

M. Rukmani Devi Vs. the Chief Educational Officer and 2 ors.

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Court : Chennai

Decided On : Jul-26-1995

Reported in : 1996(2)CTC577

Judge : K.A. Swami, C.J. and ;Raju, J.

Acts : Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Sections 22 and 22(1); [Constitution of India](#) - Article 226

Appeal No. : W.A. No. 445 of 1995

Appellant : M. Rukmani Devi

Respondent : The Chief Educational Officer and 2 ors.

Advocate for Def. : D. Murugesan, Special Government Pleader (Education) for Respondent Nos. 1 and 2 and ;K.V. Subramanian, Adv. for Respondent No. 3

Advocate for Pet/Ap. : C. Chinnaswami, Sr. Adv. for ;V. Ramajagadeesan and ;H. Rajasekaran, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

Raju, J.

1. The above writ appeal has been filed against the order of the learned Single Judge dated 4.4.1995 in W.P.No.10311 of 1994, whereunder the writ petition filed by the appellant, seeking for a writ of mandamus to implement the orders of the 2nd respondent in Rc.No.22945/A2/92 dated 21.4.1994 and to reinstate the appellant as teacher in the 3rd respondent school with all backwages payable to the appellant during the period of suspension, come to be dismissed.

2. The relevant facts are that the petitioner was working as a School Assistant in the 3rd respondent School; that she is a daughter of the Correspondent of the 3rd respondent School and also the sister of the Head Master of the said school; that owing to certain personal and family disputes a suit for partition in O.S. No. 103 of 1991 came to be filed on the file of the District Munsif, Tuticorin by the appellant and that the same was decreed in her favour. The defendant in that suit appears to have filed an appeal in A.S.No.62 of 1992 on the file of the Sub Court, Tutucorin and the same is said to be pending. According to the appellant, enraged at this and for no fault of the appellant by proceedings dated 14.12.1992 the appellant was placed under suspension with effect from 17.12.1992, pending framing of charges. Thereafter, charges were said to have been framed and the appellant also submitted her explanation. An enquiry was said to have been conducted and as a consequence of the same, the 3rd respondent appears to have submitted proposals for prior approval of the 2nd respondent for terminating the services of the petitioner from the School even before the expiry of four months of the period of suspension. According to the 3rd respondent no orders have been passed thereon and the 2nd respondent was adopting silent attitude. At that stage; the 3rd respondent school appears to have wrote a letter to the 2nd respondent on 15.4.1993 surrendering the secondary grade post held by the appellant in the 3rd respondent school along with her services with effect from 17.4.1993 and requesting the 2nd respondent to resume the post by virtue of the powers delegated in G.O.Ms.No.1664 Edn dated 4.6.1978 so that posting may be given to the appellant in some other needy school. The appellant has also been representing to the 2nd respondent complaining about the nondisbursal of the subsistence allowance and also the circumstances in which the appellant was being harassed by the 3rd respondent School.

3. The appellant also appears to have filed earlier W.P.No.3215 of 1994, challenging the order of suspension dated 14.12.1992 on the ground that the appellant cannot be kept under suspension for a period of four months in view of Section 22(3) of the Tamil Nadu Recognised Private Schools Regulation Act, 1973, hereinafter referred to as 'the Act'. By an order dated 28.2.1994, Bakthavatsalam, J., after hearing the learned Counsel appearing for the appellant at that time and also the learned Additional Government Pleader, issued a direction to respondents 1 and 2 to consider and dispose of the representations said to have been given by the appellant in June, 1993 and January, 1994 on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of the order. Thereupon, the 2nd respondent has passed an order in Re.No.22945/92 dated 21.4.1994, declining approval on the request made by the 3rd respondent for terminating the services of the appellant with a consequential direction to forthwith reinstate the appellant in service. The various irregularities in the proceedings submitted with a request for approval by the 3rd respondent has been pointed out in the said proceedings dated 21.4.1994 by the 2nd respondent in justification for the rejection of the request for approval. Since in spite of letters dated 5.5.1994 and 15.5.1994 by the appellant to the 3rd respondent, inviting the attention of the 3rd respondent to the orders of the 2nd respondent and for allowing her to re-join duty, the 3rd respondent was indifferent and did not take any action, the appellant was constrained to file the present writ petition, W.P.No.10311 of 1994, for the relief as referred to supra.

