

**A. Chelliah and anr. Vs. the State of Tamil Nadu and ors.**

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**Court :** Chennai

**Decided On :** Oct-07-1994

**Reported in :** (1995)1MLJ230

**Appellant :** A. Chelliah and anr.

**Respondent :** The State of Tamil Nadu and ors.

**Judgement :**

ORDER

**Abdul Hadi, J.**

1. These writ petitions are connected and hence they were heard together and common order is passed.

2. All these writ petitions relate to Kattathurai Aided High School, which is the petitioner in W.P. No. 11548 of 1994 in which respondents 1 and 2 are the State of Tamil Nadu and the District Educational Officer, Thuckalay, respectively. With reference to this school, there was dispute regarding the management of the school among two sets of persons and the said dispute was sought to be resolved in a suit, which ended in judgment dated 18.8.1966 in S.A. No. 1117 of 1962, on the file of this court. The operative portion of the said judgment is as follows:

Both the plaintiff (Chelliah) and the appellant (Selvanayagam) are co-owners or co-managers each should act with the consent of the other. But when there is no-

operation or co-ordination between the parties, best course would be to direct the plaintiff and the appellant to be in charge of collection of fees of the school in alternate years. In regard to the general management of the school, both of them will work together. The plaintiff will be in charge of the collection of fees, meeting of expenses, drawing of bills, etc. for the year ending 30th April, 1967. From 1st May, 1967 the appellant will attend this work. This arrangement of attending to this particular work will go on alternatively and in other respects both shall manage the school working together.

Thus, the dispute was resolved by prescribing turn management in respect of collection of fees, meeting of expenses and drawing of bills and in other respects, both the rival parties were to manage the school, working together.

3. The abovesaid Chelliah is the writ petitioner in W.P. No. 16796 of 1993. Respondents 1 and 2 therein are the State of Tamil Nadu and the abovesaid District Educational Officer, respectively. The 3rd respondent therein is the school represented by the correspondent. The abovesaid Selvanayagam who died subsequently was succeeded by his children, 4th respondent, (Gnananayagam) and 5th respondent (Russal Nayagam). In view of the death of Selvanayagam, the turn management is done by the abovesaid Chelliah in one year and in the next succeeding year, it is done jointly by the abovesaid Gnananayagam and Russal Nayagam. Admittedly during the period 1.5.1993 to 30.4.1994, the abovesaid Gnananayagam and Russal Nayagam were in turn management with reference to the abovesaid collection of fees, meeting of expenses drawing of bills etc.

4. The grievance of the abovesaid Chelliah in W.P. No. 16796 of 1993 is that the 6th respondent Mrs. Jothi Christy in the said writ petition was appointed as headmistress by order dated 1.6.1993 by the abovesaid turn manager Gnananayagam, without the consent of the other turn manager, viz., himself (Chelliah) and that since the said appointment relates to general management of the school other than the abovesaid function of collection of fees, etc., the said appointment is void in view of the abovesaid absence of consent. The said Jothi Christy was a teacher earlier in the said school and the abovesaid appointment was actually a promotion to the post of Headmistress from the post of a teacher.

5. Since the 2nd respondent, the District Educational Officer has approved the said appointment by order dated 6.8.1993, the abovesaid writ petition seeks to quash the said order dated 6.8.1993. It is not in dispute that the abovesaid appointment pertains to the general management of the school and as per the above referred to second appeal judgment, all the abovesaid three persons, viz., Chelliah on one side and Gnananayagam and Russal Nayagam on the other side, have to work together. That is why, the material allegation in support of this writ petition is as follows:

The respondents 4 and 5 appointed 6th respondent as Headmaster of the 3rd respondent school without obtaining the consent of the petitioner with effect from 1.6.1993. The said appointment is total violation of the judgment and decree passed in S.A. No. 1117 of 1962 by this Hon'ble Court. The appointment of 6th respondent as Headmaster of 3rd respondent school is illegal and ab initio void.

As against this supporting affidavit of the petitioner, the 5th respondent did not file any counter, the 4th respondent filed a counter. There is also a counter by the 2nd respondent. In the counter-affidavit of the 4th respondent, while dealing with the abovesaid allegation extracted from the supporting affidavit, the relevant allegation is as follows:

The petitioner refused to give consent for the appointment of the 6th respondent as Headmistress even though several requests were made by the respondents 4 and 5.

Here it must be noted that when actually such refusal took place has not been stated. The 4th respondent also gives no details regarding the abovesaid alleged several requests. No copy of any documents also has been placed before me regarding the abovesaid refusal or several requests.

