

M. Dinakaran Vs. the Director of School Education (Elementary Schools) and anr.

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Court : Chennai

Decided On : Feb-09-1999

Reported in : (1999)2MLJ488

Appellant : M. Dinakaran

Respondent : The Director of School Education (Elementary Schools) and anr.

Judgement :

ORDER

V.S. Sirpurkar, J.

1. The petitioner herein challenges his dismissal from the services as a teacher and contends that the said dismissal being without holding any departmental enquiry or giving any opportunity to the petitioner of being heard is per se bad.

2. Following facts will highlight the grievance of the petitioner. The petitioner was appointed as a Higher Grade Teacher in the institution run by the 4th respondent. He has been working as teacher since 8.11.1961 and was promoted as a secondary grade teacher from 1.6.1976. The school where he was working is a government aided middle school. It is the petitioner's case that it is also governed by the Tamil Nadu Recognised Private Schools Regulations Act, 1973 and Tamil Nadu Recognised Private Schools Regulations Rules, 1974. The petitioner pleads

that since he opposed the irrational and incorrect policies of the 4th respondent school Management, the Management was annoyed with him and as such he was transferred on 3.7.1984 to another school run by the Management. However, his claim is that he was already on medical leave for 30 days from 3.7.1984 itself. The school where he was transferred was named as Good shepherd High School. In his transferred school, he was appointed as a secondary grade assistant in the place of one Thiru V.M. Anthonymuthu who had retired from the services with effect from 1.6.1984. The petitioner was directed to join duty in the school where he was transferred from the forenoon of 4.7.1984. The petitioner claims that he objected to his transfer on various grounds including the loss of seniority. He also contended that the transfer was made without consent and such consent was necessary because the transfer was from the Middle school to the High School. He also objected to the direction that he should undergo the period of probation in the transferred school as if he was newly appointed teacher in the said school. He also claimed that he would have to suffer monetary loss and last but not the least, he said that there was absolutely no reasons for his transfer, probably meaning thereby that the transfer was mala fide. According to the petitioner, he had sent his objection by Registered post on 17.7.1984 during the period when he was on medical leave.

3. This objection was taken before the third respondent, who, however, by his reply dated 13.9.1984 informed that the third respondent could not interfere with the transfer, since this was a minority school. The petitioner claims that thereafter, the Deputy Inspector of schools, Coimbatore had orally informed him that the transfer order was cancelled by the 4th respondent on 21.11.1984 and that he should, therefore, present himself before the 4th respondent management. The petitioner further claims that he was, however, not allowed to join the school where he was already working and in fact, the management had filled up the vacancy in the Goodshepherd school where he was transferred, thereby the petitioner was prevented from joining the said transferred school and he was not being allowed to join the original middle school where he was already serving. It is his claim that it was only on 2.7.1985 that the 4th respondent again sent a letter stating that the petitioner was transferred to Goodshepherd Elementary school and he was directed to join before 12.7.1985. However, this transfer order was not sent to the

Headmaster of the Goodshepherd Elementary School by the 4th respondent, with the result the petitioner, could not join that school. In short, according to the petitioner, he was tossed from one school to another without being allowed to join any of the schools run by the management. He then claims that the 4th respondent terminated the services by its order dated 30.12.1985 yet, the order was posted by the 4th respondent only on 21.3.1986 and was received by the petitioner on 22.3.1986. According to the petitioner, strangely enough in this order, it was stated that the petitioner had not joined duty on or before 12.7.1985, though he was so informed and, therefore, his services were being terminated permanently. The petitioner thereafter filed an appeal against the order of termination before the 2nd respondent, However, no order came to be passed and, therefore, a legal notice was sent on 19.6.1986. He further claims that the 3rd respondent invited the attention of the fourth respondent. The petitioner claims that thereafter, he sent half a dozen reminders on various dates, the last being on 1.8.1987. He was, therefore, driven to file a writ petition it being W.P.No. 11527 of 1987. The writ petition was however dismissed on the ground that the petitioner had straightaway impugned the order of termination from the services passed by the 4th respondent, though on appeal against the order was in fact preferred by the petitioner to the 2nd respondent 14.4.1986. In short, the petitioner was directed to prosecute the appeal which he had filed on 14.4.1986. He further points out that the 2nd respondent however dismissed the appeal basing its decision on the Division Bench judgment of the High Court which held that the appeal provisions were not available in case of a minority school. It was on this background that the present writ petition was filed since the petitioner was left with not other remedy to challenge the said dismissal. The petitioner contends that right from 19.9.1985 there has been unprecedented persecution of the petitioner and he is without job or any salary.

