

T. Chandrasekaran Vs. the Committee of Management of Pachaiyappa's Trust and Ors.

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Court : Chennai

Decided On : Jan-23-1989

Reported in : (1989)ILLJ294Mad

Judge : Bellie and ;S. Nainar Sundaram, JJ..

Acts : Tamil Nadu Recognised Private Schools (Regulation) Rules - Rule 15, 15(2) and 15(4); Pachaiyappa's Trust (Taking over of Management) Act, 1981 - Sections 19 and 28; Tamil Nadu Recognised Private Schools (Regulation) Act, 1973; Tamil Nadu Recognised Private Schools (Regulation) (Amendment) Act, 1974; [Reserve Bank of India Act, 1934](#) - Sections 7(2)

Appeal No. : Writ Appeal No. 874/87

Appellant : T. Chandrasekaran

Respondent : The Committee of Management of Pachaiyappa's Trust and Ors.

Advocate for Pet/Ap. : Mr. N. S. Sivam

Judgement :

Nainar Sundaram, J.

1. The petitioner in W.P. No. 5859 of 1987 is the appellant in this writ appeal. The respondents in the writ petition are the respondents herein. It will be convenient for us if we refer to the parties, as per the nomenclature assigned to them in the writ petition. The first-respondent is a trust governed by a scheme framed by the original side of this Court. The management of the first-respondent has been taken over by the second-respondent under the Pachaiyappa's Trust (Taking over of Management) Act II of 1981. On 25th June 1971, the petitioner was appointed by the first-respondent as a B. T. Science Assistant in the Pachaiyappa's High School, Chidambaram, hereinafter referred to as 'the School at Chidambaram'. It must be immediately pointed out that there was no term in the order of appointment that the petitioner is liable to be transferred to any other school under the management of the first-respondent. On 1st December 1974, the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974), hereinafter referred to as 'the Act', came into force. The first-respondent is running more than one school. All the schools, including the school at Chidambaram, run by the first-respondent, being private schools, are governed by the Act. The First-respondent does not and cannot claim itself to be a minority institution. The provisions of the Act and the Rules framed thereunder apply to the schools under the management of the first-respondent with full vigour and rigour. After the Act came into force, the petitioner and the school committee of the school at Chidambaram, on 15th July 1978, entered into the agreement as per the form VII-A set out in the rules framed under the Act. Even in this agreement-assuming it is tenable to do so-there is no term adumbrated enabling either the first respondent or the school committee of the school at Chidambaram to transfer the petitioner to any of the schools under the management of the first-respondent. However, on 27th June 1981, the second-respondent brought in G.O.Ms. No. 1228, Education Department, the body of which runs as follows :

'In the circumstances reported by the Director of School Education in his letter read above, the Government direct that the Pachaiyappa's Trust Board, Madras be declared as a Corporate Body for the purpose of transfer of teachers and other persons employed in Schools run by them, permitting the school committee to include a transfer clause in agreements (Form VII-A or VII-B) that transfer should be made only during the summer vacation of the schools concerned and that

transfer should not be effected during the middle of the school year. The Government also direct that all the schools run by the above Board be treated as a single unit for the purpose of promotion as contemplated in the rule 15(4)(ii) of the Tamil Nadu Recognised Private Schools (Regulation) Rules.

2. The Government also ratify the action of the management in having transferred Tmt. K. Thillaikkarasi, Tamil Pandit, from Pachaiyappa's Higher Secondary School, Kanchipuram to Pachaiyappa's Higher Secondary School, Chidambaram on 21st December 1979 prior to receipt of Government Orders, treating all schools run by the management as a corporate body for the purpose of transfer and permit the management to include a transfer clause in the Agreement.'

On 30th May 1987, the first-respondent transferred the petitioner from the school at Chidambaram to Pachaiyappa's College Higher Secondary School at Madras, hereinafter referred to as 'the school at Madras'. The petitioner, aggrieved by the order of the transfer, approached this Court by way of the writ petition, challenging the order of transfer. The learned single Judge, who heard the writ petition, did not countenance the grievances of the petitioner and opined that the order of transfer of the petitioner from the school at Chidambaram to the school at Madras was made on administrative grounds and further similar order of transfer has been upheld by another learned single Judge of this Court in G. Mohanavelu v. state of Tamil Nadu and others (W.P. Nos. 5873 and 5874 of 1982, Order dated 22nd February 1984), and dismissed the writ petition. This has obliged the petitioner to prefer this writ appeal.

