



WP(MD)Nos.19633, 25272 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.19633, 25272 of 2022
and
WMP(MD)Nos.14345, 19374 of 2022

WP(MD)No.19633 of 2022:-

D.Rosali

.. Petitioner

v.

1.The Director of School Education,
DPI Campus,
College Road,
Chennai – 600 006.

2.The Chief Educational Officer,
Madurai.

3.The District Educational Officer,
Madurai.

4.The General Manager,
Schools of the Congregation of Immaculate Conception,
No.20, Old Kuyavarpalayam,
Madurai – 625 009.

.. Respondents



WP(MD)Nos.19633, 25272 of 2022

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the fourth respondent dated 05.12.2016, quash the same and consequently, directing the respondents to reinstate the petitioner in service, as Headmistress with backwages and with all attendant and monetary benefits.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.K.Balasubramani,
Special Government Pleader
for R.1 to R.3

Mr.C.Muthu Saravanan for R.4

WP(MD)No.25272 of 2022:-

Rev.Sr.Pushpa Ranjitham

.. Petitioner

v.

1.The District Educational Officer,
Madurai.

2.The Block Educational Officer,
T.Vadipatti,
Madurai District.



WP(MD)Nos.19633, 25272 of 2022

3.Rosali

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in Na.Ka.No. 1561/A4/2021 dated 04.07.2022 and quash the same.

For Petitioner : Mr.C.Muthu Saravanan

For Respondents : Mr.K.Balasubramani,
Special Government Pleader
for R.1, R.2

Mr.J.Lawrance for R.3

COMMON ORDER

One D.Rosali, Headmistress, was transferred from one School to another School. She did not join. Therefore, the management has dismissed her from service. This order of dismissal is challenged by the Headmistress in WP(MD)No.19633 of 2022.

2.The Headmistress has also filed a statutory appeal before the District Educational Officer as against the order of dismissal. The appeal



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was returned by the District Educational Officer stating that prior approval as required under Section 22 of the Tamil Nadu Recognized Private School Regulation Act was not obtained. As against this order of the District Educational Officer, the Management has filed WP(MD)No.25272 of 2022.

3.Since both the writ petitions pertain to the affairs of the disciplinary proceedings initiated as against the Headmistress, Ms.D.Rosali, by the School of Congregation of the Immaculate Conception, both the writ petitions are taken up for hearing together and are disposed of by this common order.

4.It appears that a person [D.Rosali], who was appointed as a Record Clerk, has been elevated as a Headmistress. While she was working as Headmistress in RC Middle School, Rayapuram, she was transferred to St. Joseph High School, Ambasamudiram. This, according to the petitioner, is to accommodate one M.Panimatha. Therefore, she has challenged the order of transfer by way of a writ petition before this Court in WP(MD)No.16225 of 2016. Pending that writ petition, a show cause notice was issued as



against the Headmistress that she had disobeyed the orders of the Management. Charges were framed as against her and she was terminated from service, by order dated 05.12.2016.

5.As against the termination order dated 05.12.2016, the Headmistress has filed a statutory appeal before the District Educational Officer, Madurai and has filed a writ petition before this Court in WP(MD)No.3963 of 2017 for early disposal of the appeal. The said writ petition was disposed of on 10.03.2021 with a direction to dispose of the appeal within a period of twelve weeks. The District Educational Officer, by proceedings dated 04.07.2022, has returned the appeal filed by the Headmistress that the order of termination has been passed without obtaining the prior approval from the Department and as such, there is no scope of appeal as against an non-est order.

Case of the Headmistress:-

6.Learned Counsel for the Headmistress submitted that she has been vindicated by transferring from one School to another School and that the



post of Headmistress in the transferred School is not a sanctioned one.

Moreover, this transfer order has been made only in order to accommodate one Panimatha as Headmistress. Since the transfer order has been made with malafide intention, the same was challenged by way of a writ petition. For having filed a writ petition, she was also imposed with the punishment of removal from service. In view of the subsequent development of removal from service pending the writ petition, this Court, while deciding the earlier writ petition filed as against the order of transfer, has disposed the same with liberty to challenge the subsequent order of removal.

7.The appeal filed before the District Educational Officer was also returned, stating that the prior approval as required under Section 22 of the Tamil Nadu Recognized Private School Regulation Act was not obtained. Therefore, according to the learned Counsel, there is no order of termination, as on date, as against the Headmistress and therefore, she has to be reinstated as Headmistress in RC Middle School, Rayapuram.



Case of the Department:-

8.Learned Special Government Pleader for the official respondents submitted that Section 22(1) of the Tamil Nadu Recognized Private School Regulation Act mandates prior approval before passing an order of major punishment. In this case, a major punishment of removal from service was passed as against the Headmistress, however, without any prior approval.

