

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.20289 of 2014

and

M.P.No.1 of 2014

K.Jhansirani

... Petitioner

Vs.

1.Government of Tamil Nadu,  
rep. by the Principal Secretary to Government,  
School Education [PK-1(2)] Department,  
Secretariat, Chennai-600 009.

2.The Director of School Education,  
DPI Campus, Chennai-600 006.

3.The Chief Educational Officer,  
Vellore District.

4.Mr.Saravanan, P.G.Assistant,  
C/o. Director of School Education,  
DPI Campus, Chennai-600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent relating to G.O.(D).No.265, dated 20.08.2013, School Education [PK-1(2)] Department and to quash the same as illegal, arbitrary, vindictive, discriminatory, principles of Natural Justice, without jurisdiction and consequently, to direct the respondents 1 to 3 to pay all the monetary, service and other benefits to the petitioner, which she had suffered due to the impugned proceedings, promote the petitioner to the post of P.G.Assistant from the date on which the 4th respondent i.e, petitioner's immediate junior was promoted together with monetary, service and other benefits.

For Petitioner : Mr.K.Srinivasa Murthy

For respondents : Mr.K.Dhananjayan, Spl GP

## ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent relating to G.O. (D).No.265, dated 20.08.2013, School Education [PK-1(2)] Department and to quash the same and consequently, to direct the respondents 1 to 3 to promote the petitioner to the post of P.G.Assistant from the date on which the 4th respondent i.e, petitioner's immediate junior was promoted and to pay all the consequential monetary, service and other benefits to the petitioner, which she had suffered due to the impugned proceedings.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2-1.The petitioner was selected as Block Resource Teacher Educator, through competitive examination. On 19.07.2002, she was posted at Vedaranyam, Nagapattinam District under Sarva Siksha Abhyas Scheme. On 01.11.2002, she was posted at Vellore Rural District. Since a temporary vacancy arose in Vellore District Programme Office, she was deputed and posted there for a short period of 62 days between 11.07.2008 and 16.09.2008. There was five Programme Co-ordinators in the said office. The petitioners was doing whatever work the CEO, APO, Superintendent instructed to do.

2-2.While so, Activity Learning Material (ALM) Training Programme was conducted on 19.08.2008, 21.08.2008, 12.09.2008 and 13.09.2008 in the Vellore Programme Office. No training was conducted on 20.08.2008 as there was a bandh on that day in Vellore District. On the last date of the training, Travel Allowance was disbursed to the teachers. In the presence of all the District Officials, the District Programme Officer asked the petitioner to count and give the money to the respective teachers and to obtain their signature in the attendance-cum-acquittance register. Accordingly, the petitioner paid the money to the respective teachers in front of all the officers and obtained signatures in the attendance-cum-acquittance register and handed over the same to the Superintendent along with the signed register and the Bills for the other amounts spent for the Training Programme.

2-3.It is stated that the Chief Educational Officer would attend the District Collector Review Meeting once in a month and

the State Programme Development Officers meeting at Chennai once a month. Based on the information sent by the District Training Office, Vellore by email to the State Programme Development Office (SPDO) in Chennai, the CEO would submit the report about the training programmes conducted.

2-4. On 17.09.2008, the petitioner was relieved from Vellore District Office. Unfortunately, the petitioner was not given any posting orders. Therefore, the petitioner sent a representation under the Right to Information Act, 2005. In the reply, it was stated that she was transferred to Arakonam and the transfer order was handed over to her. While so, all of a sudden, by letter dated 19.12.2008, the petitioner was suspended from service and on 09.01.2009, a charge-memo was issued to the petitioner containing three charges. The 1st charge levelled against the petitioner is that some of the teachers had complained that they were not paid with the travelling allowance for attending the training programme on 20.08.2008 and since the petitioner did not obtain necessary acknowledgment for the same, it is deemed that she has utilized the amount of Rs.50,000/- withdrawn on 19.08.2008 & 21.08.2008, for her personal use. The 2nd charge levelled against the petitioner is that on 12.09.2008, 13.09.2008, a sum of Rs.45,000/- was withdrawn by the training co-ordinator and that some teachers complained that they were not paid the Travelling Allowance and no receipts for Rs.7,621/- were submitted. The 3rd charge levelled against the petitioner is that she did not send information regarding the training programme to the State Programme Officer then and there through phone etc.

2-5. To the said charge-memo, the petitioner has given a detailed reply denying the allegations made in the charge-memo. According to the petitioner, the above said charges are not correct. In fact, on the last date of the Training, the Travel Allowance was disbursed to the teachers. The amount was disbursed in the Training Hall in the presence of all the officials. Thereafter, the respondent by order dated 11.02.2009 revoked her suspension and posted the petitioner to Cheyyar Block, Tiruvannamalai. The respondent paid salary to the petitioner from 17.09.2008, ie., only after 1 1/2 years.