4. The 3rd respondent has also filed a counter-affidavit, wherein while denying the claims of the petitioner, it was contended that in view of the surrender of the post made by the 3rd respondent with the services of the appellant, no further relief can be asked against the 3rd respondent. It was also contended in the counter affidavit that the appellate authority so far as the appellant is concerned is the 1st respondent and not the 2nd respondent and that, therefore, there is no jurisdiction for the 2nd respondent to pass any order, particularly the order dated 21.4.1994. It was also contended that in the absence of the grant the 3rd respondent cannot be made liable for any sum to the appellant and that the 2nd respondent had no jurisdiction to direct reinstatement of the appellant in the School. The 3rd respondent also claimed that representations were entertained from the appellant

behind the back of the 3rd respondent and that therefore the order dated 21.4.1994 is violative of principles of natural justice. The learned single Judge was of the view that on the face of it the order appears to have been passed not in conformity with the requirement of natural justice in that the same proceeded to rely upon the opinion given by the Assistant Educational Officer and in the absence of communication of such opinion to the 3rd respondent the order passed by the 2nd respondent has to be considered as the one passed in violation of the principles of natural justice. On that view, the learned single Judge thought that the writ of mandamus, being a discretionary remedy, the discretion of this Court need not be exercised at the instance of the appellant. Aggrieved, the above writ Appeal has been preferred.

5. Mr. Chinnasamy, learned Senior Counsel appearing for the appellant while reiterating the stand taken before the learned Single Judge contended that the order of the learned Single Judge, declining to interfere constitute failure to exercise jurisdiction and that in the teeth of statutory provision and mandate contained in Scc.22 (3) of the Act the appellant could not be kept indefinitely under suspension and that at any rate the orders of the 2nd respondent dated 21.4.1994, the 3rd respondent is bound to obey and implement the same, unless the 3rd respondent is able to challenge and obtain stay of the order. Argued the learned Senior Counsel further that it is not open to the 3rd respondent to set up in these proceedings by way of defence any ground of alleged invalidity in the order when the 3rd respondent itself has not chosen to challenge the same in the manner provided under the statute being a statutory order passed by the 2nd Respondent.

6. Mr. K.V. Subramanian, learned counsel appearing for the 3rd respondent school contended that the order of the learned single Judge does not call for any interference and that the decisions relied upon before the learned Single Judge, which found favour of acceptance by the learned Single Judge, squarely support his stand and that therefore the order of dismissal passed by the learned single Judge is well merited in law. The learned Counsel invited our attention to the decisions referred to by the learned Single Judge in the order.

7. We have carefully considered the submissions of the learned Counsel appearing on either side. It is an indisputable fact on record that the appellant was placed under suspension pending framing of charges with effect from 17.12.1992 and, as admitted by the 3rd respondent in its communication dated 15.4.1993 to the 2nd respondent, four months period by which final orders have to be passed expired on 17.4.1993 and that no final orders have been passed, terminating the services of the appellant. Consequently, in view of Sub-section 3 (b) of Sec.22 of the Act, the order of suspension must be considered to be of no force and effect after the expiry of four months from the date of suspension. There is also no controversy over the fact that the delay, if any, is not for reasons which are directly attributable to the teacher in this case. That apart in view of the stalemate created the appellant also appears to have moved the 2nd respondent for orders and by order dated 21.4.1994, the 2nd respondent, who is the competent authority to accord or refuse approval to the request of the School management for termination of the services of a teacher in a Primary School, refused to accord approval and as a consequence of which direct reinstatement too. This order of the 2nd respondent cannot be said to be one passed on any appeal. The order is one virtually and in substance declining approval to the proposal submitted by the 3rd respondent for terminating the services of the appellant. It is therefore futile for the 3rd respondent to contend that the 2nd respondent has no authority to pass such an order. Equally untenable is the stand taken of the alleged violation of principles of natural justice. The Assistant Educational Officer is part of the office of the 2nd respondent and he prepares his remarks on the proceedings submitted by the 3rd respondent to help and assist the 2nd respondent to analyse the matter. According approval is purely an administrative function and the remarks furnished pointing out the irregularities cannot be said to be a document which need be communicated to the 3rd respondent and equally non-communication of the same to the 3rd respondent cannot be considered to be a vitiating factor in respect of the order of 2nd respondent. The remarks of the Assistant Educational Officer does not also appear to furnish any additional material or material outside the record and it cannot be contended that any such additional material outside the record had been relied upon. As noticed supra, the remarks are merely comments on the regularity of the proceedings conducted by the 3rd respondent by way of

assistance to the 2nd respondent to appreciate the matter placed before him. Consequently, the non-communication of the remarks of the Assistant Educational Officer cannot be said to constitute denial of opportunity to the 3rd respondent or for that matter can be said to constitute violation of principles of natural Justice. The contention on behalf of the 3rd respondent that the order dated 21.4.1994 came to be passed on an appeal and a representation from the appellant and the 2nd respondent is not the competent authority for the same needs mention only to be rejected and does not deserve any serious consideration. A mere perusal of the order dated 21.4.1994 does not disclose that it has been made on any appeal or representation by the appellant. The mere mentioning of the letter dated 21.3.1994 as reference No. 4 in the order dated 21.4.1994 cannot be pressed into service to support such a claim inasmuch as nowhere in the proceedings any of such representation of the appellant has been either referred to or relied upon in the body of the order to reject the claims of the 3rd respondent. Apparently the said communication dated 21.3.1994 from the appellant was for early orders and inasmuch as nothing from the said representation have been relied upon in the impugned order, the contention of the 3rd respondent that the order came to be passed on an appeal from the appellant has no merit whatsoever.

