

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: **12.11.2007**

CORUM:
THE HONOURABLE MR. A.P.SHAH CHIEF JUSTICE
THE HONOURABLE JUSTICE MR. D. MURUGESAN
AND
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN
Review Application No. **139** of **2007**

Roman Catholic Diocese of Tuticorin
Rep by its Superintendent of R.C.
Schools, Bishop's House, Tuticorin
Tirunelveli District

Petitioner

Vs

1. The Government of Tamilnadu
Rep. by its Commissioner and Secretary,
Educational Department, Fort
St. George, Chennai – 600 009
2. The Director of School Education,
Chennai – 600 006
3. The Joint Director of School Education
(Secretary), Chennai – 600 006
4. The Chief Educational Officer, Tirunelveli
5. The District Educational Officer,
Tirunelveli South, Tirunelveli

Respondents

Review application under section 114 of CPC to review the order dated 30.04.1998 and made in WP 7235 of 1986 prayed this Honourable Court to issue Writ of Mandamus directing the Government of Tamilnadu rep by its Commissioner and Secretary, Educational Department, Fort St. George, Ms – 9, The Director of School of Education, Ms – 6, The Joint Director of School of Education (Secondary), Ms-6, The Chief Educational Officer, Tirunelveli, The District Educational Officer, Tirunelveli South, Tirunelveli, The Respondents 1 to 5 herein to pay the salaries of the Transferred Teachers working in the petitioner's schools 1. St. Alloysius Higher Secondary School at T. Kallikulam, Tirunelveli District, 2. St. Joseph's Higher Secondary School at Koottupalli, Tirunelveli District, 3. Holy Redeemers Higher Secondary School at Thisaiyanvillai, Tirunelveli District, 4. St. Teresas Higher Secondary School at Vadkankulam, Tirunelveli District, from 18.06.1986 and 20.06.1986 onwards with all benefits and privileges attendant thereto.

For Applicant: Mr. R. Vijay Narayan, Senior Counsel
For Mr. S.M. Edward Stanley

For Respondents: Mr. Raja Kalifulla, Govt. Pleader
Assisted by Mr. V.R. Thangavelu, Govt. Advocate

ORDER

(PRABHA SRIDEVAN, J)

The petitioner runs several schools under a corporate management. Teachers were transferred in 1986 and the respondents were requested to pay salaries to the transferred teachers. The salaries were withheld by the respondents and therefore, the petitioner filed a Writ of Mandamus for payment of salary of the transferred teachers. The Writ Petition was dismissed. The appeal filed against that was heard along with the batch of appeals by the Full Bench and disposed of on 30.04.1998 by the judgment reported in 1998 (3) MLA 595 (The correspondent, Malenkara Syrian Catholic School, Marthandam, Kanyakumari District V.J. Robinson Jacob and others). The Full Bench was constituted since there were conflicting and contrary observations with regard to the question whether transfer of teacher governed by the Tamilnadu Private Schools (Regulation) Act (“the act” in short) is an incident of service. The Full Bench held that “transfer” is neither a term of contract nor an incident of service nor is provided for under the statute governing the parties. Against this, the petitioner had filed a review petition but with a delay of 72 days. The delay was condoned only now and the review petition was taken on file.

2. The learned Senior Counsel, Mr. Vijaya Narayan raised the following questions for consideration in the review application.

(a) The petitioner is a minority corporate management.

(b) There has always been transfer of teaching staff within the schools in Tirunelveli district coming under the Corporate Management and that

(c) The Bishop of the Roman Catholic Diocese is the Manager of the Educational, Charitable and Technical Institutions established and administered by the Diocese and amongst the powers of the Manager, is the power to transfer teachers from one schools to another within the Management.

3. According to the learned Senior Counsel, this practice of the corporate management has also been approved by the competent authorities even before the Tamil Nadu Recognized Private Schools (Regulation) Act came into force. Since there is corporate administration, the petitioner is maintaining a common seniority list and a common pool for the purpose of appointment and transfer. The learned Senior Counsel submitted that if transfer is not possible, teachers will suffer discrimination. He also contended that if transfer interse schools under the single

corporate management is not possible then the management will have to promote undeserving candidates as Headmasters. The learned counsel also relied on 2003 (4) CTC 65 (The Manager, R.C. Schools, Salem Social Services Society, Alagapuram, Salem and another Vs. G. Vincent Paulraj), where on the basis of the Full Bench judgment transfer within schools coming under one corporate management has been upheld.

