



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.8240 of 2018

and

W.M.P (MD)Nos.7819 & 14831 of 2018

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S.Udhaya Kumar

... Petitioner

vs.

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

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

3.The Chief Educational Officer,
Dindigul, Dindigul District.

4.The District Educational Officer,
Palani, Dindigul District.

5.The Secretary,
Sri Renugadevi Higher Secondary School,
Neikarapatti,
Palani - 625 615,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of termination issued by the fifth respondent/Secretary, vide proceedings Nil, dated 05.02.2018, quash the same and further direct the respondents herein to reinstate the petitioner forthwith into service and allow him to continue as Physical Education Teacher in the fifth respondent School with all attendant benefits including full salary, allowances and continuity of service.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

For RR 1 to 4 : Mr.P.Subbaraj
Government Advocate

For R - 5 : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

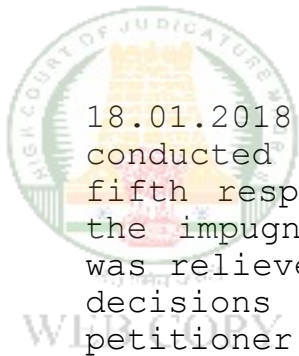


ORDER

The petitioner has filed the present Writ Petition, to quash the impugned order of termination issued by the fifth respondent/Secretary, dated 05.02.2018 and to direct the respondents to reinstate him forthwith into service and allow him to continue as Physical Education Teacher in the fifth respondent School with all attendant benefits including full salary, allowances and continuity of service.

2. According to the petitioner, he was appointed as Physical Education Teacher in the fifth respondent School, after following due process of selection in the sanctioned post, with effect from 19.12.2016. The fifth respondent in order to fill up the post of Physical Education Teacher, that fell vacant on the retirement of M. Ramakrishnan, earlier incumbent, who attained the age of superannuation on 30.09.2015, obtained prior permission from the fourth respondent to fill up the vacancy and appointed the petitioner as Physical Education Teacher, vide order, dated 19.12.2016, as the petitioner was most suitable and meritorious candidate among others. The fourth respondent approved the appointment of the petitioner as Physical Education Teacher with effect from 19.12.2016, by proceedings, dated 02.05.2017. The fifth respondent School is the Higher Secondary School and only Middle School is aided School. High School and Higher Secondary School are self-finance School. Even though the petitioner was appointed in the Middle School, he was asked to maintain discipline among all the students in the School upto Higher Secondary level. The petitioner was conducting various sports and games and providing good training to the students and also maintained discipline among the students.

3. Further, according to the petitioner, the fifth respondent/Management demanded money for permitting him to continue in service. The petitioner hails from poor family and he could not afford to pay the illegal demands made by the fifth respondent/Management. The fifth respondent/Management did not open the Service Register even though the petitioner completed one year of service. When the petitioner requested the fifth respondent/Management to open his Service Register, the fifth respondent/Management did not permit the petitioner to sign the attendance register on 04.01.2018 and on subsequent dates. The fifth respondent removed the pages of attendance register where the petitioner signed on 02.01.2018 and 03.01.2018. The petitioner was going to School daily, but he was not permitted to sign the attendance register and discharge his duties. After Pongal Holidays, when the petitioner went to the School on 17.01.2018, the fifth respondent/Management did not permit the petitioner to enter in the School. The petitioner gave complaint to the third respondent on



18.01.2018 and again on 01.02.2018. The third respondent has not conducted any enquiry. While so, when the petitioner went to the fifth respondent School on 08.02.2018, the fifth respondent served the impugned order, dated 05.02.2018, stating that the petitioner was relieved from the School with effect from 05.02.2018, as per the decisions of the School Committee. Challenging the same, the petitioner has come out with the present Writ Petition.

4.The learned Senior Counsel appearing for the petitioner submitted that the petitioner was appointed in a sanctioned post and his appointment was approved by the fourth respondent. The fifth respondent, without any notice and without any reason, arbitrarily relieved the petitioner from service. The fifth respondent has not obtained prior permission from the authorities as per the mandatory provision of Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The impugned order is invalid, illegal and non-est in law. The fourth respondent called the petitioner for enquiry on 14.02.2018. The petitioner appeared and explained about the malafide on the part of the fifth respondent School in terminating him from service. According to the petitioner, the fourth respondent directed the fifth respondent/Management also to appear for enquiry on the same date, but the fifth respondent/Management did not participate in the enquiry, despite the instructions of the fourth respondent. In the meantime, the second respondent, on considering the representation of the petitioner given to the Director of School Education, directed the third respondent to conduct enquiry and report the same.

