

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.A.No.1231 of 2015
& MP No.1 of 2015

St.Patricks Anglo Indian Higher Secondary School,
Rep. By its Correspondent,
Gandhi Nagar, Adayar,
Chennai 600 020.

... Appellant

versus

1. Jecintha Vijayakumar
2. The Department of School Education,
Office of DPI, College Road, Chennai 600 006.
3. The Director of School Education,
Office of DPI, College Road, Chennai 600 006.
4. The Inspectress of Anglo Indian Schools,
DPI Compound, College Road, Chennai 600 006.

... Respondents

Appeal filed against the order passed by this Court dated 29.10.2014 passed in W.P.No. 30253 of 2008.

WP.No.30253/2008:Writ petition is filed under Article 226 of the constitution of India for issuance of writ of certiorari to call for the records of the 4th respondent in their letter dated 17/12/2008, terminating the services of the petitioner and quash the same.

For Appellant : Mr. M.Ramamoorthi
For Respondents : Mr.V.Ravi
for Mr.M.Devaraj for R1
Mr. K.Karthikeyan
Government Advocate for RR 2 to 4

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge made in WP No.30253 of 2008 dated 29.10.2014, in and by which, the learned Single Judge allowed the Writ Petition filed by the 1st respondent challenging her

termination from service and directed the appellant Management to reinstate the petitioner/1st respondent herein in the same post of Librarian with 50% back wages from the date of termination till re-employment.

2. The appellant Management which runs Anglo Indian Higher Secondary School had appointed the respondent as librarian on 03.06.2005 and she was put on probation till 30.04.2006. Her services as a librarian were extended up to 30.04.2007 by communication dated 30.03.2006. There were further extensions and the respondent served as Librarian till 05.11.2008. The Management by its letter dated 06.11.2008 terminated the services of the respondent claiming that her services were not satisfactory.

3. This order was challenged by the respondent in WP No.26969 of 2008, pending the said Writ Petition, this Court had also granted stay the order of termination. While so, when the Writ Petition was listed for hearing on 16.12.2008, this Court was informed that the order of termination was withdrawn on 03.12.2008 by the Management. On 17.12.2008, the Management passed another order of termination simpliciter enclosing a Cheque for Rs.13,800/- representing salary for a period of 3 months in favour of the 1st respondent. The 1st respondent challenged this order of termination in WP No.30253 of 2008. The said Writ Petition was dismissed by this Court on 10.02.2009, on the ground that a settlement has been arrived at between the parties and the Management had agreed to get duplicate SSLC and Higher Secondary Certificate of the petitioner/1st respondent herein from the concerned Authorities.

4. This order was challenged by the 1st respondent in Writ Appeal No.509 of 2009 alleging that she had not authorized her counsel to enter into a settlement. The said Writ Appeal was subsequently withdrawn with leave to file a Review before the learned Single Judge. Thereafter, the respondent filed a Review Application No.19 of 2012 seeking review of the order dated 10.02.2009 made in WP No.30253 of 2008. The learned Single Judge dismissed the Review Application on the ground that the claim of the 1st respondent that her counsel was not instructed to accept a settlement cannot be made on the ground for review of the order.

5. Aggrieved the 1st respondent filed Writ Appeal No.1897 of 2012 challenging the order in the Review Application dated 25.04.2012. The Division Bench of this Court, by its order dated 06.12.2012, allowed the said Writ Appeal concluding that the Writ Petition challenging the order of termination has to be

decided on merits and not on the basis of the concession alleged to have been given by the counsel for the petitioner/1st respondent. The Division Bench further observed that justice would be subserved if the 1st respondent's contention was considered on merit and the legality and validity of the termination order is determined conclusively. The Division Bench also found fault with the conduct of the Management in attempting to dispense with the services of the petitioner by hook or crook. On the Writ Appeal being allowed, the Writ Petition was directed to be heard by the learned Single Judge and disposed of in accordance with law. It is pursuant to the aforesaid direction of the Division Bench, the Writ Petition in WP No.30253 of 2008 was reheard by the learned Single Judge and it came to be allowed by the order impugned in this Writ Appeal.

6. The claim of the 1st respondent before the Writ Court was that she was appointed as a Librarian in the appellant School, which has strength of about 2400 students and 40 Teachers and Staff. The School is governed by the Code of Regulations for Anglo Indian Schools, framed by the Government of Tamil Nadu. The Code of Regulations requires a full-fledged Library and the books should be catalogued properly. There are nearly 5000 books in the Library of the School. The 1st respondent was appointed after a process of selection during June 2005 and she possess a Post Graduate Degree in Library Science as well as M.Phil in Library Science from a recognized University. Upon being satisfied with her qualifications, she was appointed as Librarian on 03.06.2005 and kept under probation for the period of one year, on satisfactory completion of the probation, her services were extended year by year and she served the appellant School till her first termination on 06.11.2008 on the ground her services were not satisfactory. The said order of termination was stayed by this court 13.11.2008 and on 16.12.2008 the Writ Petition came to be dismissed on the ground that the order of termination itself was withdrawn by the Management. Curiously the Management had passed another resolution on 16.12.2008 deciding to terminate the services of the petitioner/1st respondent herein. This time it was a termination simpliciter accompanied by a cheque for 3 months salary, while the earlier termination dated 06.11.2008 was a stigmatic termination inasmuch as the Management alleged that the services of the 1st respondent were not satisfactory.

