

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 07/08/2014

DATED : 21/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.10743 of 2008

M.Rajamanickam

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Secretariat, Chennai-600 009.

2.The Director,
Directorate of Elementary Education,
College Road,
Chennai-600 006.

3.The District Elementary Educational Officer,
Krishnagiri District.

4.The District Elementary Educational Officer,
Namakkal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for

a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the third respondent in his proceedings in Na.Ka.No.2999/A3/2002, dated 29.11.2007, quash the same and direct the respondents to reinstate the petitioner by allowing him to retire on superannuation with effect from 31.08.2007 with all retirement and pensionary benefits.

For Petitioner : Mr.K.Mahalingam

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader

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ORDER

The petitioner has submitted that he joined the Tamil Nadu Educational Department on 03.10.1969. Thereafter, he was promoted as Headmaster and transferred and worked as Headmaster at Sukkuranda Alli (Kalliyur) Panchayat Union Elementary School from 16.03.1999. While so, the petitioner was charged under Rule 17B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and suspended from service on 28.08.2007 at the verge of his retirement on 31.08.2007. The charges levelled against him are that, the petitioner abetted for the misappropriation of funds one N.Muthukumarasamy, Junior Assistant who worked in the Assistant

Elementary Educational Officer, Kaveripattinam. It is alleged that the said Junior Assistant N.Muthukumarasamy misappropriated to the tune of Rs.30,92,590/-.

2. The petitioner has further submitted that based on the above allegations, he was suspended from service by order dated 21.12.2003 passed by the third respondent. Earlier, the petitioner filed a writ petition before this Court in W.P.No.22102 of 2006, challenging the order of suspension. This Court, by an order dated 21.07.2006 was pleased to grant stay of the order of suspension. Based on the orders passed by this Court, the second respondent, by an order dated 18.04.2007, revoked the order of suspension and reinstated the petitioner in service. The petitioner has further submitted that the charges were framed by the proceedings of the third respondent dated 15.03.2006. The petitioner had sent a detailed representation on 31.03.2006, explaining for all the charges levelled against him and narrated his innocence and denied abetment to the crime committed by the said Muthukumarasamy.

3. The petitioner has further submitted that the fourth respondent was appointed as an Enquiry Officer, who conducted an enquiry and held that the entire allegations levelled against the petitioner are proved. Based on the enquiry report dated 30.08.2007 submitted by the fourth respondent, the

third respondent, by his notice dated 13.11.2007 called upon him to give his reply / explanation within 15 days. The petitioner submitted an explanation on 22.11.2007, denying the allegation levelled against him. The petitioner has further submitted that the third respondent, by an order dated 29.11.2007 accepted the report of the fourth respondent and passed the impugned order, dismissing the petitioner from service. Aggrieved by the same, the petitioner has filed the above writ petition.

4. The second respondent has filed a counter affidavit and resisted the above writ petition. The second respondent has submitted that the petitioner joined service as Secondary Grade Teacher in Tamil Nadu Education Department on 03.10.1969 and he was promoted as Headmaster and transferred to various schools and lastly transferred to Sukkuranda Alli (Kalliyur) Panchayat Union Elementary School on 16.03.1999. During his tenure as Headmaster in the said School, he misappropriated the Government Provident Fund of various teachers to the tune of Rs.30,92,590/-. Charges were framed against the petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline and appeal) Rules and he was suspended from service by an order dated 21.12.2003. Aggrieved by the same, the petitioner filed a writ petition in W.P.No.22102 of 2006 before this Court, challenging the order of suspension. This Court, by an order dated 21.07.2006, granted stay of

operation of the suspension order. The second respondent has further submitted that on the basis of the orders passed in W.P.No.22102 of 2006, the order of suspension was revoked and the petitioner was reinstated into service pending disciplinary charges, by an order dated 18.04.2007 passed by the second respondent.

5. The second respondent has further submitted that in the above said Disciplinary charges, the fourth respondent herein was appointed as Enquiry Officer. The Enquiry Officer after considering the entire documentary evidence and the explanation submitted by the Delinquent Officer submitted his Enquiry Report on 30.08.2007, stating that the charges levelled against the petitioner are proved. On the basis of the Enquiry Report, the petitioner herein was called upon to submit his further explanation and the petitioner submitted his further explanation on 22.11.2007. After considering the entire documents, the second respondent passed an order dated 29.11.2007, dismissing the petitioner from service. The second respondent has further submitted that the petitioner was involved in misappropriation of General Provident Fund of various teachers in collusion with one Mr.N.Muthukumaraswamy, who was working in the office of the Assistant Elementary Educational Office, Kaveripattinam, to the tune of Rs.30,92,590/-. A detailed enquiry was conducted by the Enquiry Officer, who had submitted

his report stating that the charges levelled against the petitioner are proved. The second respondent has further submitted that a criminal case was also registered against the petitioner in Crime No.9 of 2002 before the District Crime Branch, Dharmapuri. The impugned order has been passed only after due consideration of the facts and circumstances and the charges levelled against the petitioner are amply proved.

