



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABAABU

W.P. (MD) No. 1047 of 2015

and

M.P. (MD) No. 1 of 2015

WEB COPY

D. Joseph Dhanapaul,
Headmaster (Under Suspension),
Government High School,
Peyankuzhi,
Karankadu Post,
Kanyakumari District.

...Petitioner

Vs.

1. The Director of School Education,
College Road,
Chennai 600 006.

2. The Chief Educational Officer,
Kanyakumari District.

3. The District Educational Officer,
Thuckalay,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the second respondent issued in his proceedings in R.C.No.2096/A1/2014 dated 21.01.2015 and quash the same.

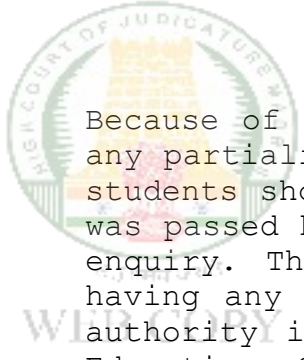
For Petitioner : Mr.A.Thirumurthy for
M/s.Victory Associates
For Respondents : Mr.J.Gunaseelan Muthiah
Government Advocate

O R D E R

The petitioner is aggrieved against the order of suspension dated 21.01.2015 issued by the second respondent.

2. The case of the petitioner is as follows:

He was appointed as Secondary Grade Teacher on regular basis on 01.06.1988 and promoted as B.T. Assistant on 27.01.1998. Thereafter, he was promoted as Headmaster on 13.07.2012. He has achieved 99% pass during the year 2013 and achieved 100% pass during the year 2014. He was selected for Best Teacher Award and was given Certificate of Award by the Chief Educational Officer, Nagercoil. The petitioner brought certain insubordination activities of two teachers to the knowledge of the Chief Educational Officer, Nagercoil. Therefore, to victimise, the said teachers instigated the Village President to make a false complaint against the petitioner before the Chief Educational Officer, Nagercoil.



Because of the unruly acts of few students, the petitioner has not shown any partiality to any other teacher or student, since the interest of the students should not be spoiled. While so, the present order of suspension was passed by the second respondent without even conducting a preliminary enquiry. The impugned order is passed by the second respondent without having any jurisdiction, since the appointing authority and disciplinary authority in respect of the petitioner is only the Director of School Education, Chennai.

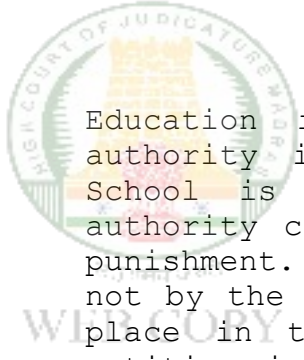
3. The second respondent filed a counter affidavit, wherein it is stated that the petitioner without the knowledge of the respondents, directed the students of 10th standard to attend the special classes on 16.01.2015 and on 19.01.2015 and attacked some students brutally because they failed to attend the special classes. It is further stated that because of the said corporal punishment imposed on the said students, a volatile situation prevailed in the above said school and therefore, the petitioner was suspended by the second respondent after thorough enquiry. Further, the suspension order issued by the second respondent was given ratification by the Director of School Education on 05.02.2015.

4. Mr.A.Thirumurthy, learned counsel for the petitioner submitted that the petitioner has not indulged in any misconduct or dereliction of duty and only acted to achieve 100% result as required by the Director of School Education. He further submitted that the petitioner is being victimised as he has not obliged to issue some bogus transfer certificates demanded by the villagers. The learned counsel, apart from those contentions on merits, mainly challenge the impugned suspension order on the ground of jurisdiction. He submitted that when the Director of School Education being the competent authority, the second respondent is not entitled to pass the order of suspension. He further pointed out that the subsequent ratification issued by the Director of School Education cannot be taken into account as the same was obtained after filing this writ petition and after taking time by the learned Government Advocate to get instruction. In this aspect, he relied on the decision of the Hon'ble Supreme Court reported in AIR 1964 SC 787 (*R.P.Papur v. Union of India*) to contend that the suspension order could be made only by the appointing authority. He further relied on the decision of the Hon'ble Supreme Court reported in AIR 1978 SC 851 (*Mohinder Singh vs. Chief Commissioner*) to contend that the validity of an order must be judged by the reasons so mentioned therein and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

5. Per contra, the learned Government Advocate appearing for the respondents submitted that since the petitioner has indulged in imposing corporal punishment on the students, which is banned, the order of suspension was rightly imposed by the second respondent which was subsequently ratified by the Director of School Education.

6. Heard both sides.

7. In this case, the petitioner, who was working as Headmaster, was suspended from service on 21.01.2015 on the ground that an enquiry into grave charges is contemplated against him. The said order was passed by the second respondent, who is the chief Educational Officer, Kanyakumari District. It is not in dispute that the Director of School



Education is the appointing authority as well as the disciplinary authority insofar as the petitioner's post viz., Headmaster of High School is concerned. It is well settled that only the appointing authority can initiate disciplinary proceedings and impose the order of punishment. Admittedly in this case the order of suspension was issued not by the appointing authority. However, the development that had taken place in this case, that too subsequent to the filing of the writ petition is that the second respondent, who passed the impugned order, had obtained a ratification from the competent authority viz., first respondent later. In my considered view, such ratification, as rightly pointed out by the learned counsel appearing for the petitioner, cannot be taken into consideration, since the said action had admittedly taken place not only after filing of the writ petition, but also after getting time from this Court on 03.02.2015 to nullify the jurisdictional point raised by the petitioner. Seeking such ratification thereafter and obtaining the same from the competent authority is nothing, but an over reaching act only to defeat the point of jurisdiction raised by the petitioner and hence such act cannot be justified. As it is observed in the order made by the Honourable Supreme Court reported in AIR 1978 SC 851 (*Mohinder Singh vs. Chief Commissioner*), that the validity of the order must be judged by the reason so mentioned therein including its competency, this Court is fully satisfied that the second respondent was not having the jurisdiction to pass the order of suspension on the date when it was passed. Accordingly, the impugned order of suspension is set aside. However, this order setting aside the order of suspension will not preclude the respondents from proceeding against the petitioner in accordance with law.

8. This Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1. The Director of School Education,
College Road, Chennai 600 006.
2. The Chief Educational Officer,
Kanyakumari District.
3. The District Educational Officer,
Thuckalay, Kanyakumari District.

+1cc to Mr.A.Thirumurthy, Advocate in SR.5856
+1cc to the Special Government Pleader in SR.6263

W.P. (MD) No.1047 of 2015
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