4. The learned Government Pleader, Mr. Raja Kalifulla submitted that these questions including the right of the minority has been considered by the Full Bench in its judgment, which has held the field for so many years and there is no ground for review.
5. A reading of the judgment of the Full Bench shows that while the facts relating to the Malankara Syrian Catholic School, who was the appellant in W.A. Nos. 275 and 1037 of 1989, has been considered in detail; the facts pertaining to the petitioner have not been considered. As regards the Malankara Syrian Catholic Dioceses, which was running different schools in different places it was stated that recognition was granted by the Diocese, to each school, individually as a separate entity; seniority list for each individual school as the unit is maintained by the Diocese; and there is no approved common seniority list for all the schools run by Diocese. Therefore, the teachers are appointed in the individual school unit, as an entity in itself. After considering the decisions of various Courts, the Full Bench held that the schools have been treated as separate units and has further held,

“In view of the observation made above, and the findings rendered that there is no minority corporate management recognized by the authorities and the transfer is not an incident of service; the contract does not provide for the minority institutions being affiliated as one as sided cannot transfer the teachers in the different unit established ad administered by it and it has no inherent power to transfert.”

6. To demonstrate that the finding of fact rendered in the above decision of the Full Bench will not apply to the petitioner an additional typed set was filed. This contains the proceedings of the Director of School Education, Tamil Nadu dated 27-09-1985, which was enclosed as its Annexure the list of Roman Catholic Schools under the Management of the petitioner Diocese. It is with regard to the teachers working in St. Alloysius Higher Secondary School at T. Kollikulam, Tirunelveli District, St. Joseph's Higher Secondary School at Kootupalli, Tirunelveli District, Holy Redeemer's Higher Secondary School at Thisaiyanvillai, Tirunelveli District and St. Teresa's Higher Secondary School at Vadkankulam, Tirunelveli District, that the writ petition was filed. These schools are found in the Annexure in the Higher Secondary Schools list as item Nos. 1,2,3, and 4 coming under the jurisdiction of the District Educational Officer in Cheramedevi District.

7. Documents were also enclosed in the paper book, which are pay bills for the schools paid only by the Tuticorin Diocese to show that the schools under the petitioner came under one single corporate management.
8. In 1989 Writ L.R. 187 (N. Sampathu Vs. The Chief Educational Officer) and 1989 T.L.N.J. 75 (T. Chandrasekan Vs. The Committee of Management of Pachaiyappa's Trust rap. By its Secretary Madras and 2 others), the Division Bench considered the question whether there is power for the management of private schools to transfer its staff, when no such power has been expressed, either in the Act or in the rules or in the Forms; but in neither of these cases was the right of transfer of teachers under a corporate management considered. On the other hand, in 2003 (4) CTC 65 (The Manager, R.C. Schools, Salem Social Services Society, Alagapuram V.G. Vincent Paulraj) the Division Bench had considered the terms and conditions of transfer of the teachers and has held that transfer of teachers, which does not affect his seniority and emoluments is valid. It was the case of the petitioner in that case that,

“A common seniority list is maintained of all the teachers working in all these schools. The society has been effecting transfers of its teachers from one school to another, such transfers being authorized under the Rules of the society which rules are made part of the service conditions of the employees by the undertaking obtained from the teachers in their service registers that they will be bound by the rules of the society.”

After referring to the observations of the Full Bench in 1998 (3) MLJ 595 (cited supra) with regard to the scheme of Act and the Rules, the Division Bench observed that,

“On the facts of the case before the Full Bench, it was concluded that transfer was not an incident of service as the schools in that case had been treated as separate units and separate seniority list were maintained in each individual school and admittedly there was no common seniority list.

4. The ratio of the decision of the Full Bench, therefore, is that transfer is not prohibited by the provisions of the Act; that if in a given case it is shown that transfer is a condition of service having regard to the terms of the contract between the parties, the transfer is permissible subject to the transferee not being deprived of the benefits of his service prior to such transfer.”

