

(2011) 09 MAD CK 0182

Madras High Court

Case No: Writ Petition No. 19580 of 2011 and M.P. No. 1 of 2011

N. Kunchithapatham

APPELLANT

Vs

The Joint Registrar, Collegiate
Education and The
Secretary-cum-CorRespondent

RESPONDENT

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 mala fide.
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 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 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 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 Union*¹, *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.