

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.16761 of 2019 & WMP.No.16370 of 2019
and
W.P.No.28451 of 2019 & WMP.No.28147 of 2019

K.Sekar

... Petitioner
(in both Wp's)

Versus

1. Interim Administrator
Pachaiyappa's Trust
Pachaiyappa's College Campus
113, Harrington Road
Chennai - 600 030.

2. The Director of Collegiate Education
Chennai - 600 006.

3. The Secretary,
Pachaiyappa's Trust
Pachaiyappa's College Campus
113, Harrington Road
Chennai - 600 030

4.Nanthini

5.P. Arul Mozhichelvan

6.C.Rajendran

7.N.Shettu

... Respondents
(in WP.No.16761 of 2019)

Versus

1. Interim Administrator
Pachaiyappa's Trust
Pachaiyappa's College Campus
113, Harrington Road
Chennai - 600 030.

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2. Thiru. R.Janikraman, B.Sc., B.L.,
Advocate, Enquiry Officer,
No.11, Leonord Street, Royapettah,
Chennai - 600 014.

3. The Secretary,
Pachaiyapa's Trust,
Chennai - 600 030.

4. The Director of Collegiate Education,
Chennai - 600 006.

... Respondents
(in WP.No.28451 of 2019)

Prayer in WP.No.16761 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the entire records pertaining to the Rc.No.A1/1326/2019, dated 23.05.2019 issued by the first respondent and quash the same.

Prayer in WP.No.28451 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the entire records pertaining to the Rc.No.A1/1326/2019, dated 20.09.2019, in relation to the appointment of the second respondent as enquiry officer to conduct the enquiry against the petitioner as issued by the first respondent and quash the same.

WP No. 16761 of 2019:

For Petitioner : Mr. G. Murugendran

For Respondents : Mr. K.V. Sundarajan (for R1 & R3)

: Mr. V. Kathirvelu,
Special Government Pleader (for R2)

: Mrs. B. Saraswathi (for R4)

: Mr. V. Ayyathurai, Senior Counsel
for Mr.V.B.Perumal (R5 & R6)

WP.No.28451 of 2019:

For Petitioner : Mr. G. Murugendran

For Respondents : Mr.Senthil (for R1 & R3)

: Mr. V. Kathirvelu,
Special Government Pleader (for R4)

COMMON ORDER

The Writ Petition No.16761 of 2019 has been filed by the petitioner seeking to call for the entire records pertaining to the Rc.No.A1/1326/2019, dated 23.05.2019 issued by the first respondent and quash the same.

2.The Writ Petition No. 28451 of 2019 has been filed by the petitioner seeking to call for the entire records pertaining to the Rc.No.A1/1326/2019, dated 20.09.2019, in relation to the appointment of the second respondent as Inquiry Officer to conduct the inquiry against the petitioner as issued by the first respondent and quash the same.

3.Both these writ petitions are filed by one Mr. K. Sekar, who is working as Superintendent in Pachaiyappa's College, Chennai. The petitioner has filed the first writ petition being WP No. 16761 of 2019 challenging the Memorandum dated 23.05.2019 issued by the Interim Administrator of the College, directing him to submit his explanation within 15 days of receipt of the charge Memorandum. The other writ petition being WP No. 28451 of 2019 has been filed by him challenging the order dated 20.09.2019 of the Interim Administer, by which, he was called upon to participate in the inquiry to be conducted on 04.10.2019.

4. According to the petitioner, he joined the services of Pachaiyappa's College on 23.12.1989 and subsequently got promoted to the post of Superintendent. It is further submitted that the election to the Trustees of the Pachaiyappa's Trust Board has been conducted and the term of office of the Trustee expired on 26.06.2018. Thereafter, as per the directions of this Court in the order dated 14.06.2018 passed in O.A. No. 283 of 2018, the Interim Administrator was appointed and he is functioning from 25.06.2018 for conducting election to the Trustee. While so, on 23.05.2019, the first respondent/Interim Administrator issued a charge memo to the petitioner containing 15 charges. The charges relate to alleged unlawful assembly of the petitioner along with others on 11.04.2019 in front of the Pachaiyappa's Trust Office by abandoning his official work as incharge of University examination. The charges also relate to certain misconduct allegedly committed by the petitioner in his capacity as Superintendent, which includes embezzlement of the funds.