6. The second respondent has further submitted that the petitioner was again kept under suspension only on the ground that the petitioner is reaching superannuation and the disciplinary proceeding is pending as on that date and in order keep him under service, they have issued a suspension order dated 25.06.2007 again. Thereafter, the third respondent passed an order, by not permitting the petitioner to retire on 28.08.2007, in view of the pending of the disciplinary proceedings and now, the enquiry is over and final order has been issued to the petitioner herein. The second respondent has further submitted that against the order passed by the third respondent the petitioner ought to have filed an appeal to the Appellate Authority. But, on the other hand, without exhausting the appeal remedy, the petitioner has filed the above writ petition. Hence, the second respondent entreats the Court to dismiss the above writ petition.

7. The learned counsel appearing for the petitioner has submitted that the petitioner had joined with the Tamil Nadu Educational Department, on 03.10.1969, as a Teacher. Subsequently, he was promoted as Headmaster. As such, he is the authorised person to disburse the salary to the staff and non-teaching staff. The petitioner, at the verge of his retirement, on 31.08.2007, was charged under Section 17(B) of the Tamil Nadu Civil Services Rules and suspended from service on the ground of misappropriation of funds. Further, initially, he was suspended from service by the third respondent, by order dated 21.12.2003. The same was challenged by him before this Court in W.P.No.22102 of 2006 and this Court, on 21.07.2006, had granted an order of interim stay. Based on the order of interim stay granted by this Court, the second respondent, by order, dated 18.04.2007, revoked the order of suspension and reinstated the petitioner in service. It clearly proves that the petitioner was having a *prima facie* case.

8. Further, the learned counsel has submitted that the third respondent had framed charges against the petitioner and for which he had submitted a detailed explanation and revealed that he is an innocent person and he had not been involved in any such fraud as alleged. Thereafter, the fourth respondent was appointed as an Enquiry Officer, who had erroneously held that the charges had been proved against the petitioner and the third

respondent had also confirmed the findings of the fourth respondent, without assigning any valid reason and dismissed him from service by the impugned order, dated 29.11.2007. The Assistant Elementary Educational Officer / *de facto* complainant, had levelled a criminal case before the District Crime Branch against one Muthukumarasamy, Junior Assistant, with whom the petitioner is alleged to have misappropriated the funds and the said case had been registered in Crime No.9 of 2003. But, in the said FIR, the petitioner's name had not found place. The allegation is purely of criminal nature. Therefore, the Investigating Officer attached to the Dharmapuri District Crime Branch had initiated criminal proceedings against the said Muthukumarasamy. Under the circumstances, the entire disciplinary proceedings initiated against the petitioner are not sustainable under law. The petitioner has no nexus with the said Muthukumarasamy. Further, the alleged offence took place during 2002, but the charges were framed after a lapse of four years. As such, the third respondent has committed shortcomings in the impugned order and hence it is not suitable for execution against the petitioner.

9. The learned Additional Government Pleader appearing for the respondents has submitted that the petitioner had joined in the service of Tamil Nadu Education Department as a Secondary Grade Teacher, on

03.10.1969, and he was promoted as Headmaster. Subsequently, on 16.03.1999 he was transferred to Panchayat Union Elementary School at Kalliyur. During his tenure as Headmaster, he had misappropriated the general provident fund of various teachers to the tune of Rs.30,92,590/- in collusion with Muthukumarasamy, who was working as office assistant in the Assistant Elementary Educational Office, Kaveripattinam. Hence, charges were framed against the petitioner. The fourth respondent, who was appointed as an Enquiry Officer, had conducted a comprehensive enquiry and found that the charges levelled against the petitioner were proved. Hence, the third respondent has dismissed the petitioner from service by the impugned order, dated 29.11.2007. The impugned order has been passed after verification of criminal case and hence there is no shortcoming in the impugned order. For all the reasons, the learned Additional Government Pleader has prayed for dismissal of the writ petition.

10. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, it is seen that provident funds of four teachers has not been paid fully and the same was proved by documentary proof. Further, the respondents levelled charges on the basis of relevant documents with regard to quantum of provident fund, misappropriation of funds and date and

mode of payment etc. Further, the School, where misappropriation of provident funds of the teachers has taken place, is under the petitioner's care and maintenance. Therefore, the writ petition does not generate sufficient force to allow it and hence it is liable to be dismissed.

11. In the result, the writ petition fails and it is dismissed. No costs.

21/01/2016

Index : Yes/No.
Internet : Yes/No.

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To

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C.S.KARNAN, J.

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