8. Learned Counsel for the 3rd respondent relied upon the decision reported in *Kalvi Pani P. Ltd v. The Director of School Education and Ors.*, 1991 WLR 103 to contend that before passing the order, rejecting the request for approval for the termination sought for under Section 22 of the Act, an opportunity ought to have been given to the petitioner to substantiate his claim. We have carefully gone through the decision of the Division Bench relied upon for that purpose and we do not find anything in the said Judgment, warranting the grant of such a right or opportunity to the School Management. The decision of the Division Bench was in the context of the contesting claim being considered by the authority concerned and only in such circumstances it was held that before disposing of the revision filed under the provisions of the Act dealing with contesting claims for the post of Head Master Notice should have been given and an opportunity should have been afforded. So far as the case on hand is concerned, the provisions of Section 22 does not visualise the grant of such notice an opportunity before rejecting the claim for approval sought for by the school management. The fact that such a right

cannot be read into the provisions of Section 22 of the Act is also apparent on account of the fact that the hearing as claimed cannot be confined to the management alone and if the approval merely after hearing the management is granted to the School management to terminate the services of the teacher or other person concerned, it would amount to hearing School management behind the back of the other i.e. the teacher, and passing orders against such person. Therefore, accepting the plea of the 3rd respondent as projected in this case would amount to reading into the provisions the need for a regular hearing being conducted and in our view that is not in the contemplation of the scheme underlying Section 22 of the Act. Therefore, we see no merit in the said conception on behalf of the 3rd respondent.

9. Learned Counsel for the 3rd respondent also placed reliance upon the decision reported in Secretary, Sri Ramakrishna Vidhyalayam High School v. The State of Tamil Nadu and Ors., 1990 W.L.R.62 to contend, relying upon the conclusions arrived at in paragraph 38 of the said judgment, that if the power of approval is not exercised by the authority concerned within a reasonable time, such authority loses his jurisdiction over the matter and he shall not exercise the same thereafter to the prejudice of the School management. The observations of the learned Judge in paragraph 38 of the said judgment are as hereunder:-

'With great respect to the learned Judge, I agree with the observations made by him and apply the principle contained therein to the present case. If the competent authority under Section 22 of the Act does not exercise the power combined with duty to pass orders on an application for approval of the proposed punishment of a teacher within a reasonable time, he loses his jurisdiction over the matter and he shall not exercise the same thereafter to the prejudice of the School management. At any rate, neither he nor the other authorities under the Act will be entitled to find fault with the School management for not getting the prior approval of the competent authority under the provisions of Section 22 of the Act and seek to invalidate the order of termination made by the School management. If after waiting for a reasonable time the School management proceeds to exercise its right to terminate the services of the teacher in terms of the agreement of service between the school and the teacher, it is not open to the authorities under the Act

contend that such a termination is not valid on the ground of non-compliance with the provisions of Section 22 of the Act. Even if it can be said that the language of sub-section (1) is not fully satisfied in such cases, it will be a case of substantial compliance with the provisions of sub-section which will be sufficient in the eye of law to uphold the validity of the termination, subject, of course to other grounds of attack if any against the same. I am of the view that such an order of termination cannot be challenged on the ground that sub-section (1) of Section 22 of the Act has not been complied with.'

