

CASE NO.:
Appeal (civil) 2960 of 2008

PETITIONER:
Correspondent, St. Michael's T.T.I.

RESPONDENT:
V.N. Karpaga Mary & Ors

DATE OF JUDGMENT: 24/04/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2960 OF 2008
(Arising out of SLP (C) No.19520 of 2006)

S.B. Sinha, J.

1. Leave granted.
2. Appellant is an aided institution. It is aided by the State of Tamil Nadu. Terms and conditions of its teachers are governed by Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 framed under Tamil Nadu Recognised Private Schools (Regulation) Act, 1973.
3. Respondent was appointed in the said school on or about 11.7.1977. He was a graduate in Master of Education as also in Master of Science. He was having the requisite qualification for recruitment to the said post.
4. The State, however, issued a Government Order dated 16.9.1994 raising the qualification of a teacher, inter alia, stating :
"XV Staff Requirements:
Teaching Staff
Qualifications etc.

(b)Subject Teacher
A Post Graduate Degree in the relevant subject and M.Ed.
Degree with teaching experience preferably in recognized schools.
There shall be four subject teachers to handle Tamil, English, Mathematics, Science and Social Science. The Headmaster shall handle one of the five subjects."

On the plea that the respondent did not hold the requisite qualifications in terms of the said GOMs dated 16.9.1994, his services were terminated by the appellant by an order dated 6.1.1995 with effect from 22.12.1994.

5. Respondent filed a writ petition before the High Court questioning the said order of termination, inter alia, stating that the said purported G.O.Ms. dated 16.9.1994 could not have been given a retrospective effect.
6. A learned Single Judge of the said Court, by an order dated 5.9.2005 quashed the said order of termination opining that once the appointment was made in a lawful manner and the teachers were found to have the requisite qualifications as prescribed at the time of such appointment, a revision in qualification so as to be applied retrospectively and affect the career of an

appointee would not be permissible. Appellant institution was held to be amenable to writ jurisdiction. It was also found that the State had not issued any direction to remove the respondent from service. On the said findings, it was directed :
"Therefore, it is not open to the respondents to adopt an erroneous interpretation and to deny employment to the petitioner who has been serving the school from 1977. It is pertinent to note that in W.P.M.P. No.9628 of 1995, the learned Single Judge has issued interim orders on 21.4.1995 itself that no appointment shall be made for a period of two weeks if the third respondent had not appointed any one in the place of the Petitioner. There is nothing on record to show that the said interim order had been vacated subsequently, though the respondent, in their counter affidavit, has stated that a qualified teacher had been appointed on 23.12.1994."

7. An intra court appeal was preferred thereagainst before the Division Bench of the said Court. The question which was raised before the said Bench was limited to the question of payment of the back wages to the respondent and as to whether the State is liable therefor or the appellant institution.

The contention of the parties were noted by the Division Bench as under :

"According to the appellant, namely the Teacher's Training Institute, the teachers services were terminated only because the Government repeatedly wrote letters that the Government Order has to be strictly adhered to and that it is only at their instructions that the teacher was terminated. The learned Special Government Pleader would submit that while it is true that the Government insisted on all Institutes to strictly comply with the conditions stipulated in the Government Order, no instructions had been specifically issued in this case to terminate the services of the teacher, nor had any instructions been issued to comply with the Government Order retrospectively in respect of any person who has already been in service. According to them, since they are bearing the expenditure arising out of the appointment of the new teacher, they cannot be saddled with the burden twice. It is also the case of the Government that it was never the Institute's case that any specific instructions were issued by the Government to terminate the services of the teacher; and that if the Institute had taken a decision which is not supportable in law, then it is the Institute which has to bear the financial burden and not the State."

While refraining itself from interfering with the order of the learned Single Judge, the Division Bench observed :

"However, it is open to the Institute to apply to the Government, if so advised, for reimbursement of the wages paid to the teacher in compliance of the orders of the learned Single Judge and thereafter, it is for the Government to take a decision in this regard. No costs. Consequently, W.A.M.P. No.4015 of 2005 is closed."