7. The 1st respondent had also alleged motives to the Management for terminating her services. According to her, the Management was provoked by the fact that her brother had sought for certain information from the Public Information Officer/District Educational Officer Concerned regarding the post of Librarian in Anglo Indian Higher Secondary Schools. The

Management did not take it kindly and started harassing the 1st respondent. The Management required the 1st respondent to produce her 10th Standard and Higher Secondary Certificates. The 1st respondent by her letter dated 26.09.2008 pointed out that all those documents have already been furnished to the appellant. Then by its letter dated 15.10.2008, the appellant Management had required the 1st respondent to furnish proof of her having furnished those original Certificates. On the same day i.e., 15.10.2008 a memo was issued seeking explanation to a charge of insubordination. On 16.10.2008 the 1st respondent sent a reply pointing out that the memo dated 15.10.2008 was actuated by mala fide. Inasmuch as the School is managed by the Correspondent and Headmaster in-charge reply dated 16.10.2008 was sent to the Headmaster in-charge.

8. The appellant Management by its reply dated 20.10.2008 claimed that the reply should have been addressed to the Correspondent and not the Headmaster in-charge. Subsequently, the 1st respondent had sent a same reply to the correspondent. However, no further action was taken by the Management based on the memo dated 15.10.2008. It is only at this juncture on 06.11.2008 the appellant Management issued the first order of dismissal from service, which claimed that the services of the 1st respondent were not satisfactory. After withdrawing the said order of termination and having reported to this Court on 16.12.2008, the Management issued present proceedings dated 17.12.2008 claiming that the governing body of the School had passed a resolution on 16.12.2008 terminating her services and the said order was served her on 17.12.2008.

9. The 1st respondent would claim that the order of termination though appears to be an order of termination simpliciter, it is actually not a termination simpliciter. According to her, the termination itself actuated by the mala fide, inasmuch as the brother of the 1st respondent had made certain enquiries and made an application under the Right Information Act seeking details about the post of Librarian in the Anglo Indian Higher Secondary School from the District Educational Officer/ Public Information Officer. In answer to the claim of the Management that the post of the Librarian is neither a sanctioned post nor a mandatory post, the 1st respondent would contend that the code of Regulations for Anglo Indian School provides that all Schools should have a Library for Staff as well as the Pupils and a Librarian is also mandatory.

10. The Writ Petition was resisted by the Management contending that the 1st respondent was appointed only on a

temporary basis and her services were extended based on exigencies. It is also claimed that when the services of the 1st respondent expired on 30.03.2008, the governing body intended to discontinue her services, but the same was extended only on the assurance by the 1st respondent that she would improve her performance. It is also claimed in the counter affidavit, filed in the Writ Petition, that she had been found wanting in various areas, unless she improved herself the Management cannot retain her in service. It was only on the condition that the 1st respondent improves her services her appointment was extended up to 30.04.2009. It is also claimed that the first respondent had left the School unauthorisidly on 05.11.2008 and she had also taken her two children who were studying in the School without the permission of the respective Class Teachers. In view of such conduct, the appellant had no other option but to discontinue her services.

11. The learned Single Judge, who heard the Writ Petition, found that the conduct of the Management is dismissing the 1st respondent from service on the ground that her services were not satisfactory on 06.11.2008 and having chosen to withdraw the said order of dismissal on 03.12.2008 was not justified in dismissing the 1st respondent again on 16.12.2008. It was also further concluded by the learned Single Judge that the claim of the Management that the services of the 1st respondent were purely temporary and after the expiry of the contract she cannot claim reappointment or continuation in service as of right was unjust. The learned Single Judge also concluded that the termination of the services of the 1st respondent by the Management without any valid reason cannot be approved as the same is against the principles of natural justice.

12. The learned Single Judge also concluded that the Management cannot terminate the services of an employee, who rendered continuous service for nearly 4 years. The learned Single Judge also faulted the Management for not conducting any enquiry before passing the order of dismissal. On the above conclusions, the learned Single Judge directed the reinstatement of the 1st respondent with continuity of service and directed payment of 50% of the back wages.