6. On the other hand as pointed out by learned Counsel for the petitioner, the relevant statements in the letter of the 5th respondent to the 2nd respondent dated 4.8.1993 (copy of which has been filed by the 4th respondent in his typeset at page 17) show something different from what has been averred in the abovesaid counter affidavit of the 4th respondent. The said letter was in reply to the letter of

the 2nd respondent dated 10.7.1993 to the correspondent of the school, enclosing the lawyer notice issued by Chelliah to the 2nd respondent, wherein, the complaint was that the abovesaid promotion was illegal and the specific allegation therein was that the petitioner 'never consented for any such promotion.' The above referred to relevant statements in the letter dated 4.8.1993 are as follows:

So on 27.5.1993 I have sent a letter to Thiru Chelliah requesting him to come to the school on 29.5.1993 at 10 a.m., to discuss about the said promotion. But even after having received the letter he has not cared to come to the school as requested by me. But instead, his son come there and represented to me that he is having general power of attorney given by his father. But, he has not shown the said power when demanded. If Sri A. Chelliah had given the power of attorney to his son the said power should be approved by the department. After a general power of attorney is given to his son he can act only through his son the power holder till the power is cancelled. As Smt. Jothy Christy is the seniormost teacher, her request for promotion cannot be overlooked. Further she has put up 31 years of meritorious and unblemished service in the school. So, I have no other alternative, except to promote her as the Headmistress of the school and if Thiru A. Chelliah is interested in the smooth administration of the school he cannot but give his consent Smt. Jothi Christy's promotion as Headmistress.

[Italics supplied]

Thus, the above statements do not show any refusal to give consent as alleged in the aforesaid counter-affidavit, but only says that the petitioner 'cannot but give his consent.' So, it is clear that the abovesaid appointment of 6th respondent is contrary to the judgment in the above referred to second appeal.

7. The argument of learned Counsel for 4th respondent is that the abovesaid withholding of the consent by Chelliah was only with a mala fide intention. In this connection he drew my attention, to the averment in paragraph 6 of the counter-affidavit of the 4th respondent, stating that Chelliah wanted to promote his son Rajan as Headmaster in the place of Thiru Russalin (former Headmaster) though he put up only 4 1/2 years of service, that respondents 4 and 5 wanted to promote 6th respondent as Headmistress, who is having 31 years of unblemished service

and that since Chelliah could not promote his son as Headmasters he did not cooperate with respondents 4 and 5 for the smooth running of the 3rd respondent-school. The said learned Counsel also points out that there was no reply affidavit to the abovesaid counter of 4th respondent, repudiating the abovesaid allegations in paragraph 6 of the counter affidavit of the 4th respondent. On the other hand, learned Counsel for Chelliah submits that though a reply affidavit has not been filed in W.P. No. 16796 of 1993, the above referred to allegation which finds a place in the abovesaid counter of 4th respondent has been repudiated in the counter-affidavit filed in W.M.P. No. 14418 of 1994 in W.P. No. 9485 of 1994, stating that the averment that Chelliah wanted one of his sons to be made as Headmaster of the school, is denied and the said averment has been made with oblique motive. Anyway, in the above circumstances, I do not think that the abovesaid contention of learned Counsel for 4th respondent can be taken as having much weight.

8. Learned Counsel for 6th respondent contends that the abovesaid appointment order dated 1.6.1993 has been made by the 4th respondent as correspondent of the school and the said appointment cannot be challenged simply because of the rivalry between the above referred to two different turn managers. She also argues that it is not the case of the writ petitioner that the 6th respondent has not qualified for the above promotion. She also drew my attention to Section 28(a)(iii) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, The said provision says that Chapter V of the said Act dealing with the terms and conditions of teachers employed in private schools shall have effect notwithstanding anything contained in any judgment, decree or order of the court. She also refers to Section 19 coming under the said chapter, which provides for qualifications, conditions of service, etc., of teachers in the private schools. Her resultant submission is that the abovesaid judgment in the second appeal will not affect the appointment of the 6th respondent as Headmistress. But, I am unable to accept this argument of the learned Counsel for 6th respondent, based on Section 28 of the abovesaid Act. Section 28 cannot be interpreted in the way in which the said counsel wants to interpret it. If the person appointing the 6th respondent as Headmistress, has no jurisdiction at all to do so without the consent of the other turn manager, her appointment would be contrary to the judgment of this Court in the abovesaid

second appeal and hence, even at the inception, said appointment would be not valid.

