

The Secretary Vs. Vanideswari

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Court : Chennai

Decided On : Feb-29-2012

Judge : Chitra Venkataraman; R.Karuppiah, Jj.

Appeal No. : Writ Appeal (MD) Nos.98 of 2012 and 130 of 2012 W.A.(MD)No.98 of 2012

Appellant : The Secretary

Respondent : Vanideswari

Advocate for Def. : Mr.M.Govindan, Adv.

Advocate for Pet/Ap. : Mr.S.Seenivasagam, Adv.

Judgement :

COMMON JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN, J.)

1. The Management as well as the delinquent teacher are on appeal before this Court, as against the order passed by the learned single Judge in W.P.(MD)Nos.11602 of 2011 and 8998 of 2011, dated 10.12.2011. W.A.(MD)No.98 of 2012 is filed by the Management and W.A.(MD)No.130 of 2012 is filed by the delinquent teacher.

2.For the purpose of convenience, the status as shown in the writ petitions are maintained in this appeal.

3.The delinquent teacher is the petitioner in both the writ petitions. W.P.(MD)No.11602 of 2011 was filed for issuance of a writ of certiorari to quash the order of the Secretary, Buddha Middle School, Periyakulam, appointing an Enquiry Officer, by proceedings dated 24.09.2011. W.P.(MD)No.8998 of 2011 is regarding challenge made to the proceedings dated 18.07.2011 sustaining the writ petitioner consequent on certain allegations and pending the enquiry.

4.The facts herein are that the writ petitioner is a Graduate teacher working in the first respondent school since the year 2008. Complaining about the misconduct of the Headmaster of the school, along with the other women teachers working therein, the writ petitioner gave a complaint to the District Educational Officer, Theni. Coming to know about the complaint, the Secretary and Headmaster of the school stopped signing the loan papers submitted by the writ petitioner. The writ petitioner lodged a complaint against the first respondent as well as the Headmaster too, alleging misconduct and harassing women teachers working in the school. Based on the investigation, the Additional Superintendent of Police, Theni District, came to the conclusion that the complaints were not substantiated, and the enquiry revealed that the writ petitioner had made false complaints and that the enquiry with the public and students revealed that the school is run well under the new Management since the date of purchase by the present Management in the year 2008, and that the writ petitioner had been making complaints against the school at the instigation of a rival group. It is a matter of record that proceedings were initiated against the writ petitioner to conduct enquiry as to the alleged misconduct of the writ petitioner. Having regard to the same, by the proceedings of the first respondent, the writ petitioner was placed under suspension on 18.07.2011. A reading of the same shows that the writ petitioner has been indulging in giving false complaint to the District Educational Officer as well as to the students and parents, which, according to the Management, is highly prejudicial to the interest of the students as well as to the school. Thus, the School Committee invoked Section 18(c) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, to suspend the petitioner and initiate disciplinary

proceedings. In terms of the said decision, notice was issued on 18.07.2011, calling upon the petitioner to give her explanation and thus kept her under suspension since 18.07.2011 and she was advised not to attend classes.

5. In terms of the suspension thus ordered, the school also appointed an Enquiry Officer, who is stated to be an Advocate by profession. On 24.09.2011, notice was issued by the Enquiry Officer informing the date of hearing. The petitioner appeared on 03.10.2011 before the Enquiry Officer and gave a letter wherein she sought the assistance of an Advocate to defend her case. By proceedings dated 03.10.2011, the Enquiry Officer rejected the said plea of the petitioner, on the ground that the representative of the Management is not a legally trained personnel. Immediately, thereafter, the petitioner approached this Court by filing W.P.(MD)Nos.11602 and 8998 of 2011. A perusal of the affidavit filed in support of the writ petition shows that, the challenge made therein, was with reference to the appointment of Enquiry Officer on the ground that the appointment was not subject to the prior approval obtained from the School Committee. According to the petitioner, there was no School Committee functioning and consequently, the assumption of jurisdiction by the Enquiry Officer is bad in law. As far as the suspension order passed by the first respondent is concerned, the petitioner contended that there being no School Committee, the suspension and other proceedings are bad in law and in any event, as per Section 22(3) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the petitioner could be placed under suspension only for a period of 60 days and beyond that, to the maximum of 2 months, subject to the Management recording reasons for the same. The petitioner contended that since there is no such valid approval either for suspension or for further prolonging the suspension in accordance with the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the suspension order has to be quashed. As regards the Enquiry Officer's order, there is no direct challenge at all. However, the petitioner stated that the enquiry if permitted, would only result in findings which practically would be as per the dictates of the school Management only. In the circumstances, the present allegations are made. On hearing the parties, learned single Judge pointed out that Section 22 deals with order of suspension pending enquiry. As far as the dismissal, removal or reduction in rank or suspension of teachers or other persons

