

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED ::23.03.2015

CORAM ::

THE HON'BLE MR. JUSTICE V. DHANAPALAN

Writ Petition No: 25038 of 2013

K. Ganapathy

Headmaster

Manicka Swamy Naidu Higher

Secondary School

Govindapuram,

Dharapuram Taluk

Tirupur District.

... Petitioner

-vs-

1. Manicka Swamy Naidu Hr. Sec. School
represented by the Secretary
Govindapuram
Dharapuram Taluk
Tirupur District.

2. The Chief Educational Officer
Tiruppur
Tiruppur District.

3. Thiru. M. Narayanasamy
Secretary
Manicka Swamy Naidu Higher
Secondary School
Govindapuram
Dharapuram Taluk
Tirupur District.

... Respondents

Writ petitions under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the 1st respondent issued in proceedings No. Nil dated 22.08.2013 and quash the same and issue a consequential direction to the respondents 1 and 2 to drop all the proceedings and to post the petitioner as Headmaster of the 1st respondent School.

For petitioner	::	Mr. R. Saseetharan
For respondents	::	Mr. M. Venkatachalapathy
1 & 3		Senior counsel for
		Mr. M. Sriram
For 2 nd respondent	::	Mr. R. Rajeswaran
		Special Government Pleader

O R D E R

This writ petition is filed for issuance of a writ of certiorarified mandamus calling for the records on the file of the 1st respondent issued in proceedings No. Nil dated 22.08.2013 and quash the same and issue a consequential direction to the respondents 1 and 2 to drop all the proceedings and to post the petitioner as Headmaster of the 1st respondent School.

2. The case of the petitioner is that he was initially appointed as Tamil Pandit in the Manicka Swamy Naidu Higher Secondary School, Govindapuram, Dharapuram Taluk, Tirupur District, on 08.11.1995. The said school is a private aided school receiving teaching grant from the Government of Tamil Nadu and, is therefore, guided by the provisions of the Tamil Nadu Private School Regulation Act, hereinafter referred to as the Act. The petitioner was promoted as Headmaster, High School on 09.07.2008. The said school is functioning with the aid of the Government upto High School and the Higher Secondary section is functioning without aid. According to the petitioner, he has rendered an unblemished record of 18 years of service. While so, to his shock and surprise, the Secretary of the School issued a memo on 23.11.2012 calling upon the petitioner to give an explanation to the allegations levelled in the said memo. The only allegation is that the petitioner conducted an examination, which is stated to be District Public Examination, on 07.11.2012 and 08.11.2012 on different timings, contrary to the schedule fixed by the Chief Educational Officer, Tirupur District. It is stated in the memo that the schedule fixed by the Chief Educational Officer, Tirupur District, is the rule and that its violation is a misconduct. The petitioner submitted his explanation on 27.11.2012, by stating that in view of the announcement of cyclone warning on 07.11.2012, he had chosen a different timings and that while fixing such different schedule he has taken care of the fact that there is enough interval for the students to get prepared for the examination. According to the petitioner, the examinations are not District Public Examination but only a Second Midterm examinations i.e. A revision test prior to the half yearly examination and therefore, it would not amount to misconduct. After this, the respondent had issued another memo on 03.12.2012 alleging that (i) the petitioner did not appoint a substitute teacher on 23.11.2012 for 7th standard " B " Section and for 6th standard " B " Section; (ii) the petitioner did not verify the exercise note books for X-A, X-B and X-C; (iii) that the drawing note books of the students was not verified and signed by the petitioner and that all these irregularities were complained of by five teachers of the school. Petitioner submitted his explanation to the second show cause notice also on 08.12.2012. According to the petitioner the issuance of these memos were not valid as they were issued without any resolution being passed by the School Committee. However, an Enquiry Officer was appointed on 18.01.2012 and an enquiry report was prepared on 22.04.2013 wherein the charges levelled in both the memos are held proved. Consequently, the 1st respondent, accepting the enquiry report,

issued a notice dated 29.04.2013 informing the petitioner that he proposed to impose a punishment of dismissal from service. As no opportunity to submit an explanation objecting to the findings of the enquiry officer was given to him, petitioner submitted a representation on 05.05.2013. Challenging the said show cause notice dated 29.04.2013 on the above ground and many other grounds, petitioner moved this Court in W.P. No: 14500 of 2013, which is pending.