4. The main contesting respondent in this petition i.e., the school Management opposed this writ petition on the ground that firstly the writ petition is not maintainable it being a private institution and secondly on merits. According to the respondents though the petitioner was given umpteen chances to join at the transferred schools he had deliberately avoided to join the school where he was transferred and, therefore, the school management was left with no other

alternative but to terminate the services. It is haltingly suggested by the management that though not in the usual form an enquiry was in fact conducted wherein the petitioner himself agreed to join the school where he was transferred and even thereafter, he did not choose to join at all, giving no scope for the management to take any alternative course, Further, the petition is opposed on the ground that the petitioner cannot now be allowed to be reinstated nor can any backwages be ordered in favour of the petitioner as the dismissal was because of his own. On these rival consideration, it will have to be seen as to whether the following questions fall for consideration:

1. Is the petition tenable?
2. Whether the petitioner's dismissal is wrongful and illegal?
3. If the answer to the second question is in the affirmative. What is the relief that can be granted to the petitioner.
5. Question No. 1: The learned Counsel appearing on behalf of the 4th respondent very strenuously suggested that the writ petition is not maintainable since the petitioner had essentially asked for a writ against a private institution for being reinstated. The learned Counsel further pointed out that under Article 226 this Court could not direct a private institute like the 4th respondent to reinstate the petitioner. According to the learned Counsel, therefore, the Writ petition itself was liable to be rejected at the threshold. In support of his contention, the 4th respondent's counsel relied on firstly the judgment reported in *Kulachhinder Singh v. Hardy Singh*, (1976)2 L.L.J. 204, where the Apex Court has held that a contractual obligation cannot be enforced through a writ petition against the co-operative society. The learned Counsel pointed out that under the present scheme of the Tamil Nadu Recognised Schools (Regulation) Act, 1973 and more particularly under Rule 15(2) thereof, every teacher of a private school was required to enter into an agreement in Form VII(A) or VII(B). The learned Counsel also further pointed out that this was a minority school and the petitioner had actually entered into the said agreement which provided in Clause 7 that the school committee shall not dismiss, remove or reduce in rank or terminate the service of the teacher without informing him in writing of the grounds and without

following the procedure. According to the learned Counsel, even if it was held that this procedure was applicable to the minority school, what the petitioner was contending in this petition was that he had a right of being heard and he could not be terminated without holding a proper enquiry. According to the learned Counsel, in this, the petitioner was simply trying to enforce the agreement against the 4th respondent which is a minority institution, The learned Counsel therefore, argues that such exercise was not possible by way of a writ petition. In that view, the learned Counsel very heavily relied upon the aforementioned case. It is an admitted position that the petitioner has entered into an agreement as required by the rules under the Private Schools Act and that the said agreement does provide for holding of an enquiry as contemplated in Clause 7(a), (b), (c) and (d) thereof. However, it cannot be said that what the petitioner was asking was only enforcement of contract. The ruling cited is of no assistance to the 4th respondent management as firstly the facts show that an employee of Punjab State Co-operative Land Mortgage Bank had challenged the proposed promotion by the Bank in violation of the quota of 75% in favour of the promotees. The Apex Court however held that the appellant was seeking merely to enforce an agreement entered into between the employees and the co-operative bank. It observed that the writ petition sought enforcement of a binding contract which was not available by way of remedy under Article 226. The following observations, however, are telling. They are, 'we are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty'. In the reported decision, the said agreement did not flow from a statute, However, in the present case the agreement is required to be entered into (Vide: Rule 15) and thus the agreement has a statutory force. The case, therefore, is clearly distinguishable and cannot be relied upon by the 4th respondent to canvass that the writ petition was not maintainable.

