

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 30.08.2016	Pronounced on 26.09.2016
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DATED: 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.427 of 2016

- 1.The Correspondent,
Anaikar Oriental (Arabic) Higher Secondary School,
M.C.Road, Ambur, Vellore District.
- 2.The Headmaster,
Anaikar Oriental (Arabic) Higher Secondary School,
M.C.Road, Ambur, Vellore District. ... Appellants/
Respondents 2 & 3

Vs

- 1.A.Haroon
- 2.The Joint Director,
Director of School Education,
College Road,
Chennai - 6. ... Respondents/
Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 20.03.2015 made in W.P.No.17838 of 2010.

W.P.No.17838 of 2010:- 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 dt 1.9.2008 on the file of the 2nd respondent and the re-considered order in RC No.7/2010-2011 dt 9.6.2010 on the file of the 2nd respondent and to quash the same and consequently direct the respondents to re-instate the petitioner with full back wages and other benefits forthwith.

For Appellants : Mr.Habibulla Badsha, Senior Counsel
for Mr.T.P.Sankaran

For Respondents : Mr.S.N.Ravichandran (for R1)
Mr.T.N.Rajagopalan (for R2)
Special Government Pleader

JUDGMENT

M.V.MURALIDARAN, J.

The instant intra court appeal has been filed challenging the Order passed in W.P.No.17838 of 2010 dated 20.03.2015 wherein the learned Single Judge has allowed the Writ Petition filed by the first Respondent herein. We have heard the submissions of Mr.Habibulla Badsha, learned Senior Counsel for Mr.T.P.Sankaran appearing on behalf of the Appellants and the submissions of Mr.S.N.Ravichandran on behalf of the first Respondent and of Mr.T.N.Rajagopal, learned Special Government Pleader on behalf of the second Respondent.

2.The short issue that arises in the present Writ Appeal is with regard to the challenge of the order dismissing the first Respondent from service by the Appellant School Management. The factual background of the matter revolves around a very narrow compass and a perusal of the records would reveal that the Writ Petitioner was working a P.G.Assistant in Biology in the Appellant Higher Secondary School for almost a decade and a half and he has had a very good track record of teaching students. On 17.05.2007, a charge memo was issued by the second Appellant herein and in the charge memo, it was stated that the first Respondent has disobeyed the instructions of the Head Master, has derelicted from his duty, has shown scant respect for the authorities and has also not submitted the practical notebooks for Class 11. However, without conducting an enquiry, a punishment of stoppage of increment appears to have been imposed on the first Respondent on 24.04.2008. Again, on 24.06.2008, the second Appellant herein has sent a charge memo that the first Respondent has not accepted the syllabus that was submitted to him and an explanation was sought for from him on the same day before 5 PM. Though he has given the explanation, he was placed under suspension on the very next day without assigning reasons. On 09.07.2008, a second charge memo was issued by the Appellant with 8 charges.

3.The sum and substance of the charge memo that was issued on 09.07.2008 is

"1. He doesn't not accept the communication from the Head Master; for instance, a. On 10.06.2008, he refused to acknowledge the secondary syllabus book communicated to all the staff. b. On 17.06.2008, again he refused to accept and acknowledge the secondary syllabus.

2. On 10.06.2008, he disobeyed the instruction of the Head Master to accept the 12th Standard practical examination Feb 2008.

3. He disobeys since the academic year 2002-2003, the Head Master's instruction to organize the Science club and arrange for meetings and discussions and its auspices.

4. Despite the repeated instruction, he has not submitted the stock register for the academic year 2006-2007.

5. He has disobeyed the instructions of the Head Master to organize the rain water harvest project despite clear instructions.

6. He has been in the habit of sending false reports and levelling baseless charges against the authorities of the school to various bodies thereby attempting to tarnish the image of the institution.

7. His scant respect to the Head Master whenever he happens to meet him is evident from the abusive and filthy language that he hurled at him on 24.06.2008.

8. He attempted to physically assault the Head Master on 24.06.2008.

He is hereby directed to offer explanation to the charges referred to in the above and explain as to why serious action should not be taken against him for his misbehavior, misconduct, disobedience and insubordination."

4. In response to the charge memo, the first Respondent has given a detailed representation in which it has been clearly indicated that he has been working hard for the interest of the students of the institution for almost 18 years and the management, instead of appreciating and encouraging him is continuously charging him with charge memos and suspension orders and mainly believing the statements that are false and misguided made by the Head Master of the institution. On 09.08.2008, the Correspondent of the Appellant has asked the first Respondent to appear in person on 19.08.2008 to explain his stand in person. When the first Respondent appeared before the above said enquiry, it could be seen that the management was represented and the Head Master was also present and the deposition was conducted in a summary manner and after the same was done, without properly following the principles of natural justice and the settled principles of domestic enquiry, the Appellant, 01.09.2008, has decided to terminate the services of the first Respondent with immediate effect. It could be seen that an appeal was preferred on 04.09.2008 to the Joint Director, who is the second Respondent herein, wherein the first Respondent has narrated the alleged illegality in the manner in which the punishment was imposed. In the Writ Petition that was filed before this Court in W.P.No.25980 of 2008, the learned Single Judge by order dated 03.11.2008 has directed the second Respondent herein to consider the appeal filed by the first Respondent against the order of dismissal dated 01.09.2008 and pass an order in accordance with law as expeditiously within a period of 8 weeks from the date of receipt of a copy of the order. This order was later modified on 24.03.2009 at the <https://hcservices.courts.gov.in/hcservices/> wherein the Appellant herein wherein this Court has modified the previous order and stated that even the earlier order dated 03.11.2008 that was passed without going into the merits of the

