

P.Devi and ors. Vs. the State of Tamil Nadu and ors.

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Court : Chennai

Decided On : Jun-06-2011

Judge : P.Jyothimani, J.

Acts : Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Section 26; Indian Penal Code (IPC) - Sections 120-B, 304, 307, 338, 285, 108(1), 109, 167, 197

Appeal No. : W.P.Nos.3981 to 3983 of 2007

Appellant : P.Devi and ors.

Respondent : The State of Tamil Nadu and ors.

Advocate for Def. : Ms.Dhakshayani Reddy, Adv.

Advocate for Pet/Ap. : Mr.P.Srinivasa, Adv.

Judgement :

1. These writ petitions are filled challenging the order of the first respondent in G.O.(2D) No.49, School Education (P2) Department, dated 28.9.2006 insofar as the observation of pendency of criminal case in paragraph (5) is concerned and to direct the respondents to absorb the petitioners in any one of the Government Aided Primary Schools with continuity of service.

2.1. While the petitioner in W.P.No.3981 of 2007 was appointed as a Secondary Grade Teacher on 19.11.2002 in Sri Krishna Aided Primary School at

Kumbakonam, Tanjore District, which is a Government Aided Private School governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the petitioner in W.P.No.3982 of 2007 was appointed as a Secondary Grade Teacher in the said school on 8.12.1993 and the petitioner in W.P.No.3983 of 2007 was appointed as a Secondary Grade Teacher in the said school on 12.11.2003.

2.2. The said Sri Krishna Aided Primary School is the school in which the fire accident occurred on 16.7.2004, charring to death 94 children. In respect of the above fire accident, the Kumbakonam East Police registered a criminal case in C.C.No.261 of 2004 and the petitioners in these writ petitions were arrayed as accused Nos.19, 21 and 20 respectively and charges framed against them are as follows:

Charge against the petitioner in W.P.No.3981 of 2007:

Selvi P.Devi was a Class Teacher of Standard IIIB of Sri Krishna Aided Primary School. Her class was situated in the thatched roof class room in the first floor in Survey No.763/B. It was in her class that students from Saraswathi Nursery and Primary School and other classes in Sri Krishna Aided Primary School were brought and made to sit as per the orders of the A1, A2 and A3 for the purpose of proving headcount during the proposed visit of the Education Department Officers to the School on 14, 15 and 16.7.2004. It was because of this, the large number of students died in the fire tragedy. During this occurrence, the accused had abandoned the children who were in flames and escaped.

Charge against the petitioner in W.P.No.3982 of 2007:

Tmt. T.Anthoni Ammal was a Class Teacher of Standard IVA in Sri Krishna Aided Primary School. Her class was situated in the thatched roof class room in the first floor in Survey No.763/B. On 14, 15 and 16.7.2004 as per the orders of the A1, A2 and A3, students from Saraswathi Nursery and Primary School and other students of her school and students from Sri Krishna Girls High School were directed to sit in her class room for the sake of proving the attendance as per the attendance Register which was allegedly false, thus enabling all the children of the three

Schools to be engulfed in flames. The accused, during this occurrence abandoned the children and escaped.

Charge against the petitioner in W.P.No.3983 of 2007:

Tmt.R.Mahalakshmi was a Class Teacher of Standard IVC in Sri Krishna Aided Primary School. Her class was situated in the thatched roof class room in the first floor in Survey No.763/B. On 14, 15 and 16.7.2004 as per the orders of the A1, A2 and A3, students from Saraswathi Nursery and Primary School and other students of her school and students from Sri Krishna Girls High School were directed to sit in her class room for the sake of proving the attendance as per the attendance Register which was allegedly false, thus enabling all the children of the three Schools to be engulfed in flames. The accused, during this occurrence abandoned the children and escaped.

2.3. According to the petitioners, the charges levelled against them are incorrect and with malafide intention they have been implicated in the charge sheet even though they are not in any way connected with the fire accident. It is their case that the evidence of the school children reveals that they were taking effective steps to save the children during the fire accident and they themselves were injured in the accident with minor injuries.