5.On receipt of the charge memo, the petitioner has filed the first writ petition No. 16761 of 2019. Subsequently, when the Interim Administrator issued a Memorandum dated 20.09.2019

indicating that the explanation offered by the petitioner is not satisfactory and therefore he has decided to conduct an inquiry as per the Rules, he has filed the second writ petition No. 28451 of 2019. In both the writ petitions, the petitioner has raised common and identical grounds with respect to jurisdiction of the Interim Administrator to initiate disciplinary proceedings against him.

6.Mr. G. Murugendran, learned counsel for the petitioner would submit that the Interim Administrator has no power to take disciplinary proceedings against the petitioner and it is contrary to Section 13 and 14 of the Tamil Nadu Private Colleges (Regulation) Act 1976 and the Rules made thereon. It is his contention that the College Committee alone is competent to take disciplinary proceedings against the petitioner and the learned Interim Administrator has no power or authority to either frame charges or to reject the explanation offered by the petitioner. In support of his contention the learned counsel for the petitioner relied upon a judgment of this Court in the case of Suresh Manohar and another Vs. The State of Tamil Nadu rep.by the Secretary to Govt., Public Dept., Fort St.George, Chennai - 600 009 and others reported in 2003 (4) CTC 1, vol 30, the relevant portion of the judgment is extracted hereunder:-

" 7. As contemplated under Sect.14(1)(c) of the Act, the college committee is having power to take disciplinary action against the teachers or other persons of the private college. Sec.19(3) of the Act deals with suspension, pending enquiry. In view of the above provisions of the Act, the college committee alone can suspend a teacher pending enquiry of grave misconduct within the meaning of the code of conduct prescribed under sub-section(1) of Sec.18 of the Act as contemplated therein. But the said suspension cannot be kept pending for more than two months from the date of such suspension. But, the same can be extended for a further period of two months for the reasons mentioned in the proviso to Sec.19(3)(b) of the Act. So, it is clear that a teacher of a private college can be suspended only by a committee and also only in accordance with Sec.19(3) of the Act. Rule 13 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976, hereinafter called ' the Rules', deals with the procedure to be followed in the matter of suspension."

7.According to the learned counsel for the petitioner, the Interim Administrator was appointed by this Court in OA.No.283 of 2018 only for the purpose of conducting election to elect the Trustees and complete the election process within a stipulated

time. While so, the Interim Administrator has no right to initiate disciplinary proceedings against the petitioner and he lacks jurisdiction. It is also contended that the Interim Administrator did not comply with Rule 12 (3) of the Tamil Nadu Private Colleges (Regulation) Rules before initiating the disciplinary proceedings. Even in the meeting of the college committee held on 15.04.2019, totally four persons participated out of which two persons supported the resolution and two opposed the resolution. While so, the entire proceedings initiated by the first respondent based on the resolution passed on 15.04.2019 is contrary to Section 13 (3) of the Act. It is also contended that even though several persons participated in the protest, the first respondent had chosen to initiate disciplinary proceedings only against the petitioner and it would amount to discrimination. Therefore, the learned counsel for the petitioner prayed for allowing the writ petitions.