10. We have carefully considered the submission of the learned counsel for the 3rd respondent based on the ratio of the above decision. On facts, we find that in the case before the learned Single Judge in the decision reported in *Secretary, Sri Ramakrishna Vidhyalayam High School v. The State of Tamil Nadu and Ors.*, 1990 W.L.R.62, after a particular time the school management passed the order of termination itself and served it on the teacher concerned on the view that the management has waited for sufficient time and since the approval was not forthcoming they are entitled to serve the order of termination. On facts, it may be noticed that in the case before us no such final order has been passed and communicated to the appellant in and consequently it cannot be contended that the disciplinary proceedings have been properly concluded culminating in an order of punishment. Even that apart, with great respect to the learned Single Judge, we are unable to either subscribe to or approve the view taken as expressed in paragraph 38 of the decision referred to supra. The statutory power of approval like the one conferred on the competent authority under Section 22 (1) of the Act to approve or refuse approval of termination of a teacher or other person has been devised as an essential check on the arbitrary exercise of powers by a school management. The stipulation of obtaining approval before termination has been made to safeguard the rights of a teacher or other person under the management of an aided private school and merely because a statutory authority conferred with powers of supervision and control commits a lapse or shows some indifference that by itself is no ground to totally deny and deprive the competent authority of the right to exercise such power for all times to come on account of the initial lapse or delay in so exercising the power of approval. The power conferred under Sub-section(1) of Section 22 of the Act is not for the benefit of the competent authority or the

department concerned, by the Legislature must have thought of such a device more in order to protect a teacher or other employee of an aided educational institution and while that be the position the lapse or the delay on the part of the competent authority in diligently exercising the power cannot have the effect of denying the protection and safeguard statutorily devised in favour of the teacher or other person employed in an aided educational institution. The reasoning of the learned single Judge that if the competent authority under Section 22 of the Act does not exercise the power combined with the duty to pass orders on an application for approval within reasonable time he loses his jurisdiction over the matter and he shall not exercise the same thereafter to the prejudice of the School management cannot be justified while dealing with the nature purpose and character of the powers conferred upon the competent authority under the said provision which would appear to be meant more to protect the teaching or other staff of an aided school. Approving such a ratio merely on the basis of a possible prejudice to the School management would mean totally ignoring the prejudice and damage that may be caused to the teacher or other person concerned for whose protection such a stipulation has been made providing for prior approval before termination of services. If there is any lapse or indifferent attitude exhibited by the competent authority, it is always open to the school management concerned to move the appellate or revisional authorities or this Court under Art.226 of the [Constitution of India](#) to direct the competent authority to discharge his duties expeditiously within a reasonable time. But that is not the same thing as to completely deny the statutory power of approval conferred upon the competent authority so as to efface the statutory stipulation once and for all. Doing so would amount to rewriting a specific statutory provision with a definite purpose in public interest. Further, we are also unable to approve the view expressed by the learned single Judge that though Sub-section (1) is not fully satisfied in cases of the nature dealt with by the learned single Judge, it will be a case of substantial compliance with the provisions of Sub-section (1) which will be sufficient in the eye of law to uphold the validity of termination. The theory or principle of substantial compliance can be applied only in cases or situation which relates to mere observance of certain procedural formalities. The provision contemplated for securing the approval of the competent authority before effecting termination of services of a

teacher or other person employed in an aided School is not a mere procedural formality, but really concerns a substantial restriction on the power of the management of an aided school to dispense with the services of a teacher or other person employed therein at its whim and a corresponding right in the teacher or other person employed in the institution. To put it more crisply it is a condition precedent contemplated by the statute for dispensing with the services of an employee and in respect of such a matter there is no scope for negotiating with rigor of law having recourse to the Principle of substantial compliance. Consequently, we do not approve the ration contained in paragraph 38 of the decision reported in Secretary, Sri Ramakrishna Vidhyalayam High School v. The State of Tamil Nadu and Ors., 1990 WLR 62 and over rule the same.

11. That apart, though the order declining approval was passed by the competent authority as early as 21.4.1994, so far the 3rd respondent management has not chosen to take any steps to challenge the same in a manner known to law either before the statutory authorities stipulated under the Act or before this Court under Art.226 of the [Constitution of India](#). While that be the position, it is not permissible for the 3rd respondent to collaterally attempt to attack the order while opposing the claim of the appellant in this case under Art.226 of the Constitution. The order of the learned Judge countenancing the defence of the 3rd respondent in these proceedings, in our view, does not lay down the correct position of law. The 3rd respondent is not only bound to implement the order of the 2nd respondent dated 21.4.1994, and it cannot also avoid the liability to pay the emolument due to the appellant for the period beyond the expiry of four months from the date of the order of suspension pending framing of charges. The further stand taken by the 3rd respondent on the basis of the letter surrendering the post with the services of the appellant cannot also be countenanced since it is not given to the 3rd respondent to so surrender a post with an incumbent unilaterally and plead it as an excuse for avoiding compliance with the statutory order passed by the competent authority. The said action on the part of the 3rd respondent is merely a ruse to avoid his statutory liability and it only go to show the extent of abuse of powers on the part of the 3rd respondent.

12. For all these reasons stated above, we set aside the order of the learned Single Judge and allow the writ appeal and the writ petition as prayed for with costs in a sum of Rs. 1,000 to be paid by the 3rd respondent to the appellant.

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