2.4. It is stated that the Government of Tamil Nadu appointed a Commission headed by Hon'ble Mr.Justice K.Sampath to enquire into the fire accident and the petitioners have deposed before the Commission and according to them, the Commission in its report submitted to the Government has not found fault with them. It is stated that the names of the petitioners were not mentioned in the First Information Report or during the subsequent events and only at the time of framing the charge sheet, they have been falsely implicated.

2.5. It is stated that immediately after the fire accident, the second respondent withdrew the recognition given to the school as per the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and admitted the students of the said school in various other schools in and around Kumbakonam. It is stated that at the time of fire accident twelve teachers were working in the

school and the second respondent has not taken steps to absorb the teachers into other schools as required under Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. According to them, no order has been passed absorbing them to other schools or placing them under suspension or dismissing them and they have not been paid salary from July, 2004. It is stated that even if there is any order of suspension, the petitioners would be entitled to subsistence allowance, but no such allowance is being paid to them and no order has been passed in respect of their services.

2.6. It is stated that on 4.9.2004, the petitioners have sent representations to the respondents requesting them to absorb them in any other school with the same service and in spite of such representations, no action was taken by the respondents.

2.7. According to the petitioners, one V.Usharani, a similarly placed teacher, filed W.P.No.10500 of 2005 before the Madurai Bench of this Court seeking a direction against the respondents to absorb her as a Secondary Grade Teacher in any Government Aided Private School with continuity of service and also arrears of salary from July, 2004 and the Madurai Bench, by order dated 26.7.2006, allowed the writ petition directing the respondents to consider the case of petitioner therein within thirty days, while rejecting the claim in respect of arrears of salary and according to the petitioners, pursuant to the said order, on 28.9.2006, the Government was pleased to issue a government order in G.O.(2D) No.49, School Education (P2) Department, and based on the same, the third respondent issued direction to accommodate V.Usharani and other teachers in some other Government Aided Schools, provided there is no criminal case pending against them.

2.8. Based on the absorption of similarly placed teachers, as stated above, the petitioners made representations to the respondents to accommodate them in some other schools and the respondents refused to accommodate the petitioners on the ground that they were charge-sheeted in the criminal case. According to the petitioners, the respondents passed the government order with a malafide intention and the same is evident from the fact that the other persons, who are

implicated in the charge sheet and who have committed graver offences, have been provided with jobs.

2.9. It is also stated that some of the accused were allowed to retire even though charge sheets are pending against them in respect of the criminal case and the same would establish that the respondents are taking different stand in respect of different persons and in any event, the refusal to absorb the petitioners in some other aided primary schools on the ground that criminal case is pending against the petitioners is arbitrary and unreasonable.

2.10. The impugned government order is challenged by the petitioners on the following grounds:

(i)that the rejection of absorption of the petitioners in some other Government aided schools on the ground of pendency of criminal case is illegal and devoid of merits and the same is liable to be set aside;

(ii)that the respondents have failed to see that the petitioners have been falsely implicated in the charge sheet by the Police Department with a malafide intention and, in fact, the petitioners were discharged by the Commission headed by the Hon'ble Mr.Justice K.Sampath;

(iii)that even though the impugned order says that the teachers working in Sri Krishna Aided Primary School will be absorbed, provided they are not implicated in the criminal case, the respondents have provided jobs to the persons belonging to their own department, viz., the Chief Educational Officer M.Palanisamy, the Director of Elementary School Education A.Kannan, who were implicated in the charge sheet, and therefore, the same yardstick ought to have been applied to the petitioners;

(iv)that the persons who are implicated for graver charges have been provided with jobs while the petitioners were denied and as such, they are being discriminated and the principles of equality are not applied;

(v)that the respondents have not issued any order of suspension insofar as the petitioners are concerned and therefore, the respondents ought to have provided

jobs to the petitioners with continuity of service; and

(vi) that the petitioners are entitled to absorption as Secondary Grade Teachers in any other Government Aided Primary Schools as per Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

3.1. In the counter affidavit filed on behalf of the respondents, it is stated that the petitioners are permanent employees of Sri Krishna Aided Primary School, Kumbakonam, which enjoyed the recognition and aid of the Government till 15.7.2004 under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974.