6. The second authority relied upon by the learned Counsel for the 4th respondent Management is reported in *Tamilarasan v. The Director of Handlooms and Textiles* (1989)1 L.L.J. 588. Here also the Apex Court has held that a writ against a co-operative society was not maintainable as the co operative society could not be held to be a 'State' within the meaning of Article 12. I am afraid, the judgment is totally irrelevant as we are not dealing with the co-operative society here.

Therefore, this judgment will also be of no help to the 4th respondent.

7. Now it has to be considered in this behalf that it is now a settled law that the writ petition could lie even against a private educational institution, if the said institution is required to do a statutory duty. The ruling in *Unnikrishnan v. State of A.P.* : [1993]1SCR594 , has settled the issue forever. As has already been pointed out, the school, though a minority school, gets the grants of the Government and is required to be recognised by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. It is also required to keep and maintain the basic standards, the norms of which have already been fixed and under the Act, the authorities of the Education Department retain adequate control in so far as those norms are concerned. Such schools, even if they are minority schools, cannot be allowed to be run without adhering to the basic standards of education and without answering to the basic standards of education and without providing for the necessary implements and facilities to the students. So also, such schools are required to maintain a proper standard of education by appointing qualified teachers and are also required to enter into the agreement with them to ensure their safety in the job as also to safeguard the interests of the teacher so that such teachers do not become prey to the arbitrary attitude of the management. The agreement, therefore, enjoins a duty in the private management which is of a statutory nature. If that be so, the writ petition against a management has to be held maintainable.

8. The learned Counsel for the 4th respondent Management also relied upon the ruling in the decision reported in *Tiwari v. Jawala Devi Vidya Mandhir* : AIR 1981 SC122 , and more particularly the observations therein to the following effect:

The regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to respondent 1 and if the provisions thereof are violated by respondent 1, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the educational grant payable to the institution. That does not, however, mean that respondent 1 is a public or a statutory body.

I am afraid, the observations are being read out of context, This was not a case where the Apex Court was examining the question as to whether a writ petition under Article 226 against such an institution was maintainable or not. These observations were made in entirely different context, that is, to examine whether the appellant who was wrongfully terminated could claim a reinstatement or whether such person was only entitled to the damages. The ruling, therefore, is of no help to the 4th respondent.

9. It has already been held by the Division Bench of this Court in Sampathu v. Chief Educational Officer (1989)2 M.L.J. 263, that Rule 15(2) of the Tamil Nadu Recognised Private Schools (Regulation) Rules was applicable even to the minority schools and a writ petition concerning the agreement entered under Rule 15 of the Rules is maintainable. This ruling which is relied upon by the petitioner is applicable on all fours. The Division Bench has also made a specific reference to the rulings of the Supreme Court regarding the minority institutions, they being (i) Frank Antony Public School Employees Association v. Union of India and Ors. : [1987]1SCR238 ; (ii) The Clamma v. Union of India and Ors. : [1987]2SCR974 ; (iii) CMC. Hospital Employees Union and Ors. v. CMC. Vellore Association and Ors. (1981)1 L.L.J. 263. Astray reference was made even to the following case reported in The Rajasthan State Road Transport Corporation and Anr. v. Krishna Kant (1995)2 L.L.J. 928, where the facts of the case are entirely different and have no reasonable nexus with the questions involved regarding the tenability of the writ petition, similarly, a Division Bench judgment of this Court reported in C. Lakshmiah Reddiar v. The Sriperumbadur Taluk Co-operative Marketing Society Ltd. : AIR1962 Mad169 , was relied upon to suggest that the writ petition against a co-operative society was not tenable that not being a State. There can be no dispute about the proposition. However, we are not concerned with the question of a writ against a co-operative society in this writ petition. The ruling is therefore, of no consequence. Ultimately, the answer to the first question, therefore, has to be given in the affirmative.

