

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.17838 of 2010

A. Haroon

...Petitioner

-Vs-

1. The Joint Director
Directorate of School Education
College Road
Chennai-6.
2. The Correspondent
Anaikar Oriental (Arabic) Higher Secondary School
M.C.Road
Ambur
Vellore District.
3. The Headmaster
Anaikar Oriental (Arabic) Higher Secondary School
M.C. Road
Ambur
Vellore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the correspondent dated 1 September 2008 on the file of the second respondent and the re-considered order in R.C.No.7/2010-2011 dated 9th June 2010 on the file of the second respondent and quash the same and consequently direct the respondents to re-instate the petitioner with full backwages and other benefits forthwith.

For Petitioner : Mr.S.N.Ravichadran
For Respondents : Mr.P. Sanjaigandhi
AGP for R.1

No appearance for RR 2 and 3

ORDER

This writ petition is directed against the order dated 1 September 2008 and the subsequent order dated 9 June 2010 whereby and whereunder the second respondent dismissed the petitioner from service without conducting a full fledged enquiry.

2. The petitioner joined the service of the second respondent as P.G.Assistant in Biology. His services were regularised on 1 June 1994. While so, the third respondent issued a charge memo to the petitioner on 17 May 2007 and initiated disciplinary proceedings. The third respondent issued a second charge memo dated 24 June 2008. The petitioner submitted his explanation. The second respondent thereafter issued another charge memo on 9 July 2008 with eight charges which includes the charges levelled against him earlier.

3. The second respondent adopted a summary procedure and ultimately passed an order dismissing the petitioner from service. Subsequently pursuant to the order passed by the first respondent, the second respondent passed a detailed order giving reasons. Those two orders are under challenge in this writ petition primarily on the ground that the dismissal was made without conducting a full fledged enquiry in the manner known to law.

4.The second respondent filed a counter affidavit indicating the charge memos issued to the petitioner., The second respondent contended that the petitioner submitted explanation and thereafter appeared before the management for personal deposition. After considering the explanation and personal deposition, the management passed the order of dismissal.

5. The learned counsel for the petitioner contended that the second respondent adopted a summary procedure and dismissed the petitioner from service. According to the learned counsel the management was determined to oust the petitioner from service and the same is evident by the series of charge memos issued to him. The

learned counsel further contended that even a minority institution is bound to follow the principles of natural justice before dismissing its employees from service.

6. Heard the learned Additional Government Pleader appearing on behalf of respondent No.1. None appeared on behalf of respondents 2 and 3.

7. The second respondent issued a charge memo to the petitioner on 9 July 2008 alleging that his activities were not in the interest of the institution. The petitioner submitted his explanation. The disciplinary authority conducted a personal interview with the petitioner. Thereafter the disciplinary authority dismissed him from service. The counter affidavit filed by the Correspondent very clearly shows that a full fledged enquiry was not conducted by him. Paragraph 9 of the counter affidavit reads thus:

"9. I state that I had to proceed against the petitioner vide Memo dated 9.7.2008 as the activities of the petitioner were not in the interest of the institution. The charges were set out in the said memo. The petitioner was asked to submit his explanation. The petitioner vide his communication dated 14.7.2008 offered his explanation. Pursuant thereto a memo dated 9.8.2008 was given to the petitioner giving opportunity to him to explain his stand in person if he so desired on 19.8.2008. The petitioner appeared and offered his explanation and his personal deposition on 19.8.2008. After due consideration of his explanation dated 14.7.2008 and his personal deposition on 19.8.2008 the management was convinced that the petitioner was found guilty of the charges levelled against him in the said Memo dated 9.7.2008. The management therefore had to decide to terminate his service in the interest of the institution with from immediate effect and his services were accordingly terminated under the proceedings dated 1.9.2008."

8. The documents produced by the second respondent shows that the petitioner was examined by the management and his statement was recorded. There was no Presenting Officer to present the case of the management. The management acted as the complainant, prosecutor and the Judge. The authority who issued the charge memo himself conducted the enquiry and ultimately passed the order of dismissal.