3.2. It is stated that there are three different educational institutions, viz.,

(i) Sri Krishna Aided Primary School, Kumbakonam;

(ii) Sri Krishna Girls High School, Kumbakonam; and

(iii) Saraswathy Nursery School, Kumbakonam, functioning in one complex and the second floor of Sri Krishna Aided Primary School, Kumbakonam was provided with thatched roof and classes III and IV were functioning there. It is stated that on 16.7.2004, a major fire accident occurred in the school complex and the thatched roof of the Sri Krishna Aided Primary School, Kumbakonam got fire and the children sitting in Standards III and IV fell victims to the fire as there was no proper exit facility provided in the school. It is stated that about 94 children were burnt alive and more than 100 were seriously injured in the fire accident and consequently, the police authorities registered a case in Crime No.261 of 2004 under Section 120-B read with Sections 304, 307, 338, 285, 108(1), 109, 167 and 197 of IPC and Rule 5(5) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 against the Secretary and Correspondent, the petitioners herein and others.

3.3. It is stated that there were thirteen teachers working in the above said school at the time of the fire accident and by virtue of the withdrawal of recognition as a consequence of the fire accident, the existence of the school came to an end and

therefore, the question of payment of salary to the teachers of the said school, which ceased to function with effect from 16.7.2004, does not arise. It is further stated that the employment in a private management school is like a contract between the employer and the employee and the Government has nothing to do with the same and the Government will allow teaching grant to the teachers appointed in the school according to the norms prescribed by the Government from time to time.

3.4. According to the respondents, the school being a recognised private school, the appointment, suspension and dismissal of the teachers is done by Secretary, School Committee as per the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 and it is not obligatory on the part of the Government to provide alternative employment opportunities to the teachers and therefore, the claim of the petitioners for absorption as well as payment of salary from July, 2004 is illegal and unsustainable in law. It is stated that the claim of the petitioners for arrears of salary from July, 2004 is unreasonable and unjustifiable, for the reason that they have actually not worked as teachers from that date.

3.5. It is stated that Section 26 of the the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 contemplates absorption of teachers in cases where loss of employment was due to fall in strength of students, due to wilful neglect of management to reinstate a teacher whose termination of services was declared as illegal, etc., and the case of the petitioners does not come under the purview of the said section.

3.6. It is further stated that while the services of the petitioners are governed by the the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the services of the Chief Educational Officer M.Palanisamy, the Director of Elementary School Education A.Kannan, who were implicated in the charge sheet, are governed by the rules applicable to Government Servants and therefore, the petitioners cannot seek relief on a par with the said officers.

3.7. It is further stated that the police investigation is completed and the petitioners are arrayed as accused in the criminal case in Crime No.261 of 2004 and charge sheets were issued to them and the same is pending before the Principal Sessions Court, Thanjavur for disposal and there is no merit in these writ petitions and the same are liable to be set aside.

4. I have heard the learned counsel for the petitioners and the learned counsel for the respondents, perused the documents and given my anxious thought to the issue involved in these cases.

5. It is seen that after the ghastly mishap which took place on 16.7.2004, resulting in death of large number of innocent children who were mainly attending classes in the second floor, the activities of the school, viz., Sri Krishna Aided Primary School, have abruptly come to an end. Admittedly, that school happened to be a private school aided by the Government governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

6. It is on record that the remaining students of the said school were transferred and accommodated in other recognised schools. Section 29 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 contemplates the closure of private school on various grounds. Under Section 29(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, which is as follows: Section 29. Closure of private school.-

(1) No private school and no class and no course of instruction therein in a private school shall be closed without obtaining the prior approval of the competent authority and without making such arrangements as may be prescribed for the continuance of the instruction of the pupils of private school or the class or the course of instruction, as the case may be, for the period of study for which the pupils have been admitted. there is a statutory compulsion on the part of the competent authority to make arrangements for the pupils of the private school to continue their study in other schools and that part of the mandatory duty has been, in fact, carried out by the competent authority, as it is seen that the other children were accommodated in various schools, since the functioning of the school concerned, viz., Sri Krishna Aided Primary School, has abruptly come to an end.

But, it remains a fact that no steps have been taken for the purpose of closure of the school in accordance with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, even though the school has been closed.

7. Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, which is as follows:

Section 26. Absorption of Teachers or other persons on retrenchment.-

Where any retrenchment of any Teacher or other person employed in any private school is rendered necessary consequent on any order of the Government relating to education or course of instruction or to any other matter, or consequent on the reduction in strength of the pupil's studying in any such private school it shall be competent for the Government or the School Committee of any private school to appoint such Teacher or other person in any school or institution maintained by the Government or in such private school, as the case may be.

