

**A. Ramaswami Ayyangar Vs. State of Madras (Educational Department),
Represented by the Divisional Inspector of Schools and ors.**

**A. Ramaswami Ayyangar Vs. State of Madras (Educational Department),
Represented by the Divisional Inspector of Schools and ors.**

SooperKanoon Citation : sooperkanoon.com/808397

Court : Chennai

Decided On : Jul-13-1961

Reported in : (1962)1MLJ269

Appellant : A. Ramaswami Ayyangar

Respondent : State of Madras (Educational Department), Represented by the
Divisional Inspector of Schools and ors

Judgement :

ORDER

Anantanarayanan, J.

1. This application for the issue of a writ otceriorari for quashing certain orders under which the services of the petitioner (A. Ramaswami Ayyangar) were dispensed with by the Management of the St. Andrews Higher Elementary School, Manapparai (third respondent) involves certain issues of interest. The petitioner claims that he was appointed as a Headmaster of the third respondent school on 9th June, 1947. Charges were first framed against him on certain disciplinary grounds on 9th January, 1956. Certain of these charges were cancelled and recast, and fresh charges were issued on 3rd March, 1956. Subsequently, the petitioner was reduced as an Assistant in the same school with effect from 8th

March, 1956. The petitioner appealed to the District Educational Officer, Trichy, on 26th March, 1956. On 10th July, 1956, the Manager of the institution framed charges upon other facts, and asked the petitioner to submit an explanation to them on or before 15th July, 1956. Admittedly, the petitioner wrote on 13th July, 1956 wanting some further time, but this request was refused. Finally, the Management gave the petitioner notice for three months with effect from 10th July, 1950 and terminated his services, apparently holding the charges proved, in the absence of any satisfactory or adequate explanation. The petitioner appealed to the District Educational Officer, Trichy, on 31st July, 1956, and later to the Divisional Inspector of Schools, Coimbatore. On 17th June, 1958, by Disposal No. 1185 of 1958, the Divisional Inspector of Schools rejected this appeal. In other words, the petitioner sought to appeal, under the rules governing such aided institutions to certain officers of Government, such as the District Educational Officer and the Divisional Inspector of Schools who had power to review the proceedings of the Management and to grant the petitioner redress. But he pursued those remedies in vain, and he failed.

2. Learned Counsel for the petitioner (Sri Venugopalachariar) has urged two grounds only, as the basis of his argument that this Court should now interfere under Article 226 of the Constitution by the issue of a writ of certiorari, quashing the proceedings dispensing with the services of the petitioner. Both these grounds are founded upon certain rules in the Rules Relating to the Elementary Schools' published by the Government of Madras. Under Rule 13(2)(ii)(b), the class of teachers referred to in those rules could be

dismissed with three months' notice, or three months salary in lieu thereof, for any of the following reasons, namely, wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, incompetence, retrenchment, physical unfitness or any other good cause.

3. It is now submitted before me that the petitioner was denied redress in two matters, coming within the first and second provisos to Rule 13 (2)(ii)(b) extracted above. 'Under the first proviso, the teacher has to be informed in writing of the charges against him, and this was undoubtedly done in the present case. The

proviso further specifies that 'the statement made by the teacher, if any, shall be taken into consideration before a final decision is taken by the Management.' This also seems to have been done, in the sense that a belated explanation from the petitioner was taken into consideration before the notice dispensing with his services was given. But there is another part of this proviso that 'the teacher shall be given a reasonable opportunity for stating his case in writing or in person.' The argument is that this rule was not complied with, since the petitioner was given time for only five days for the preparation and submission of his full explanation on the charges which involved one or two matters of accounting, and it is stressed that this was not in consonance with principles of natural justice. The second proviso which is the other ground of the application, enunciates that

before the issue of the notice the Deputy Inspector of Schools should be consulted and his approval obtained by the Management about the propriety of such an action.

4. In the present case, this proviso was also formally complied with in the sense that as early as the preceding May, the approval of the Deputy Inspector of Schools had been obtained for taking disciplinary action 'against the petitioner upon two charges. The grievance of the petitioner is that this was a long time prior to the actual formulation of the present charges in July, and that permission was not specifically obtained from that Officer for taking disciplinary action with regard to the matters which formed the subject of the subsequent charges.

5. In this connection, two decisions of the Andhra Pradesh High Court have been placed before me, in both of which that Court took action for the alleged violation of certain rules framed under the Madras Elementary Education Act (VIII of 1920). One such case was Venkataswamy v. Correspondent, K.G.B. Sr. School : AIR 1961 AP178 . Basi Reddy J., observed that where the statutory rules were disregarded the termination of the service was improper. The rules are as much binding on the Government as on any one else. They cannot be abrogated at will, by an executive fiat. But there is one important fact distinguishing this case from the present matter, with regard to the entire question of the applicability of Article 226 of the Constitution. That was a case in which the termination of the services of

the teacher was set aside in appeal by certain authorities in the Education Department, and the Government subsequently intervened, in order to restore the action of the Management. Hence, what was essentially in issue in that case, was the action of the Government in interfering against the principles of natural justice to set aside a proper action of one of its own officers, which benefited a private individual.

