

N. Kunchithapatham Vs The Joint Registrar, Collegiate Education and The Secretary-cum-CorRespondent

Court: Madras High Court

Date of Decision: Sept. 28, 2011

Acts Referred: Tamil Nadu Private Colleges (Regulation) Act, 1976 & Section 12, 14(1), 19(3)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: A. Muthukumar, for the Appellant; V. Subbiah, Spl. G.P. for R1, S. Kandasamy, Spl. G.P. HR and CE for R2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner is working as an Assistant in the second Respondent College. He has come forward to challenge an order

of suspension dated 02.08.2011. The suspension was made by the Secretary-cum-CorRespondent of the second Respondent College. In the

suspension order, it was stated that the suspension was made in terms of Section 19(3) of the Tamil Nadu Private Colleges (Regulation) Act,

1976.

2. It is seen that the Petitioner was working from 1997 and there has been series of complaints given against the Petitioner. Therefore, in order to

enquire into the complaints, a charge memo dated 02.08.2011 was issued to the Petitioner alleging as many as 9 charges and the Petitioner was

asked to give his explanation within 15 days. Pending enquiry into the charges, he was placed under suspension.

3. The Petitioner contended that the suspension has been made by the Secretary-cum-CorRespondent and there is no approval by the College

Committee and it has been done malafide.

4. When the matter came up for admission before this Court on 24.08.2011, this Court directed Mr. V. Subbiah, learned Special Government

Pleader to get instructions from the Respondents. Thereafter, he was directed to produce the original file relating to the complaints received against

the Petitioner which formed the basis of the charge memo and suspension.

5. Accordingly, the Joint Commissioner HR & CE, Myladuthurai, who is also the ex-officio Secretary-cum-CorRespondent of the second

Respondent College has forwarded the original file relating to the suspension of the Petitioner. The original file contained 96 pages and there are

series of complaints against the Petitioner including misusing of the post held by the Petitioner; that he had collected money by giving false

assurance of getting employment even in teaching posts, had received money from several candidates through his uncle for getting such

employment, that he had a lavish house warming ceremony conducted in his village on 22.08.2010 in which political leaders and ministers were

invited. Apart from that, there were also charges about his negligence in duty and in not taking steps for granting lease of harvest of the coconut

trees and allowing two teakwood trees to be cut and not showing in the expenditure statement for the maintenance work done, had also received

extra amounts from persons at the time of admission, without getting permission to draw names from the Employment Exchange, on his own, got

names from the Employment Exchange and appointed non-teaching staff, purchased immovable properties contravening the rules relating to

Government Servant Conduct Rules.

6. Pursuant to the charge memo, the Petitioner requested time for giving reply and finally, he submitted his reply on 24.08.2011. In his reply, he

had denied the charges with reference to his negligence in duties. With reference to purchase of properties, he had stated that Tamil Nadu Private

Colleges (Regulation) Act and the Rules framed thereunder do not require any prior permission and therefore, no permission was obtained. After

the receipt of the reply, the second Respondent had forwarded the letter to the Joint Director of Collegiate Education (wrongly shown in the cause

title as Joint Registrar in the array of parties) seeking grant of approval for time extension for two more months for completing the enquiry. It is at

this stage, the petitioner has filed the present writ petition.

7. Mr. A. Muthukumar, the learned Counsel for the Petitioner strenuously contended that the suspension was illegal inasmuch as the second

Respondent did not have authorisation by the College Committee and hence, he is liable to be restored to service. He placed reliance upon the

judgment of this Court in Prof.M. Gopal v. Government of Tamil Nadu, rep. By its Secretary, Department of Higher Education, Chennai and Ors.

reported in (2006) 3 MLJ 958 (Mad). In paragraph, 16, it was directed as follows:

16. A reading of Section 12 of the Act makes it clear that the Secretary of the College Committee shall have to exercise only such powers and

perform such functions that have been prescribed in the Act and in the Rules. The decisions referred to and relied upon by the learned Counsel for

the Petitioner clearly lays down that the statutory scheme is that the power to take disciplinary action against teachers and other employees of the

institution is vested only with the College Committee. The power to suspend being a power which is incidental to the taking of such disciplinary

action has also to be held to be a power which is vested in the College Committee and not in other individuals. Suspension can only be made when

the person against whom an enquiry is contemplated or has committed any misconduct in relation to the Code of Conduct prescribed under the

Act. The Act, u/s 14(1)(c), has vested the power in the College Committee and not in the Secretary of the College Committee, who is only

required to act for and on behalf of the Committee and on the basis of the resolution passed in the College Committee.

Therefore, on the strength of the judgment, the Petitioner seeks for setting aside the order of suspension and get restored.

8. The Petitioner also referred to an unreported judgment of this Court made in W.P. No. 17394 of 1995 dated 16.07.2003 (M. Veeramani v.

The Joint Director of Collegiate Education) to the very same effect holding that the Secretary of the College Committee cannot suspend a non-

teaching staff of the College.

