



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P. (MD)No.11805 of 2020
(Through Video Conferencing)

ICI Primary School
Rep. by its Secretary
I.A.Chidambaram
Elanji, Tenkasi District

... Petitioner

Vs.

1. The Chief Educational Officer,
Tenkasi District, Tenkasi.
2. The District Educational Officer,
Tenkasi, Tenkasi District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 2nd respondent to pass orders on the application/proposal submitted by the petitioner school dated 23.12.2019 seeking prior approval in terms of Section 22(1) of the Tamil Nadu Recognized Private Schools (Regulation) Act 1973 within the time that may be stipulated by this Court.

For Petitioner

:Mr.Mahaboob Athiff
for M/s.Ajmal Associates

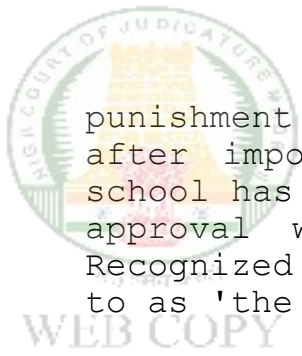
For Respondents

:Mr.M.Thilagar
Government Advocate

ORDER

The prayer sought for is a Writ of Mandamus to direct the 2nd respondent to pass orders on the application/proposal submitted by the petitioner school dated 23.12.2019 seeking prior approval in terms of Section 22(1) of the Tamil Nadu Recognized Private Schools (Regulation) Act 1973 within the time that may be stipulated by this Court.

2.The petitioner is a recognized Aided school, where, a Teacher called one Kuthaleeswari was working, against whom, disciplinary proceedings was initiated. Pursuant to the disciplinary proceedings, Enquiry Officer was appointed. After conducting the enquiry, the Enquiry Officer has given a report stating that, the charges framed against the said Teacher were proved. Pursuant to the Enquiry Officer's report, the School Committee imposed a



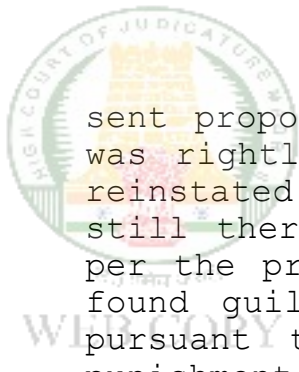
punishment of removal from service against the said Teacher and after imposing the said punishment of removal from service, the school has sent the punishment proposal for approval by way of prior approval within the meaning of Section 22 of the Tamil Nadu Recognized Private Schools Regulation Act 1973 (hereinafter referred to as 'the Act') to the respondents.

3. However, the first respondent, vide proceedings dated 17.07.2019, rejected the said proposal sent by the school for getting prior approval of punishment proposal against the Teacher concerned.

4. The reason stated by the first respondent, in their order dated 17.07.2019, is that, as per Section 22(1) and (2) of the Act, after taking disciplinary proceedings, if the school Management has inflicted the punishment on the Teacher, such a proposal before imposing the punishment shall be made to the concerned authorities for getting prior approval and as such, after getting prior approval alone, punishment will be imposed or inflicted against the erring Teacher. Here in the case in hand, after imposing the punishment against the Teacher, since the school has sought for approval from the respondents, they have refused to give the same. Along with the said impugned order dated 17.07.2019, the first respondent has, in fact, not only had rejected the proposal sent by the school, but also directed to reinstate the Teacher concerned and also further directed or suggested to transfer the said Teacher to some other school by way of redeployment.

5. Subsequently, since the said proposal sent by the School, as a prior approval proposal was rejected, as if that it was not a prior approval proposal, but was only construed as a post approval proposal, the School thought it fit to reconsider the same and place the issue before the School Committee, which is the competent authority to take disciplinary action against the teaching staff and further resolved to send a proposal as a proposal for prior approval for the proposed punishment to be inflicted on the Teacher and accordingly the punishment has once again been sent by the School to the first respondent on 23.12.2019. However, the said proposal has not so far been decided and it has been kept pending at the hands of the first respondent. Therefore, in order to seek a direction from this Court to the first respondent to decide the said proposal submitted once again by the petitioner School on 23.12.2019 to the first respondent for getting prior approval to the proposal for punishment to be inflicted on the Teacher, this writ petition has been filed with the aforesaid prayer.