3. When the matter stood thus, the 1st respondent had issued another notice dated 20.05.2013 levelling certain other allegations against the petitioner and placed him under suspension from 20.05.2013. On 23.05.2013, the petitioner sought for the complaints referred to in the notice dated 20.05.2013. After some correspondence, finally, an enquiry officer was again appointed on 22.06.2013. The Enquiry Officer conducted enquiry on 27.07.2013 and 03.08.2013 and was closed on 03.08.2013. However, at the instigation of the 1st respondent, the enquiry was re-opened by an order dated 20.08.2013. But, by the proceedings of the 1st respondent dated 22.08.2013, the petitioner was reverted from the post of Headmaster, High School, to the post of B.T. Assistant (Tamil) on the ground that the charges in relation to the Memorandum of Charges dated 23.11.2012 and 03.12.2012 are proved as per the Enquiry Officer's report dated 22.04.2013.

4. Even after passing the order of reversion in the 1st set of allegations, the 1st respondent has proceeded further in relation to the 2nd domestic enquiry, which was re-opened, and was held again on 07.09.2013. Therefore, left with no other option, the petitioner has moved this Court with the present writ petition challenging the order of reversion as well as the order dated 20.08.2013 re-opening the enquiry. On 05.09.2013, when notice was ordered to the respondents in this writ petition, this Court granted an order of interim stay, which is still operating.

5. In the counter affidavit filed by the 3rd respondent, Secretary of the School, it is stated that the writ petition joined the school as Tamil Pandit and he was given his due promotion at the relevant point of time and was working as Headmaster. That the petitioner has failed to discharge his duties cast upon him and exposed the school to adverse criticism from the statutory authorities viz. He on his own changed the schedule of examination prescribed by the 2nd respondent on two days. By this act, the petitioner had not only violated the schedule fixed by the Chief Educational Officer, Tirupur, but had also indirectly helped the students to get the question papers in advance, which is against the interest of the students and the institution. The explanation submitted by the petitioner was not an acceptable one. On a subsequent misconduct, charge memos have been issued on 23.11.2012 and 03.12.2012, charging that there was no proper maintaining of records relating to the allocation of teachers when there is any absence and there was no substitute allotted for the Xth standard students on 28.11.2012 and the Headmaster did not countersign the

exercise books submitted by the school teachers. It is further stated that the explanation submitted by the petitioner for these charges will show that the writ petitioner had admitted the charges levelled against him and gave an undertaking that he will be careful in future and will not commit such kind of lapses in future. It is also stated that there are valid resolutions passed by the School Committee and that the petitioner participated in the enquiry proceedings without any demur and is therefore, estopped from making any allegations about the conduct of the enquiry in this writ petition. It is further stated in the counter affidavit that the petitioner has got a statutory appeal remedy and without availing that opportunity, he has rushed to this Court by filing the present writ petition and prayed for dismissal of the writ petition.

6. I have heard Mr. R. Saseetharan, learned counsel appearing for the petitioner, Mr. M. Venkatachalapathy, learned Senior Counsel appearing for the Mr. M. Sriram for respondents 1 and 3 and Mr. R. Rajeswaran learned Special Government Pleader appearing for the 2nd respondent and perused the material documents made available on record.

7. The petitioner was initially appointed as Tamil Pandit in the 1st respondent School on 08.11.1995. The said school is a private aided school receiving teaching grant from the Government of Tamil Nadu and, is therefore, guided by the provisions of the Tamil Nadu Private School Regulation Act. The petitioner was promoted as Headmaster, High School on 09.07.2008. Petitioner has rendered an unblemished record of 18 years of service. On 23.11.2012, the Secretary of the School issued a memo calling upon the petitioner to give an explanation to the allegation levelled namely the petitioner conducted an examination, which is stated to be District Public Examination, on 07.11.2012 and 08.11.2012 on different timings, contrary to the schedule fixed by the Chief Educational Officer, Tirupur District. It is stated in the memo that the schedule fixed by the Chief Educational Officer, Tirupur District, is the rule and that its violation is a misconduct. The petitioner submitted his explanation on 27.11.2012, by stating that in view of the announcement of cyclone warning on 07.11.2012, he had chosen a different timings and that while fixing such different schedule he has taken care of the fact that there is enough interval for the students to get prepared for the examination. According to the petitioner, the examinations are not District Public Examination but only a Second Midterm examinations i.e. A revision test prior to the half yearly examination and therefore, even if there is slight deviation in the schedule, it would not amount to misconduct. After this, another memo came to be issued on 03.12.2012 alleging that the petitioner did not appoint a substitute teacher on 23.11.2012 for 7th standard " B " Section and for 6th standard " B " Section; that the petitioner did not verify the exercise note books for X-A, X-B and X-C; that the drawing note books of the students was not verified and signed by the petitioner and that all these irregularities were complained of by five teachers of the school. Petitioner submitted his explanation