9. In the present case, it is no doubt that the Secretary-cum-CorRespondent of the College, who is an ex-officio Joint Commissioner of HR & CE

had suspended the Petitioner on the basis of specific materials. The college is maintained by HR & CE Department and one of the officer is

nominated as Secretary-cum-CorRespondent of the College and a perusal of the impugned order does not show there was any reference to

College Committee. Even assuming that there was no decision by the College Committee, still it is open to the second Respondent to get

ratification from the College Committee and the matter can be placed before the College committee for further action. Even assuming such an

order was not valid, considering the serious nature of the charges levelled against the Petitioner, this Court is not inclined to direct the restoration of

the Petitioner in the service of the college before he faces the enquiry since he has already given reply to the charge memo and the second

Respondent had proposed to conduct an enquiry and has also sought for permission from the first Respondent for extension of suspension by two

months.

10. It has been held that even if there is no power under the terms of the contract for suspending an employee and the employer prevents an

employee from reporting to work all that the employee can claim is full wages in terms of contract of service. In this context it is necessary to refer

to a judgement of the Supreme court in V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, . In paragraph 8, it was observed as

follows:

8. The same view was reiterated by this Court in T. Cajee v. U. Jormanik Siem. The rule laid down in the above decisions was followed by this

Court in R.P. Kapur v. Union of India. The law on the subject was exhaustively reviewed in Balvantray Ratilal Patel v. State of Maharashtra.

Therein the legal position was stated thus: The general principle is that an employer can suspend an employee of his pending an enquiry into his

misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It

is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied terms in an ordinary contract.

between master and servant, and that such a power can only be the creature either of a statute governing the contract or of an express term in the

contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some statute

would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the

employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either

in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the

relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. It is

equally well-settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even

though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for

the period of suspension if there is no statute or rule under which, it could be withheld. The distinction between suspending the contract of a service

of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in

the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer

merely issues a direction to him that he should not do the service required of him during a particular period. In other words the employer is

regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey.

11. The same view was taken earlier by the Supreme Court in Balvantray Ratilal Patel Vs. The State of Maharashtra, . In paragraphs 3 and 4, it

was observed as follows:

3. The first question to be considered in this appeal is whether Government had the power to suspend the Appellant by its order dated February

13, 1950 pending enquiry into his alleged misconduct. It was contended on behalf of the Appellant that the power to suspend is not an implied

term in an ordinary contract between master and servant and that such a power can only be the creature either of a statute governing the contract,

or of an express term in the contract itself. It was urged that there was no express provision in the Bombay Civil Services Rules granting a power

to the Government to suspend a Government servant pending enquiry into the allegations made against him. The argument was put forward that in

the absence of any express provision either in the contract of employment or in any statute or statutory rules governing such employment, there was

no power to suspend a public servant pending inquiry into the allegations of his misconduct. We are unable to accept the argument put forward on

behalf of the Appellant as correct. The general law on the subject of suspension has been laid down by this Court in three cases viz. Management

of Hotel Imperial, New Delhi v. Hotel Workers Union¹, T. Cajee v. U. Jormanik Siem, and R.P. Kapur v. Union of India. It is now well settled

that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and

servant, and that such a power can only be the creature either of a statute governing the contract, or of an express, term in the contract itself.

Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean

that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have

to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or

the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the

consequence that the servant is not bound to render service and the master is not bound to pay. This principle of law of master and servant is well-

established: (See Hanley v. Pease & Partners, Ltd., Wallwork v. Fielding, and the judgment of Cotton, L.J. in Boston Deep Sea Fishing and Ice

Company v. Ansell). It is equally well settled that an order of interim suspension can be passed against the employee while an inquiry is pending

into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled

to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to

notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on

the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is

suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the

time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as

issuing an order to the employee which, because the contract is subsisting, the employee must obey.

4. The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that

can arise in such suspension will relate to payment during the period of such suspension. If there is no express term relating to payment during such

suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim

suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules

framed thereunder providing for the scale of payment during suspension, the payment will be made in accordance therewith. This principle applies

with equal force in a case where the Government is an employer and a public servant is an employee with this qualification that in view of the

peculiar structural hierarchy of Government administration, the employer in the case of employment by Government must be held to be the

authority which has the power to appoint the public servant concerned. It follows therefore that the authority entitled to appoint the public servant

is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a

departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of

the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if

there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles therefore

the government like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant

pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. The Government may also proceed to hold a

departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty.

As we have already pointed out, the question as to what amount should be paid to the public servant during the period of interim suspension or

suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection.

12. Therefore, while holding that the Petitioner cannot report for work in view of the serious charges levelled against him, the second Respondent

is directed to pay the Petitioner full wages for the period of suspension and a further direction is issued to complete the enquiry against the

Petitioner within a maximum period of four months permitted u/s 19(3) of the Tamil Nadu Private Colleges (Regulation) Act. The first Respondent

shall also give necessary approval for extension of the suspension. In any event, suspension should not exceed four months which is the maximum

period prescribed under the Act and if for some reason, the enquiry gets prolonged, then the Petitioner may be restored to service without

prejudice to the enquiry.

13. The writ petition is disposed of with the above direction. However, there will be no order as to costs. Consequently, connected miscellaneous

petition is closed.