The petitioner is therefore perfectly correct in his contention that he was dismissed, from service without conducting a regular enquiry in the manner known to law. The order dismissing the petitioner from service would involve civil consequences to him. The second respondent being an educational institution is bound to conduct an enquiry in the manner known to law. The delinquent should be given an opportunity to cross examine the witnesses produced by the management. Unfortunately no such procedure was adopted by the second respondent.

9. The question as to whether the Tamil Nadu Recognised Private Schools Regulation Act, 1973 would apply to a minority institution came up for consideration before a Division Bench of this Court in C.Masanam v. Chief Educational Officer, Madurai and another (2008) WLR 898. The Division Bench considered the provisions of the Tamil Nadu Recognised Private Schools Regulation Act and held that Rules 8,15,20 and 27 of the Private Schools Regulation Rules would apply even to minority institutions. The ratio of the said decision would apply to the present case.

10. The materials produced by the management itself would support the case of the petitioner that he was dismissed from service without conducting a fair enquiry. I am therefore of the view that the petitioner must succeed.

11. In the result, the impugned orders dated 1 September 2008 and 9 June 2010 are set aside, The second respondent is directed to re-instate the petitioner into service forthwith with full backwages. Such exercise shall be completed within a period of one week from the date of receipt of a copy of this order.

12. The writ petition is allowed as indicated above. No costs.

Sd/-

Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

Tr/

To

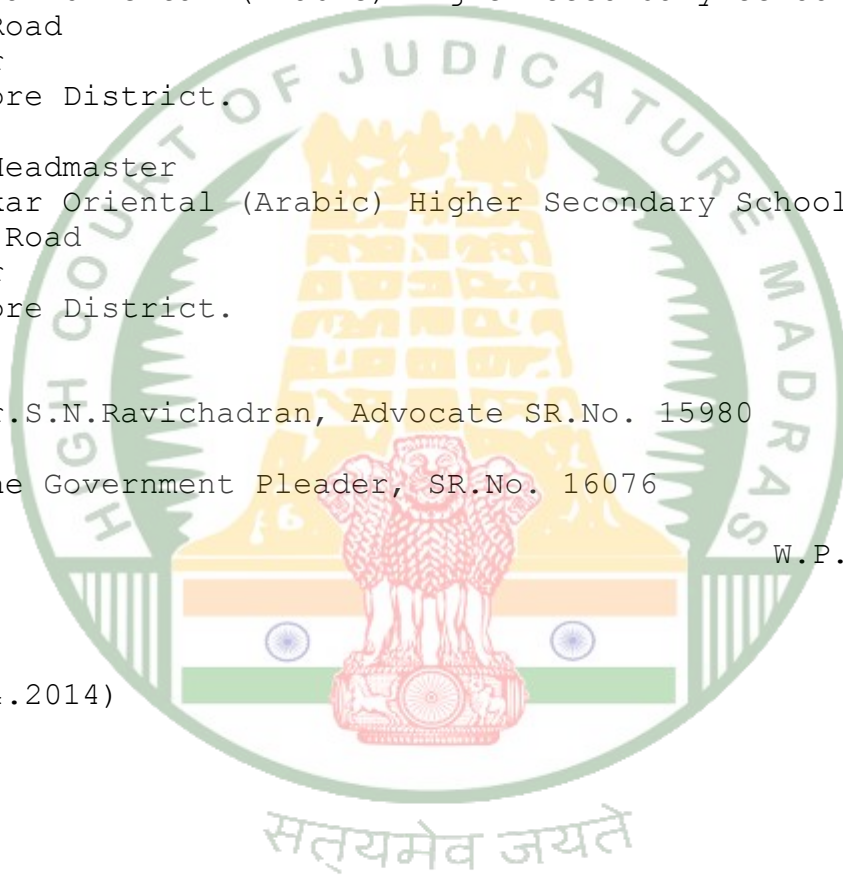
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1 CC to Mr.S.N.Ravichadran, Advocate SR.No. 15980

1 CC to the Government Pleader, SR.No. 16076

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GJ (CO)
PSI (11.04.2014)



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