9. The said learned Counsel also adopted the argument of learned Counsel for the petitioner in the other writ petition, viz., W.P. No. 9485 of 1994, based on the de facto doctrine. That writ petition is by one teacher by name Ravi Blessed Nayagam of the abovesaid school and it seeks to quash the letter dated 4.5.1994 addressed to him by Chelliah, relieving him (Ravi Blessed Nayagam) from the post of teacher, he was holding. I shall deal with the said argument when I take the said W.P. No. 9485 of 1994.

10. The said learned Counsel for the 6th respondent also argues that this writ petition is not maintainable since there is an effective alternative remedy against the order of the 2nd respondent, approving the appointment, In this connection, he drew my attention to paragraph 8 of the judgment in Gham Shyam Das Gupta v. Anant Kumar Sinha : AIR 1991 SC2251 . No doubt in paragraph 8 of the said decision, it is observed that the remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court and the jurisdiction to issue a writ of certiorari is supervisory in nature and is not meant to correct errors like an appellate court. But, in the present case, I am not venturing to correct errors, like an appellate court. Only on the ground that the appointment order of the 4th respondent was without jurisdiction he having not obtained the consent of the other turn manager, and that the impugned approval order dated 6.8.1993 of the 2nd respondent is also consequently invalid, I am asked to correct the impugned order. Further, it is settled law that there is no absolute bar for the High Court to hear writ petitions, even assuming there is an effective alternative remedy. Having heard the arguments at length from different counsel in these three writ petitions, I am not inclined to dismiss W.P. No. 16796 of 1993, solely on the abovesaid technical even assuming there is an effective alternative remedy.

11. As already indicated W.P. No. 9485 of 1994 has been filed by one Ravi Blessed Nayagam, who is a teaching Assistant in the above said school. The 1st respondent is the District Educational Officer and the 2nd respondent is the above said Chelliah and the 3rd respondent is the correspondent of the school. The

prayer in this writ petition is to quash the order dated 4.5.1994 of the 2nd respondent and to direct the respondents to forbear from preventing the petitioner functioning as Assistant in the 3rd respondent- school. It must be remembered that this writ petition relates to the period 1.5.1994 to 30.4.1995, when the above said Chelliah the turn Manager as per the judgment in the abovesaid second appeal. The abovesaid impugned order in this writ petition is actually a letter from the abovesaid Chelliah to the abovesaid Ravi Blessed Nayagam. The said letter runs as follows:

This is to inform you that your appointment as a teacher in the School made on 30.8.1991 is void, since the appointment is made in a non-sanctioned post without the consent and knowledge of the co-manager myself. As such you have no claim as a teacher. So you were relieved from the work on 16.7.1992.

It seems that the successor manager who happened to be your relative had permitted you to come to school and has allowed to work in a sanctioned post as a teacher. You have no right to function as a teacher in the school. By this notice, I prohibit you from coming to school or function as a teacher.

12. Thus, it is found that once the said Chelliah took over the management of the school for the abovesaid period 1994-95, by the abovesaid letter, he seeks to relieve the abovesaid Ravi Blessed Nayagam from the sanctioned teacher post, he is occupying, and admittedly the said Ravi came to be appointed to the said sanctioned post by the order dated 1.9.1993 with effect from 1.6.1993 during the period when the abovesaid Gnananayagam and Russal Nayagam were in management. Further, it should also be noted that the abovesaid Ravi Blessed Nayagam was originally appointed in a non-sanctioned teacher post on 30.8.1991, but subsequently was relieved from the said post on 16.7.1992 and thereafter, after a break, he got the abovesaid appointment in the sanctioned post with effect from 1.6.1993 as stated above. The abovesaid impugned letter dated 4.5.1994 was issued by Chelliah on the ground that the appointment of Ravi to the sanctioned post with effect from 1.6.1993 by the abovesaid Gnananayagam, was void, it being without the consent of the other co-manager, viz., Chelliah.

13. The abovesaid letter dated 4.5.1994 is termed as 'termination order' by learned Counsel for Ravi. But, it cannot be strictly a termination order, what it says is, the original appointment of Ravi itself was without jurisdiction and that is why it says that Ravi has no claim as teacher. Learned Counsel for Ravi also submits that this letter dated 4.5.1994 is also without jurisdiction, and hence the alleged termination is bad. But, it must be noted that once the original appointment itself was without jurisdiction, the required consent having not been not obtained, there is no termination of the employment as such. The letter dated 4.5.1994 only points out that the original appointment was bad. Viewed in that light, it cannot be said that the said communication dated 4.5.1994, is without jurisdiction.