5.The learned Senior Counsel appearing for the petitioner further submitted that this Court by order, dated 16.04.2018, admitted the Writ Petition and ordered notice to the respondents and also granted interim stay of the impugned order. The fifth respondent has not reinstated the petitioner into service and not complied the order of this Court. In support of his contention, the learned Senior Counsel appearing for the petitioner relied on the Judgment of the Division Bench of this Court in ***RV Thevar Memorial Girls High School, Cholapuram Vs. The Director of School Education and others*** reported in **2002 (4) CTC 129** and contended that the Division Bench of this Court held that the requirement of prior approval before termination from the competent authority is mandatory. The relevant paragraphs of the said Judgment read as follows:-

"17. The learned Judge of this Court in the decision in The Ayya Nadar JanakiAmmal College, etc. Sivakasi v. A.Pandian and Ors., 1996 Writ L.R. 521, while construing the provisions of Tamil Nadu Private Colleges (Regulation) Act (1976), which is in pari materia of the provisions in the Act 1973, had held as follows:-

"21. Learned counsel for the petitioner also raised a contention that under Form-7A of the Tamil Nadu Private



Colleges (Regulation) Rules, 1976, there is no provisions as that found in Form-7A under Rule 15 of the Tamil Nadu Private Schools (Regulation) Rules which reads as under:-

"Termination of the probationer shall be done only with the previous permission of the competent authority specified in Rule 17."

And for that purpose, learned counsel relied upon as seen earlier, the G.O.Ms.No. 1606 dated 24.8.1983 issued by the Commissioner and Secretary to Government directing the incorporation of the similar agreement in the existing paragraph-2 in Forms 7A and 7C of the Tamil Nadu Private Colleges (Regulation) Rules, 1976. No doubt, the Government has directed the incorporation of a similar clause found in Form-VII-A of Private Schools (Regulation) Act to the Form-7A of the Tamil Nadu Private Colleges (Regulation) Act. The belief or the assumption of the executive about the need to incorporate such a provision in the agreement cannot make the law. It is not known what prompted the government to issue such a direction, but, as already observed, the case has to be decided on the statutory language employed in the form, as it exists on the date of impugned order, and not on the basis of the views of the executives. Form-7-A deals with form of agreement to be executed by a College Committee of a college in respect of a permanent teacher. This form is prescribed under Rule-11, Sub-rule 2(1) of the relevant Rules. It is seen from the agreement dated 2.1.1979 executed between the College Committee and the first respondent that the petitioner-college has adopted Form 7-A with slight modification, because Form-7A deals with the appointment of a permanent teacher, whereas the first respondent was appointed on probation and taking into account that aspect of the matter, certain minor variations have been made in the agreement executed between the petitioner and the first respondent though there is no clause akin to the clause as found in the Private Schools (Regulation) Rules. But, the absence of such a clause as found in Private Schools (Regulation) Rules in the terms prescribed under the Private Colleges (Regulation) Rules, does not dispense with the statutory requirement of getting prior approval of the competent authority before terminating the services of the first respondent.

23. Learned counsel for the first respondent is well-founded in his submission that the order of termination of the service of the first respondent is void ab initio. As already seen, he relied on following decisions; (1) K. Rajeswari v. T.P. Sankaran and Anr., 1977 T.L.NJ.537;



