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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.33237 of 2007

The Principal
St.Michaels Academy Matriculation
Higher Secondary School, Adyar
Chennai 600 020.

... Petitioner

-Vs-

1.The Director of Matriculation Schools
Egmore, Chennai 600 008.

2.Inspector of Matriculation Schools
Chennai 600 008.

3.Ms.J.Irudaya Mary

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the proceedings of the 1st respondent herein in RC 3876/E3/2007 dt 31.8.2007 and quash the same.

For Petitioners : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.AL.Gandhimathi

For Respondents : Mr.S.Suresh Kumar,

Government Advocate -
for RR 1 and 2

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records relating to the proceedings of the 1st respondent herein in RC 3876/E3/2007 dt 31.8.2007 and quash the same.

2. The third respondent was working as a Teacher at the petitioner School, against whom some complaints seems to have been received by the School from the parents on behalf of the

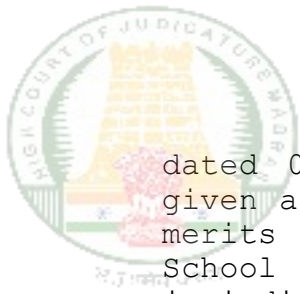


students that, the third respondent was inflicting corporal punishments against the students and also she has been absent from duty for some time.

3. In this regard, ultimately a show cause notice was issued by the School against the third respondent, seeking explanation or show cause from the third respondent and pursuant to the show cause notice, explanation seems to have been given by the third respondent. After considering the same, the petitioner School passed an order of termination against the third respondent by order dated 31.05.2005. In this context, the third respondent has approached this Court by filing a writ petition in W.P.No.19120 of 2006. In the said writ petition, a learned Judge, by an order dated 26.10.2006, had directed the first respondent ie., the Director of Matriculation Schools to enquire in the matter and decide the same on merits. In this regard, a representation / appeal was directed to be made by the third respondent. Accordingly, the third respondent had preferred an appeal to the first respondent, which was considered, where, after hearing the School as well as the third respondent, the first respondent, by proceedings dated 31.08.2007, has come to the conclusion that, even though the allegations made against the third respondent were serious in nature, the record shows that, there was no oral enquiry conducted to prove the guilt against the third respondent on the definite charges framed in this regard and in view of the same, since major punishment of removal from service was inflicted against the third respondent without conducting oral enquiry, on that ground, the first respondent has set aside the order of termination passed by the School dated 31.05.2005 and as a consequence, the third respondent had to be reinstated by the School.

4. It is to be noted in this regard that, in the meanwhile ie., after the order was passed by this Court in the earlier round of litigation on 26.06.2006, the School in fact filed a separate writ petition in W.P.No.3338 of 2006, where the School sought for a direction to prohibit the first respondent ie., Director of Matriculation Schools from assuming jurisdiction for deciding the veracity of the order of termination passed by the School as disciplinary authority, as the first respondent is not an appellate authority or supervisory authority to inflict disciplinary action against the erring staff within the meaning of Tamil Nadu Private Schools Regulation Act as well as Matriculation Code, which are the governing regulations of the petitioner School and the staff working therein.

5. Challenging the said order since the writ petition has been filed, Mr.AR.L.Sundaresan, learned counsel for the petitioner School would contend that, in the writ petition in W.P.No.3338 of 2006, a learned Judge of this Court, by an order



dated 08.02.2006, while disposing the said writ petition, has given a direction that the first respondent, before deciding the merits of the issue ie., the order of termination made by the School against the third respondent, has to decide as to the jurisdiction of the first respondent, which would be raised by the School, as a first or preliminary issue. The learned Senior Counsel has relied upon the following portion of the order of the learned Judge made in W.P.No.3338 of 2006 dated 08.02.2006.

" 4. In my opinion, the submission of the learned counsel for the petitioner is well founded. Nevertheless so long as the order of this Court in W.P.No.26009 of 2005 is in force, giving liberty to the third respondent to prefer an appeal and the said appeal has to be considered by the Director of Matriculation School, the order of injunction restraining the Director of Matriculation School shall not be in conformity with the judicial precedent. That apart, this Court had earlier permitted the third respondent to file an appeal and this Court has not given any finding adversely affecting the minority institution, viz., the petitioner herein.

