

A CORRESPONDENT, ST. MICHAEL'S T.T.I.

v.

V.N. KARPAGA MARY & ORS.

(Civil Appeal No. 2960 of 2008)

APRIL 24, 2008

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[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.]

C *Service law – Termination – Government Order raising the qualification for post of teacher – In terms therewith, Teachers' Institute terminating services of teacher appointed 17 years ago – Challenge to – High Court quashed the termination order and granted back wages – Correctness of –*
D *Held: At the time of appointment teacher possessed the requisite qualification – Appointment was on permanent basis and employee was a regular teacher, as such could not be terminated on basis of the GO since the Order could not be given retrospective effect – Also, no instructions by Government to terminate services of employees validly appointed in terms of the GO – Institute being amenable to writ jurisdiction, High Court had jurisdiction to set aside the*
E *termination order and also to grant back wages – However, in facts and circumstances of the case, back wages reduced to 75% – Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 – Constitution of India, 1950 – Articles 12 and 226.*

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G **Respondent, having the requisite qualification was appointed as a teacher with the appelland institution in 1977. By a Government Order dated 16.9.1994 the requisite qualification for recruitment to the post of teacher in the school was raised. Thereafter, in terms of the GO, respondent's services were terminated. Respondent challenged the termination order. The Single Judge of High Court quashed the termination order and granted back wages. It was found that the State did not issue**

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directions for termination of the respondent. On basis thereof the appellant institutions were directed not to deny employment to the respondent who had been working in the School since 1977. In appeal before the Division Bench of High Court, regarding the payment of back wages to the respondent and the liability of the State or the appellant institution, the Division Bench upheld the order of the Single Judge of High Court and also held that the appellant Institute could apply to the Government for reimbursement of wages paid to the teacher. Hence, the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1 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, and as such 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. [Para 11] [1092-E-G]

1.2 The submission 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, no legal infirmity can be found in the judgment. [Para 12] [1092-G, H; 1093-A]

1.3 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

A 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. [Para 13] [1093-B, C]

B 1.4 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. [Para 13] [1093-C, D, E]

E 1.5 In the facts and circumstances of this case, the interest of justice would be subserved if the quantum of back wages is confined to 75% for the total period the respondent remained out of service. [Paras 16] [1095-A]

Pearlite Liners (P) Ltd. v. Manorama Sirsi 2004 (3) SCC 172; *General Manager, Haryana Roadways v. Rudhan Singh* 2005 (5) SCC 591 – referred to.

F *Jasbir Singh v. Punjab and Sind Bank and Ors.* 2007 (1) SCC 566; *Gangadhar Pillai v. Siemens Ltd.* 2007 (1) SC 533 – referred to.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2960 of 2008.

From the Judgment and Order dated 24.2.2006 of the High Court of Judicature at Madras in W.A.No. 2167/2005.

Romy Chacko for the Appellant.

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L.N. Rao, Jayanth Muthraj, C.K. Sasi and V.G. Pragasam A
for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellant is an aided institution. It is aided by the State B
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 C
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 D
16.9.1994 raising the qualification of a teacher, inter alia,
stating :

"XV Staff Requirements:

Teaching Staff	Qualifications etc.	E
(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."	F G

On the plea that the respondent did not hold the requisite H
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.

A 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.

B 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.

C 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 :

D "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."

E 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.

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

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"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

A 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*
B *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
C 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
D 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].

E 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
F 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
G 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
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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. A

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. B C

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. D E

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

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]}. G

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 H

A 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
B 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
C 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
D 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
E 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
F 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
G 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
H 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 75% for the total period the respondent remained out of service. A

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. B

N.J.

Appeal partly allowed. C