2. On the contentions raised by Mr. N. S. Sivam, learned counsel for the petitioner, and the counter contentions raised by Mr. O. Radhakrishnan, learned counsel appearing for the first-respondent and Mr. P. Samuel, learned Government Advocate appearing for respondents 2 and 3, three question emerge for consideration before us : (1) The first question is as to whether, after the Act, and the Rules framed under the Act and the Forms of agreement of service between private schools and their staff got formulated, with regard to conditions of service in private schools, there could be the power for the management of private schools to transfer its staff, when no such power has been expressed, either in the Act or

in the rules or in Forms, (2) The second question, which is ancillary to the first one, is as to whether the theory that transfer is an incidence of service could be brought in, in respect of service in private schools, governed by the Act without any express power reserved therefor in the statutory provisions; (3) The third question is as to whether the Government could, by a bare executive fiat, direct the addition of a condition regarding power of transfer to the statutory forms, governing the contract of service in private schools.

3. The Act governs private schools. The schools concerned are private schools. Even in respect of schools, run by minorities, as per the pronouncement of the Bench of this Court in W.P. nos. 4478 of 1974, etc., Batch, Order dated 17th December 1975, the provisions relating to prescription of conditions of service, namely, Section 19 of the Act and the corresponding rule, namely, rule 15, framed under the Act are not held to be inapplicable to them. Section 19 of the Act empowers the Government to make rules regulating the number, qualifications and conditions of service of the teachers and other persons employed in private schools. It reads as follows :

'Qualifications, conditions of service, etc., of teachers and other persons employed in private schools :- The Government may make rules regulating the number, qualifications and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respect disciplinary matters) of the teachers and other persons employed in any private school.'

Rule 15(2) of the Rules says that the contract of service between private school and its staff, teaching and non-teaching, should be struck in the prescribed forms. There are two different forms-one Form VII-A for the permanent staff and the other Form VII-B for the temporary staff. Thus we find that the question of prescription of conditions of service in private schools is a matter of legislation. Neither in Section 19, nor in rule 15, nor even in the forms, there is an express power of transfer of the staff, conferred on the management of private schools.

4. The Act is a piece of modern legislation and it has tended to place the broad general provisions and statements of principles in its body, relegating the working

of the details of the provisions and the principles to the rule making authority. In its wisdom, the Legislature thought that the conditions of service in Private Schools should be a matter of prescriptions by the Government. It has not left that discretion with the management of private schools. The statute having intervened and vested the Government with the authority to prescribe the conditions of service, it is no longer possible to envisage the parties entering into a contract, the terms of which run beyond the prescriptions done by the Government. The prescriptions are to be done by statutory mode. They have to be done by resorting to the rule making power. In fact, this process has been resorted to and exhausted for the time being. The rules got formulated. The Forms are part and parcel of the rules. They are statutory in character. Neither there could be a term expressed nor a term implied in any contract of service between the management of private schools and their staff, which has not been laid down and settled by the statutory prescriptions. In *Dr. Madan Mohan Rao v. The State of Tamil Nadu, rep. by the Secretary to the Government, Education Department, Madras and another* : (1983)2MLJ491, a Bench of this Court opined that the parties are not governed by the master and servant jurisprudence, but by the provisions of the Act. We respectfully agree with that view.

5. In the instance case, Form VII-A framed as per rule 15(2), has set out the terms and conditions of service of payment staff. They do not take in a power to transfer for the management of private schools, their staff. One need not overstress the principle that the rules framed under a statute acquire the same status as the statute itself and should have the same effect as if they stood adumbrated in the statute. The terms and conditions of service of the staff in the private schools having been settled by the statutory provisions, they stand concluded, unless by the very same process of the rule making power, there is an enlargement of the said terms and conditions of service. Obviously, no such process has been adopted in the instant case. When the condition empowering transfer is not settled and set out in the statutory form, and the Government has not exercised its rule-making power to bring in that condition, neither the private schools nor their staff could adopt and adhere to any such condition by any other mode. Hence, it would be futile to hang upon any term, which is being sought to be introduced by the Executive Fiat into the statutory contract entered into between the private schools

and their staff. That Government Order has no sanctity in the eye of law and cannot be taken advantage of for the exercise of such power under it.