5. In such circumstances, in my opinion, it would be only proper for the petitioner School to put forth all the above grounds before the appellate authority and in such event, the issue as to the jurisdiction of the respondent to entertain the appeal preferred by the third respondent shall be first decided.

6. In that view of the matter, I am not inclined to entertain the writ petition. However, liberty is given to the petitioner School to raise all the points available to them before the appellate authority and the appellate authority shall independently consider those points and without construing the direction of this Court, as if, the direction to dispose of the appeal on facts. Objections if any, shall be filed on Friday (10.02.2006). the writ petition is disposed of accordingly. No costs. Consequently, connected WPMP No.3540 of 2006 is closed."

6. By relying upon this direction issued by the learned Judge, the learned Senior Counsel would contend that, though such a direction was given to decide the issue as to the jurisdiction of the first respondent, and though that issue was



in fact raised by the School, the first respondent has not shown any interest to decide the said issue and he suo motu assumed his jurisdiction as if that he is the appellate authority and set aside the order of termination order passed by the School on the alleged ground of violation of principles of natural justice. Therefore, the learned Senior Counsel would contend that, the impugned order passed by the first respondent is without jurisdiction and therefore, on that ground itself the order is liable to be quashed.

7. Insofar as the merits of the case is concerned, assuming that there was no oral enquiry conducted, there was no necessity to conduct oral enquiry in view of the serious charges levelled against the third respondent, as lot of complaints were received by the School from the parents for the treatment meted out to number of children studying in the School, who are in the class of the teacher concerned.

8. He would also submit that, even if this Court feels that, for violation of principles of natural justice, the order of termination has to go and a fresh enquiry or de novo enquiry has to be conducted, by affording an opportunity to the teacher concerned, he would submit that, due to passage of time, as this incident took place prior to 2005, absolutely there is no oral evidence available, as majority of the co-teachers working in the School at that time as well as the students studying then at that point of time and the parents, who gave the complaint, would not come to the School for cooperating with the enquiry, as their wards who studied in the School definitely would have left the institution after completing their course. Therefore, according to the learned Senior Counsel, conducting a fresh enquiry may be a very herculean task and even if conducted, no useful purpose would be served, he contended.

9. Insofar as the third respondent is concerned, the earlier counsel appearing for her has also given Change of Vakalat and the bundle has been handed over to the third respondent and therefore, the name of the third respondent with full address was directed to be printed in the cause list. Accordingly, the name and full address of the third respondent was shown in the cause list today. However, when the case is taken up for hearing, there is no representation for the third respondent.

10. However, the learned Government Advocate appearing for the official respondents would submit that, even though the petitioner School is the authority to take decision with regard to the disciplinary matters in view of the procedure contemplated under the Matriculation Code as well as the Tamil Nadu Private Schools Regulations Act, once orders are passed



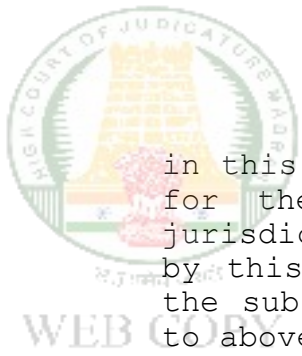
which are under judicial scrutiny before this Court, where a judicial order has been passed directing the first respondent to entertain an appeal to be filed in this regard by the affected teacher, ie., the third respondent, and further direction was given to decide the appeal on merits, there is absolutely no infirmity on the part of the first respondent to assume the jurisdiction that is not flown from the provisions of the Act as well as the Regulations, but based on judicial order passed in this regard. Therefore, the learned Government Advocate would submit that, on the point of jurisdiction, no error has been committed by the first respondent in proceeding with the said appeal filed by the third respondent and decide the same on merits as directed by this Court.

11. As has been rightly pointed out by the learned Senior Counsel for the petitioner, it is no doubt settled that the School, that too being a minority School, is the disciplinary authority to take action against the erring staff. The learned Senior Counsel, in fact, fairly submitted that, as against the said termination order passed against the third respondent, if at all she feels aggrieved, she should have agitated the matter in the manner known to law and therefore, as against the said order of termination, the first respondent cannot assume the power as an appellate authority, which is not permissible under the provisions of the Act as well as the Code.

12. The said submission made by the learned Senior Counsel appearing for the petitioner School is to be accepted and in fact the same has been indicated in favour of the petitioner School by a learned Judge in the earlier round of litigation by an order dated 08.02.2006 and the relevant portion of the order has already been quoted herein above.