to the second show cause notice also on 08.12.2012. According to the petitioner the issuance of these memos were not valid as they were issued without any resolution being passed by the School Committee. However, an Enquiry Officer was appointed on 18.01.2012 and an enquiry report was prepared on 22.04.2013 wherein the charges levelled in both the memos are held proved. Consequently, the 1st respondent, accepting the enquiry report, issued a notice dated 29.04.2013 informing the petitioner that he proposed to impose a punishment of dismissal from service. Petitioner submitted a representation on 05.05.2013 stating that no opportunity was given to him to submit an explanation objecting to the findings of the enquiry officer. Challenging the said show cause notice dated 29.04.2013 petitioner moved this Court in W.P. No: 14500 of 2013, which is pending.

8. Again, the 1st respondent had issued another notice dated 20.05.2013 levelling certain other allegations against the petitioner and placed him under suspension from 20.05.2013. An enquiry officer was again appointed on 22.06.2013. The Enquiry Officer conducted enquiry on 27.07.2013 and 03.08.2013 and was closed on 03.08.2013. However, at the instigation of the 1st respondent, the enquiry was re-opened by an order dated 20.08.2013. But, by the proceedings of the 1st respondent dated 22.08.2013, the petitioner was reverted from the post of Headmaster, High School, to the post of B.T. Assistant (Tamil) on the ground that the charges in relation to the Memorandum of Charges dated 23.11.2012 and 03.12.2012 are proved as per the Enquiry Officer's report dated 22.04.2013. Even after passing the order of reversion in the 1st set of allegations, the 1st respondent has proceeded further in relation to the 2nd domestic enquiry, which was re-opened, and was held again on 07.09.2013. Therefore, challenging the order of reversion as well as the order dated 20.08.2013 re-opening the enquiry, petitioner has filed the present writ petition.

9. The learned counsel appearing for the petitioner submitted that though the petitioner has rendered an unblemished record of 18 years of service, the Management, in order to bring trouble to the petitioner, has mounted one after another charge and is trying to dismiss him from service. He would submit that the first memo came to be issued on 23.11.2012, another memo was issued on 03.12.2012 and yet another memo was issued on 20.05.2013. According to the learned counsel, the enquiry initiated on the basis of the first set of charges namely the memos dated 23.11.2012 and 03.12.2012 had reached the final stage and by deciding to accept the Enquiry's Report, the second show cause notice was issued to the petitioner by the appointing authority on 29.04.2013 seeking his explanation as to why the punishment of dismissal from service should not be imposed and fixed time limit of seven days for submitting his explanation. Being not satisfied with that, the third memo came to be issued on 20.05.2013 levelling certain other allegations against the petitioner and placing him under suspension. This attitude of the Management clearly shows its intention of dismissing the petitioner from service on count or the other.

10. The learned counsel further submits that in the show cause notice dated 29.04.2013, the respondent school required the petitioner to submit his explanation to show cause as to why the petitioner should not be dismissed from service after concluding that the Management has accepted the report submitted by the Enquiry Officer. Thus, it is clear that the Management had decided to impose the punishment of dismissal from service even before the explanation of the petitioner about the enquiry report is received by it. In support of his contention, learned counsel relied on the decision rendered by the Supreme Court in the case of Managing Director, ECIL, -vs- B. Karunakar (1994 S.C. 1074) wherein it was held as under :

" Hence it is to be held that when the inquiry officer is not a disciplinary authority the delinquent employee has right to receive a copy of the inquiry report before the disciplinary authority arrived at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is an integral part of the employee's right to defend himself against the charges levelled against him. A denial of Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is breach of the principles of natural justice "

According to the learned counsel, by this act the disciplinary authority had violated the principles of natural justice and this vitiates the entire proceedings and therefore, the impugned order is liable to be quashed on this solid ground.