employed in private schools, are concerned, the same have to have the prior approval of the competent authority and the competent authority should satisfy that there are adequate and reasonable grounds for taking the proposed action. Thus, learned single Judge pointed out that as far as the suspension of teachers is concerned, as per Section 22(3)(b), prior approval of the School Committee is mandatory. Learned single Judge held that, when the Act does not provide seeking prior approval, the order passed suspending the teacher is right in law. As far as the Enquiry Notice dated 24.09.2011 is concerned, the School Committee had approved the action of the Management for issuance of charge memo. In the circumstances, the contention that there was no prior approval of the School Committee, was rejected. Thus, the learned single Judge dismissed the writ petitions. Further, he directed that the petitioner be permitted to engage a lawyer, as the Enquiry Officer himself is an Advocate. Aggrieved by this portion of the order, the Management is on appeal, and as regards the suspension order, the teacher is on appeal, before this Court.

6.Learned counsel for the writ petitioner pointed out that the conduct of the Management in giving blank papers to the petitioner to sign on it, and when the teacher questioned the reasons, the Secretary of the School informed the petitioner that it was in respect of the complaint given by one Vasuki, and when the teacher refused to sign on the papers, she was immediately placed on suspension by order dated 18.07.2011, shows that the suspension order is highly a motivated one. As far as the order passed appointing the Enquiry Officer is concerned, the learned counsel reiterated the contentions as has been taken before the learned single Judge.

7.Per contra, learned counsel for the school Management, in support of the writ appeal filed as against the writ petitioner being given the facility of engaging an Advocate to represent, pointed out that in the absence of any specific provision or regulation enabling the delinquent officer to have the service of a lawyer in a domestic enquiry, there could be no right to be claimed as a fundamental right to have the assistance of a lawyer in a domestic enquiry. Learned counsel for the appellant Management placed reliance on the decision of this Court reported in 2006 (3) L.L.N. 873 in the case of M.Anbu vs. Reserve Bank of India and others,

and contended that, even going by the decision of this Court in 1989 LAB. I.C. 1569 (A.Veeman vs. Management of Paramakudi Co-operative Urban Bank Ltd.), the allegation of the petitioner seeking the assistance of a lawyer in a domestic enquiry, cannot be sustained. It is further contended that except for making a strange allegation that the Enquiry Officer's Report would be only that of the Management, there are no specific grounds made by the petitioner, nor was there any material to point out as regards any prejudice likely to happen in the course of the enquiry proceedings. Therefore, the order needs to be set aside to the extent of granting relief to the writ petitioner on that score.

8.Heard the learned counsel on either side.

9.As already pointed out, the prayers in the writ petitions before this Court, are as against the first respondent relating to appointment of an Enquiry Officer and as against the suspension order. Even though the petitioner has raised it as an issue in the writ petition that the petitioner should have the assistance of an Advocate to represent, failing which, the enquiry conducted would be prejudicial, there is absolutely no material to show that the petitioner is entitled to have the assistance of an Advocate. As rightly pointed out by the learned counsel for the Management, given the fact that the domestic enquiry is a fact finding enquiry and not controlled by the formal Rules of evidence under the Evidence Act, in the absence of any regulation or statutory prescription that the delinquent officer has to have the services of an Advocate, on the sole ground that the Enquiry Officer is a lawyer, we do not find any justification to grant the plea as has been granted by the learned single Judge. In the circumstances, we agree with the submission made by the learned counsel for the school-Management in his appeal in W.A.(MD)No.98 of 2012, and accordingly, we allow this writ appeal, thereby setting aside that portion of the order of the learned single Judge granting assistance of a lawyer to the delinquent officer representing her in the course of enquiry proceedings. Such refusal does not amount to violation of principles of natural justice, vide decision reported in AIR 2008 SC 1958 (D.G. Railway Protection Force and others Vs. K.Raghuram Babu). In (2008) 4 SCC 406 (D.G. Railway Protection Force and others Vs. K.Raghuram Babu), the Apex Court pointed out that there is no absolute or vested right in any charge-sheeted