10. Question No.2: The answer to this question depends on the factual scenario. The petitioner was appointed as back as on 8.11.1961 and was also given a promotion as a secondary Grade Teacher on 1.6.1976. He came to be transferred

to another school on 3.7.1984 of the 4th respondent management and the petitioner's claim is that he was transferred to one Goodshepherd High School and he was transferred in place of one V.M. Anthony muthu, who had retired from Goodshepherd school from 1.6.1984. The petitioner's further case is that he objected to the transfer mainly on the ground of loss of seniority and he also pleaded that the transfer was made without consent particularly because the transfer was made from the Middle school to the High School. Again he pleaded that he should undergo the period of probation in the transferred schools as if he was newly appointed teacher and would suffer a monetary loss and last but not the least, he claimed that there was no reason for the said transfer. He claims that he sent an objection to the transfer by 'Registered Post' on 17.7.1984 when he was on medical leave. There does not appear to be any serious objection to the fact that an objection was raised. The objection was taken up before the 3rd respondent who by his reply dated 3.9.1984 informed that the 3rd respondent could not interfere with the transfer, since this was a minority school. The petitioner's claim is that thereafter, the Deputy Inspector of Schools, Coimbatore had orally informed him that the transfer order was cancelled by the 4th respondent on 21.11.1984 and, therefore, he should present himself before the 4th respondent management. His claim is that though he was present himself, he was not allowed to join the school and the management had filled up the vacancy in Goodshepherd School also where he was transferred. Thus, the petitioner was out of his original school as well as the transferred school. There is also a letter on record to suggest that on 2.7.1985 the 4th respondent again sent a letter stating that the petitioner was transferred to Goodshepherd Elementary School and that he should join before 12.7.1985. However, it is the claim of the petitioner that this letter was not sent to the Headmaster of the Goodshepherd Elementary School, with the result that the petitioner could not join that school also. In short his claim was that he was tossed from one school to another without being allowed to join in any of the schools run by the 4th respondent Management. Ultimately, he received an order on 22.3.1986 which is passed on 30.12.1985 suggesting that his services were terminated with effect from 30.12.1985. It will be necessary to go through the order of termination which has been placed on the records of the writ petition. The order simply suggests that the petitioner was permanently terminated from the

services as in spite of the letter dated 2.7.1985 he had failed to join the duty on or before 12.7.1985. The letter suggests that in the last letter dated 2.7.1985, he was informed that he would lose his post if he does not join the duty on or before 12.7.1985.

11. Prima facie a look at the letter does not show as if this was as a result of any departmental enquiry. There is nothing on record to suggest that firstly the Enquiry Committee was constituted and that the petitioner was informed that an enquiry was going to be held for his alleged absence from the duty. Now the agreement with the petitioner which is in Form No. VII-A, suggests that for taking an action of dismissal, removal or reduction in rank or termination in service, a procedure has to be followed as given in Clauses 7(a), (b), (c) and (d), wherein it is provided that the memorandum of charges has to be communicated to the teacher in writing and reasonable time has to be given calling for his explanation. The explanation given by him has to be considered and the school committee has to communicate the findings regarding the explanation. If necessary, the teacher has to be given a personal hearing or enquiry and he has to be given an opportunity to examine or cross-examine any or all the witnesses and he also should be given an opportunity to produce the witnesses of his own, The procedure further suggests that the report of the personal hearing or enquiry has to be furnished to the teacher and a notice has to be issued to him about the proposed punishment and he has to be given a reasonable time to defend himself against the proposed punishment and it is only after receipt of the statement of defence from him and after considering the same, the school committee has to take its final decision. Now, such procedure is conspicuously absent in the present scenario. The learned Counsel appearing for the 4th respondent management very strenuously urged that in fact, there was an attempt to hold an enquiry and it was only the petitioner who chose to remain absent all through. There does not appear to be anything on record to suggest that the petitioner was ever informed of the decision of the school committee to hold any enquiry against him and or to punish him for his so balled absence. On the other hand, it is apparent from the documents filed by the petitioner that first the petitioner was transferred and when he objected to his transfer, he had to run from pillar to post and even failed in his attempt to convince the officers under the Private Schools Act on the specific grounds that he was a teacher in the minority