11. Next he would submit that when there is clear violation of the principles of natural justice, an alternate remedy is not a bar to approach this Court under Article 226 of the Constitution and hence, the writ petition is very well maintainable. As to the merits of the charges levelled against the petitioner, he would emphatically state that the allegations as such cannot be termed as a misconduct or violation of code of conduct warranting imposition of capital punishment such as dismissal or removal or termination of service or reduction in rank.

12. On the otherhand, Mr. M.Venkatachalapathy learned Senior Counsel appearing for the respondents / Management would strenuously contend that the impugned order dated 22.08.2013 imposing the punishment of reversion had been passed after conducting a disciplinary

enquiry and after getting the approval from the statutory authorities viz. The Chief Educational Officer, Tiruppur District. According to the learned Senior counsel, the charge levelled against the petitioner in altering the time schedule of the examination, which is common to the whole District, is the subject matter of the disciplinary proceedings for which an Enquiry Officer

was appointed, who after giving reasonable opportunity to the petitioner, has come to the conclusion that the charges are proved. Considering the report of the Enquiry Officer, the School Committee has issued a second show cause notice and after getting the reply, the matter was placed before the School Committee which decided to alter the punishment of dismissal from service into one of reversion and after getting the approval of the 2nd respondent herein, the same has been communicated to the petitioner vide the impugned proceedings dated 22.08.2013. The learned Senior Counsel would further submit that the petitioner, having participated in the enquiry fully, cannot now come and plead before this Court that the Enquiry Officer has not followed the established principles of natural justice, etc. and seek to set aside the order of reversion. According to the learned Senior counsel, the petitioner has not availed the appeal remedy available to him and on this

score also the writ petition is liable to be dismissed. In order to emphasise this point, the learned Senior Counsel relied on the following decisions and prayed for dismissal of the writ petition:

- (i) 2001 (X) S.C.C. 445 - Shashi Gaur vs. NCT of Delhi & Others
- (ii) 2013 S.C.C. Del.985 - Asha Rani Gupta vs. Ravindra Memorial Public School
- (iii) 2014 1 S.C.C. 603 - Commissioner of Income Tax vs. Chhabil Dass Agarwal
- (iv) 2014 (5) M.L.J.267 -Nissan Motors India Pvt. Ltd. (NMIPL) -vs- Competition Commission of India, Delhi and others
- (v) 2015 (2) S.C.C. 610 - Union of India and others vs. P. Gunasekaran.

13. According to the writ petitioner, the Management has taken a decision to dismiss him from service and in order to do so, the authorities are issuing one memo after another memo and that what all were charged as grave misconduct can only be termed as dereliction in duty which would not attract any capital punishment and hence, the impugned order is unsustainable. But, according to the Management, the petitioner who worked as a Headmaster cannot be permitted to act in a manner which would prejudice not only the interest of the students but the School as a whole as well and hence, he cannot be allowed to continue as a Headmaster. As regards the number of charge memos, the Management states that the allegations levelled against the petitioner came to light one after another at different dates and thus there arose a necessity to issue charge memos one after another. It is not in dispute that the 1st respondent School is governed by the provisions of the Tamil

Nadu Recognized Private Schools (Regulation) Act, 1973. Section 23 of the aforesaid Act provides that an appeal remedy would lie to the Joint Director of School Education (Higher Secondary). The said Section reads as under :

" 23. Appeal against orders of punishment imposed on teachers and other persons employed in private schools - Any teacher or other person employed in any private school -

(a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated ; or

(b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantage, by any order, may prefer an appeal against such order to such authority or officer as may be prescribed; and different such authorities or officer, as may be prescribed for different classes of private schools.

Explanation - In this section, the expression "order" includes any order made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date."