6. The other decision, *Subba Rao v. Divisional Inspector of Schools* (1960) 1 An. W.R. 305 again refers to certain rules relating to elementary schools, but the very head note shows that the proceedings under Article 226 were between the aggrieved petitioner and the Divisional Inspector of Schools, a servant of Government. Obviously different considerations apply where the grievance of an individual is against the Government for non-compliance with the spirit of its own rules, which were definitely acknowledged as binding by Government.

7. In the present case also, it is true that the petitioner desires the issue of a writ of certiorari not merely to quash the orders passed by the Management terminating his services, but also the orders of the Divisional Inspector of Schools, Goimbatore, and of the District Educational Officer, Pudukottai (Respondents 1 and 2) confirming the order of the Management. But there is one aspect of the matter, which, in my view, makes a vital difference, and which does not appear to have been considered in the authorities to which I have been referred. That aspect can be simply expressed as follows. The petitioner admits that he is an employee of the private institution alone and that, as regards the Management and himself, the terms of the contract are those appearing in his service register. The relevant condition or term runs as follows :

No teacher shall ordinarily leave a school without giving three months' notice to the Management, and no Management shall dispense with the services of a teacher without giving three months' notice to him, except for adequate disciplinary reasons approved by the District Educational Officer.

The prima facie interpretation of this rule must certainly be that a teacher could leave the service of a school giving three months' notice to the Management, but that the Management can dispense with his services only after giving three months

notice ordinarily, and that if it does not give that notice but less there must be adequate disciplinary reasons approved by the District Educational Officer.

8. Now, I am unable to see how these terms of the contract between the teacher and the Management are enlarged or qualified by the rules already referred to. The learned Additional Government Pleader claims that the rules are not statutory, but administrative in character; he also relies upon the judgment of this Court in W.P. No. 802 of 1958 in support of this view. The difficulty is obvious that, as between the employer (the Management) and the employee (the teacher) the implied or express terms of the contract will alone govern their mutual relationship. If the State steps into the picture at all, as an agency recognising the institution and giving it financial aid, it may very well be that this aid is hedged around with certain conditions, which the Management will have to observe, if it requires the continuance of the recognition or of the aid. But from a strictly legal point of view, I am quite unable to see how a private individual who is an employee of this private institution can invoke those conditions, in support of a redress claimed by terms of the contract of employment. In other words, the Management may have to pay the penalty of withdrawal of recognition or financial aid, if the Management does not choose to abide by these administrative rules promulgated for its benefit. But as far as I can ascertain from the actual contract, the Management is entitled to dispense with the service of the employee (teacher) after three months ' notice. It is only if notice for a lesser period is given, that any special considerations would govern the case. Similarly the employee (teacher) can leave the services of the school after giving three months ' notice.

9. In the present case, no doubt, the Management desired to comply with the rules framed by the Government for its guidance in dealing with teachers. Actually, there was formal compliance with both the provisions that I have referred to earlier. Whether there was substantial compliance or otherwise, is a matter of opinion. However this might be, when the rules are administrative and not statutory in their effect, and when the Management can dispense with the services of its employee (the teacher) after giving three months ' notice in the usual course, without assigning any special reasons therefor, I am unable to see how such an employee could invoke the aid of this Court in order to quash the proceedings of the

Management dispensing with his services. In the two authorities of the Andhra Pradesh High Court which I have referred to, this aspect does not appear to have been considered at all. Nor can learned Counsel for the petitioner (Sri Venugopalachariar) draw my attention to any other authority of this Court or of any other Court, which would justify the interpretation that the scope of the contract between a private institution and its employee could be widened, because that private institution has chosen to accept certain terms or conditions upon which Government has granted the institution recognition or financial aid. For instance, a case could be conceived where the teacher was entertained by the private institution a little before it was recognised by Government. Are we to hold, in such a case, that the recognition by the Government has transformed the terms of the contract or widened its scope? In other words, is there a tripartite agreement between the Government, the Management and the teacher, superseding the original agreement between the Management and the teacher? I have no reason to think so, and none has been shown.

10. Apart from this even with regard to the orders of the two departmental authorities, I am unable to come to the conclusion that they were manifestly erroneous upon the face of the record, or so unjust and opposed to the principles of natural justice, as to necessitate interference. It is clear enough that, at one stage, the Deputy Inspector did authorise disciplinary action against this petitioner, whether upon the same material or material of lesser scope. It is, again, clear that the petitioner was granted some time for submitting his explanation, though he might have thought that it was not sufficient time, and that, at any rate, the explanation subsequently submitted by him was considered by the authorities in arriving at their decisions.

11. For these reasons, I do not think it would be a proper exercise of the powers vested in this Court to interfere by the issue of a writ of certiorari. The application is accordingly dismissed, and the rule nisi will be discharged. There will be no order as to costs.