school and as such, the authorities had no jurisdiction to do anything. The school authorities have not been able to bring anything on record to suggest that the school Authorities at least made an attempt to hold any enquiry before deciding to terminate his services. The learned Counsel appearing for the 4th respondent management tried to justify the order suggesting that in spite of the notices, the petitioner never chose to attend either the original school or Goodshepherd school where he was allegedly transferred. However, there is no serious challenge to the factual assertions on the part of the petitioner that he had no opportunity to join either the original school or the school where he was transferred. A letter dated 2.7.1985 was pressed into service wherein it is suggested by the Correspondent of St. Mary's Middle School, Gandhipuram, Coimbatore that in spite of the assurance given to the petitioner that he would not suffer any monetary loss as a result of transfer he had not joined the duty even after a lapse of one year and that he had not obeyed the orders of the management and he has been disobedient to the superiors and, therefore, the management levelled the charge under para 7 of Teachers Agreement Form wilful neglect of duty and serious misconduct. However, in this very letter in paragraph 2, the said Correspondent has taken some interest and has offered that on a humanitarian consideration and by extending sympathy, the petitioner was given a final chance to join duty again on 12.7.1985 at Goodshepherd school. Prior to this, the management also sent him a letter dated 27.6.1985, where it is contended that the petitioner would not incur any monetary loss or lose his position in seniority because, of the transfer. The petitioner's case is that though he was directed to join the Goodshepherd school, the copy of this order was not sent to the Headmaster of the Goodshepherd school, with the result the petitioner was not allowed to join at that school at all, The petitioner has asserted in paragraph 9 of his affidavit that though he was directed to join the Goodshepherd Elementary school on or before 12.7.1985, the said transfer order was never sent to the Headmaster of the Goodshepherd Elementary school and in spite of his repeated requests, the 4th respondent deliberately failed to send the order to the Good Shepherd Elementary school, with the result he could not join the said Goodshepherd school, I am afraid this factual assertion has not been countered at all. In the name of the so called enquiry, the 4th respondent has merely put on record some letters warning the petitioner that

his failure to join the transferred school would entail in his termination. The letters dated 5.9.1984, 26.9.1984 as also dated 16.11.1984 and 20.3.1985 merely suggested that the 4th respondent management was considering an action against the petitioner for his not joining. The learned Counsel very heavily relied upon the letter dated 20.3.1985 and more particularly pointed out that in paragraph 9, it was suggested herein that he had failed to avail the time given to him by the management from 3.8.1984 to 20.3.1985 and, therefore, the Management had levelled the charges against him for disobedience, deliberate negligence of duties, showing disregard to the letter of the management and having attitude of disrespect to the management as also failure to show interest in the welfare of the students, disregarding the advice of the superiors. The learned Counsel points out in paragraph 12 of the letter dated 20.3.1985 that the petitioner was asked to show cause within fifteen days as to why he should not be removed from service for the reasons stated above, the learned Counsel, therefore, wants this Court to consider this as a notice regarding the final punishment under Clause 7(c) and (d).

12. Now, as a matter of fact, the Sub-clause (c) and (d) of Clause 7 would operate only after firstly the management holds a proper enquiry and gives complete notice to the petitioner in that behalf. The petitioner has already pointed out that no such notice was ever given to him declaring the intention of the management to hold an enquiry against the petitioner as also that even after this letter, the management has chosen to write a letter dated 2.7.1985 giving him an opportunity to join the Goodshepherd school, but the management had not chosen to send that order to the Headmaster of the Goodshepherd school. In fact, a letter dated 27.6.1985 would wipe out the effect of the letter dated 20.3.1985. even if the letter dated 20.3.1985 is considered to be a notice. I have already stated as to how the letter dated 20.3.1985 cannot be deemed to be a notice contemplated by Clause 7 of the Agreement, since the management had failed to hold an enquiry and give any opportunity to the petitioner. Again by the letter dated 2.7.1985 whatever little opportunity was given to the petitioner seems to have been wiped out, because the 4th respondent management had again taken the decision to allow the petitioner to join duty without however sending the order to the Headmaster of the Goodshepherd High school. Thus, there appears to be only an attempt on the part of the management to create only a record and create a show of having held an