8. Appellant is, thus, before us.

9. Mr. Romy Chacko, learned counsel appearing on behalf of the appellant, would submit that the petitioner institution being not a State within the meaning of Article 12 of the Constitution of India, the writ petition was not maintainable. It was furthermore contended that in any event, as the order of termination of the respondent was not mala fide, the High Court should have held that she was not entitled to back wages and no legal right vested in her in obtaining the relief of reinstatement. Reliance in this behalf has been placed on *Pearlite Liners (P) Ltd. v. Manorama Sirsi* [(2004) 3 SCC 172].

10. Mr. L.N. Rao, learned senior counsel appearing on behalf of the respondent, on the other hand, would urge that the appellant herein having not questioned the jurisdiction of the learned Single Judge to interfere with the matter, the contention that the writ petition was not maintainable should not be allowed to be raised before this Court for the first time. It was furthermore urged that keeping in view the respective contentions made before the Division Bench, it is evident that the question of the respondent's having any alternate employment did not and could not arise. Strong reliance in this behalf has been placed on *Jasbir Singh v. Punjab & Sind Bank & Ors.* [(2007) 1 SCC 566]; *Gangadhar Pillai v. Siemens Ltd.* [(2007) 1 SC 533]; and *Vice Chancellor, Banaras Hindu University & Ors. v. Shrikant* [(2006) 11 SCC 42].

11. It is neither in doubt nor in dispute that the appellant possessed the requisite qualification at the time of his entry in the service. The educational qualification for a teacher was sought to be raised by the State much later, namely, in the year 1994. Respondent, indisputably, was appointed on a permanent basis. She was a regular teacher. If she was a regular teacher, the question of termination of her services relying on or on the basis of the purported GOMs dated 16.9.1994 did not arise as the same had not been given retrospective effect. The State never said that in terms of the said GOMs, the services of the employees who had validly been appointed, should be terminated.

12. The contention of the appellant that there was some apprehension that recognition, as granted by the State to the said institution, may be withdrawn should have been taken up by it with the State at the first instance. It having failed to do so, in our opinion, no legal infirmity can be found in the judgment.

13. Reliance placed by the learned counsel on *Pearlite Liners (P) Ltd. v. Manorama Sirsi* [(2004) 3 SCC 142] is not apposite. The courts exercise different jurisdictions while entertaining applications filed under different statutes. While entertaining a suit, the court's jurisdiction would be governed by the Specific Relief Act, 1963. Although principles laid down therein may be found to be applicable, the said provisions by themselves need not be strictly applied by the High Court while exercising its jurisdiction under Article 226 of the Constitution of India. The question that the appellant was amenable to writ jurisdiction is not in dispute. If it was amenable to writ jurisdiction, the High Court was not only entitled to set aside an order of termination of service on an interpretation that neither the GOMs had any retrospective application nor, in any event, had any application to the case of appointment of the respondent but also to grant back wages. On the said premise, the High Court had the jurisdiction to set aside the order of termination. Once the order of termination was set aside, the logical corollary therefor should ordinarily ensue, subject of course to denial of the benefit either in totality or in part.

It was in the aforementioned situation, the question of grant of back wages would arise.

14. In *Jasbir Singh v. Punjab & Sind Bank & Ors.* [(2007) 1 SCC 566], this Court directed reinstatement in service with back wages, continuity of service and other consequential benefits. {See also *Gangadhar Pillai v. Siemens Ltd.* [(2007) 1 SCC 533]}.

In *General Manager, Haryana Roadways v. Rudhan Singh* [(2005) 5

SCC 591], this Court stated :

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his service are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

15. The said decision as also the decision in Pearlite Liners (P) Ltd. v. Manorama Sirsi [(2004) 3 SCC 172] have been rendered in a different fact situation, namely, the jurisdiction of the Labour Court under Section 11-A of the Industrial Disputes Act. The question as to what would be the relevant factors for the industrial court to grant the said relief need not be the same for the writ court. For grant of back wages, this Court has laid down several principles therefor.

16. However, in the facts and circumstances of this case, we are of the opinion that the interest of justice will be subserved if the quantum of back wages is confined to Rs.75% for the total period the respondent remained out of service.

17. Appeal is allowed to the aforementioned extent. This order is being passed keeping in view the fact that the respondent has already been reinstated in service. In the facts and circumstances of the case, there shall be no order as to costs.