the appellate authority's order can take retrospective effect from the date of approval or it can be prospective. In the present case, the appellate authority held that the staff can be removed only from the date of the appellate order. In normal circumstances, the law applicable under Section 22 (1) of the T.N. Private Schools (Regulation) Act viz., the requirement of prior approval will have no application while the appellate authority decides an issue in a particular way. However, if one looks at the scheme of the T.N. Private Schools (Regulation) Act, teachers and non-teaching staff are protected from being kept out of the School until an approval is obtained from the competent authority or in the alternative from the first appellate authority or the Second Appellate Tribunal.

15. In a case where the School Management fails to get approval, then the staff is deemed to be in service and entitled to get salary either from the School Management or from out of the teaching grant available with the School. The said position continues even thereafter until the appellate authority reverses the order of the approving authority. If only the School Management had retained the staff as per the mandatory provisions of the T.N. Private Schools (Regulation) Act, there would not have been any liability for them towards payment of salary for the period of alleged non-employment. In the present case, such a situation has been brought out by the School Management itself by preventing the staff from continuing in service until the finality is reached in the case viz., the dismissal of the staff in question. Therefore, there is nothing wrong in both the appellate authority as well as the Appellate Tribunal holding that the Staff is entitled for salary from the date of suspension till the date the appellate authority decided the case against the staff."

(emphasis supplied)

27. Therefore, the plea of the respondent school that non obtaining of prior approval from the competent authority cannot be put against them also fails in the light of the decisions referred supra.

28. In any event, this Court already observed that the decision-making process adopted by the respondent school is not just and reasonable and that the punishment imposed was shockingly disproportionate. Therefore, this Court does not propose to traverse into the other legal issues or decisions relied on either side.

29. Considering the fact that despite such disciplinary proceedings and termination, which this Court has held to be arbitrary and unreasonable, the petitioner would have attained superannuation on 25.05.2007, this Court passes the following order:

- a) The writ petition is allowed and the order in F.05/2007, dated 09.04.2007 passed by the third respondent is set aside.
- b) As a consequence, the respondents are directed to treat the petitioner as having been reinstated in to service notionally and pay all service and monetary from January, 2006, and also retirement benefits, from the date of his superannuation.

c) The said exercise shall be done within a period of four weeks from the date of receipt of a copy of this order.

d) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs
To

1.The Chief Educational Officer,
Perambalur.

2.The District Educational Officer,
Udayarpalayam Taluk,
Udayarpalayam,
Perambalur District.

+ 1 cc to MR.A. Kalaivanan, Advocate Sr.77048

W.p.No.15366 of 2007
and
M.P.Nos.1 and 2 of 2007

(CS-IV)
EU(03/01/2018)

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