enquiry. The whole action of the 4th respondent management appears to be as a result of a stubborn attitude on the part of the management to any how terminate the petitioner. As has already been suggested, the management has made no efforts to adhere to the principles of enquiry as laid down in Clause 7 of the Agreement. It kept on merely sending letters without actually allowing the petitioner to join the duties and not only this but the petitioner was driven from pillar to post in vain without getting any relief. It has to be, therefore, held that the termination of the petitioner by the management brought about finally is basically incorrect and illegal. The learned Counsel tried to suggest that there cannot be any hard and fast rule regarding the enquiry and that the school being a minority school, the management was entitled to hold an enquiry in the manner it deemed fit. I am afraid, the contention is completely unfounded. Clause 7 of Form VIIA does provide the guidelines for holding an enquiry. There does not appear to be any formation of a school committee for holding the enquiry as is required by Clause 7. Again, there does not appear to be any opportunity provided to the petitioner. Even the copy of the enquiry report which is required to be furnished to the petitioner, is not so furnished. There is no notice given to the petitioner that the enquiry was actually held and as a result of that, the punishment of termination was proposed.

13. The learned Counsel for the petitioner invited by attention to the reported decision in *Managing Director, E.C.I.L. v. B. Karunakar* : (1994)ILLJ162SC , where the Apex Court has pointed to the basic principles of natural justice which are to be followed in a departmental enquiry. A perusal of the documents before the court suggests that no principles of natural justice were even observed by the 4th respondent before terminating the petitioner. A mere exchange of letters and a mere warning do not amount to holding of an enquiry. Here, it has already been pointed out that even those letters have been contradictory to each other. There does not appear to be any opportunity provided to the petitioner to put forth his own witnesses. There were no witnesses examined nor any opportunity given to the petitioner to even know as to what were the charges against him. The 4th respondent merely went on sending letters to the petitioner which too were of a contradictory nature. It has to be, therefore, held accordingly and the second question has to be answered in favour of the petitioner.

14. Question No. 3: This leaves me with the third question as to what relief the petitioner is entitled to. Considering the age of the petitioner, there cannot be any reinstatement directed even if the said termination order is ordered to be set aside as the petitioner has already reached his age of superannuation as per the rules. The learned Counsel for the petitioner strenuously pointed out that right from 1984, the petitioner has been engaged in this lengthy legal battle and 15 years of his life has been wasted during which he has been a jobless person. There is nothing put on record to suggest that the petitioner has been jobless during all these years. The learned Counsel, prayed that the petitioner was entitled to a declaration that he was wrongfully terminated and as such he was liable to be reinstated with all the backwages. The learned Counsel appearing on behalf of a declaration that he was wrongfully terminated and as such he was liable to be reinstated with all the backwages. The learned Counsel appearing on behalf of the 4th respondent management, however, heavily relied upon the Supreme Court judgment reported in *J. Tiwari v. Jwala Devi Vidyar Mandir* : AIR 1981 SC122 , to suggest that under the ordinary law of master and servant the petitioner could not claim reinstatement with backwages. The Supreme Court in the said judgment observed as follows:

We may further assume that since this procedure was not followed by the society, the order terminating the appellant's service is unlawful. But the appellant is an employee of a private institution and their mutual rights and obligations are governed by the terms of the contract, Ex.1, which was entered into by them in 1953, since under those terms the appellant's services were liable to be terminated on three months notice, all that she would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of her services she continued to be in service. The judgment of this Court in *Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain* (1976)2 S.C.C. 58, is a direct authority for this conclusion.

15. Relying heavily on this judgment, the learned Counsel for the 4th respondent management contended that even under the present agreement, the same situation would be applicable inasmuch as under Clause 9 of the Agreement, a

