

P. Saraswathy Vs. the District Elementary Educational Officer,

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SooperKanoon Citation : sooperkanoon.com/839044

Court : Chennai

Decided On : Jun-05-2007

Reported in : (2007)5MLJ155

Judge : K. Raviraja Pandian and ;P.R. Shivakumar, JJ.

Acts : Tamil Nadu Private Schools (Regulation) Act - Sections 21(1), 22 and 22(3)

Appeal No. : Writ Appeal No. 93 of 2007

Appellant : P. Saraswathy

Respondent : The District Elementary Educational Officer, ;The Assistant Elementary Educational Officer and ;the

Advocate for Def. : R. Janakiramuan, Special Government Pleader for Respondent Nos. 1 and 2 and ;A. Thirumurthy, Adv. for Respondent No. 3

Advocate for Pet/Ap. : G.R. Swaminathan, Adv.

Disposition : Appeal dismissed

Judgement :

K. Raviraja Pandian, J.

1. Questioning the correctness of the order dated 05.03.2007 made in writ petition No. 1940 of 2007 this writ appeal is filed. In the said writ petition, the

appellant/petitioner has sought for issuance of writ of mandamus to call for the records relating to the order made in memorandum No. 2 dated 26.02.2007 passed by the third respondent, whereby the appellant was placed under interim suspension for certain charges levelled against her. That order of memorandum dated 26.02.2007 was put in issue by contending that the order impugned in the writ petition is violative of Section 22(3)(e) of the Tamil Nadu Private Schools (Regulation) Act, in the sense that interim suspension can be passed only when certain action is contemplated and not thereafter. To put it precisely, such an order can be passed only at the stage of contemplation of action and not beyond that. Hence, the order of suspension is without jurisdiction. The other contention for assailing the impugned order was that the impugned order has been passed initially without serving the charge memo dated 23.11.2005.

2. The learned single Judge non suited the petitioner on both the grounds by stating that the provisions under Section 22(3) of the Act cannot be strictly construed as contended by the learned Counsel for the petitioner. It is well open to the respondents to place the teacher or any other person under suspension even after the contemplation of the enquiry. Like that, the other contention that non serving of the charge memo has also been negated on the ground that the explanation submitted by the appellant on 28.11.2005 falsifies the above statement.

3. Mr. G.R. Swaminathan, learned Counsel for the appellant reiterated what is stated above. In addition to that, he contended that the impugned order cannot be regarded as an interim suspension but it should be regarded as a suspension which is punitive in nature. Assaulting the contention of the learned Counsel for the petitioner, Mr.Thirumurthy, learned Counsel for the respondent submitted that there is absolutely nothing to be adjudicated in the writ appeal because of the subsequent development. He contended that after the disposal of the writ petition, enquiry has been initiated during March 2007. The period of suspension stated in the order which is impugned in the writ petition has already been expired. When that being the position, the correctness or otherwise of the order of suspension need not be gone into. If the appellant participates in the enquiry the period spent on suspension would be regulated according to the outcome of the enquiry.

4. We heard the learned Counsel on either side and perused the materials available on record.

5. Section 22(3) (a) and (b) of the Act read as follows:

Section 22. Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools:

(1) ...

(2) ...

(3) (a) No teacher or other person employed in any private school shall be placed under suspension, except when an inquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under Sub-section (1) of Section 21, of such teacher or other person is contemplated.

(b) No such suspension shall remain in force for more than a period of two months from the date of suspension and if such an inquiry is not contemplated within that period, such teacher or other person shall, without prejudice to the inquiry, be deemed to have been restored as teacher or other employee:

Provided that the competent authority may, for reasons to be recorded in writing, extend the said period of two months, for a further period not exceeding two months, if in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person.

6. From the conjoint reading of Clauses (a) and (b) particularly (b), with the proviso thereto, it is clear that no suspension shall remain in force for more than a period of two months, if, in the opinion of such competent authority, the inquiry could not be completed within the said period of two months for reasons directly attributable to such teacher or other person. That would imply that though Clause (a) of Sub-section (3) of Section 22 ended with the terms 'is contemplated' the restricted meaning as argued by the learned Counsel for the appellant cannot be given.

7. It is well settled principle of law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved vide *Prakash Kumar v. State of Gujarat* : 2005 CriLJ929 . Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be read in isolation. vide *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* : [1987]2SCR1 . It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. Vide *Anwar Hasan Khan v. Mohd. Shafi* : AIR 2001 SC2984 .

8. Hence, we find that there is no force in the argument of the learned Counsel that the above said provision empowers the college to place a teacher or any other person under suspension only at the stage of contemplation of enquiry and not subsequently.

9. The other factual contention that the charge memo has not been duly served has been rejected by the learned single Judge by stating that the petitioner has given a reply to each and every one of the charges by her explanation dated 28.11.2005. That being a factual finding, we cannot interfere with that.

10. The last of the contentions is that the impugned order is punitive in nature. That argument, it is stated as an elaboration of the argument made before the learned single Judge. On an entire reading of the order, we are not able to find such an argument has been advanced. Learned Counsel for the appellant submits that the above said contention has been taken as ground (b) in the affidavit filed in support of the writ petition. That may be true. Several grounds might have been taken in the grounds. But it cannot be said that all the grounds so taken have been argued and decision arrived at could only be seen from the reasoning given in the order. If we see the impugned order the contention that the order of suspension is punitive in nature has not been argued before the learned single Judge. It is manifestly clear that the impugned order that the two points that have been raised are answered. The point that the suspension is punitive in nature, though has been taken as a ground in the writ petition, was not argued. Hence, we are not inclined to allow the appellant to argue that point before us, which has not been argued by the learned single Judge.

11. In addition to that, the enquiry proceedings have been initiated and in view of the subsequent development we are of the view that we need not delve deep into this matter any further. It is well open to the appellant, to come out with the flying colours in the enquiry by facing it.

12. For the reasons stated in the foregoing paragraphs, the writ appeal is dismissed. No costs.