

CASE NO.:
Appeal (civil) 6782 of 2001

PETITIONER:
SECRETARY SCHOOL COMMITTEE THIRUVALLUVAR HIGHER SECONDARY SCHOOL

RESPONDENT:
GOVT. OF TAMIL NADU AND ORS.

DATE OF JUDGMENT: 02/04/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 (3) SCR 282

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Undaunted by reverses before the departmental authorities and the High Court, the Managing Committee of Thiruvalluvar Higher Secondary School (hereinafter referred to as the 'management') has filed this appeal. The controversy lies within a narrow compass and factual position being undisputed, a brief reference thereto would suffice.

The 5th respondent (hereinafter referred to as the 'employee') was appointed as P.G. Assistant for teaching English in 1978. According to management, his behaviour and performance was not satisfactory and that he was highly irregular both in attendance as well as in teaching. A memorandum was sent to him and to another teacher on 14.1.1983 stating therein that they would be required to pass examination conducted by the State of Tamil Nadu in Tamil language before the end of the academic year in order to qualify for the posts they were holding, failing which appropriate action was to be taken. From 1.12.1984, the employee did not attend school. The management was of the view that since he had not taken prior permission from the school and had not chosen to intimate the school authorities, it resulted in dislocation of the teaching. Prior to his long absence, he had not been taking classes regularly. The students were put to grave and irreparable loss and hardship. Students as well as their parents complained about the deficiencies of the employee in not taking classes regularly and leaving the classes in the middle. He had also not completed portions of the lessons for the 11th standard. Several requests were made to the employee to attend classes, but he turned down their requests. On 29.8.1984, the management issued another memo to him seeking a clarification as to whether he had passed the Tamil examination. On 31.8.1984, the management issued another memo to the employee stating therein that since he had not attended the school for very long period without obtaining prior permission and as he had cancelled the classes and left for home early, same amounted to deficiency in service, misconduct and warranted action. Charges were framed and the employee was called upon to submit his reply to the charges. Another memo was issued on 30.10.1984 containing similar charges. Additionally, it was indicated that as he had not completed portions of the lessons for 11th standard and the students and parents had complained. He was required to show cause in respect of the allegations. On 24.1.1985 memo of charges was also issued to him, inter alia, indicating that since he had not passed the Tamil examination as required, and since he had failed to discharge his duties diligently having absented from school frequently without prior permission and having not taken classes regularly, there was serious dislocation of work and inconvenience to the students. On 13.3.1985, the show cause notice was issued indicating that in spite of opportunity given, he had failed to respond and was called upon to submit his explanation as to why his services should not be terminated for violation of code of conduct

prescribed for teachers employed in private schools. Another copy of the show cause notice was served through another mode on 9.4.1985. The employee did not respond to the show cause notice. Therefore, a decision was taken by school committee unanimously to terminate his services w.e.f. 1.12.1984, the date from which he had stopped attending the school. On 9.5.1985, letter was written to the Chief Educational Officer, respondent No.3 (in short the 'CEO') seeking his approval for term (nation of employee's services in terms of Rule 17 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as the 'Rules')). On 29.8.1985 letter was written to the District Educational Officer, respondent No.4 (in short the 'DEO') requesting for early action in the matter.

The DEO issued a notice to the employee but there was no response thereto. On 3.12.1985, DEO sent a report to the CEO. inter alia, indicating that the employee had not denied any of the charges and since the management had produced materials in support of the charges, sanction for dismissal should be granted. On 21.4.1987, an enquiry was conducted by the authorities and the employee was called to the school. But he did not make any effective participation. Again, an enquiry was conducted by the CEO on 23.4.1987. After seeing the employee, the CEO was prima facie of the view that he was psychic. Finally, on 24.4.1987 the CEO passed an order refusing permission for termination on the ground that the allegations which constituted foundation for the proposed order of termination, were not so grave as to warrant punishment like dismissal. Therefore, permission was refused. Aggrieved by the said order, the Management preferred an appeal under Section 41 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (in short the 'Act') to the Joint Director of School Education (Secondary), Directorate of School Education (in short the 'Joint Director'). The appeal was rejected. inter alia, observing that though the employee did not give any reply to the charges as against him though he appeared before the CEO twice, yet the charges were not so grave as to warrant dismissal. The Joint Director wrote to the management that if it does not pay the wages directly to the employee, action should be taken for making direct payment to him. On 9.3.1988. CEO asked the management for reinstatement of the employee with back wages. Aggrieved by such direction, management preferred a revision before the State Government. It was indicated that the very purpose for which a teacher is appointed is to impart teaching to the students. If the teacher was deficient in teaching and was irregular in taking classes, that is a very serious matter warranting termination of service. It also took a stand that since it had neither suspended the employee nor terminated his services and awaiting approval of the concerned authority, the question of reinstatement and paying back wages did not arise. In fact, the employee had not worked and abandoned work. But the DEO again directed the management to reinstate the employee and pay him back wages failing which the steps regarding direct payment were to be taken. Aggrieved by these orders, the Management filed a writ petition before the Madras High Court. Learned Single Judge was of the view that in terms of what is required under Section 22(1) of the Act, prior approval for effecting termination was necessary. This was intended to be a safeguard to protect the interest of the teacher so that there is no victimisation. An appeal was preferred before the Division Bench, inter alia, taking a stand that disciplinary action as taken was necessary in the interest of the Institution and the students whose interest was of paramount consideration. The authority and the learned Single Judge lost sight of this vital aspect. The Division Bench dismissed the appeal holding that the authorities had considered the materials on record and, therefore, no interference was called for.