14. W.P. No. 11548 of 1994 is by the abovesaid school represented by its correspondent Paul Wilson, who is none other than the son of the abovesaid Chelliah. This writ petition seeks to quash the order dated 20.6.1994 of the 2nd respondent- District Educational Officer therein, and to direct him to approve the pay bill of the school and accordingly disburse the salary without insisting the school to include the name of the abovesaid Ravi Blessed Nayagam in the pay bill. This writ petition has been filed when the abovesaid Chelliah is having the turn management, on the footing that the abovesaid Ravi Blessed Nayagam had been relieved of the teacher post pursuant to the abovesaid letter dated 4.5.1994, which is impugned in W.P. No. 9485 of 1994. Since the District Educational Officer insisted for passing the pay bill of the school, that the bill should include the name of the abovesaid Ravi Blessed Nayagam, W.P. No. 11548 of 1994 has been filed with the abovesaid prayer. So, it follows, if W.P. No. 9405 of 1994 is allowed, W.P. No. 11548 of 1994 has to be dismissed and if W.P. No. 9485 of 1994 is dismissed, W.P. No. 11548 of 1994 has to be allowed.

15. In the case of appointment of Ravi Blessed Nayagam also it is clear from the relevant averments in the affidavit that consent for his appointment was not obtained from Chelliah the other co-manager., Even paragraph 5 of the affidavit in support of W.P. No. 9485 of 1994 only says, 'whenever appointment was made by one faction, the other faction gave oral consent.' But, in the light of what has been stated above, while dealing with W.P. No. 16796 of 1993 this allegation of oral consent cannot be believed. Further in the case of the appointments in question in

the proceedings, the letter dated 28.10.1993 written by Gnananayagam to the District Educational Officer, (Copy of which has been filed in the typeset of Ravi Blessed Nayagam in W.P. No. 9485 of 1994) it is stated thus:

Actually the appointments made till 1991, 1992 were done with mutual consent.

This also would show that there was no such mutual consent thereafter, particularly for the abovesaid appointments of Mrs. Jothi Christy as well as Ravi Blessed Nayagam.

16. Learned Counsel for the petitioner in this W.P. No. 9485 of 1994 relied very much on the above referred to de facto doctrine and in that connection he relied on the decisions in P.S. Menon v. State : AIR1970 Ker165 and Mahamani v. Tamil Nadu Magnesite Limited : AIR1970 Ker165 , the contention was that since the Public Service Commission was not a duly constituted body, the selection made by it was not valid. But, the Kerala High Court upheld the said selection, applying the principle of de facto doctrine Likewise in : (1993)2MLJ634 , a Division Bench of this Court applied the said doctrine in a defective appointment by a de facto officer. But I do not think that the said de facto doctrine could be applied to the present facts. Even in the abovesaid case in : (1993)2MLJ634 , it has been held as follows:

The doctrine is now well-established that the acts of the officers de facto, performed by them within the scope of their assumed official authority in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure.

But, here in the present case, even assuming that the abovesaid Ghananayagam, who made the abovesaid impugned appointments of the abovesaid Mrs. Jothi Christy or Ravi Blessed Nayagam could be considered as an "officer" with reference to whom the said doctrine could be applied, there is no proof in the present case that the said appointment was 'in the interest of the public or third persons' and not for his own benefit. That apart, the said Gnananayagam cannot be considered as a de facto officer since he is entitled to make such an appointment and on that account should be held to be a de jure officer. Only what

is required is pursuant to the abovesaid second appeal judgment, he should get the consent, of the other de jure officer, viz., the abovesaid Chelliah. Further, the abovesaid Mahamani v. Tamil Nadu Magnesite Limited : (1993)2MLJ634 , itself observes as follows:

The defective appointment of a de facto officer may be questioned directly in proceeding to which he may be a party but it cannot be permitted to be questioned in a litigation which is of no concern or consequence to the officer concerned.

In the present case, the abovesaid Gnananayagam is a party in W.P. No. 16796 of 1993, in which the appointment of Mrs. Jothi Christy is involved In W.P. No. 9485 of 1994 also, the correspondent of the school is the 3rd respondent (while the abovesaid Chelliah is the 2nd respondent). The 3rd respondent is none other than the abovesaid Gnanayagam. So, in that sense in W.P. No. 9485 of 1994, Gnananayagam is a party. So, even as per the abovesaid judgment, there is no bar for the abovesaid Chelliah, to question the appointments made by the Gnanayagam as defective.

17. All these apart, Ravi Blessed Nayagam, himself is not only closely related to both Russal Nayagam and Gnananayagam but he himself also avers in his own affidavit in support of W.P. No. 9485 of 1994 about the above referred to second appeal judgment of 1966 thus:

This Hon'ble Court by its judgment dated 18.8.1966 held that both of them are entitled to have control over the school and they will act as co-managers and they should act with the consent of each other....Subsequent to the judgment there was no hitch until the second respondent (Chelliah) started putting obstacles.