13. Aggrieved the Management is come forward by way of this intra Court Appeal.

14. We have heard Mr.M.Ramamoorthi, learned counsel appearing for the appellant, Mr.V.Ravi, learned counsel appearing for Mr.M.Devaraj, learned counsel for the 1st respondent and Mr.K.Karthikeyan, learned Government Advocate,

learned counsel appearing for the respondents 2 to 4.

15. Mr.M.Ramamoorthi, learned counsel appearing for the appellant would vehemently contend that the learned Single Judge was not right in setting aside the impugned order of termination. He would point out that the post of Librarian is not a sanctioned post and no aid is payable by the Government for the said post. According to him, the appointment of the 1st respondent as a Librarian was only temporary and the Management always had the discretion to dispense with her services. Even though the Management dismissed her from service on 06.11.2008 since the order amounted to termination on certain allegations, the same was withdrawn and the order dated 17.12.2008, which is the order of termination simpliciter was passed only to help the 1st respondent to seek employment in some other organization without any stigma being attached to her.

16. Per contra Mr.V.Ravi, learned counsel appearing for the 1st respondent would contend that as per the Code of Regulations for Anglo Indian Schools, if it is a Higher Secondary School, it shall have a Library and provision has to be made for approved Provident Fund Scheme for Teachers, Clerks and Librarian. Even though no aid is payable for the post of Librarian, it cannot be said that the post of Librarian is not a mandatory requirement for approval of an Anglo Indian School. The learned counsel would also contend that the appointment order dated 03.06.2005 does not say that the appointment of the 1st respondent is temporary. He would also point out that the order dated 03.06.2005 places the appellant on probation for a period of one year up to 30.04.2006, this by itself, according to the learned counsel show that the appointment was permanent. Even before the expiry of the probation period on 30.03.2006 and the Management had issued a letter continuing the services of the 1st respondent till 30.04.2007, such extensions were made again on 23.04.2007 and 18.04.2008.

17. According to Mr.V.Ravi, learned counsel appearing for the 1st respondent, it was the action of her brother, in seeking certain information about the post of Librarian in Anglo Indian Schools under the Right Information Act, from the office of the District Educational Officer, that prompted the Management to take coercive steps against the 1st respondent and eventually dismiss her from service claiming that her initial appointment was temporary.

18. Mr.K.Karthikeyan, learned Government Advocate, appearing for the respondents 2 to 4 would submit that under the Code of Regulations for Anglo Indian Schools the post of Librarian is not a mandatory requirement for grant or for continuance of the

recognition of a Anglo Indian Higher Secondary School. We have given our anxious consideration to the contentions of the learned counsel on either side. We are constrained to observe that this is a classic case of vindictive action of the Management on the hapless employee. The Division Bench while allowing the appeal filed by the 1st respondent against the order dismissing in the Review Application in Review Application No.19 of 2012 dated 06.12.2012, had observed as follows:

"8. As noticed above, the writ petition was filed by the petitioner challenging the order of termination dated 17.12.2008, making out a specific case that the order of termination was passed mala fide and with ulterior motive, on the basis of false allegations made therein. The petitioner was appointed as Librarian on a probation of one year and upon satisfactory completion of the probationary period, her services were extended by the fourth respondent for a further period of one year and then, further extension was given for another year. In this manner, she continued in service for more than four years. The petitioner, therefore, requested to make her services permanent since she had already completed three years of unblemished service. That was not acceded to by the fourth respondent. The services of the petitioner were terminated and the order was communicated by letter dated 6.11.2008, making bald allegations against her. The petitioner, by her reply dated 11.11.2008, challenged the termination as being motivated and vindictive. However, the said termination order was subsequently withdrawn by the resolution of the Governing Body of the fourth respondent-school dated 2.12.2008. Curiously enough, after a few days, another resolution was passed by the Governing Body on 16.12.2008 terminating the services of the petitioner by tendering three months' salary. The said order was challenged in the writ petition.

13. Indisputably, although the petitioner was appointed initially for a period of one year on probation, because of her unblemished record and satisfactory performance, it was extended thrice for a period of one year consecutively and thereby, she continued in service for more than four years. All of a sudden, the services of the petitioner were terminated by order dated 6.11.2008 on the ground, inter alia, that her employment continued to be a temporary one and the post of Librarian is not an aided one from the Government. Curiously enough, for three consecutive years, the services

of the petitioner were extended on the ground of satisfactory performance, but suddenly it was alleged in the termination letter that her performance continued to flounder and she has failed to improve herself. The further allegation against the petitioner was that she made baseless allegations against other staff etc. Realizing the fact that the termination order was ex facie stigmatic, the same was withdrawn by the fourth respondent by resolution dated 2.12.2008. Few days thereafter, by another resolution dated 16.12.2008, her services were again terminated, showing it a termination simpliciter. These facts themselves show that the action of the fourth respondent-school prima facie cannot be held to be a bona fide one. This important fact has not been considered by the learned single Judge while dismissing the writ petition."