13. It is also to be noted that, in view of the judicial precedent, where a Mandamus has already been issued in the writ petition filed by the third respondent, directing the first respondent to decide the appeal filed by the third respondent, the learned Judge in the said order referred to above has made an observation and direction to the first respondent to decide the issue as to whether the first respondent has got jurisdiction to decide the appeal to be filed by the third respondent and once such an issue is raised by the petitioner School, that should have been decided by the first respondent. Here, if we look at the impugned order, nowhere that issue on the jurisdiction of the first respondent has been decided, though it has been raised by the petitioner School as claimed by the learned Senior Counsel appearing for the petitioner.

14. Therefore, the impugned order is liable to be set aside, on the ground of non compliance of the direction issued



in this regard by this Court to decide the jurisdiction and also for the reason that the first respondent has assumed his jurisdiction by taking clue only from the judicial order passed by this Court in the earlier round of litigation unmindful of the subsequent order passed by this Court in the order referred to above.

15. Moreover, if at all the first respondent decides the appeal filed by the third respondent pursuant to the judicial order passed by this Court and ultimately if the first respondent finds that the order of termination dated 31.05.2005 passed by the School was made in violation of the principles of natural justice and in this regard, the matter should have been remitted back to the petitioner School for re-consideration and even that exercise has not been undertaken by the first respondent, as he has simply quashed the order and left the matter at rest and as a sequel, the third respondent would be entitled to get reinstatement.

16. Therefore, there is every justification on the part of the petitioner School to challenge this order, which is impugned herein on the ground of jurisdiction and also the ultimate decision rendered by the first respondent.

17. Insofar as the jurisdiction is concerned, this Court feels that, the first respondent ie., the Director of Matriculation Schools cannot sit upon the order of termination passed by the petitioner School, which is a minority institution, as appellate authority. However, the reasons cited by the first respondent in the impugned order for setting aside the termination order ie., want of following or adhering the principles of natural justice, is to be accepted.

18. However, since the third respondent has not come before this Court to sustain the order of the first respondent, which is impugned herein, and also to take the stand of the petitioner to fix the enquiry afresh, if it is ordered by this Court, this Court cannot give such a direction to the petitioner to conduct a fresh enquiry as of now.

19. However, the order of termination dated 31.05.2005 can very well be challenged by the third respondent even now, on the alleged ground of violation of principles of natural justice and that right accrued on the third respondent can be retained, unmindful of the long period that had gone during the pendency of the writ petition and in this context, this Court is of the view that, if any such move is taken by the third respondent to challenge the order of termination dated 31.05.2005, the principles of laches shall not stand in her way. Whatever the



defence to be taken in this regard by the School can also be kept open to be agitated, if such eventuality arises by setting the law in motion by the third respondent, challenging the order dated 31.05.2005 in the manner known to law.

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20. In view of the aforesaid discussion, this writ petition is disposed of with the following order.

(a) That the impugned order viz., RC 3876/E3/2007 dt 31.8.2007 is hereby quashed.

(b) As a sequel, the petitioner School need not take the third respondent as a teaching faculty, even assuming if there is any service period left before superannuation.

(c) It is made clear that, by virtue of the setting aside of the impugned order, the right of the third respondent to challenge the order of termination dated 31.05.2005 passed by the petitioner School is not taken away and it is open to the third respondent to challenge the same in the manner known to law.

(d) If such a challenge is immediately taken up within a reasonable period, the laches / delay on the part of the third respondent to challenge the order dated 31.05.2005 shall not stand in the way.

(e) It is also made clear that, once such an eventuality arises, where the termination order dated 31.05.2005 is under challenge by the initiation of the third respondent, it is open to the petitioner School to raise all the reasonable defences on their behalf and that can be decided on merits and in accordance with law by the forum, before which it is to be challenged.

21. With the above observations and directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



KST

To

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1.The Director of Matriculation Schools,
Egmore, Chennai 600 008.

2.Inspector of Matriculation Schools,
Chennai 600 008.

+1cc to the Government pleader Sr.15562

+2cc to Ms.A.L.Gandhimathi, Advocate Sr.15095, 13074

W.P.No.33237 of 2007

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srg 16/07/2021