employee to make representation either through a Counsel or through any person unless the Statutes or the rules provided for the same. Thus, even if such right is granted, it can be a controlled/restricted right reserving the discretion with the employer to consider the said request. The Honourable Apex Court clarified this by further saying that if the charge is serious and complex nature, the delinquent's request to be represented through a counsel or agent could be considered. The Apex Court referred to the decisions of the House of Lords, particularly, Lord Denning who held that in a domestic enquiry, justice can often be done in them better by a good layman than by a bad lawyer.

10.As far as the suspension order is concerned, a perusal of Section 22 of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973, particularly Sub-Section(3) shows that, no teacher or other person employed in any private school shall be placed under suspension except when an inquiry into the gross misconduct, is contemplated. In order that the enquiry is not prolonged indefinitely to the prejudice of suspended delinquent teacher, Sub-Section 3(b) of Section 22, states that no suspension shall remain in force for more than a period of two months from the date of suspension, and where the enquiry has not been completed within that period, the delinquent teacher shall without prejudice to the inquiry, shall be deemed to have been restored as teacher. However, proviso of Sub-Section 3(b) states 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 the enquiry is not completed within the period of two months, on the grounds which are directly attributable to the teacher. As pointed out by the learned single Judge, a perusal of Section 22(3) shows that there is no such provision for seeking approval of the School Committee which apparently is protective of the rights of the delinquent teacher. Considering the fact that there is no necessity at all to seek a direction from the School Committee, such protective measure has been already provided for in Sub-Section(3) of Section 22 that the maximum period for which the teacher could be kept under suspension shall be four months, i.e., initially for a period of two months and thereafter two months on the ground that the delay in not completing the enquiry is strictly attributable to the teacher only and the grounds for extension is given therefor.

11.As far as the writ petitioner is concerned, the petitioner approached this Court immediately on receipt of the proceedings dated 18.07.2011 suspending her as well as for quashing the order of appointment of an Enquiry Officer. The writ petition was posted before this Court on 09.08.2011 and the same was dismissed on 16.11.2011. Thus the matter was pending before this Court for nearly three months. Thereafter, the appeal was preferred by the Management. It is no doubt true that under Section 22, the suspension has to be initially for two months followed by further extension of two months. Going by the said provision, from 18.07.2011, the maximum period up to which the suspension can be ordered even as per Section 22(3)(b), would be upto 18.11.2011. In the background of the above-said scenario and the facts projected by both the parties making allegations of serious nature, wherein the allegations made by the writ petitioner were found to be untrue and the school-Management making allegations as regards the conduct of the teacher is pending in enquiry, this Court feels that the proper course herein would be to direct the Enquiry Officer to complete the enquiry proceedings within a period of three weeks from today. The petitioner shall cooperate in the conduct of the enquiry proceedings. Based on the outcome of the enquiry proceedings, it is open to the parties herein to work out their remedies.

12.However, as regards suspension, considering the pendency of the writ petitions before this Court (for three months) and that the petitioner had approached this Court within a period of one month, on grounds stated and the nature of allegation made and taking note of the interest of the parties herein, the maximum period for which the suspension could be considered is fixed as for further four weeks from today and not beyond that. As far as the conduct of the enquiry is concerned, as already pointed out, the above said order is passed taking into account the attitude of the teacher as well as the Management. This Court feels such attitude is detrimental to the interest of the students in the said school in order to avoid further complexity of this scenario, this extreme order is passed that the suspension order shall continue for a further period of four weeks from today. Learned counsel for the petitioner submitted that the petitioner shall extend all cooperation in the conduct of the enquiry proceedings, which shall be over by three months.

13.In the result, W.P.(MD)No.98 of 2012 is allowed and W.P.(MD)No.130 of 2012 is dismissed. Consequently, M.P.(MD)Nos.1 and 2 of 2012 in W.P.(MD)No.98 and 130 of 2012 are closed. No costs.

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