8. Per contra, the learned counsel for the Interim Administrator would vehemently contend that the first respondent/Interim Administrator was appointed by this Court on 14.06.2018 not only to hold election to the Board of Trustees but also to administer the Pachaiyappa's Trust till the Trustees are elected to the office. Therefore, the disciplinary proceedings initiated by the first respondent is proper and the first respondent is empowered to administer the affairs of the Board. In fact, after the first respondent was appointed as an Interim Administrator, a College committee was constituted on 10.10.2018. As against the same, WP No. 11440 of 2019 was filed before this Court, but it was dismissed as withdrawn on 15.04.2019. Yet another writ petition was also filed in WP No. 14984 of 2019 and it is pending. After constitution of the College Committee, three meetings were held on 18.01.2019, 15.04.2019 and 17.05.2019 in which the petitioner had signed in the first two meetings without any objections. However, in the third meeting held on 17.05.2019, the petitioner participated but has stated that he is dissenting with the resolution passed. In fact, as per the minutes of the meeting dated 15.04.2019, the Interim Administrator was empowered to initiate action against any irregularity committed by any of the staff member, either a teaching or non-teaching staff. It is in pursuant to the resolution dated 15.04.2019, Memorandum of charge memo dated 23.05.2019 was issued to the petitioner and the petitioner also submitted his written statement of defence on 19.06.2019. Further, Rule 11 (2) (i) read with Form VII-C provides for the College Committee to take disciplinary proceedings. As per Rule 9, the Educational Agency shall nominate one of its representatives as Secretary of the Committee. As per Rule 9 (3) the Secretary shall function for and on behalf of the Committee and Educational Agency. Therefore, as Educational Agency, the Interim Administrator is empowered to initiate

disciplinary action which include power to appoint an Inquiry Officer and to conduct an inquiry. After initiating the disciplinary proceedings, all due opportunities have been given to the petitioner to submit his written statement of defence and he will also be given further opportunity till a final order is passed. Therefore, the question of incompetency of the Interim Administrator will not arise in this case. The learned counsel for the first respondent therefore prayed for dismissal of the writ petitions.

9. On the above contention, this Court heard the learned counsel for the contesting respondents, who would contend that the writ petitions are not maintainable as against the charge memo or the inquiry proceedings. The petitioner can very well participate in the inquiry and prove his innocence. In exercise of power under Article 226 of The Constitution of India, this Court cannot interfere with the disciplinary proceedings initiated by the first respondent. The writ petitions are premature inasmuch as no final order has been passed in the disciplinary proceedings initiated against the petitioner. Therefore, the respective counsel for the contesting respondents prayed for dismissal of the writ petitions.

10. I heard the counsel on either side and perused the materials placed on record. This Court appointed an Interim Administrator to administer and manage several institutions coming under the administrative fold of Pachaiyappa's Trust Board. Such an appointment has been warranted in view of several irregularities said to have been committed in the administration of the Trust funds. While appointing the Interim Administrator, this Court had specifically stated in the order dated 14.06.2018 in O.A. No.283 of 2018 that the Interim Administrator shall administer the Board till the elections are over and new elected Trustees are taken over. The word 'administration' shall mean and include initiation of disciplinary proceedings against the teaching as well as non teaching staff and the Interim Administrator cannot be said to be prevented from doing so. For day to day administration of the Colleges coming within the administrative fold of the Trust, it is essential that the Interim Administrator must be empowered to initiate disciplinary proceedings against the erring staff based on any complaint with respect to irregularity, insubordination or mis-administration of the funds. In the present case, there was a commotion in the premises on 11.04.2019, on which date, several teaching and non-teaching staff have led a protest by unlawfully assembling in front of the Pachaiyappa's Trust Office and also locked the entry gate of Pachaiyappa's Trust Office and thereby wrongfully confined the staff and other officers of the Trust. In connection with the above incident, the Interim Administrator had thought fit to

initiate disciplinary proceedings against the petitioner, who is said to have participated in the Dharna. For resorting to such a course of action, the Interim Administrator is wholly empowered. Even otherwise, the meeting of the College Committee had taken place on 18.01.2019, 15.04.2019 and 17.05.2019 and in all those meetings, the petitioner participated in which a resolution was passed to initiate disciplinary proceedings against the petitioner. Therefore, I am of the view that the Interim Administrator is empowered to initiate disciplinary proceedings against the petitioner and he does not lack jurisdiction to do so.

11. The petitioner would contend that he did not participate in the protest at all and he has been victimized. It is also submitted that even though several others participated, the first respondent had chosen to initiate disciplinary proceedings only against him. Such a plea of the petitioner cannot be examined by this Court in exercise of the powers under Article 226 of The Constitution of India. It is for the petitioner to disprove the charges levelled against him by participating in the inquiry. It is very well open to the petitioner to prove that he was not at all present on the particular date when the protest was held, as has been contended by him. It is needless to mention that the petitioner shall be afforded all due opportunity to put forth his defence in the inquiry proceedings.