Explanation. - For the purpose of this section, the strength of the pupil's shall be determined in accordance with the norms fixed in the Grant-in-Aid Code of the Tamil Nadu Education Department or under any Rule, Regulation or order as may be made or issued by the Government or the Director of School Education, from time to time, for appointment of Teachers or others in any private school. enables the Government or the School Committee to appoint teachers, who are either rendered surplus because of the closure of the course in any school or institution maintained by the Government or in any private school.

8. Certainly, by virtue of the abrupt closure of the institution due to the unfortunate incident, in respect of which criminal case is pending from 2004, it is seen that the redeployment of the said teachers of the school has been, in fact, done in respect of those teachers against whom criminal cases are not pending. It is only in respect of the petitioners, who have been implicated in the criminal case at the time of framing of the charge sheet, the Government has not invoked the power of redeploying them to some other institutions. It is not as if the petitioners have been found guilty or they are detained in prison.

9. It is seen that one V.Usharani, a similarly placed teacher, who has approached the Madurai Bench by filing W.P.No.10500 of 2005, based on the direction of this Court, has been reinstated, of course, without arrears of salary from the date of the incident till the date of reinstatement.

10. It is true that in respect of other authorities, viz., the Chief Educational Officer M.Palanisamy, the Director of Elementary School Education A.Kannan, who were also implicated in the criminal case, inasmuch as they are not governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, the question of redeployment or applicability of Section 26 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 does not arise and in respect of them the rules applicable to Government Servants are applicable and they cannot be in any way compared with the petitioners, who are teachers governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.

11. Under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the competent authority to take action like disciplinary proceedings, etc. is the School Committee. In the instant case, the management itself is responsible for the unfortunate incident, inasmuch as the management has failed to provide adequate protection to the children and has not taken safety measures, and therefore, the question of the School Committee taking action against the teachers does not arise. Of course, if the competent criminal court comes to a conclusion that the concerned teachers, who have been implicated in the charge sheet, have deliberately involved themselves in the incident which has resulted in the death of the children and therefore, they are liable, there is no question of any disciplinary action or Government taking action for the purpose of redeployment, and in such event the criminal law will take its course of action.

12. On the facts of the present case, even though the charges in respect of the three writ petitioners, which are extracted above, are not directly attributable to them, in the sense that they have deliberately involved in the killing of children and so on, I do not want to express any opinion since the matter is at large pending before the criminal court. Suffice it to state that prima facie such charge, in my

considered opinion, cannot be the only ground for denying them reinstatement, when especially under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 there is no such bar.

13. The stand taken by the Government as if the teachers against whom criminal cases are not pending are different from the teachers against whom the criminal cases are pending is not acceptable. Even those teachers against whom criminal cases are not pending and who were deployed to some other institutions were also along with the children on the fateful day. It is not as if in respect of these petitioners they have deliberately aided to see that the children are killed in order to safeguard their interest. In any event, in respect of the charges framed in the year 2004, even as on date there is no headway. It is also relevant to point out that the persons who have granted permission for putting up such construction have not been proceeded with. In such circumstances, it is too harsh to accept the contention as if these three petitioners, who were teachers, were deliberately interested in the killing of the children.

14. The charges framed against the petitioners are under Section 120-B read with Sections 304, 338, 285, 167, 197, 465, 467, 468, 471 of the Indian Penal Code and Section 5 read with Section 47 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and Rule 15(1)(2) read with Section 16 of the Tamilnadu Public Buildings (Licensing) Act, 1965 and Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2000 and Municipalities Act read with Section 108(1) and 109 of the Indian Penal Code.

15. The main charge, especially in respect of P.Devi (petitioner in W.P.No.3981 of 2007) is that as per the orders of A1, A2 and A3, who are the management, she has permitted the children of Saraswathi Nursery and Primary School to sit in her class in the first floor on the eastern corner, where the tragedy took place, for the sake of attendance, which has resulted in engulfing children of three schools, and also abandoned the children.

