

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.1.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.15331 of 2004

D.Rajalakshmi

.. Petitioner

vs.

1.The Correspondent

Chinmaya Vidyalaya Matriculation School
(Recognised by Govt. Of Tamilnadu)

P.M.Samy Colony
II Street, Robertson Road
Coimbatore-2

2.The Director of School-Matriculation Education

Chennai-6

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.S.K.Krishnamurthy, for
M/s.S.Saravanan

For Respondents : Mr.C.Karthick, for
M/s.T.S.Gopalan & Co., for R1.
M/s.V.Velumani,A.G.P. For R2.

ORDER:

This writ petition has been filed seeking to issue a writ of certiorarified mandamus, challenging the impugned order of termination passed by the 1st respondent dated 11.5.2004 and to quash the same and consequently direct the 1st respondent to reinstate the petitioner in service with full back wages, continuity of service and all other consequential monetary benefits.

2. The grievance of the petitioner is that she was initially appointed as school assistant on 20.10.1982 and later she was allowed to take classes for U.K.G. till 1998 and then she was allowed to take classes for 1st standard. Accordingly for

the past 22 years she has been working sincerely without any blemish. She adds that she is the senior most teacher in the 1st respondent-school. While so, to her utter shock and dismay, she received a letter on 20.5.2004 of the 1st respondent dated 11.5.2004 stating that on a restructuring exercise and one of the processes is to size down the strength of the staffing in the school, the management decided to terminate her service with immediate effect. It is the specific case of the petitioner that there was no opportunity given to her to explain her case at all. It is stated by the petitioner that her long, sincere unblemished record of service has been put to test by the order of termination thereby the cardinal principles of natural justice has been violated. It is also stated that there was absolutely no communication whatsoever prior to the order of termination. It is further stated that her juniors numbering 24 are being retained in the school and she has been chosen and singled out on the ground that the process of sizing down the staffing has been started. Therefore, challenging the order of termination dated 11.5.2004, the petitioner has filed this writ petition and obtained an order of stay.

3. On the other hand, the 1st respondent filed a counter. According to the 1st respondent-management, after she took over as the correspondent of the 1st respondent school in the beginning of 2004, she found that R.S.Puram school at Coimbatore was not performing to the standard of other Chinmaya Vidyalaya schools. Therefore, it was necessitated to consult eminent educationalists as to the steps to be taken to improve the standard of the school. She had also availed the assistance of leading personalities, particularly, Smt.Padmini Janardhanan, M.A.,M.Phil., of Chennai, who had undertaken to study the various schools to improve their standard. One of the suggestions put forth by the expert was to restructure the administration of the school and the personnel. It was also found that the reasons found for falling in standard in the school was either due to the presence of members of some faculty who were either not fully qualified or untrained or lacking in aptitude or attitude for teaching. Therefore, to improve the overall standard of education in the school, a committee of five eminent educationalists was constituted to have a direct interaction with each of the teachers to assess his/her ability and their competence and to make recommendation about the continuance or discontinuance of their service in the school. All the 39 teachers in the R.S.Puram school were made to appear before the Special Committee. On the assessment of the committee, 12 teachers including the petitioner were found not suitable having regard to their communication skill, attitude and interest and appropriate training. The Committee also suggested downsizing of the teachers to pave the way for

effective imparting of knowledge to the students and improve its economic health. Accordingly, following the recommendations made by the special committee, the petitioner's services were terminated on 11.5.2004 offering three months' salary in lieu of notice. She was also offered Rs.73,302/- along with a letter dated 20.5.2004, towards notice pay and terminal benefits. Therefore it is contended that there is no illegality nor infirmity in the impugned order of termination warranting interference by this court.

4. Though, at the admission stage, interim stay was obtained, later it was vacated and the petitioner is no longer in service of the school.

5. Learned counsel for the petitioner has submitted that the petitioner was served with the impugned order without any prior notice. There was no opportunity given to her earlier to put forth her views on the alleged complaint of incompetency. It is stated that she has been serving in the school for 22 years without any blemish and the treatment meted out to her was opposed to all principles of law. It is also added that on the ground of sizing down the strength of the staffing in the school, she was sought to be terminated.

6. According to the learned counsel for the petitioner, she being the senior most person has been chosen to be sent out leaving the juniors to be in the school. The reason attributed by the first respondent-management in the counter is that the petitioner was not found suitable, having regard to the communication skill attitude and interest. Whereas nothing has been said about the same in the impugned order. Moreover, learned counsel has drawn my attention to Regulation 20 of Code of Regulations for Matriculation Schools in Tamil Nadu, which reads as under:-

"20. Termination:- (A) In respect of teachers or a member of non-teaching staff appointed temporarily or to act on probation, the management shall have power to terminate the services of such teacher or a member of non-teaching staff without notice for any or all of the following reasons:-

(i) Wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, suspension or cancellation of teachers' certificates by the Director under the Code of Regulations for Matriculation Schools.