14. Time and again this Court as well as the Supreme Court has repeatedly held that a writ petition, under Article 226 of the Constitution of India, cannot be entertained when the statute itself provides for an efficacious alternate remedy under the Act. This was the view taken by the Supreme Court in the decision rendered in 2014 1 S.C.C. 603 in the case of Commissioner of Income Tax vs. Chhabil Dass Agarwal. The relevant portion reads as under :

" 16. In the instant case, the Act provides complete machinery for the assessment / reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futurity. "

Even in the decision rendered by this Court in the case of NISSAN Motors India Private Ltd. vs. Competition Commission of India, New Delhi, reported in 2014 (5) M.L.J. 267, this Court held that,

" 37. A writ petition under Article 226 of the Constitution of India should not be entertained when the statute itself provides for efficacious alternative remedy under the Act, unless exceptional circumstances, such as, violation of fundamental rights, violation of principles of natural justice and ultra vires the rule of law, are made out. In other words, the powers conferred upon the High Court under Article 226 are discretionary in nature, which can be

invoked very sparingly, for the enforcement of any fundamental right or legal right, but not for any other rights, in view of existence of efficacious alternative remedy. The Constitutional Court should insist upon the party to avail the same, instead of invoking the extraordinary writ jurisdiction of the High Court. " "

15. Thus, by taking into consideration all the relevant material facts and documents, this Court is of the considered view that the writ petitioner can very well avail the statutory remedy provided under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 by preferring an appeal as against the impugned order. Accordingly, by granting the liberty to the petitioner to prefer an appeal as against the impugned order, this writ petition stands disposed of. The petitioner, if he is so advised, shall prefer an appeal within a period of six weeks from the date of receipt of a copy of this order and till such time, the parties to this proceedings shall maintain status quo as on date. It is needless to mention that as to the limitation aspect in preferring the appeal, the period during the pendency of this litigation shall be excluded. Connected miscellaenous petitions are closed. There shall be no orders as to the costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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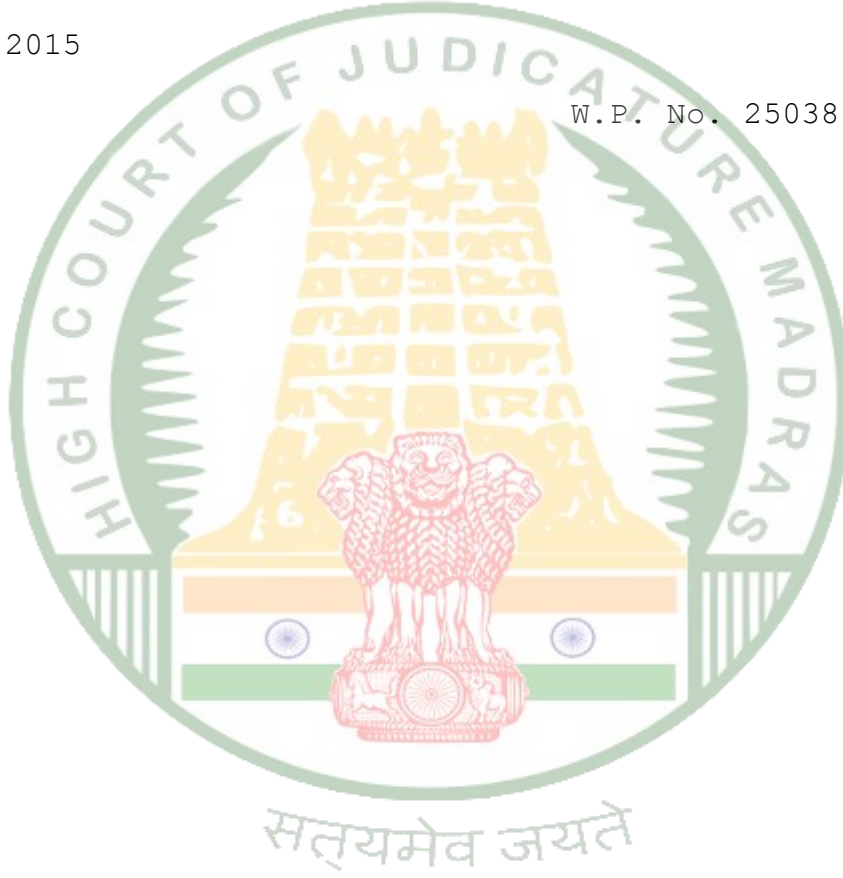
To

The Chief Educational Officer
Tiruppur
Tiruppur District.

+ 1 cc to Mr.R.Saseetharan, Advocate SR.16492
+ 1 cc to Mr.M. Sriram, Advocate SR.16022
+ 1 cc Government Pleader Sr.16318

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