(2) Selvaraj v. Jesudasan, 1983 (II) M.L.J. 406 : 96 L.W.348; 3. R. Jesudasan v. K. Selvaraj and Ors., 1989 (1) L.L.J. 470 : 1989 (2) L.W.86; 4. Rajaji Middle School v. Mariapushpam, 1987 Writ L.R. 333; 5. M.Committee v. S.D. Gupta, 1974 A.L.J. 465 : 1974 L.I.C.1036; 6. Prabhu Narain v. Dy. Director, Education, Varanasi, 1977 Lab.I.C. 1095 and 7. Rama Bhadoor and Anr., v. Thungabadra Sugar Works (P) Ltd. 1979 S.L.J. 489. In these cases, it has been held that where there is a termination of violation of the provisions of the Act, the order of termination contrary to the provisions of the Act is only a null and void order and it has no effect at all. Consideration of other cases relied upon by the learned counsel for the first respondent on the scope of the termination relating to the industrial disputes or the Shops and Establishments Act need not be made, because as held by this Court in T.Chandrasekaran's case and in Jesudasan's case (cited supra), the scope of industrial adjudication is entirely different as found in the said provisions and as expatiated by the pronouncement, it is not possible to draw any parity between the scope of the provisions of the Act and the scope of the concerned provisions of the Industrial Disputes Act, 1947, and no guidance need be taken with regard to the conferment of the power incurring obligations and consequences of the breach of the prescription of the statute other than the relevant one dealt with by the Court. Respectfully following this view, it is not possible to draw any analogy or sustenance from the cases decided under the Industrial Disputes Act or the Shops and Establishments Act to hold that the order is liable to be struck down.

24. Though I find force in the arguments advanced by the learned senior counsel Mr. Thiagarajan, in the context of the facts and circumstances of the case, I am of the view that Section 19 of the Act would squarely apply to the facts of the case and the prior approval of the competent authority is necessary before putting an end to the services of the first respondent. In this case, admittedly, the prior approval of the competent authority was not obtained by the petitioner-college before terminating the services of the first respondent by the petitioner-college. Consequently, the order of termination of the first respondent does not take effect or become effective unless approved by the competent authority and hence, the order of the third respondent does not require interference by this Court, with the result, the writ petition is liable to be dismissed and it is, accordingly, dismissed, with costs of the first respondent. The cost is

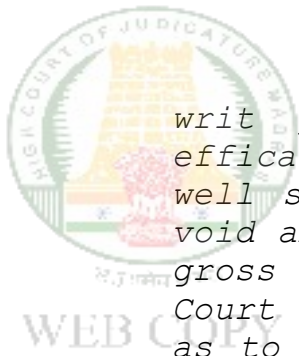


6.Further, the learned Senior Counsel appearing for the petitioner relied on the order of this Court in **W.P(MD)No.1849 of 2009, dated 28.08.2014 [A.S.Edwin Suthan Vs. The Chief Educational Officer, Tirunelveli and others]** and submitted that this Court held that prior approval if not obtained before terminating the Teacher from service, the said termination is illegal and void ab initio, which cannot be allowed to sustain. The relevant portion of the said order reads as follows:-

"9.Nextly, the learned counsel for the petitioner would submit that no approval was obtained from the second respondent before terminating the service of the petitioner. For this, the learned counsel for the petitioner relies on a Division Bench judgment of this Court in *The Ayya Nadar Janakiammal College, Sivakasi vs. Pandian*, reported in 1998 (I) MLJ 14, wherein the issue before the Division Bench was as to whether termination of the services of the probationer by passing an order simpliciter without attaching any stigma, requires any prior approval from the competent authority under the Act. The Division Bench held that even if the probationer is sought to be terminated on the ground that his services were not satisfactory, even then, prior approval should be obtained from the competent authority.

10.In yet another case, in *RV Thevar Memorial Girls High School vs. The Director of School Education*, reported in 2002 (4) CTC 129, again yet another Division Bench has reiterated the law to state that prior approval if not obtained before terminating the teacher from service, the said termination is illegal and void ab initio. Therefore, I hold that termination of the petitioner without prior approval is illegal, which cannot be allowed to sustain.

15.Now, turning to the last objection regarding the maintainability of the writ petition, I have to say that it is true that as against the order of termination from service, appeal can be filed under Section 23 of the Act. But availability of such alternative remedy would not deprive this Court from entertaining this writ petition, because, in this case, there is serious violation of principles of natural justice and because the impugned order of termination is not irregular but illegal. The power of this Court under Article 226 of the Constitution of India is not limited by any of the provisions of the Constitution. In fact, it is unlimited. But at the same time, in the course of time, the higher judiciary has itself imposed certain restrictions to exercise the said power. One such restriction is to refuse to entertain a



writ petition when the party aggrieved has got an efficacious statutory alternative remedy. It is also too well settled that in a case where the order impugned is void ab initio, or illegal or the same has been passed in gross violation of principles of natural justice, this Court would not hesitate to entertain a writ petition so as to exercise its jurisdiction under Article 226 of the Constitution of India. In the case on hand, I have already concluded that initiation of disciplinary proceedings itself is illegal and the termination is void ab initio, for want of approval from the Education Department and the same violates the principles of natural justice, because, there was no enquiry held into the charges by affording any opportunity to the petitioner. In this factual situation, applying the above said settled principles of law, I have to hold that this writ petition is maintainable.