case by directing the second Respondent in the present Writ Appeal to dispose off the appeal. If really what is stated by the learned Counsel for the Appellant that there is a Tribunal which is the Appellate authority is true, then the second Respondent in the instant Appeal shall direct the first Respondent to the said forum.

5. In pursuance of the order passed by this Court in the above said Writ Petition, the Appellant by communication dated 09.06.2010 addressed to the Joint Director, Higher Education, the second Respondent herein in the instant Appeal has communicated that the case of the first Respondent has been reconsidered and accordingly, it was stated in the said communication that the first Respondent's failure to observe the daily school activities based on the welfare of the students studying in the minority institution and his disobedience towards school administration, disrespect towards school Head Master and Educational Officer were taken into consideration, his failure to involve himself wholeheartedly in the teaching profession would put a question mark to the future of the students of the minority institution and accordingly, the termination order was confirmed. Further, the Chief Education Officer in his letter dated 16.07.2010 addressed to the first Respondent has conveyed that since the school in which he has worked is a minority institution, the Directorate cannot interfere with the internal affairs of the school and there is no provision to consider his request to reinstate him into service. Aggrieved by the original order of termination dated 01.09.2008 and the subsequent order confirming the same dated 09.06.2010, the Writ Petitioner/first Respondent has filed the Writ Petition and consequently prayed for reinstatement into service with full back wages. In the Writ Petition, it was contended by him that the manner in which the entire disciplinary proceeding against him was conducted was in scant regard to the well settled tenets of natural justice and service jurisprudence. It has been contended that the impugned order of punishment does not refer about the charges, the enquiry report and the finding. The fact that how eight of the charges have been proved is also completely absent and there has not been any cross examination or examination of any witnesses and there is no sufficient proof to justify that he has derelicted from duty. Further, it has also been contended that the enquiry report was never furnished to the Petitioner and the charges against the Petitioner are not major in nature and thus, it did not warrant such a serious punishment of termination from service and accordingly submitted that there is no proportionality between the charges and the punishment.

6. In the counter affidavit that had been filed by the Appellant in the Writ Petition, it was contended that the Writ Petition is not maintainable since there is an alternate remedy available before the Appellate Authority and hence, the Writ Petitioner ought to have approached the Appellate Authority. It was also canvassed in the Counter that the charges against the

Petitioner are quite serious and only after affording him a proper opportunity was he terminated from service. It has also been submitted that the case of the Petitioner was reconsidered and only after that the order was reconfirmed and hence, he has been given two opportunities. It has also been stated in the counter that the Petitioner cannot claim any absolute right to continue in service and the Appellant institution being a minority institution are protected under Article 30 of the Constitution of India and the Petitioner has also received his educational certificates and other certificates and hence, nothing survives for adjudication.

7.The Writ Petition was disposed on 20.03.2015. There was no representation on behalf of second and third Respondent but however, the Counter Affidavit was very much available before the Writ Court. The learned Single Judge while considering the case in totality and in fact, found that a full-fledged enquiry was not conducted by the Appellant and the same has also been accepted by them in the Counter filed. It has also been taken note of by the learned Single Judge that the Petitioner was examined by the management but however, there was no presenting officer to present the case of the management. The management has acted as a complainant, prosecution and judge. It has also been noted by the learned Single Judge that the authority who issued the charge memo himself conducted the enquiry and ultimately passed the order of dismissal. It has also been found by the learned Single Judge that the first Respondent/ Writ Petitioner was also not afforded any opportunity to cross examine the witnesses. On the above said grounds, the learned Single Judge found that the Petitioner was dismissed from service without conducting a fair enquiry and accordingly, allowed the Writ Petition.

8.Assailing the order of the learned Single Judge, Mr.Badsha, learned Senior Counsel for the Appellant would submit that the enquiry was conducted only in accordance with law and only after following the due process of law, the Petitioner has been terminated from service. It has also been canvassed by him that Section 15 of the Tamil Nadu Recognised Private Schools Act is not applicable to the Appellant School since it is a minority institution. It has also been contended by the learned Senior Counsel that under Article 226 of the Constitution of India, only the correctness of the decision making process can be reviewed and not the decision per se. it has also been submitted that as per the decision of Constitution Bench of the Supreme Court in TMA Pai Foundation vs. State of Karnataka, AIR 2003 SC 355, the Writ Petition is not maintainable. Accordingly, the learned Senior Counsel prayed for allowing the instant Appeal.