12. It is also to be mentioned that this Court, while exercising power under Article 226 of The Constitution of India, cannot go into the validity of the disciplinary proceedings or the correctness of the charges. It should be left open for consideration by the disciplinary authority. Unless there is procedural violation or the proceedings are against the principles of natural justice in conduct of inquiry proceedings, this Court cannot interfere. In this context, I am fortified by the decision of the Honourable Supreme Court in Union of India v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 wherein in paras 13 to 16 it was held as follows:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh (1996) 1 SCC 327, Special Director v. Mohd. Ghulam Ghouse (2004) 3 SCC 440, Ulagappa v. Divisional Commr., Mysore (2001) 10 SCC 639, State of U.P. v. Brahm Datt Sharma (1987) 2 SCC 179, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be

premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

13. In respect of the appointment of an Inquiry Officer in a Private College, it is governed by the provisions of Tamil Nadu Private College (Regulations) Act, 1976. as per Section 14(1)(c) r/w Rule 11(2) of the Tamil Nadu Private College Rules 1976 and Form VII(A) (Term VII (b)), only the College Committee/Interim Administrator must frame a charge sheet and later conduct an inquiry. It may not be legally and practically possible for the College Committee/Interim Administrator, which is a multi member body and also consists of representatives of teachers and non-teaching staff. to meet every time for conducting an inquiry. Therefore, there is no prohibition for the College Committee/Interim Administrator, after framing charge sheet and taking a decision to conduct an inquiry, to appoint an outsider or even an advocate to conduct an inquiry and submit a report to the committee. In doing so, the delegated inquiry officer will only gather the facts and give a report. It was thereafter for the College Committee/Interim Administrator to take a decision to either accept the report or come to a different conclusion. In either of the cases, the College Committee/Interim

Administrator must call for explanation from the delinquent teacher or non-teaching staff. The very same issue came before the Full Bench of this Court reported in K.M. Valliappan vs. Joint Director of School Education, College Road, Chennai and another) (2006 (4) CTC 471) wherein in Para Nos. 12 to 19, it was held as follows:-

"12. The statutory provisions themselves contemplate certain powers as well as laid down certain procedures. Section 18(c) of the Act contemplates that the School Committee is empowered to take disciplinary action against the teachers and other employees of the private school. It is obvious that the essential features relating to disciplinary control vested with the School Committee, which is also envisaged in the contract entered into in Form VII-A, cannot be whittled down. Essential functions as to the decision to initiate any disciplinary proceedings, to frame charge, to consider finally the guilt or otherwise of the delinquent and to impose appropriate punishment are matters which are coming within the specific jurisdiction of the School Committee and such essential functions obviously cannot be delegated. However, holding of an enquiry cannot be said to be one of the essential functions which is required to be performed by the School Committee in all events and by none else. Following the well settled principle in Service Jurisprudence, holding of actual enquiry can be delegated to any other Sub-Committee or person. It is obvious that the report made by such sub-committee or enquiry officer is to be placed before the School Committee for consideration and obviously the School Committee is free to take any decision and it is not bound by the decision taken by the sub-committee. The fact that the disciplinary authority is not required to hold the enquiry itself is quite well recognised in service jurisprudence.

13. In AIR 1956 SC 285 (PRADYOT KUMAR BOSE v. THE HON'BLE CHIEF JUSTICE OF CALCUTTA HIGH COURT), the question was whether the Chief Justice of the High Court could delegate to another Judge an enquiry relating to charges against a member of the High Court. The Supreme Court observed that a statutory functionary in the absence of any specific prohibition while exercising disciplinary control can delegate the power of holding the enquiry to another Judge, but ultimately the decision has to be taken by the disciplinary authority.

Similarly the Supreme Court in 1978 ALL.L.J. 477 (STATE OF UTTAR PRADESH v. BATUK DEO PATI TRIPATHI) observed that the disciplinary control vested with the High Court may be exercised, however, the essence of power cannot be permitted to be diluted.

Similar view has been expressed by the Supreme Court in AIR 1964 SC 364 (UNION OF INDIA v. H.C. GOEL) relating to exercise of disciplinary authority in other organisations.