In support of the appeal, Mr. L. Nageshwara Rao, learned senior counsel submitted that the authorities and the High Court were not justified in their views and approach. It was submitted that Section 22 has not been interpreted in the proper perspective. Action of the authorities was beyond jurisdiction. They could not have gone into the question of the proportionality of punishment, as it was beyond the scope of their

authority. Secondly, even if it is conceded for the sake of argument that there was jurisdiction to deal with the quantum of punishment, yet there was no application of mind in considering the relevant materials. Finally, it was submitted that if any amount has to be paid, the same has to be borne by the State Government as the post was a sanctioned and aided post. Another teacher has been appointed and the management is paying his salary. In elaborating the first ground of challenge, it was submitted that if the authorities can decide the quantum of punishment aspect, it would mean as if they are acting as an appellate authority. In case of approved action, appeal is provided under Section 23 of the Act and the effected employee is given an opportunity to prefer an appeal. There is also a scope for second appeal in terms of Section 24 of the Act. Proportionality is not within the domain of approved authority. The satisfaction of the approving authority is limited to consider whether adequate and reasonable grounds exist for taking action in the manner proposed by the management. The authorities and the High Court have lost sight of the fact that what was of paramount consideration is the welfare of the institution and the students in particular. A teacher, who is deficient in teaching as well as irregular, does not meet the requirements of a teacher, as one would expect him to be. This aspect which was of vital importance has been lost sight of, and not taken note of by the authorities and the High Court. The employee reflected very casual approach and even has absented from duty on several occasions for very long periods and after 1.12.1984 has not bothered to join duty. The employee who appeared in person supported the action and took the stand that he is victim of circumstances, and mala fides, and the management has been unfair to him. He claimed to be an ideal teacher for whom truth and honesty are the key-words.

Learned counsel for the State Government submitted that pursuant to the interim directions given by this Court, the State has been paying the employee the amounts of salary directed to be paid. In fact, it has filed an interlocutory application No. 2 for modification of this Court's order. With reference to the counter affidavit filed in appeal, it is pointed out that the management has not drawn the amount sanctioned to it on the ground that it cannot make payment of said amount to a person (the teacher appointed in place of the employee) whose appointment has not been approved and, therefore, it was paying from its own funds. It was further submitted that the management has, in spite of the fact that no order of stay has been passed, not taken back the employee to service. Since no approval was given to the proposed order of termination, for all practical purposes, there was no termination of the services of the employee and if any amount has to be paid, the same has to be borne by the management.

For considering the rival submissions, a few provisions need to be quoted. The pivotal provisions are Sections 22(1) and (2) and Rule 17(1) which so far as relevant read as follows:

"Section 22- Dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private school- (1) Subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed, or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher or other person employed in any private school is communicated to the competent authority, that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment.

Rule 17, Dismissal, removal or reduction in rank or suspension of teachers or other person employed in private schools:- (1) The competent authorities to accord prior approval for the dismissal, removal or reduction in rank of a teacher or other person employed in any private school, shall be the

District Educational Officer in respect of teacher or other person employed in Pre-Primary, Primary and Middle Schools and the Chief Educational Officer in respect of teacher or other person employed in High Schools, Higher Secondary Schools and Teachers' Training Institutes."

