



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)Nos.15438 and 15448 of 2020

and W.M.P.(MD)Nos.12971, 12972, 907 and 908 of 2021
(Through Video Conference)

J.Vimal Edward Dhas

... Petitioner in W.P.(MD)
No.15438 of 2020

B.Sheela Banu

... Petitioner in W.P.(MD)
No.15448 of 2020

Vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

2.The Director of School Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Kanyakumari District, Nagercoil.

4.The District Educational Officer,
Thiruvattar, Office at Marthandam,
Kanyakumari District.

5.The Correspondent,
Purusothamman Pillai Memorial
Higher Secondary School,
Anducode and Post-629 168,
Kanyakumari District.

6.Dr.V.R.Sajikumar

7.C.Subi Kumar

... Respondents in both W.P's

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the fifth respondent herein in Nos.PPM/C/Ve/273/2020 & PPM/C/Ve/272/2020, respectively dated 09.09.2020 and quash the



same and further to direct the respondents herein to reinstate the petitioners into service as Physical Education Teacher in the fifth respondent school from 09.09.2020 onwards with salary and other attendant benefits.

In both the W.P's:

For Petitioners : Mr.E.V.N.Siva

For RR 1 to 4 : Mr.C.Shanmugaselvam
Additional Government Pleader

For R5 : Mr.S.C.Herold Singh,
Standing counsel

C O M M O N O R D E R

The petitioners herein, are the Physical Education Teachers under the fifth respondent School. By a charge memo, dated 07.09.2019, both were levelled with certain charges and when the same was challenged before this Court in W.P.(MD)Nos.21810 and 21802 of 2019, this Court had stayed the charge memo through its order, dated 16.10.2019. Thereafter, the original charge memo came to be withdrawn on 22.10.2019 and on similar set of charges, fresh charge memo was issued on 24.10.2019. Pursuant to the charge memo, the petitioners were placed under suspension on 21.12.2019 and an enquiry came to be conducted. Ultimately, on 09.09.2020, the petitioners were imposed with the punishment of removal from service, pursuant to the report of the Enquiry Officer, finding the charges to be proved. The punishment orders are put to challenge in these Writ Petitions.

2.The predominant ground raised by the learned Counsel for the petitioner is that the sixth respondent herein is a purchaser of the School and the minority status was awarded only to the erstwhile management of the School, namely, the sixth respondent's vendor and since the sixth respondent's educational agency has not been recognized with the minority status, the initiation of the departmental action as well as the imposition of the punishment, without prior approval of the competent authority under Section 22 of the Tamil Nadu Private School (Regulations) Act, 2018, is deemed to be without authority and therefore, the punishment itself cannot be sustained.

3.The learned Standing Counsel appearing for the fifth respondent, on the other hand, would submit that while the erstwhile educational agency was approved with minority status, the same would get transferred in their favour in view of the sale deed, more so when the minority status was granted to their vendor by virtue of the decree of a Civil Court in O.S.No.5216 of 1981



and hence no fresh approval is required for recognising the school with the minority status. In support of his contention, the learned Counsel placed reliance on an order of learned Single Judge of this Court in the case of **Hindu Middle School vs the State of Tamil Nadu, Education Department and two others** in W.P.No.5519 of 2005.

4.The learned Additional Government Pleader placed reliance on the averments made in the counter affidavit and submitted that the petitioner's vendor was approved by the minority status after they had established their linguistic minority before the City Civil Court at Chennai in O.S.No.5216 of 1981. However, the minority status would lapse the moment the management of the school was transferred in favour of the sixth respondent. By relying upon the Government order in G.O.(Ms)No.375, School Education (X) Department, dated 12.10.1988 and G.O.Ms.No.216, School Education (X2) Department, dated 08.11.2008, the learned Additional Government Pleader submitted that there is a duty cast on the sixth respondent, who is the subsequent purchaser, to obtain minority status afresh and till such time, the School itself is deemed to be a non-minority one.

5.I have given careful consideration to the submissions made on behalf of the respective Counsels.

6. The object of granting minority status to Educational Institutions is for promoting the interest of the minority concerned and by grant of such status, the interests of the minority communities should be sub-served. One of the main requirement for such a purpose is that the Educational Institution should have been established by the Minority Institution and should be continuously administered only by the members of that Minority. The guidelines governing the Authorities for grant of minority status, are on the basis of these two mandatory requirements.