9.Per contra, Mr.S.N.Ravichandran, learned Counsel for the first Respondent would submit that the fundamental rights of the Petitioner under Article 14, 19 and 21 of the Constitution of India have been affected due to the illegal termination and the Appellant school management has acted with a predetermined mind to cause prejudice to the Writ Petitioner. It has also been

contended by the learned Counsel that while allowing the Writ Petition, the learned Single Judge has succinctly found that the entire disciplinary proceeding has been conducted in an unsustainable manner and accordingly, has rightly set aside the order of termination. Accordingly, he prayed that the Writ Appeal be dismissed since the order passed by the learned Single Judge is perfectly justified.

10. We have given our anxious consideration to the submissions made by both the parties and we have perused the entire material on record. At the outset, it is quite evident that the order of punishment that has passed by the Appellant herein terminating the services of the first Respondent is not based on satisfactory material and the manner in which the entire enquiry proceedings have been conducted is quite contrary to the settled principles of service jurisprudence, and most importantly, is contrary to the principles of natural justice. As it is quite settled in law that no man can be a judge of his own cause and the Supreme Court in the judgement reported in *Mohamed Younis Khan vs. State of Uttar Pradesh* (2010) 10 SCC 539 has succinctly stated that no person can be judge of his own cause and no witness can certify that his testimony is true. Considering a similar case, applying the principles of *nemo debet esse iudex in propria sua causa*, the Supreme Court held that the disciplinary proceedings are in the nature of quasi-judicial proceedings especially once when there is an imposition of punishment, therefore an enquiry must be conducted fairly and reasonably and the enquiry report must contain reasons for reaching into the conclusion that the charge framed against the delinquent stood proved against him and it cannot be a mere *ipse dixit* of the disciplinary authority and punishment for misconduct can be imposed in consonance with statutory rules and principles of natural justice.

11. It has also been laid down by the Supreme Court in *State of Uttaranchal and ors vs. Karak Singh*, (2008) 8 SCC 236 that a witness should not be allowed to be an enquiry officer and the departmental evidence should not be laid in the first instance and in the presence of the charged employee. It has also been specifically reiterated by the Supreme Court in the instant case that the enquiry officer can offer his views but cannot make strong recommendation for imposition of punishment and also it has been stated that the enquiry will have to be conducted in accordance with the settled principles of law and any enquiry that is a mere empty formality will not withstand the strict scrutiny of law. Further, a division Bench of this Court in *C. Masanam vs. Chief Educational Officer and ors*, 2000 WLR 898 while considering a case of termination of an employee on charges almost similar to the charges levelled against the first Respondent herein has concluded that the reason given for termination of the Writ Petitioner is quite unsustainable and the charges that are levelled against the Appellant are not so grave and consequently directed that the Writ Petitioner be reinstated and awarded 50 % back wages.

<https://hcservices.ecourts.gov.in/hcservices/> has been rightly pointed out by the learned Counsel for the first Respondent, the entire exercise in which the enquiry proceedings have been carried against the first

Respondent is quite unsustainable in law and is against the settled principles of law reiterated by the Supreme Court in a long line of decisions. It is quite evident that the first Respondent/ Writ Petitioner has not been provided a proper opportunity to put forth his case and the enquiry findings that have been arrived by the disciplinary authority is also without any basis and is also not in accordance with law. Even in the alleged reconsideration order for which the Appellant has considered the case of the first Respondent in accordance with the previous direction given by this Court in the Writ Petition that was filed earlier, the Appellant appears to have proceeded with a predetermined mind and it appears as if it has been decided that the order of termination of service that was imposed on the Writ petition is to be sustained at any cost. We are of the view that the entire disciplinary proceeding that has been conducted is not in accordance with law and that the learned Single Judge was perfectly right in considering the case of the Petitioner and especially taking into consideration of the fact that the management has in fact been the Complainant, Prosecution, Judge which is squarely against the principles of natural justice. The manner in which the entire disciplinary proceedings have been conducted also shows undue haste and arbitrariness on the part of the Appellant management and there is no justifiable reason given as to why the punishment that has been imposed, i.e. termination of service on the first respondent on the charges that according to our view are also not so serious. Hence, we are in agreement with the findings of the learned Single Judge and we do not find any perversity or infirmity in the said order. For the reasons stated above, the Writ Appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vs

To

The Joint Director,
Director of School Education,
College Road, Chennai - 6.
Chennai - 6.

2 ccs to Mr.T.P. Sankaran, Advocate, Sr. 54834
1 cc to Mr.S.M. Ravichandran, Advocate, Sr. 54796

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CTK (CO)
kk 22/10

<https://hcservices.ecourts.gov.in/hcservices/>