Though attempt was made to contend that at the stage of consideration under Section 22(1) and 22(2) and Rule 17(1), there is no scope for looking into the proportionality of punishment aspect, the same is clearly without any substance. What an authority is required to do at that stage is to see whether the proposed punishment is to be approved. Obviously, it has to consider whether the punishment as proposed is proper one; otherwise there is no need for seeking its approval. The crucial words used in sub-section (2) of Section 22 are "adequate and reasonable ground" for the proposal. The proposal relates to dismissal, removal or reduction in rank or otherwise termination of appointment of any teacher or any other person employed in a private school. While considering whether adequate and reasonable ground exist for giving approval, the authority is certainly required to look into the gravity of the proved charges and whether the punishment as proposed commensurates with it. Any other interpretation would make the question of approval an exercise in futility.

Stand of the learned counsel for the Management is that if adequate and reasonable grounds exist for the action, then no other question needs to be looked into. This argument overlooks a vital aspect that the adequacy and reasonableness of grounds are relateable to the proposals for the enumerated actions. The proposed actions being punishments, there is an inbuilt requirement to see whether the quantum of punishment commensurates with the gravity of the proved charges. Therefore, clearly the authority has jurisdiction to decide the question as to whether the punishment proposed commensurates with the proved charges. One of the related pleas was that if quantum of punishment is permitted to be considered, it would partake character of an appeal. This plea is equally untenable. Sections 22 and 23 operate in different fields. At the stage of consideration under Section 22, the teacher does not get any opportunity for presenting his side of the case. This opportunity is provided under Sections 23 or 24 as the case may be. The authority under Section 22 takes decision on the material placed before it by the management. So the question of action under Section 22 partaking appellate characteristics does not arise. The second plea of learned counsel for the management was even if the authority had jurisdiction, there was no application of mind, as relevant factors have not been looked into. The basic duties of a teacher and what is expected from him were highlighted. It was strenuously contended that the welfare of the students' aspect was not even taken note of.

The role a teacher plays in shaping the career and future of a student needs no great emphasis. In olden times, a teacher was considered equal to God. He is required to ensure good conduct of his pupils in addition to teaching lessons to them. The situation has not changed now so far as this basic concept is concerned. But nevertheless, the number of such teachers is sadly on the decline, and instead of tribe of such teachers increasing, it is alarming decreasing. A teacher is required to remove darkness and ignorance from the minds of students. But present day experiences show that the teachers are themselves ill-equipped and take their jobs very casually. No doubt, there are exceptions and those teachers who belong to the exception category are trying their best to make up the deficiency of their brothers in service. In the hands of these ill-equipped teachers, the destiny of the students does not get moulded in the way it ought to be. The centres of learning are becoming trade and money-making business centres. Learned counsel for the appellant is correct in his submission that welfare of the students has to receive utmost priority. But his submission that there was no application of mind by the authorities to the materials has not borne out from the records. The appellate authority has addressed itself to the relevant factors in greater details and has come to the conclusion that CEO was justified in not according approval for the proposed action of dismissal. Learned Single Judge and the Division Bench

have put their seal of approval on the findings recorded. Learned counsel for the appellant further submitted that once the disciplinary authority comes to a view that there was adequate material for imposing a particular punishment, the approving authority should not lightly interfere with the findings. This submission holds good only when the authority does not apply its mind to the materials forming the foundation of the proposed action. When after consideration of the material, it comes to a conclusion that the proposed punishment is harsh or disproportionate to the proved charges, the scope of interference with the finding is rather limited. This is because the approving authority has to consider whether the proved charges on the facts and the materials justify a particular action. Since reasons have been given on consideration of the materials, there is no scope for interference.

The order of the authorities declining to accord approval does not suffer from any infirmity. The High Court was justified in declining to interfere.

Another point urged by learned counsel for the appellant was that the direction for the back wages in its entirety is not justified because the employee absented from duty without sanctioned leave for long periods and even on some dates he went away during the school period and even abandoned the classes on several days. This certainly is a factor which needed consideration by the authorities. Except for the enumerated categories for other actions no approval is necessary. Authority acting under Section 22 could not have indicated any other aspect. Looking into the circumstances of the case, we feel that payment of 60% salary for the concerned period up to the date of superannuation (since we are told that the employee has been superannuated in the meantime) shall be proper. The undisputed position is that the charges have been proved. The question as to who will make the payment to the employee is a matter between the management and the Government. (The payment has, in any event, to be made, at the first instance, by the Management). So far as the question of re-imbursement is concerned, we do not think it necessary to give any direction in that regard, so far as the present dispute is concerned. No further orders are to be passed in the application for modification of earlier interim orders passed.

The appeal is disposed of accordingly.