6. In the present case, neither the order of appointment of the petitioner made before the date of commencement of the Act, nor the Form VII-A agreement entered into between the parties after the date of commencement of the Act, contemplated and conferred a power of transfer for and on the management of the private schools. Assuming that a contract of service entered into before or after the date of commencement of the Act contained such a term, that will stand abrogated in view of the overriding effect of the provisions of Chapter V of the Act and the Rules, as per Section 28 of the Act, which runs as follows :

'Chapter to have overriding effect :-

(1) This Chapter or any rule providing for all or any of the matters specified in this Chapter or any order made in relation to any such matter shall have effect notwithstanding -

(a) anything contained in any -

(i) other law for the time being in force, or

(ii) award, agreement or contract of service, whether such award, agreement or contract of service was made before or after the date of the commencement of this Act, or

(iii) judgment, decree or order of Court, Tribunal or authority, or

(b) that the rules relating to recognition of, or payment of grant, to private schools, had or have no statutory force :

Provided that where, under any such award, agreement, contract of service, or otherwise, any teacher or other person employed in any private school is entitled to benefits in respect of any matter which are more favourable to him than those to which he will be entitled under this Chapter, such teacher or other person shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this

Chapter. (2) Nothing contained in this Chapter shall be construed as precluding any such teacher or other person from entering into an agreement for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Chapter.'

The proviso to sub-section (1) and sub section (2) of Section 28 of the Act save only terms which are more favourable to the staff. A term conferring an unilateral power of transfer on the management of private schools cannot come within the ambit of such expressions.

7. It is argued that transfer is an incidence of service. This argument can hold good in the case of a service under Government or in a public sector. but, in the case of employment under a private sector, there is no such presumption that transfer is an incidence of service. There is no rule that a private employer has any inherent right to transfer his employee. Even in the case of employment under Government or a public-sector, there are limitations on this power with which we should not trouble ourselves for the purpose of the present case. Suffice it to state, there is no inherent right in the private employer to transfer its employee. That right must be conferred by the contract of service. In certain cases, it could be implied. That will depend upon the facts and circumstances of the case. For example, suppose the employment was under one unit having several wings and branches of its own of the same category and giving the same or similar type of employment and governed by the same terms and conditions of service, including emoluments, and even at the time of induction into service, the employee was put on notice that he is liable to be transferred to anyone of the wings and branches of the employer, such a power of transfer by implication could be spelt out. The above analysis is only academic, because, as we have already noted, the statute having intervened and settled the power to prescribe the terms and conditions of service and conferred it on the Government and the said power having been exercised, it is not permissible to travel beyond that statutory sphere and enter into a contractual sphere to spell out an implied or an inherent power to transfer. The statutory power having been exercised in the manner prescribed, there could not be a supplementation to it by bringing the theory of implied or inherent condition of service. That would be travelling beyond what the statutory provisions have

expressly provided. If such a condition of service is not expressly provided by the statutory prescription, then it must be taken to have been excluded or denied or prohibited.

8. Coming to the third question, the fundamental principle is that powers conferred by statutes must be exercised only in accordance with the mode provided and contemplated by the statute itself. General principles cannot be brought in to override the specific provisions in the statute, which define the amplitude of such powers as well as circumscribe their limits. It is true that where the statute confers a power to make rules, it will include also a power to add, to amend, vary or rescind the rules so made. But, even that power has got to be exercised in the same manner as should be resorted to initially in making the rules. It could be stated that it is not obligatory on the part of the Government to formulate the rules prescribing the conditions of service, since the expression used in Section 19 is 'may'. But, once the rules have been formulated they have to govern and if they have to be added to, amended, varied or rescinded, then the prescribed statutory procedure has to be adhered to and cannot be skipped over. The rules once framed setting out the terms and conditions of service in private schools, must hold the field and there could not be an addition to it, amendment, variation or rescission of it by any manner, other than that prescribed. Such a power is totally lacking for anyone. There could not be a departure from this mandate. If there is a departure, the very exercise of the power will be a nullity and the resultant action will have to be ignored. Section 19 of the Act contemplates the Government making rules regulating conditions of service in private schools. Rule 15 made by the Government specifically speaks about conditions of service. Section 56 gives the general rule-making power. Section 57 speaks about the publication of rules and commencement of rules, etc., The G.O.Ms. No. 1228, Education Department, dated 27th June 1981, by no stretch of imagination, could fit in with the rule-making power.