7. The only ground raised by the learned standing counsel for the fifth respondent is that since the erstwhile educational agency was approved with a minority status, pursuant to the judgment and decree of a Civil Court, such a status would be transferred to the subsequent educational agency, in view of the terms of the sale deed. This ground raised is not based on *intelligible differentia*. The Regulations governing a private school does not provide for such transfer of the status from one educational agency to another. When the basic requirement to recognise an Educational Institution is that such an Institution should be established and administered by the members of the Minority Committee, there is a duty cast on the subsequent educational agency, which had purchased the Educational



Institution with the minority status, to establish before the Educational Authorities that they are also members of the Minority Committee and that the Educational Institution is sought to be administered for promoting and sub-serving the interest of the minority concerned. This position is more so mandatory since there is no prohibition for a non-minority Educational Institution to take over an minority educational institution through a Deed of Conveyance. As such, the stand taken by the fifth respondent/Educational Agency cannot be sustained and consequently it is required to be held that so long as the statutory authorities recognize the 'minority status' of the fifth respondent/Educational Agency, they are deemed to be a non-minority one.

8. The learned standing counsel for the fifth respondent made a faint attempt to place reliance on the decision of this Court in the case of **Hindu Middle School vs State of Tamil Nadu, Educational Department and others** passed in **W.P.No.5519 of 2005** and submitted that the Madras High Court had set aside the order of the educational authorities rejecting the refusal of recognition of the minority status of the Management, which had taken over the Educational Institution through a Deed of Conveyance. The reliance placed on the aforesaid judgment is misplaced. As a matter of fact, the aforesaid decision of the Madras High Court is against the petitioner since the Court was of the view that the Educational Authorities should consider the claim of the petitioner therein for recognition of minority status. Since the Educational Authorities had set aside the rejection order on the ground that the refusal of minority status was not on a finding that the Institution fails to satisfy the basic requirements for grant of minority status, but on account of transfer of the Management, the Court was of the view that the Educational Authority should consider the claim of the petitioner therein, for recognition of minority status. Hence, the aforesaid decision in **Hindu Middle School's case** (cited supra) may not help the petitioner.

9. In this background, the facts of the present case reveals that the petitioners herein were subjected to disciplinary enquiry and ultimately dismissed from their services on 09.09.2020 respectively. While passing an order of dismissal, no prior permission was obtained from the competent Authority under the Tamil Nadu Private School Regulations Act. Now, that this Court has found that the petitioners with the respondents 5 & 6 were not confirmed with the minority status and are deemed to be a non-minority School, there is a mandatory duty cast upon them to obtain prior approval of the Competent Authority for the purpose of imposition of punishment of dismissal, removal or otherwise terminate the services of the petitioners herein. Such a legal



proposition has been well settled in various decisions of the Hon'ble Supreme Courts as well as this Court in **Bharat Seva Shram Sangh v. State of Gujarat** reported in (1998) 4 SCC 51 and the decision of this Court in **Swami Sadananda, Secretary, Disciple of Swamy Chidbhavananda, Vivekananda, Higher Secondary School, State of Tamil Nadu** reported in (2002) 3 CTC 553.

10. It is relevant to point out here that the impugned orders in the present writ petitions, dismissing the petitioners from their services', without obtaining the prior approval of the Competent Authority, has also deprived them the right of an Appeal as provided under Section 23 of the Tamil Nadu Recognized Private Schools (Regulations) Act, 1978. In this factual scenario also, the impugned orders of dismissal cannot be sustained.

11. In the result, the Writ Petitions are allowed. Consequently, the impugned orders made in Nos.PPM/C/Ve/272/2020 & PPM/C/Ve/273/2020, respectively, dated 09.09.2020 dismissing the petitioners, viz., J.Vimal Edward Dhas and B.Sheela Babu, from their service are quashed. However, if the 6th respondent is of the view that the disciplinary action is required to be proceeded against the petitioners herein, it is open to them to do so in accordance with law and in the light of the observations made, with regard to the procedure for conduct of a disciplinary action for a non-minority school. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Director of School Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Kanyakumari District, Nagercoil.

4.The District Educational Officer,
Thiruvattar, Office at Marthandam,
Kanyakumari District.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-9363[F] dated
08/03/2021)

Common order made in

W.P. (MD)Nos.15438 and 15448 of 2020

Dated:05.03.2021

SGS (CO)

TR(22.04.2021) 6P 6C