The Division Bench had further gone on to observe that this Court sitting under Article 226 of the Constitution of India, exercising the power of the Judicial Review is not only Court of Law but also the Court of equity. The Division Bench had quoted the observations of the Hon'ble Supreme Court in Food Corporation of India vs. M/s. SEIL Ltd., reported in 2008 (3) L.W. 16, wherein it is observed as follows:

14. "A writ court exercises its power of review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review; amongst others on the principle of actus curiae neminem gravabit (An act of the courts shall prejudice none). We appreciate the manner in which the learned Judge accepted his mistake and granted relief to the respondents".

19. There is no dispute on the sequence of events which preceded the order of the dismissal on 17.12.2008. Things were going smoothly till July 2008. Only after the brother of the 1st respondent sought for certain particulars, regarding the post of librarian, the Management swung in to action to somehow dispense with the services of the 1st respondent. The RTI Application filed by the brother of the 1st respondent sought details as to whether there must be a aided post of Librarian in Anglo Indian Schools. This was done probably to help the 1st respondent to get permanent status, as the appellant Management was claiming that she is only a temporary employee. As already pointed out that

the original order of appointment does not show that the 1st respondent was appointed temporarily it only says she was appointed as a Librarian with effect from 03.06.2005 and she has been kept on probation for period of up to 30.04.2006. Even before the conclusion of the probation her services were extended by one year till 30.04.2007. There were two further extensions on 23.04.2007 and 18.04.2008. We are therefore unable to agree with the contention of Mr.M.Ramamoorthi, learned counsel appearing for the Management that the appointment of the appellant was purely temporary in nature and when her services were terminated she had been paid 3 months salary hence she cannot question the order of dismissal.

20. We find that the conduct of the Management is not, to say the least, bona fide. The 1st respondent was prevented from discharging her duties and her first challenge to the stigmatic order of dismissal was scuttled by the Management by withdrawing the said order that too when the Writ Petition was about to be heard on 16.12.2008 by this Court. Even before, the ink would dry, the Management came with another order dated 17.12.2008 claiming that the Governing Body had resolved dispense with the services of the 1st respondent in its meeting on 16.12.2008. These facts would only lead to the conclusion that the object of the Management was to somehow see that the 1st respondent was kept out of service. We are unable to subscribe to the said conduct of the Management.

21. Mr.M.Ramamoorthi, of course relies upon various decisions of Hon'ble Supreme Court which dealt with the dismissal from service of a temporary employee. On facts we have found that the initial appointment of the 1st respondent was not a temporary appointment, though the Management claims that it has extended her services. But the letters extending her services do not state that her probation is extended. We are therefore of the considered opinion that the judgments relied upon Mr.M.Ramamoorthi, will not apply to the facts of the present case. Relying upon the pay fixation made by the Government while granting recognition, Mr.M.Ramamoorthi, would contend that the post of Librarian is not a sanctioned post and therefore, 1st respondent cannot claim any permanent status. May be post of Librarian is not a mandatory one under the Code of Regulations, but having appointed the 1st respondent as Librarian, the Management was not justified in dispensing with her services unceremoniously as has been in the case on hand.

22. We are therefore of the considered opinion that the order of dismissal dated 17.12.2008, though appears on paper to be a simple order of termination, is actually an order of termination motivated by mala fide and hence same deserves to

be set aside. We find ourselves in entire agreement with the views expressed by the learned Single Judge while allowing the Writ Petition. We, however, take note of the fact that the 1st respondent has not been working and the appellant Management has not had benefit of her services from the date of dismissal viz. 17.12.2008, we are therefore of the view that the appellant Management should be directed to reinstate the 1st respondent in the post of librarian, however without any back wages but with continuity of service with all attendant benefits.

23. For the foregoing reasons, this intra Court Appeal is partly allowed the order of the learned Single Judge is modified as follows:

The order of dismissal dated 17.12.2008 is quashed and the appellant Management is directed to reinstate the 1st respondent in the post of Librarian, without back wages but with continuity of service. The said reinstatement shall be made within a period of four weeks from the date of receipt of a copy of this order.

There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

jv

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Department of School Education,
Office of DPI, College Road, Chennai 600 006.
2. The Director of School Education,
Office of DPI, College Road, Chennai 600 006.
3. The Inspectress of Anglo Indian Schools,
DPI Compound, College Road, Chennai 600 006.

+1cc to Mr.M.Devaraj, Advocate SR.No.50462
+1cc to Mr.M.Ramamoorthi, Advocate SR.No.50666
+1cc to Government Pleader sR.No.50772

SPD(CO)

sm:4.9.2018

W.A.No.1231 of 2015
& MP No.1 of 2015