16. It is seen that the Government has appointed Hon'ble Mr.Justice K.Sampath as a Commission of Inquiry to inquire into the incident of death due to fire accident occurred at Sri Krishna Aided Primary School at Kumbakonam, Thanjavur District

on 16.7.2004. In the report filed by the Commission, after elaborate inquiry, the Commission has dealt with the role of teachers. In fact, the question as to whether the teachers have abandoned the children was also considered. The question framed by the Commission of Inquiry was The incidental question would be as to what was the role of the teachers? Whether they have abandoned the school students and fled the scene?. The Commission has considered two views. One view being that the teachers have deserted the children and the other view that the teachers apparently thought that it was a routine feature in the school to get smoke in the class rooms and asked the children to stay. In fact, the Commission has referred to the statement of the Headmistress Santhalakshmi, who was examined as P.W.17, and considered her statement before the Police (marked as Ex.P26), which was admitted by her during the course of examination by the Commission, to the effect that the school teachers, to the extent possible, took efforts to rescue the children and even though they were not given any training in disaster management, nearly 700 children escaped because of their efforts and it cannot also be said that none of them were hurt. Ultimately, the Commission has found that there was only a lack of judgment on the part of the teachers and not culpable negligence. It is relevant to extract the exact wordings of the Commission, which are as follows: 277.1.8.2. Santhalakshmi, the headmistress of the aided school, examined as P.W.17 has in her statement before the police, marked as Ex.P-26, which she admitted to be correct, stated that because smoke had engulfed the area she thought that all the children had escaped. She has further stated in Ex.P-26 that the school teachers also to the extent possible took efforts to rescue the children. Again, the teachers were not trained in disaster management. However, it has to be said to their credit that nearly 700 children escaped. But for their efforts, this would not have been possible. It cannot also be put against them that none of them got hurt in the accident. Some stated they received some minor injuries. Did any of the rescuers receive injuries and get treated in any hospital? There is no material on this. In the view of the Commission, there was only lack of judgment on the part of the teachers and not culpable negligence. That was sad indeed.

17. The Commission, while summing up, has recommended the individuals who are indictable as follows:

1

Pulavar Palanichamy

(P.W.18)

2

Saraswathy

(P.W.17)

3

Santhalakshmi

(P.W.16)

4

Prabhakaran

(C.W.255)

5

Vijayalakshmi

(P.W.15)

6

Vasanthi

(P.W.14)

7

Sivasankari

(C.W.212)

8

Parmasivam

(P.W.7)

9

Jayachandran

(P.W.9)

10

Thandavan

(P.W.11)

11

Sivapragasam

(P.W.12)

12

Madhavan

(P.W.8)

13

Balaji

(P.W.13)

14

Annadurai

(C.W.254)

15

Dr.Sivapunyam

(C.W.218)

16

Muthusamy

(C.W.219)

17

Dr.C.Palanivelu

(C.W.257)

18

Pinagapani

(C.W.258)

19

Shanmughavelu

(C.W.268)

20

Srinivasa Appu Rao

(C.W.265)

21

Sethu Ramachandran

(C.W.269)

22

Govindarajan

(C.W.259)

23

Sivaraman

(C.W.264)

24

Dr.S.Chanrasekharan

(C.W.270)

and no one of the petitioners find place in the said list. In any event, it is not an hindrance for a criminal court to give appropriate finding.

18. However, there is a prima facie inquiry report by a responsible authority contemplated under the Commission of Inquiry Act, at least as on date, to show that the petitioners are not indictable. Under such circumstances, even though I do not propose to grant the relief as prayed by the petitioners in quashing the impugned government order insofar as it relates to the teachers who are involved in criminal cases, I am of the considered view that the petitioners, against whom as on date there is no prima facie case or indictment by the Commission of Inquiry, have to be directed to be redeployed in some other schools so as to enable them to work and earn their salary, but at the same time the claim of arrears from the date of the closure of the institution till today shall be left open till the disposal of the criminal case.

For the foregoing reasons, the writ petition stands disposed of with a direction against the respondents to redeploy and appoint the petitioners in other institutions depending upon the availability of vacancies within a period of four weeks from the date of receipt of a copy of this order and pay the salary to them from the said date. It is made clear that as far as the claim of the petitioners for arrears of salary from July, 2004 till the date of such reinstatement is concerned, the same shall be decided after the criminal case pending against them is disposed. No costs.

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