G.Appavu Vs The Joint Director of Higher Secondary Education, DPI Compound, College Road, Chennai-6, The Chief Educational Officer, Saidapet, Chennai-15 and P.A.K.Palanisamy Higher Secondary School

Writ Petition No. 804 of 2009 and M.P. No"s. 1 to 3 of 2009 and 1 and 2 of 2011

Court: Madras High Court

Date of Decision: Oct. 31, 2011

Acts Referred:
Constitution of India, 1950 â€" Article 16, 19(1)#Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 â€" Section 22, 22(1), 22(2), 23, 24#Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 â€" Rule 17(1), 29

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: V. Ajoy Khose, for the Appellant; I. Arokiasamy, GA(Education) for RR1 and 2 and Ms. Hema Muralikrishnan for R-3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The petitioner has come forward to challenge an order passed by the first respondent, i.e., Joint Director of Higher

Secondary Education, dated 24.6.2008, wherein in respect of proved charge No.6, he had directed the management to impose minor penalty

other than dismissal, removal or reduction in rank or suspension and that based on the gravity of the charge, he may be given lesser punishment.

Taking advantage of the same, the third respondent school had imposed a penalty of compulsory retirement against the petitioner. It is not clear as

to why the petitioner did not prefer any appeal against the said order before the appellate authority, failing which the Private School Tribunal. On

the contrary, he has filed the present writ petition challenging the very order of the first respondent, dated 24.6.2008 not immediately after the

order was passed, but after the consequential order was passed by the school management.

2. The contention of the petitioner in the affidavit was that the third respondent school as a private school governed by the provisions of the Tamil

Nadu Recognised Private Schools (Regulation) Act, 1973. He had joined the school on 5.9.1990 as a P.G. Assistant in Maths. He was handling

higher secondary classes. No student was failed in the subject handled by him. A charge memo was given to him on 21.9.2001 alleging six

charges. After farce of enquiry, the third respondent had decided to dismiss the petitioner from service and sought for approval from the Chief

Educational Officer, i.e., the second respondent u/s 22(1) of the School Act. The second respondent had refused to grant approval vide order

dated 5.8.2002. It was thereafter, the third respondent had preferred an appeal on 2.9.2002 to the first respondent u/s 41 of the Act read with

Rule 29 of the Tamil Nadu Recognised Private Schools (Regulation) Rules. The first respondent by an order dated 16.2.2004 had allowed the

appeal. Thereafter, the petitioner filed a revision u/s 45 to the State Government. The State Government had allowed the revision by an order

dated 4.4.2005 and remitted the matter to the first respondent for a fresh disposal. The first respondent by an order dated 16.2.2006 had rejected

the appeal filed by the third respondent.

3. The third respondent had filed a writ petition before this court in W.P.No.8771 of 2006 against the order of the first respondent. This court by

an order dated 17.3.2008 set aside the said order and remanded again to the first respondent for a fresh disposal. On such remand, the impugned

order dated 24.6.2008 was passed rejecting the appeal of the third respondent by stating that charge No.6 alone was proved. Therefore, the

punishment for the same need not be the imposition of dismissal, removal or reduction in rank. The charge No.6 which is said to have been proved

is that on 5.9.1990 he was appointed on permanent basis. Thereafter, when an intimation was sent regarding his selection, once again his name

was sponsored by the employment exchange and an interview letter was also sent. But he did not turn up for interview nor informed the

management. He had renewed his name in the live register of the employment exchange with the collusion of the staff. It was contended that the

petitioner''s name being retained in the employment exchange was not illegal. In any event, it would not constitute any misconduct. As against the

order passed by the first respondent, dated 24.6.2008, the school management did not file any appeal. The present imposition of punishment of

compulsory retirement was a disobedience of the order passed by the first respondent as the first respondent has held that there cannot be any

major penalty.

4. In the writ petition when it came up for admission on 20.01.2009, notice was ordered. In the application for direction for reinstatement or in

alternative to grant pay and in the application for withholding the grant to the third respondent and also to stay the operation, only notice was

ordered. The petitioner also filed an implead application as well as application to raise additional grounds, but no orders have been passed.

5. It is claimed by them that in the post held by the petitioner, only temporary employment alone can be made. On notice from this court, the third

respondent has filed a counter affidavit, dated 14.3.2011. In the counter affidavit, it was claimed that if the petitioner was aggrieved by the order

passed by the first respondent, he should have approached the revisional authority u/s 45 of the Private Schools Act. Whereas the third respondent

has filed a revision before the Secretary to Government and that before disposal of the revision pending before the Government, the petitioner

cannot file the present writ petition. In support of their stand, they produced a copy of the so-called revision filed u/s 45 before the State

Government, which was served on the State Government through tapal register on 24.7.2008.

6. But it is clear that their alleged revision was only a camouflage and a second line of defence. If they are really interested in revision, they ought

not to have passed any consequential order pursuant to the interim order passed by the first respondent. Having taken advantage of the first

respondent"s order and having made it final, they cannot harp on the alleged revision application filed by them before the Government.

7. Therefore, the only question to be considered was whether the petitioner has made out any case to interfere with the impugned order.

8. In the present case, even the petitioner has not challenged the impugned order immediately after it came to be passed by the first respondent. He

had also allowed the management to pass an order and thereafter has come to this court challenging both orders. Since the management had not

challenged the findings rendered by the first respondent before any forum and this court having rejected their stand about pending revision, it has to

be taken that only charge No.6 has been proved and that the first respondent had remitted the matter indicating the terms to the third respondent.

9. The two facts which had become final in this case are the first respondent held the petitioner guilty of charge No.6 and secondly, it does not

require any major penalty by the school authority.