(ii) With notice of two months or two months salary in lieu thereof for the following reasons:-

(a) Incompetence, (b) Retrenchment, (c) Physical unfitness or any other good cause.

(B) In respect of teachers or a member of non-teaching staff appointed permanently, the management shall have the power to terminate the services of such teacher or a member of non-teaching staff without notice for any or all of the following reasons:-

(a) Wilful neglect of duty, serious misconduct, gross insubordination, mental unfitness, suspension or cancellation of teachers' certificates by the Director under the Code of Regulations for Matriculation Schools.

(b) With three months notice or three months salary in lieu thereof for the following reasons:-

(a) Incompetence, (b) Retrenchment, (c) Physical unfitness or any other good cause.

Subject to the proviso given below:

(i) The school authority shall not terminate the services of the said teacher or a member of non-teaching staff whether summarily or otherwise without informing him/her in writing of the grounds on which they intend to take action and giving him/her what in their view is a reasonable opportunity for stating his/her case in writing and before coming to a final decision shall duly consider his/her statement and if he/she so desires give him/her a personal hearing or conduct an enquiry.

(ii) After the conduct of the personal hearing or enquiry by the management, a notice will be issued to him/her setting out the proposed punishment and he/she shall be given a reasonable time to defend himself/herself against the proposed punishment.

(iii) ...

(iv) ...

(v) "

7. Referring to the above said statutory provision, learned counsel for the petitioner has submitted that as per the said Code, a show cause notice with reasons will have to be given to the petitioner and also if desired, a personal hearing or an enquiry to be conducted. This provision is mandatory and has to be complied with by the school committee. But, disregarding the clear statutory provision, according to the learned counsel, the petitioner's services were sought to be terminated by a stroke of pen, by the impugned order. Therefore, it is the primary contention of the learned counsel that the impugned order not only violates the statutory provision but also violates the basic principles of natural justice. Therefore, it is contended that the impugned order does not stand to legal scrutiny and it has to be set aside as prayed for in the writ petition.

8. On the other hand, learned counsel for the 1st respondent-management would submit that it is only in the interest of the 1st respondent-management school, action was taken and the petitioner also was aware of the expert committee which had interviewed her to assess the ability. Therefore, the petitioner cannot say that she was not aware of any action that is being taken. Moreover, it is the case of the 1st respondent-management that the impugned order of termination has been taken in consonance with the provision, namely, Section 20 of the Code of Regulations for Matriculation Schools and there is no infraction of the same.

9. I have given my considered view on the facts stated above.

10. This is a case where a school teacher of the 1st respondent-management who has been working there for the last 22 years was terminated all of a sudden, on the ground of downsizing of the students and the teachers and steps are taken to terminate the services of the petitioner. No satisfactory explanation has been given by the learned counsel for the 1st respondent-management for not having given a notice to the petitioner before such action of termination being taken. Though the question regarding the maintainability of the writ petition against the 1st respondent private school under Article 226 of the Constitution of India was taken initially by the learned counsel for the 1st respondent school, he withdrew the said argument later. Regarding the merits of the case, it is the basic principles of natural justice that when a person is going to be visited with orders of civil consequence, he/she must be given an opportunity of being heard. Moreover, in this case, Regulation 20 of the Code of Regulations for Matriculation Schools as referred to supra clearly stipulates a hearing, that too, a personal hearing, in a matter when an order of

termination is going to be issued. It is stated by the learned counsel for the 1st respondent that only on the basis of the report of the external agency, impugned action was taken. Whereas no such report was given to the petitioner before action being taken against her. Therefore, violating the clear statutory provisions and the basic principles of natural justice, the 1st respondent-management has issued the impugned order of termination to the petitioner. Looking from any angle, this impugned order will not stand the test of legal scrutiny.

11. In view of the above, I am inclined to set aside the impugned order. Consequently, the impugned order of the 1st respondent is set aside and the relief sought for in the writ petition is granted and this writ petition stands allowed. Consequently, the rule-nisi is made absolute. There is no order as to costs.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Director of School-Matriculation Education
Chennai-6.

+ one cc to Mr.T.S.Gopalan, Advocate Sr.No.3313.
+ one cc to Government Pleader Sr.No.3320.

PV (CO)
RSM/3.3.2006

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