9. An argument was advanced that there could be prescription by the Government of conditions of service in private schools, though not by the method laid down by the statute, but by other appropriate manner, such as a Government Order. It would have been a different case, if the Government is manning the private

schools as a whole with no room left for any other body to come into the picture of management and administration of the affairs of the private schools in all their spheres. The allocation of power to the Government for prescribing the conditions of service in private schools is by statutory provisions, namely, Section 19 of the Act. The Government has to derive its powers from this statutory source alone. The Government is not vested with general power of administration and management of the private schools. Hence, the argument that an authority having a comprehensive power of management and administration of the affairs of private schools, could certainly exercise that power in appropriate manner, though a departure from the prescribed mode has been adopted, does not deserve acceptance at all. If the Government has been made the sole repository of all the powers of management and administration of the affairs of the private schools, may be, the above argument can be raised. But, it has to be noticed that such is not the position so far as the Act governing the private schools, is concerned.

10. The specific power to prescribe conditions of service in private schools having been vested by the statutory provisions with the Government and the method of exercise of that power also having been delineated by the statute itself, it is not permissible for the Government to purport to exercise that power in any other manner than the one prescribed. The Government Order could have no sanctity in the eye of law and could not be relied on as a substitute for the exercise of the statutory power of rule making. Reliance was also placed by the learned counsel appearing for the first-respondent in support of this argument of his, on a pronouncement of the Supreme Court in *V. T. Khanzode and others v. Reserve Bank of India and another* : (1982)ILLJ465SC ; and to say that when once the power has been given, the method of exercising that power and any departure from the prescribed mode may not matter much. In that pronouncement, the Supreme Court found the central Board, under the [Reserve Bank of India Act, 1934](#), as the sole repository of all the powers of management and administration of the affairs of the Bank. In that context, the Supreme Court expressed such a liberal view. After referring to the scope of the powers of the Central Board under Section 7(2) of the [Reserve Bank of India Act, 1934](#), the Supreme Court observed as follows (at-474).

'By that section, the general superintendence and direction of the affairs and business of the Bank are entrusted to the Central Board of Directors, which is empowered to exercise all powers and do all acts and things which may be exercised or done by the Bank. Matters relating to the service conditions of the staff are, pre-eminently, matters which relate to the affairs of the Bank. It would therefore be wrong to deny to the Central Board the power to issue administrative directions or circulars regulating the conditions of service of the Bank's staff. To read into the provisions of S. 58(1) a prohibition against the issuance of such administrative directions or circulars is patently to ignore the scope of wholesome powers conferred upon the Central Board of Directors by S. 7(2) of the Act.'

The first respondent cannot draw any support from the above pronouncement for the proposition which its learned counsel advances, since under the framework of the Act and the Rules under it, the scope of the powers of the Government stands specified and circumscribed.

11. In view of the preceding discussion and reason, we answer all the three questions posed for consideration against the respondents and in favour of the petitioner. For the same reasons, we are not able to extend our support to the view and decision of the learned single Judge, that the impugned order of transfer could be sustained on administrative grounds. The other learned single Judge, in *G. M. Mohanavelu v. State of Tamil Nadu and others* (W.P. Nos. 5873 and 5874 of 1982, Order dated 22nd February 1984) took note of the term in the order of appointment of the teacher that he is liable to be transferred to any school under the management, and declined to countenance the grievance of the teacher with regard to the order of his transfer. But it must be noted that the other learned single Judge did not advert to the overriding effect set out in Section 28 of the Act. The other learned single Judge in the above pronouncement also seemed to have opined that in the absence of an express prohibition either in the Act or in the Rules, such a power of transfer could be implied. Our discussion of the position of law dissuades us from concurring with this view.

12. Accordingly, we allow this writ appeal, set aside the order of dismissal of W.P. No. 5859 of 1987, passed by the learned single Judge, and allow that writ petition.

As a result, the petitioner is entitled to be restored to the same service position as it prevailed prior to the impugned proceedings. We make no order as to costs, both in the writ Petition and in this writ Appeal.

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