10. Insofar as the first issue is concerned, it was correctly argued by Mr.V.Ajoy Khose, learned counsel for the petitioner that maintaining the

name in the live register of the employment exchange cannot be held to be misconduct in terms of the Code of Conduct prescribed under the

Private Schools Act. Already a Full Bench of this court in R.Sivakumari Vs. Ramanathapuram Mavatta Payirchipetra Edainilai Asiriyargal Sangam

reported in 2007 (5) CTC 561 held that there was no specific provision for inclusion or deletion of names from live register and on the ground that

the name was found in the employment register, no person can be removed from the rolls of the employment exchange. Therefore, it can never be

said to be any misconduct. The Full Bench had posed a question in paragraph 14 and gave an answer for the said question in paragraphs 39(a)

and 39(d), which reads as follows:

14. Coming to the dispute on hand, it is seen that the core issue raised in the Writ Petitions is as to whether a candidate who gets appointment in a

Private Aided School, loses his right to be sponsored by the Employment Exchange to a Government post or not. The Division Bench has

concluded that a person who gets appointment in a Private Aided School has no right to have his name retained in the live register of the

Employment Exchange and to get sponsored to a Government job.

39. In the result, all the Review Applications are allowed on the following terms:

(a) Persons who are in employment in Private aided Schools are not disqualified from having their names retained in the rolls of the Employment

Exchanges. Therefore, the deletion of the names of persons already in service in Private Aided Schools, from the live registers of the Employment

Exchanges, is violative of Articles 16 and 19(1)(g) of the Constitution and the same is not also authorised by any law.

.....

(d) Persons already in employment in Private Aided Schools, whose names were deleted from the live register of the Employment Exchange shall

have their names restored in the live registers with the same seniority and the Employment Exchanges are directed to sponsor their names against

existing vacancies.

11. If for any reason a private school teacher has his name retained in the live register of the employment exchange, he cannot be terminated from

service because of that reason. He has got right to retain his name in the live register. There is no question of imposition of any penalty on the basis

of charge No.6 being proved against the petitioner. Hence the first respondent is clearly wrong in remanding the matter to the third respondent for

imposing penalty other than major penalties. To that extent the order of remand is illegal. Secondly, having told to impose penalty other than major

penalties, the third respondent cannot conveniently impose the penalty of compulsory retirement, which did not find place in the Private Schools

Act. Therefore, the third respondent has really violated the order of remand.

12. As to whether the first respondent can pass an order interfering with the decision taken by the management in exercise of power u/s 22, the

question is no longer res integra. The Supreme Court vide its judgment in Secretary, School Committee, Thiruvalluvar Higher Secondary School

Vs. The Govt. of Tamil Nadu and Others, in paragraphs 10 and 11 had held as follows:

10. Though attempt was made to contend that at the stage of consideration under Sections 22(1) and 22(2) and Rule 17(1), there is no scope for

looking into the proportionality of the punishment aspect, the same is clearly without any substance. What an authority is required to do at that

stage is to see whether the proposed punishment is to be approved. Obviously, it has to consider whether the punishment as proposed is a proper

one; otherwise there is no need for seeking its approval. The crucial words used in sub-section (2) of Section 22 are #adequate and reasonable

grounds# for the proposal. The proposal relates to dismissal, removal or reduction in rank or otherwise termination of appointment of any teacher

or any other person employed in a private school. While considering whether adequate and reasonable grounds exist for giving approval, the

authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it. Any

other interpretation would make the question of approval an exercise in futility.

11. Stand of the learned counsel for the management is that if adequate and reasonable grounds exist for the action, then no other question needs

to be looked into. This argument overlooks a vital aspect that the adequacy and reasonableness of grounds are relatable to the proposals for the

enumerated actions. The proposed actions being punishments, there is an inbuilt requirement to see whether the quantum of punishment

commensurates with the gravity of the proved charges. Therefore, clearly the authority has jurisdiction to decide the question as to whether the

punishment proposed commensurates with the proved charges. One of the related pleas was that if the quantum of punishment is permitted to be

considered, it would partake the character of an appeal. This plea is equally untenable. Sections 22 and 23 operate in different fields. At the stage

of consideration u/s 22, the teacher does not get any opportunity for presenting his side of the case. This opportunity is provided u/s 23 or Section

24, as the case may be. The authority u/s 22 takes decision on the material placed before it by the management. So the question of action u/s 22

partaking appellate characteristics does not arise.

13. Further, when the Joint Director had specifically remanded the matter, he had also restricted the power of the management to impose penalty

other than dismissal, removal, termination or reduction in rank on the petitioner. Therefore, the management by using the word imposition of

penalty as compulsory retirement cannot get over the embargo imposed by the first respondent. When penalty of compulsory retirement is

imposed, it is also a major misconduct. In this context, it is necessary to refer to a judgment of the Supreme Court in Gujarat Steel Tubes Ltd. and

Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, . The following passage found in paragraph 53 may be usefully reproduced below:

53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be

misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether

disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the

true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this

test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of

the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an

innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal

order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to

terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as

on simple termination, are given and non-injurious terminology is used.

Therefore, the management by the imposition of the penalty in question cannot get over the limited remand given by the first respondent competent

authority.

14. In the light of the above, the writ petition will stand allowed. However, there will be no order as to costs. Consequently, connected

miscellaneous petitions stand closed.

15. The impugned orders passed by the first and third respondents stand set aside. The petitioner is entitled to get reinstatement with all

backwages. In case if any person is appointed as borne out by the order produced by the parties, the said person has to be terminated after due

notice and the petitioner should be restored to service. This exercise shall be carried out within a period of eight weeks from the date of receipt of

copy of this order.