14. In B & C Mills v. B & C Mills (1970-I-LLJ 26), the Company's Mill-manager issued the charge-sheet, but the senior Labour Officer recorded the evidence. Thereafter on scrutiny of the enquiry report, the Mill-manager passed the order of dismissal. The contention that the Mill-manager had no jurisdiction to delegate to another officer the power to hold the enquiry was accepted and it was held that the Mill-manager could delegate the function of collecting necessary evidence.

15. In A. KRISHNASWAMY v. TAMIL NADU ELECTRICITY BOARD (1981-I-LLJ 374), a Division Bench of this Court had observed that the Board being a statutory body composing of numerous members could delegate its functions in conducting an enquiry against its employee to its subordinate officer, so long as there is no prohibition against such delegation under the statute.

16. It is no doubt true that on a cursory reading of the contents of Form VII-A, one may prima facie come to a conclusion that the enquiry in the disciplinary proceedings has to be conducted by the School Committee. We do not think that it was the intention of the Legislature that the matter relating to collection of evidence and even submission of report thereon has to be done by the School Committee and not by any other sub-committee or person. Such a conclusion would give rise to many impracticable situations which could not have been the intention of the Legislature.

17. Two of the earlier Division Bench decisions had lost their sting by virtue of the subsequent observations made by the Supreme Court arising out of those cases. The other Division Bench decision in 1992 WLR 124 is distinguishable and had been rendered on a different fact situation.

18. In our opinion, the ratio of the decision of the Division Bench in 1995-I-MLJ 610 (SARADHA BALAKRISHNAN v. THE DIRECTOR OF COLLEGIATE EDUCATION AND ANOTHER) can be said to be reflecting the correct position, subject to certain clarifications.

19. From the provisions contained in the Act along with the contents of Form VII-A, it is evident that the decision as to whether a disciplinary proceeding should be initiated or not, whether an employee should be placed under suspension or not, whether charges should be framed or not has to be taken by the School Committee. These powers are essential powers of the School Committee and the provisions contained in the Act do not envisage that such essential powers can be delegated. However, the duty of holding the enquiry can be delegated by the School Committee of course and not by any other authority. The Sub-Committee or the person appointed, as enquiry officer is required to hold the enquiry and can submit his report. In view of the decision of the Supreme Court in AIR 1994 SC 1074 = (1993) 4 SCC 727 ((MANAGING DIRECTOR, ECIL, HYDERABAD, ETC. v. B. KARUNAKAR, ETC.)), copy of such report is required to be served on the delinquent to enable him to make his submission. Such report is required to be considered independently by the School Committee and obviously such report is not binding on the School Committee. Once the School Committee comes to an independent conclusion regarding the delinquency of the charged employee, the question of punishment is again a matter to be decided by the School Committee and such authority cannot be delegated."

14. Thus, it is evident that this Court cannot interfere with the disciplinary proceedings initiated against the petitioner. In fact, in the Order dated 20.09.2019, the first respondent had only called upon the petitioner to participate in the inquiry to be conducted on 04.10.2019. It was also mentioned therein that such inquiry will be conducted strictly in accordance with the Tamil Nadu Private Colleges (Regulation) Act and Rules, 19976. Therefore, it is for the petitioner to participate in the inquiry and to disprove the charges levelled against him. This Court cannot, at this stage, interfere with the disciplinary proceedings initiated by the first respondent.

15.In the result, both the writ petitions fail and they are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Director of Collegiate Education
Chennai - 600 006.

2. The Interim Administrator
Pachaiyappa's Trust
Pachaiyappa's College Campus
113, Harrington Road
Chennai - 600 030.

+1 CC to Mr.K.V. Sundararajan, Advocate sr 90570.

+2 CCS to M/s.B. Saraswathi, Advocate sr 90509

+2 Ccs to Mr.B. Perumal, Advocate sr 90583

+2 Ccs to Mr.G. Murugendran, Advocate sr 90573 & 90574.

W.P. No.16761 of 2019 & WMP.No.16370 of 2019
and
W.P.No.28451 of 2019 & WMP.No.28147 of 2019

सत्यमेव जयते

VD (CO)

SP (22/11/2019)

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