9. In 2002 Writ. LR 538 (DB) (Sri Kasi Mutt, Educational Agency, etc., V. The Commissioner of Collegiate Education, etc. & others) the Division Bench held,

“14. The next question that arises is whether the approval of the first respondent is a pre-condition for effecting the transfer. On the facts of the case, we hold that if the two institutions are run by one

and the same educational agency as a single corporate unit, it is not necessary to obtain prior approval of the first respondent for effecting transfer. The prior approval is required under the Act in the cases of dismissal or reduction in rank of teachers and when the Act is silent as regards the requirements of obtaining prior permission for transfer between two educational institutions run under a single corporate unit, we hold that the requirement of prior approval cannot be insisted upon and it is open to the educational authority to grant approval post-facto.”

10. As observed in 2003 (4) CTC 65 (cited supra) even the Full Bench had not held that there is no right to transfer rather it clearly provided that it would depend upon the particular facts and circumstances of each case.
11. Corporate Management is something that is recognized in the Act. Rule 15 of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 which deals with qualifications, conditions of service of teachers and other persons provides that “ In respect of corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of the rule”. Therefore, the Management of several schools by one corporate body certainly has statutory recognition.
12. The Full Bench did not consider the facts and circumstances relating to the petitioner which claims that it is a corporate body running several schools and also maintaining the single seniority list. The factual aspects of Malankara Syrian Catholic Arch Diocese alone has been dealt with by the Full Bench and a decision has been given thereon. The petitioner has produced certain documents to show that it stands at a different footing and dealing with the petitioner on the same basis as Malankara Syrian Catholic Arch Diocese, is an error apparent and the petitioner is entitled to have its request for sanction of salaries dealt with independently on the basis of the records produced. In these circumstances, the petitioner’s grievance that its right has been jeopardized by linking its case with the case of another situation which stands on a different footing definitely merits acceptance. In 1995 II CTC 513 (DB) (Baskaran Vs. The commissioner of College Education & 2 others) the Division Bench of this Court laid down the following principles for review:
 - (1) “If the judgment is vitiated by an error apparent on the face of the record in the sense that it is evident on a mere looking at the record without any long-drawn process of reasoning, a review application is maintainable.
 - (2) If there is serious irregularity in the proceeding, such as violation of the principles of natural justice, a review application can be entertained.

(3) If a mistake is committed by an erroneous assumption of a fact which is allowed to stand, would cause miscarriage of justice, then also an application for review can be entertained.”

In the course of judgment, the Division Bench referred to the following para in 1993 Supp. (4) SCC 595 (s. Nagaraj Vs. State of Karnataka):

“... Even the law bends before justice. Entire concept of writ jurisdictions exercised by the higher courts is found on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification depending on if it is fact or law. But the root from which the power flows is the anxiety to avoid injustice.

..... rectification of an order thus seems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.”

According to the petitioner, there was a basic assumption of facts by the Full Bench, which was erroneous insofar as the petitioner is concerned.

13. **The Full bench decision need not be reviewed** in its entirety since the Full Bench in answer to the question whether transfer is an incident of service had indeed observed that there may be facts and circumstances where transfer would be an incident or service. Therefore, it is not necessary to review the said judgment, rather, we think that the correct course would be to delink the petitioner’s case, from the batch that was considered by the Full Bench so that the authorities may consider their request on the basis of the documents produced. Accordingly we dispose of the Review Petition by directing the respondent to consider the question **whether the petitioners are a corporate management and whether they maintain a common seniority list and whether there has always been transfer of teachers inter-school** and on the basis of the answers to the questions a decision shall be taken in accordance with law within a period of four weeks. The review petition is disposed of accordingly,

Sd/-
Asst. Registrar

/ True Copy /

Sd/-
Sub Asst. Registrar

glp

To

1. The Govt. of Tamilnadu
Rep. By its Commissioner and Secretary, Educational Department
Fort St. George, Chennai – 600 009
2. The Director of School Education
Chennai – 600 006
3. The Joint Director of School Education (Secondary)
Chennai – 600 006
4. The Chief Educational Officer
Tirunelveli
5. The District Educational Officer
Tirunelveli South, Tirunelveli

1 cc To Mr.S.M.Edward Stanely, Advocate, SR. 67364

1 cc To The Government Pleader, SR. 67046

Review Application No. 139 of 2007

KA (CO)

RVL 29.11.2007