teacher is entitled to have his services terminated by giving three months, notice to the school committee. Now obviously, the line of the agreement will not apply at all as Clause 9 speaks about the teachers entitlement to leave the job with 3 months notice. It was not a right provided to the management to terminate the services of a teacher at its own will. Even in Clause 8 it is provided that it will be open to the School Committee to terminate the services of the teacher only if it is satisfied on medical evidence that the teacher is unfit to discharge his duties on account of his ill health. Otherwise, the right to terminate the teacher under the agreement is only not allowing the teacher by completing the probation. In short, there is nothing in the agreement which entitled the school committee to simply terminate the services of a permanent teacher by giving three months, notice. The ruling relied upon by the learned Counsel for the petitioner is of no consequence. On the other hand, it will be found that Clause 7 prohibits termination of a teacher without adopting the procedure given in Sub-clauses (a), (b), (c) and (d) of Clause 7. The contention of the 4th respondent's counsel that the petitioner would be entitled to at the most three months of salary would, therefore, be of no consequence, at least, on the basis of the rulings relied upon by him. The ruling, therefore, is of no consequence. The 4th respondent's counsel then pointed out the ruling of this Court reported in *R. Rajamanickam v. Indian Bank* (1981)2 L.L.J. 367, where the learned single Judge of this Court has upheld the principle of 'no work, no pay'. The learned Judge, Nainar Sundaram, J. has suggested in paragraph 24 that where the employees abstained from the work illegally and where the respondent back did not acquiesce in the breach of contract, it would justify in not paying the wages for that day. This ruling is obviously not applicable as it has been held that the workers were not justified in abstaining from the work. In our case, that is not the factual situation here, it has been found as a matter of fact that the management had failed to hold an enquiry and illegal terminated the petitioner. The learned Counsel for the 4th respondent also relied upon the reported ruling by the Apex Court in *Bank of India v. T.S. Kelawala* (1990)1 L.L.J. 39. The ruling is in the same tune to the effect that where the workers were not justified in abstaining from working and where there were no justification for such a strike and the employer is entitled to deduct the wages proportionately for the period of absence or for the whole day. The principles stated in the ruling cannot be made applicable

as the factual scenario in our case is totally different. The learned Counsel also suggested, relying on the reported ruling of the Apex Court in *State of Punjab v. Haribhajan Singh* : (1996)11LLJ636SC, where the departmental enquiry was found to be defective, the relief of reinstatement and backwages was not automatic and that the matter was required to be remitted to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. The learned Counsel pointed out that the Supreme Court had disallowed the backwages granted by the High Court. It will be worth seeing that in this case the appellant was dealing with a defective enquiry. However, this is not a case of defective enquiry. In fact, this is a case of no enquiry whatsoever. As has already been pointed out, the management at no point of time has ever held any enquiry whatsoever and has proceeded merely to terminate the petitioner. The reported ruling is of therefore, no help to the 4th respondent. Lastly, reliance was placed on the judgment reported in *Lilly Kurian v. The University Appellate Tribunal* J.T. (1996) 2 S.C. 565 : (1996)3 S.C.C. 565. The Supreme Court has held that the petitioners employee has no right of appeal and the institution being a minority institution the sections creating that right were held to be unconstitutional. Now, we are not dealing with that aspect here as no similar provisions have fallen for consideration in this matter. The petitioner's counsel however, pointed out that considering the lengthy legal battle, the petitioner is held entitled to a compensation. Considering the facts in the light of these rulings, it will have to be seen as to what relief the petitioner is entitled to. Now it is an admitted position that the petitioner cannot be reinstated. At the same time, it cannot be forgotten that there is nothing on record to suggest that all these years, he has been without a job. There cannot be any dispute that here the petitioner could have claimed reinstatement because the management having a statutory duty, had acted in breach of violation of the mandatory provisions of the statutes viz., Rule 15 of the Tamil Nadu Recognised Private Schools Regulations Rules, 1974 as also the agreement which was the outcome of the statute. However, a due consideration will have to be shown to the fact that there has actually been no service for all these years and further that the school is a minority school and would have to meet its liabilities not from the state funds but from its own. In that view, it will be reasonable to grant a compensation instead of a relief of full backwages. The

petitioner was left with eight years of service when he approached this Court in the year 1988 and he was out of job for about three years prior to that. Thus, he would have ordinarily had the tenure of about eleven years when he was served with the termination order. Though his case is that the management has stopped paying him even one year earlier from 1983 when he was transferred in the month of July. Considering the over all circumstances, I am of the opinion that the petitioner would be entitled to 50% of the backwages which shall be so calculated and be payable to the petitioner. The petitioner, therefore, stands allowed and the order of termination is set aside. However, under the circumstances since the petitioner cannot be reinstated owing to his age, he would be entitled to half of the backwages which will be calculated and paid to the petitioner within six months from today. No costs.

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