20. In the result, the writ petition is allowed, the impugned order of termination is set aside and the third respondent is directed to issue consequential order reinstating the petitioner, within a period of four weeks from the date of receipt of a copy of this order. It is also further directed that the petitioner shall be entitled for continuity of service and all the other attendant benefits. It is also directed that the petitioner shall be entitled for back wages from the date of termination till the date of reinstatement, to be paid by the third respondent Management. Consequently, the connected miscellaneous petition is closed. No costs."

7. The learned Senior Counsel appearing for the petitioner submitted that in this case, the fifth respondent has not obtained prior permission from the authority and prayed for setting aside the impugned order and reinstatement of the petitioner.

8. The fifth respondent has filed the counter-affidavit along with the vacate stay petition.

9. The learned Senior Counsel appearing for the fifth respondent submitted that the petitioner was appointed as Physical Education Teacher on 19.12.2016 and his probation was declared for two years. Before the completion of probation, the School committee unanimously decided to relieve the petitioner. The petitioner was relieved before completion of probation period and therefore, no notice is necessary to the petitioner and no permission is required from the authority to relieve the petitioner. The order of termination of the petitioner does not attach any stigma and it is order of simpliciter. The impugned order is valid and legal.

10. In support of his contention, the learned Senior Counsel appearing for the fifth respondent relied on the Judgment of the



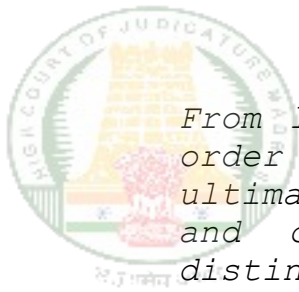
Hon'ble Supreme Court in **Mathew P.Thomas Vs. Kerala State Civil Supply Corporation Limited** reported in 2003 (3) SCC 263; **Rajasthan State Road Transport Corporation and others Vs. Zakir Hussain** reported in 2005 (7) SCC 447 and **Jai Singh Vs. Union of India and others** reported in 2006 (9) SCC 717.

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11. In **Mathew P.Thomas Vs. Kerala State Civil Supply Corporation Limited** reported in 2003 (3) SCC 263, the Hon'ble Supreme Court at paragraph Nos.11 & 12 held as follows:-

"11. An order of termination simplicitor passed during the period of probation has been generating undying debate. The recent two decisions of this Court in *Deepti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others* [(1999) 3 SCC 60] and *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences and another* [(2002) 1 SCC 520], after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simplicitor and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of *Deepti Prakash Banerjee (supra)*, after referring to various decisions indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained, thus: -

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."



From long line of decisions it appears to us whether an order of termination is simplicitor or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simplicitor falling in one or the other category, based on misconduct as foundation for passing the order of termination simplicitor or on motive on the ground of unsuitability to continue in service. If the form and language of the order of termination simplicitor of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simplicitor or punitive. In cases where the services of a probationer are terminated by an order of termination simplicitor and the language and form of it do not show that either it is punitive or stigmatic on the face of it but there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simplicitor but the real face behind it is to get rid of services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simplicitor to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct."

12. In **Rajasthan State Road Transport Corporation and others Vs. Zakir Hussain** reported in **2005 (7) SCC 447**, the Hon'ble Apex Court at paragraph Nos.32 & 37, has held as follows:-

"32. The order of termination in the present case is termination simpliciter order and does not amount to any stigma. In this respect following cases are important:

(i) This Court in the case of Champaklal Chimanlal Shah vs. The Union of India reported in AIR 1964 SC 1854 at page 1862 in para 13 has held and observed:- "...The mere fact that some kind of preliminary enquiry is held against a temporary servant and following that enquiry the services are dispensed with in accordance with the contract or the specific service rules (e.g. R.5 in this



case) would not mean that the termination of service amounted to infliction of punishment of dismissal or removal within the meaning of Article 311(2)."

(ii) This Court in the case of Shamsheer Singh & Anr. vs. State of Punjab reported in [1975] 1 SCR 814 (7 Judges Bench) has held and observed as under:- "The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2)."