2-6. On 26.12.2009, the petitioner was called for an enquiry. In the enquiry, the Enquiry Officer gave her a paper containing three charges levelled against her in a tabular column and asked her to give her comments on the right-hand side column. Accordingly, the petitioner gave her comments. When the Enquiry Officer orally asked the petitioner to say whatever she wanted, the petitioner had stated that the travelling allowance was paid to the respective teachers in the Training Hall itself in the presence of all the officials and their signatures were obtained

in the attendance-cum-acquittance register, acknowledging the receipt of the amount, as instructed by the District Training Co-ordinator, as per the procedure followed by their office. In the enquiry, no document has been produced to prove that the petitioner has withdrawn Rs.50,000/- as alleged in the charge-memo. No complaint copies alleged to have been received was produced and no witness was examined to prove the charges. Even though the respondents have not proved the charges levelled against the petitioner in the manner known to law, the petitioner had taken the Enquiry Officer to the office of the District Training Officer and showed him the documents such as the attendance-cum-acquittance register and other documents relating to the training programme conducted on 19.08.2008, 21.08.2008, 12.09.2008 & 13.09.2008, the quarterly reports submitted by the CEO in the District Collectors review meeting and the monthly reports submitted in the State Programme Officer review meeting. However, the Enquiry Officer submitted his report dated 31.05.2011, holding that the charge-2 alone was not proved and the charges 1 & 3 were proved against the petitioner. Based on the enquiry report, without considering the merits of the petitioner's contentions, the 1st respondent has imposed a punishment of two increment cut for two years with cumulative effect, by the impugned order dated 20.08.2013. Since the 1st respondent, who is the appellate Authority, himself has imposed the punishment order, the petitioner has lost her opportunity of preferring an appeal.

2-7. It is further stated by the petitioner that her next avenue of promotion is to the post of P.G.Assistant. On 01.01.2012, a panel for promotion to the post of P.G.Assistant was prepared. The petitioner's name was shown at Sl.No.103 and the 4th respondent's name was at Sl.No.104. Because of the impugned punishment order, the petitioner's name was not mentioned in the Panel prepared on 01.01.2014. The names of the petitioner's immediate senior Kasthuri and the 4th respondent find a place in the panel dated 01.01.2014. Because of the punishment order, the petitioner is losing her promotion. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that during the course of enquiry, no witness was examined and only a discrete enquiry was conducted. During the enquiry, the petitioner was asked to give her comments on the right-hand side column in the paper given to her and accordingly, the petitioner had written her comments. Thereafter, the petitioner was asked to say whatever she wanted. Accordingly, the petitioner had also stated before the Enquiry Officer that the travelling allowance was paid to the respective

teachers in the Training Hall itself in the presence of all the officials and their signatures were obtained in the attendance-cum-acquittance register acknowledging the receipt of the amount as instructed by the District Training Co-ordinator.

4.It is further submitted by the learned counsel for the petitioner, that in the enquiry, no document has been produced and no witness was examined on the side of the department, to prove that the petitioner has withdrawn Rs.50,000/- as alleged in the charge-memo. The learned counsel for the petitioner submitted that without properly conducting the enquiry, the impugned order of punishment was passed by the 1st respondent, which is in violation of the principles of natural justice. In this regard, the learned counsel for petitioner has also relied upon the decision of the Hon'ble Supreme Court reported in (2008)8 SCC 236 [State of Uttaranchal Vs. Kharak Singh], wherein it has been held that in an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine witnesses of the employer and only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give an explanation about the evidence led against him. By relying upon the above said decision, the learned counsel for the petitioner submitted that in the instant case, during the enquiry, no document was marked and no witness was examined. Thus, the learned counsel for the petitioner sought for quashing of the impugned order and a suitable direction to the respondents.

5.But, the learned Special Government Pleader appearing for the respondents, by filing a detailed counter, would only contend that the petitioner is having appeal remedy and without exhausting the appeal remedy, the petitioner has approached this Court. However, the learned Special Government Pleader has not denied the fact that during the enquiry, no document and no witness was examined.

6.Heard the submissions made on either side and perused the materials available on record.

7.It is admitted that during the enquiry, no document was produced and no witness was examined to prove the charge levelled against the petitioner. Hence, it is clear that in the instant case, the enquiry has not been conducted in the manner known to law and there is violation of natural justice in conducting the enquiry in the instant case. In this regard, a reference could be placed in the decision of the Hon'ble Supreme Court, relied upon by the learned counsel for the petitioner, reported in (2008)8 SCC 236 [State of Uttaranchal Vs. Kharak Singh], wherein it has been held as follows\_

"15.From the above decisions, the following principles would emerge\_

(i)The enquiries must be conducted bone fide and care must be taken to see that the enquiries do not become empty formalities.

(ii)If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then it all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii)In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv)On receipt of the enquiry report, before proceedings further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

The dictum laid down in the above said decision is squarely applicable to the present facts of the case. Admittedly, in the instant case, no document was marked and no witness was examined on the side of the department to prove the charge levelled against the petitioner. Hence, I am of the opinion that since there is violation of principles of natural justice in conducting the enquiry in the instant case, the impugned order is liable to be quashed.

8. Accordingly, the impugned order is quashed and the writ petition is allowed as prayed for. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Principal Secretary to Government,  
Government of Tamil Nadu,  
School Education [PK-1(2)] Department,  
Secretariat, Chennai-600 009.

2. The Director of School Education,  
DPI Campus, Chennai-600 006.

3. The Chief Educational Officer,  
Vellore District.

+1cc to M/S. Row & Reddy, Advocate Sr.64316  
+1cc to the Government Pleader Sr.64338

W.P.No.20289 of 2014 and  
M.P.No.1 of 2014

rk[co]  
srg 26/12/2016

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