Case of the Management:-

9.Learned Counsel for the Management submitted that the Management is a minority institution and there is no requirement of any prior approval for them from the Educational Authority. They are protected under Article 30 of the Constitution of India and he has also relied upon the judgments of this Court in *A.Belavendran v. Joint Director of School Education and Others* [2010 (1) CWC 343]; and *T.Sanjeeva Rao v. Director of School Education and Another* [2012 (2) CWC 25].

10.This Court considered the rival submissions made on either side and perused the materials placed on record.



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11.The case of the Headmistress is that without conducting any proper inquiry, she was terminated from service. The case of the Department is that without any prior approval, the Headmistress was removed. The Management claims that prior approval is not required insofar as minority institutions are concerned.

12.Section 22 of the Tamil Nadu Recognized Private School Regulation Act deals with dismissal of a Teacher / Staff employed in a private School and the same is extracted as under:-

“22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. -

(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate



and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

(3) (a) No teacher or other person employed in any private school shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under sub-section (1) of section 21, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such inquiry is not completed within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee:

Provided that the competent authority may, for reasons to be recorded in writing extend the said period of two months, for a further period not exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person."

13.The Management has relied on two decisions of this Court for the privileges of a minority institution. However, the learned Special Government Pleader, on the other hand, has relied on a latest decision of



this Court in *Elizabeth Rani v. Convenor, Board of Elementary Education, CSI Diocese of Vellore and Others* [WP.No.13520 of 2013, dated 08.08.2023].

In this decision, this Court, after considering various judgments including the two decisions referred by the Management, has held as under:-

“11. Admittedly, the second respondent did not send any proposal to the competent authority seeking prior approval of the petitioner's dismissal. The specific stand of the respondents 1 to 4 is that Section 22 of the Act and Section 17(1) of the Rule are not applicable to minority institutions. It is not in dispute that the respondents 1 to 4 is a recognized private school of the State. It may be a minority institution, but the fact remains that the provision and Rule are applicable to all the recognized schools. Therefore, the respondents 1 to 4 cannot state that the same is not applicable to the minority schools. Further, only after the order of dismissal dated 31.11.2013, it was sent to the competent authority for approval. On receipt of the same, the competent authority approved the order of termination by an order dated 28.05.2014.

12. The learned counsel for the second and third respondents placed reliance on the decision of the Hon'ble Division Bench of this Court in W.A.No.574 of 2010 in the case of T.Sanjeeva Rao Vs The Director of School Education, Directorate of School/Public Instruction, College Road, Chennai 6 and others, wherein it was held that obtaining



sanction or approval for removal in respect of minority institution is not mandatory and the same is also condition precedent in respect of non minority aided schools. It was held therein that in the case of minority school, an obligation of constituting a School Committee for the purpose of dealing with disciplinary proceedings against teaching and non-teaching staff is caste upon the institution. Therefore, plea of the second respondent cannot be accepted.

13. The second respondent, being the minority institution, is not governed by all the provisions of the Act. But it is governed by some of the provisions of the Act and Rules. In the case of Frank Anthony Public School Employees' Association Vs Union of India and others, reported in 1987 1 SCR 238, the Hon'ble Supreme Court of India held that the rights of the minority institutions is guaranteed by Article 30(1) of Constitution of India and held that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments of imparting education do not impinge upon the rights guaranteed by the said Article. The regulations can be made for ensuring proper conditions of service of the teachers and also for securing a fair procedure in the matter of disciplinary action against them. There is no dispute that the Sections and Rules referred to earlier are applicable to institutions. The fact that these provisions afford protection to the teachers and govern the administration of the minority institutions is sufficient to make the



second respondent amenable to Article 226 of the Constitutions of India.

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14. The provisions under Section 22(1) of the Act is clear as to what the competent authority is required to do at that stage is to see whether the punishment proposed commensurate with the proved charges. Though the second respondent is a minority institution, it is a private aided school. The nature of this provision is meant for protection of staffs of the private schools. All the judgments cited by the learned counsel for the respondents 2 and 3 is not related to the issue which arose in the case on hand. Therefore, the Judgment cited are not applicable to the case on hand. Hence, the prior approval from the competent authority is mandatory. Admittedly, the second respondent, after passing an order of removal, had not sent for any approval."

14. In yet another decision in ***Purnima Jha v. Director of Elementary Education, Chennai and Others*** [WP.No.26693 of 2014, dated 17.08.2023], this Court, after referring to a catena of decisions, has held as under:-

"20. The first issue to be decided in this writ petition is whether the third respondent management being the minority institution, the order of termination requires prior approval from the competent authority? In this regard, it is relevant to extract the provisions under Sections 22(1) and 22(2) of the Tamil Nadu Recognized Private Schools



Regulations Act as follows:-

“22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. -

(1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.”