(iii) This Court in the case of Oil and Natural Gas Commission and Others vs. Dr. Md. S. Iskender Ali reported in (1980) 3 SCC 428 in para 3 of the said matter shows that in the said matter departmental enquiry was initiated against the employee concerned but the employer neither proceeded with the inquiry nor imposed punishment and the order of termination simpliciter was passed. This Court after considering various cases in para 12 (at Page 434) has held:-

"12. The facts of the present case appear to be on all fours with those of the aforesaid decision. From the undisputed facts detailed by us in an early part of the judgment, it is manifest that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it could not be termed as penalty or punishment."

(iv) This Court in the case of K.V. Krishnamani vs. Lalit Kala Academy reported in (1996) 5 SCC 89 in para 4 at page 90 has held and observed:-

"..They have explained that the driving of the staff car was not satisfactory and that, therefore, they have terminated the services of the appellant during probation. The very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has power to terminate the services of the employee. Under these circumstances, it cannot but be held that the reasons mentioned constitute motive and not foundation for termination of service."

(v) This Court in the case of Kunwar Arun Kumar vs. U.P. Hill Electronics Corporation Ltd. And Ors. Reported in (1997) 2 SCC at page 193 has held and observed as under:-



"..Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma."

13. In **Jai Singh Vs. Union of India and others** reported in **2006 (9) SCC 717**, the Hon'ble Supreme Court at paragraph No.9 has held as follows:-

"9.....The question whether termination of service is simpliciter or punitive has been examined in several other cases e.g. Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna (2003 (2) SCC 386) and Mathew P. Thomas v. Kerala State Civil Supply Corporation Limited and Ors. (2003 (3) SCC 263). An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta (1999 (3) SCC 60) and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences (2002(1) SCC 520) after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Dipti Prakash Banerjee (supra) after referring to various decisions it was indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained thus:

"If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the



employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service."

14.The learned Senior Counsel appearing for the fifth respondent submitted that following the three Judgments, if an employee, who is on probation or holding an appointment on temporary basis, is removed from service by an order of termination simpliciter, without issuance of notice or holding enquiry.

15.Countering the submissions made by the learned Senior Counsel appearing for the fifth respondent, the learned Senior Counsel appearing for the petitioner submitted that the abovesaid three Judgements would go to show that if the services of a probationer were not found to be satisfactory, he/she can be removed without any enquiry or notice, because the termination is going to be non-stigmatic and innocuous, but the order passed by the fifth respondent Management does not speak about any stigmatic. It looks innocuous. But, in the counter-affidavit, the fifth respondent has categorically stated that without leave, the petitioner absented himself. But on the other hand, in the affidavit filed in support of the Writ Petition, it has been stated that the fifth respondent/Management did not permit the petitioner to sign in the attendance register and tore the attendance register. But the counter-affidavit makes it as stigmatic. In paragraph No.5 of the counter-affidavit, it has been stated that when it is stigmatic, absolutely prior notice would be required. In the present case, in the counter-affidavit filed by the fifth respondent itself it has been stated that the petitioner himself has absented from duty on 02.01.2018 and he has not submitted any leave letter. Hence, the School authority decided to terminate the petitioner. In view of the same, the contention of the learned Senior Counsel appearing for the fifth respondent that there is no stigma cast upon the petitioner is not correct and prayed for allowing the Writ Petition.

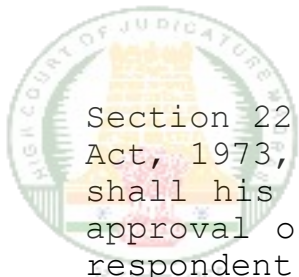


16.The learned Senior Counsel for the petitioner also referred to paragraph No.10 of the counter-affidavit filed by the fifth respondent and submitted that the fifth respondent has stated that the petitioner is only a probationer and hence, prior permission is not necessary. On the other hand, the fifth respondent has filed the typed set of papers on 15.06.2021 and it has been stated that on the same day, on relieving the petitioner, the fifth respondent has sent a letter to the fourth respondent and sought for approval of the dismissal of the petitioner and the fifth respondent has not obtained any prior permission for dismissal.

17.Heard the learned Senior Counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 to 4 and the learned Senior Counsel appearing for the fifth respondent.