6. I have heard the learned counsel for the petitioner, who would submit that, no doubt under Section 22 of the Act, prior approval is a must before inflicting the punishment on any erring Teacher, after conducting proper disciplinary proceedings and in



sent proposal originally to the first respondent and therefore, it was rightly rejected, pursuant to which, the Teacher was also got reinstated. However, the charge memo framed against the Teacher was still there, where, the disciplinary proceedings was conducted, as per the procedure established under law, where the Enquiry Officer found guilty of 6 out of 7 charges framed against the Teacher, pursuant to which, the School Committee decided to impose the punishment of removal from service. Therefore, the present proposal now has been sent for getting prior approval to the first respondent on 23.12.2019, is perfectly in consonance with the provisions of Section 22 of the Act. Therefore, now the first respondent may not have any impediment to decide the same on merits and give such prior approval or finalise the said proposal of the school dated 23.12.2019. Hence, the learned counsel would submit that, a direction, by way of mandamus sought for in this writ petition, can be considered to be issued.

7. I have heard the learned Government Advocate for the respondents, who would submit that, as already the proposal sent by the school, after inflicting the punishment on the Teacher, since was rejected and as such a post approval was not possible under Section 22 of the Act, where, the first respondent on 17.07.2019 directed the petitioner School to reinstate the Teacher and redeploy the Teacher, if the management of the School wants to some other needy school, once again whether the same proposal can be sent by the school seeking prior approval now and therefore, in that aspect, the issue would be decided by the first respondent in accordance with the provisions of the Act and accordingly, a decision would be taken.

8. I have considered the said submissions made by the learned counsel for both sides and have perused the materials placed before this Court.

9. No doubt, the said proposal sent by the petitioner School was not strictly in consonance with the provisions of Section 22 (1) and (2) of the Act, as such, the proposal for prior approval should have been sent without inflicting any punishment on the Teacher concerned. However, admittedly, after inflicting the punishment only proposal was sent, it should not have been considered as a proposal for getting prior approval, instead it should be only considered as a proposal for getting post approval. Therefore, such a post approval cannot be sought for by the School within the meaning of Section 22 of the Act. Accordingly, the first respondent has rejected the proposal by his proceedings dated 17.07.2019, of course, rightly and therefore, we cannot find fault with such action on the part of the first respondent in passing orders on 17.07.2019, where, the first respondent also directed the School to reinstate the Teacher and the suspension period of the Teacher was also directed to be regularised as duty period and further directed that



school and the management of the petitioner school wishes to do so that kind of action can also be taken for redeployment of the erring Teacher.

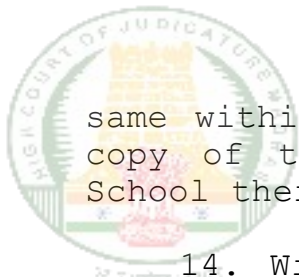
10. However, subsequently the proposal was placed before the school committee for discussion and deliberation, who is the competent authority under the Act to take disciplinary proceedings within the meaning of Section 22 of the Act and the only legal requirement was that, after completing the disciplinary proceedings, if the school management decides to impose any punishment on the proven charges against any Teacher, before imposing such punishment, proposal should be sent to the educational authorities for getting a prior approval and only after getting prior approval, such punishment can be passed against such a Teacher. Here, in the case in hand, mistakenly, after imposing the punishment, since the proposal was sent to the educational authorities, the same was rejected by the first respondent on 17.07.2019, pursuant to which, subsequently, the Teacher was reinstated and thereafter, the proposal, having been considered by the School committee, they decided to send it at the stage before imposing any punishment on the Teacher. Accordingly, now the proposal for getting prior approval for inflicting punishment on the Teacher, against whom, disciplinary proceedings was initiated, enquiry conducted and 6 out of 7 charges were proved and accordingly, was sent on 23.12.2019, but the same is still pending before the first respondent.

11. Therefore this Court feels that the present proposal dated 23.12.2019, can be considered as a proposal sent by the School for getting prior approval for the proposed punishment to be imposed against the erring Teacher and therefore, the said proposal dated 23.12.2019 can very well be construed within the meaning of Section 22(1) and (2) of the Act and accordingly, the same can be decided by the first respondent, of course, on merits within a time frame.

12. Originally, the first respondent was the authority to decide the issue, now, in view of the prescription made by the Educational authorities as to by which authority the prior approval in the middle school level Teacher have to be decided and accordingly, the second respondent, District Educational Officer, is the competent authority now to decide the issue. Therefore, the matter can be remanded to the second respondent for reconsideration.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

"That the second respondent is hereby directed to consider the proposal submitted by the petitioner School on 23.12.2019 in respect of seeking prior approval for the proposed punishment to be imposed on a Teacher called Kuthaleeswari of the petitioner School and decide the said proposal on merits and in accordance with law, of the meaning of Section 22 of the Act and decide the



same within a period of eight weeks from the date of receipt of a copy of this order and communicate the order to the petitioner School thereon".

14. With these observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Chief Educational Officer,
Tenkasi District,
Tenkasi.
2. The District Educational Officer,
Tenkasi,
Tenkasi District.

+1 CC to the Spl GP SR-17249.

W.P. (MD) No.11805 of 2020
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