

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.1675 of 2016
W.M.P.No.1456 of 2016

D.R.Munian

... Petitioner

Vs.

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

2. The Chief Educational Officer,
Dharmapuri 636 705,
Dharmapuri District.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent issued in Na.Ka.No.7667/A2/2015, dated 06.01.2016, quash the same and issue a consequential direction to the respondents to re-employ the petitioner as Headmaster, Avvaiyar Government Girls Higher Secondary School, Dharmapuri, for a period from 01.07.2015 to 31.05.2016, with all benefits.

For Petitioner : Mr.R.Saseetharan

For Respondent : Mr.S.Gunasekran
Additional Government Pleader

ORDER

Mr.D.R.Munian, who was given the benefit of re-employment, on reaching the age of superannuation, by proceedings of the Chief Educational Officer, Dharmapuri, dated 29.06.2015, for a period between 01.07.2015 and 31.05.2016, has been denied the benefit of re-employment, by the impugned order, dated 06.01.2016. Therefore, he has come forward with this writ petition, challenging the impugned order, dated 06.01.2016, with a consequential direction to the respondents to re-employ him, as Headmaster, Avvaiyar Government Girls Higher Secondary School, Dharmapuri, till 31.05.2016, with all benefits.

2. It is the case of the petitioner that he was issued with an order of re-employment, dated 29.06.2015, by the Chief Educational Officer, Dharmapuri, for a period between 01.07.2015 and 31.05.2016, on the ground that his date of retirement falls in the middle of the academic year and therefore, he has been allowed to continue as Headmaster, Avvaiyar Government Girls Higher Secondary School, Dharmapuri. While he was satisfactorily discharging his duties as Headmaster of the School, the Director of School Education, Chennai, 1st respondent, by proceedings, dated 23.12.2015, asked the Chief Educational Officer, Dharmapuri District, 2nd respondent herein, to submit a report, on the complaints, dated 21.12.2015 and 22.12.2015, made by the Member of Legislative Assembly (In short, "M.L.A."), Harur Constituency and Tmt.P.Gomathi, B.T.Assistant in the above School respectively, alleging that as the Headmaster of the School, he has given trouble to Tmt.P.Gomathi, B.T.Assistant; that he used double meaning words, while in conversation in person as well as over telephone with the teachers; that he used obscene words to other teachers; and that if any teacher fails to accept his words, he/she is threatened by force.

3. Pursuant to the direction given by the Director of School Education, Chennai, 1st respondent herein, the Chief Educational Officer, Dharmapuri, 2nd respondent herein, by proceedings, dated 31.12.2015, directed the petitioner to submit his explanation, on the complaints made by the M.L.A., Harur Constituency as well as Tmt.P.Gomathi, B.T.Assistant, within 24 hours, upon receipt of the show cause notice. In the said show cause notice, it has been alleged that while the petitioner spoke to Tmt.P.Gomathi, B.T.Assistant, at 5.00 A.M., he has underestimated the M.L.A., Harur Constituency as well as the Director of School Education, Chennai and that the conversation has been recorded in Compact Disc (CD). On receipt of the same, the petitioner has given a detailed representation on 02.01.2016, refuting the abovesaid allegations levelled against him. However, the Chief Educational Officer, Dharmapuri, 2nd respondent herein, without furnishing the copy of the Compact Disc (CD), by impugned order, dated 06.01.2016, has cancelled the order of re-employment, dated 29.06.2015. Therefore, he contended that the impugned order passed by the 2nd respondent has to be construed as a clear violation of the principles of natural justice.

4. In support of the above, Mr.R.Saseetharan, learned counsel for the petitioner has relied upon a decision of the Apex Court in Krishan Lal v. State of J & K., reported in 1994 (4) SCC 422, to say that an order passed in violation of principles of natural justice would render the same invalid. Again, relying

upon another judgment in Pepsu Road Transport Corporation v. Lachhman Dass Gupta reported in 2001 (9) SCC 523, he further submitted that if any document, relied upon in the show cause notice, in establishing the charge, the said document should be furnished to the delinquent. But in the present case, on a mere perusal of the show cause notice, dated 31.12.2015, it is seen that petitioner alleged to have used some unparliamentary words with the teachers and the same is said to have been recorded in the Compact Disc (CD) and when they have relied upon the Compact Disc (CD), to prove the charges stated in the show cause notice, the respondents ought to have furnished one set of Compact Disc (CD) to the petitioner, but the same has not been done. Therefore, he submitted that since the said document, relied on by the Department, in establishing the charge, has not been furnished to the petitioner/delinquent, the conclusion reached in the impugned order is untenable and unacceptable, because the petitioner has been denied a reasonable opportunity to defend himself in the proceedings. On this basis, he prayed to set aside the impugned order.

5. Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents, after filing a detailed counter affidavit, would submit that the petitioner cannot ask for regular enquiry, as he was continuing in service, after retirement. Only after reaching the age of superannuation, he has been given the benefit of re-employment, besides, as he was retired in the middle of the academic year, the provisions under Rule 17(b) of the Tamil Nadu State and Subordinate Service Rules, cannot be made applicable. However, he would submit that if this Court is of the view that the principles of natural justice has been violated for not furnishing the copy of the Compact Disc (CD), a direction may be given to the respondents, to re-do the exercise, because the allegations made against the petitioner are very serious. Therefore, he would submit that the respondents may be given a final chance to re-do the exercise in the manner known to law.

6. This Court finds merits on the submission of the learned Additional Government Pleader, for the reason that when the petitioner has come forward with an explanation, dated 02.01.2016, refuting the allegations made against him, in the show cause notice, dated 31.12.2015, without even furnishing the copy of the documents, including the Compact Disc (CD), said to have been relied on by the Department, for establishing the charge, the impugned order has been passed. Therefore, as rightly contended by the learned counsel for the petitioner, there is a clear violation of principles of natural justice, on the ground that the respondents have not furnished any document, including the Compact Disc (CD), relied on by the Department.

Therefore, this Court, while setting aside the impugned order, directs the 2nd respondent to furnish all the documents, relied on by the Department, to reach the conclusion. The whole exercise shall be completed within a period of two months, from the date of receipt of a copy of this order. Needless to mention that the petitioner should be allowed to function in the meanwhile. Only after the completion of the enquiry and passing final orders, it is open to the respondents to pass a speaking order.

7. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

skm

To

1. The Director of School Education,
College Road, Chennai 600 006.
2. The Chief Educational Officer,
Dharmapuri 636 705,
Dharmapuri District.

1 cc to Mr.R. Saseetharan, Advocate, SR. 22607
1 cc to Government Pleader, SR. 22194

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