18.From the impugned order, it is seen that admittedly, the petitioner was appointed as a Physical Education Teacher in the fifth respondent aided Middle School in the sanctioned vacancy on 19.12.2016. The fourth respondent, by proceedings dated 02.05.2017, approved the appointment of the petitioner with effect from 19.12.2016. According to the petitioner, the fifth respondent School Management demanded amount to continue him in service and he could not pay the amount demanded by the fifth respondent School Management. Further, the petitioner has stated that he requested the Management to open the Service Register. The fifth respondent School Management did not permit the petitioner to sign in the register and did not permit him to enter into the School and subsequently, by impugned order, dated 05.02.2018, relieved him from service. In the impugned order, it has been stated that the School Committee has unanimously decided to relieve the petitioner from service before the completion of probation. Admittedly, no notice was issued to the petitioner and no reason is given in the impugned order for relieving the petitioner from service. The fifth respondent has not obtained any prior permission from the authority before passing the impugned order. Further, the petitioner has made a complaint dated 18.01.2018 to the third respondent and representation dated 01.02.2018 to the first respondent and communicated to all the respondents. The fourth respondent, after enquiring the petitioner, did not proceed further. The first respondent also directed the third respondent to conduct an enquiry. The respondents 1 to 4, who are the authorities, have not passed any order on the complaint given by the petitioner.

19.The petitioner was appointed on 19.12.2016. The fifth respondent School sent a proposal to the fourth respondent for approval of appointment of the petitioner. The fourth respondent, by proceedings dated 02.05.2017, approved the appointment of the petitioner as Physical Education Teacher with effect from 19.12.2016. The appointment of a teacher is approved, as per



Section 22 of the Tamil Nadu Recognized Private Schools [Regulation] Act, 1973, he shall not be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority. In the present case, the fifth respondent did not obtain prior permission before terminating the services of the petitioner. On the other hand, on the same day of passing of the impugned order, the fifth respondent sought approval for termination of the petitioner. The fifth respondent without obtaining any permission from the competent authority, terminated the services of the petitioner and thereafter, sought approval for termination of the petitioner. Due to failure on the part of the fifth respondent School to comply with the mandatory condition contained in Section 22 of the Tamil Nadu Recognized Private Schools [Regulation] Act, 1973, the impugned order of termination is invalid and illegal. Further, the fifth respondent has not produced any approval granted by the competent authority, for termination of the petitioner.

20.The contention of the learned Senior Counsel appearing for the fifth respondent is that the petitioner was Probationer at the time of termination and therefore, no notice or reason needs to be given in the impugned termination order. According to the learned Senior Counsel appearing for the fifth respondent, the termination of the petitioner does not attach any stigma and it is termination simpliciter. On the other hand, from the materials on record, it is seen that the petitioner has contended that the fifth respondent demanded money to continue him in service and prevented him from discharging his duties and also prevented him from entering the School. On the other hand, it is the case of the fifth respondent that the petitioner absented from duties and the School Committee resolved to terminate the services of the petitioner. When such being the case, the third respondent ought to have followed due process of law to terminate the services of the petitioner. In view of the above, the Judgments relied on by the learned Senior Counsel appearing for the fifth respondent do not advance the case of the fifth respondent.

21. The impugned order is passed without any notice and without any reason and without obtaining prior permission from the authority concerned and hence, the impugned order is liable to be set aside. This Court granted an order of interim stay on 16.04.2018. In spite of the interim order, the fifth respondent School did not permit the petitioner to join duty. The respondents 1 to 4 have also not taken any steps for reinstatement of the petitioner, in spite of the interim order of this Court.

22.For the above reasons, the impugned order is set aside and the fifth respondent School is directed to reinstate the petitioner into service within a period of two weeks from the date of receipt of a copy of this order. The respondents are directed to pay all the arrears of salary and continuity of service to the petitioner.



23. With the above direction, this Writ Petition is allowed as prayed for. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

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 Director of School Education,
College Road,
Chennai - 600 006.
2. The Joint Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Dindigul, Dindigul District.
4. The District Educational Officer,
Palani, Dindigul District.
5. The Secretary,
Sri Renugadevi Higher Secondary School,
Neikarapatti,
Palani - 625 615,
Dindigul District.

+1 CC to M/s.SPL GP (SR-19894[F] dated 22/06/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-19879[F] dated 22/06/2021

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-19991[F] dated 23/06/2021)