It is relevant to extract the Rule 17(1) of Tamil Nadu Recognized Private Schools Regulations as follows:-

“17. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private school. –

(1) The competent authorities to accord prior approval for the dismissal, removal or reduction in rank of a teacher or other person employed in any private school, shall be the District Educational Officer in respect of teacher or other person employed in Pre-



Primary, Primary and Middle Schools and the Chief Educational Officer irrespect of teacher or other person employed in High Schools and Teachers' Training Institutes."

21. Admittedly, the third respondent did not send any proposal for the petitioner's termination for prior approval to the competent authority. The specific stand of the third respondent is that Section 22 of the Act and Section 17(1) of the Rule are not applicable to the minority institutions. It is not in dispute that the third respondent is a recognized private school of the State. It may be a minority institution, but in view of the fact that the provision and Rule are applicable to all the recognized schools. Therefore, the third respondent cannot state that the same is not applicable to the minority schools. Further, only after the order of termination dated 28.11.2013, it was sent for approval before the competent authority. On receipt of the same, the competent authority approved the order of termination by an order dated 28.05.2014.

22. Though the learned counsel for the third and fourth respondents placed reliance on the decision of the Hon'ble Division Bench of this Court in W.A.No.574 of 2010 in the case of T.Sanjeeva Rao Vs The Director of School Education, Directorate of School/Public Instruction, College Road, Chennai 6 and others, held that obtaining sanction or approval for removal in respect of minority institution is not mandatory and the same is also condition precedent in respect of non



minority aided schools. It was decided in the case of minority school is not having an obligation of constituting a School Committee for the purpose of dealing with disciplinary proceedings against teaching and non-teaching staff. Therefore, plea of the third respondent cannot be accepted.

23. The third respondent being the minority institution is not governed by all the provisions of the Act. But it is governed by some of the provisions of the Act and Rules. In the case of Frank Anthony Public School Employees' Association Vs Union of India and others, reported in 1987 1SCR 238, the Hon'ble Supreme Court of India held that the rights of the minority institutions guaranteed by Article 30(1) of Constitution of India and regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments of imparting education do not impinge upon the rights guaranteed by the said Article. The regulations can be made for ensuring proper conditions of service of the teachers and also for securing a fair procedure in the matter of disciplinary action against them. There is no dispute that the Sections and Rules referred to earlier are applicable to institutions. The fact that these provisions afford protection to the teachers and govern the administration of the minority institutions is sufficient to make the third respondent amenable to Article 226 of the Constitutions of India. Therefore, the Judgments relied upon by the petitioner are squarely applicable to the case on hand.



24. The provisions under Section 22(1) of the Act is clear what the competent authority is required to do at that stage is to see whether the punishment proposed commensurate with the proved charges. Though the third respondent is a minority institution, it is a private aided school. The nature of this provision is meant for protection of staffs of the private schools. All the judgments cited by the learned counsel for the respondents 3 and 4 are not related to the issue which arose in the case on hand. Therefore, the Judgment cited are not applicable to the case on hand. Hence, the prior approval from the competent authority is mandatory. Admittedly, the third respondent after passing an order of removal, had sent it for approval to the competent authority, which is a violation under Section 22 (1) of the Act.

... ..

34. In view of the above, the third and fourth respondents failed to send their proposal to punish the petitioner with removal from service before the competent authority for its prior approval as contemplated under Section 22(1) of the Act. Therefore, the order of removal and subsequent approval by the competent authority, namely, the District Primary Educational Officer, Chennai dated 28.05.2014 cannot be sustained and it is liable to be quashed."

15. In view of the subsequent development, the subsequent decisions



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of this Court that it is mandatory for obtaining the prior approval before imposing a major punishment and the provision u/s.22 of the Tamil Nadu Recognized Private Schools Regulation Act, this Court is inclined to issue the following directions:-

- i) the order passed by the District Educational Officer on the requirement of prior approval is valid;
- ii) the writ petition filed by the Management lacks merit and the same is liable to be dismissed;
- iii) the writ petition filed by the Headmistress is allowed inasmuch as the Management has terminated her without any prior approval as required under the Act;
- iv) the Management shall reinstate the petitioner with continuity of service and all other attendant benefits.

16. In the result, WP(MD)No.19633 of 2022 is allowed and WP(MD)No.25272 of 2022 is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes / No
NCC : Yes / No

11.12.2024

To

- 1.The Director of School Education,
DPI Campus,
College Road,
Chennai – 600 006.
- 2.The Chief Educational Officer,
Madurai.
- 3.The District Educational Officer,
Madurai.
- 4.The Block Educational Officer,
T.Vadipatti,
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B.PUGALENDHI, J.

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