So, Ravi Blessed Nayagam is quits aware of the judgment in the abovesaid second appeal and the implementation of its terms for a number of years right from 1966. Even in the case of Jothi Christi she was in service in the above school as teacher for a very long number of years, having been appointed so, even as per her own affidavit in 1962 itself and it could be safely presumed that she was also aware of the necessity for getting the consent of the other co-manager pursuant to the abovesaid second appeal judgment. That is why presumably in her affidavit

she says' even assuming that respondents 4 and 5 who were in management of the 3rd respondent school during the year 1993-94 did not get the consent from the petitioners, my promotion will not become invalid.' When such is the case, I do not think that such persons could contend that the abovesaid de facto doctrine should be applied to their abovesaid appointments, when, to such appointments there was no mutual consent as contemplated in the abovesaid second appeal judgment:

18. In this connection, I may also point out the following passage in H.W.R. Wade's Administrative Law, Sixth Edition, page 337:

The decisions indicate that the doctrine will apply only where the office-holder has colourable authority or some colour of title to the appointment. Where the registrar of the Bedford level company employed a deputy to register land titles within the level, it was held that registrations effected by the deputy after the death of the registrar was known were invalid: the deputy's authority expired on the death of his principal and once the death was generally known the deputy could not be taken to have any colour of authority to act Lord Ellenborough, C.J. said: R. v. Bedford Level Corporation (1805) 6 East 356 . An officer de facto is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law.

So, the abovesaid Gnananayagam, who made the abovesaid appointments, cannot be said to have the 'reputation' of being the officer, who could make the said appointments himself unilaterally that is, without the consent of the other co-manager.

19. One other thing also I may add regarding the applicability of the abovesaid de facto doctrine. In all certainty, it cannot be said that when the above referred to appointments, either of Ravi Blessed Nayagam, or of Jothi Christy, were made by Gnananayagam, he did so as Correspondent of the school. At page 57 in the typeset filed in W.P. No. 9485 of 1994 by the petitioner, there is a copy of the appointment order dated 1.9.1993 relating to Ravi Blessed Nayagam. It shows that the person signing the appointment order only signed as manager and not as correspondent. After I pointed out this feature, no doubt, learned Counsel for the

petitioner submitted later in the course of his argument that the original of the said appointment order contains the seal of the correspondent of the school over and above the term 'signature of manager' found there in. So, according to him, it should be considered only as an appointment by the correspondent. Learned Counsel for Chelliah argues that there is a possibility of the seal of the correspondent being affixed much later than 1.9.1993 and it cannot be taken that the said appointment order was by the correspondent of the school, but I do not think that there is any necessity to go into the correctness of either of the two contentions. It is suffice to say that the averments in the affidavit in support of W.P. No. 9485 of 1994 does not lead me to the conclusion that the abovesaid appointment order dated 1.9.1993 was made by the 'correspondent' of the school. The relevant averment in the said affidavit only says as follows:

In the resultant vacancy I was appointed by an order dated 1.9.1993.

But, it is not stated anywhere in the affidavit that the said appointment was made by whom and in what capacity.

20. Learned Counsel for Ravi Blessed Nayagam also argues that Chelliah himself filed O.S . No. 77 of 1994 in the District Munsif's Court, Padmanabhapuram, challenging the appointment of Ravi Blessed Nayagam in the sanctioned post, but could not get any interim order in the said suit against the continuance of Ravi Blessed Nayagam, in the said post. In the above circumstances, according to the said learned Counsel, the matter could be allowed to be gone into only in that suit and not in this writ petition, on the ground that disputed questions of fact are there, regarding the abovesaid obtaining of consent from the other co-manager, Chelliah, for the abovesaid appointment. But, in view of what I have stated earlier, there is no difficulty in holding that the abovesaid consent was not obtained and there is no necessity to relegate the matter to be decided only in that suit.

21. The net result is, W.P. No. 16796 of 1993 is allowed as prayed for, W.P. No. 9485 of 1994 is dismissed and consequently, W.P. No. 11548 of 1994 is allowed. In the circumstances, there will be no order as to costs in all writ petitions.

Abdul Heidi, J.: Pursuant to the request made by Mr. K. Chandru, learned Counsel appearing for the petitioner in W.P. No. 9485 of 1994 the operation of the abovesaid order is stayed till 18.10.1994 since the said counsel represents that it would take sometime before getting certified copy of the order for his client to file an appeal.

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