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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P(MD)No.3665 of 2011

and

M.P.(MD)No.2 of 2011

K.Subramanian,
BT Assistant (Tamil),
Government Higher Secondary School,
Tharuvaikulam, Thoothukudi District. .. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Joint Director of School Education (Personnel),
College Road, Chennai - 600 006.
- 4.The Joint Director of school Education,
(Higher Secondary),
College Road, Chennai - 600 006.
- 5.The Chief Educational Officer,
Tuticorin District,
Tuticorin - 628 002.
- 6.The Headmistress,
Government Higher Secondary School,
Tharuvaikulam, Tuticorin District. .. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order issued by the 4th respondent, Joint Director, Na.Ka.No.081627/W3/E3/2009, dated 18.11.2009 withholding the increment of the petitioner for a period of 3 years with cumulative effect and the subsequent proceedings issued by the 3rd respondent, Joint Director, vide Na.Ka.No.071837/C5/E3/2009, dated 19.03.2010 upholding and adopting the same Quash the same.



For Petitioner : Mr.Xavier Rajini
For Respondents : Mr.S.Kumar
Additional Government Pleader

O R D E R

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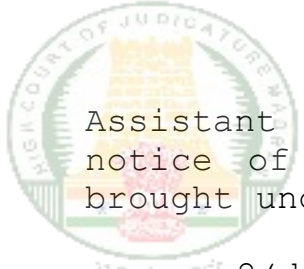
This Writ Petition has been filed for issuance of a Writ of Certiorari calling for the records relating to the impugned order issued by the 4th respondent, Joint Director of School Education (Higher Secondary), Chennai, vide Na.Ka.No.081627/W3/E3/2009, dated 18.11.2009 withholding the increment of the petitioner for a period of 3 years with cumulative effect and the subsequent proceedings issued by the 3rd respondent, Joint Director of School Education (Personnel), Chennai, vide Na.Ka.No.078377/C5/E3/2009, dated 19.03.2010 upholding and adopting the same and quash the above orders.

2. The brief facts that are necessary for disposal of the above Writ Petition are summarised as follows:

2(a). The petitioner was working as a BT Assistant in Government Higher Secondary School, Tharuvaikulam, Tuticorin District. When he was deputed as Tabulator to the examination papers valuation centre No.12 (Plus Two papers) at St. Mary's Boys Higher Secondary School, Millerpuram, Tuticorin, it was alleged that he was negligent in the tabulation work in respect of Tamil 1st answer script bearing Registration No.724460, as the petitioner failed to notice the wrong entry made by the Assistant Examiner in the mark sheet wherein the Assistant Examiner has written 60 out of 100 in stead of 87 out of 100. As a result, the candidate was given 27 marks less than the actual marks secured by the candidate as per the valuation.

2(b). When the candidate applied for the xerox copy of the answer sheet, the mistake was found and thereafter, the fourth respondent issued notice dated 14.09.2009 wherein the petitioner was informed that proceeding under Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules had been initiated and the petitioner was requested to submit his explanation within fifteen days. Similarly, notice was also issued by the third respondent to the petitioner on 01.10.2009. The petitioner submitted his explanation dated 09.10.2009 to the fourth respondent and submitted a further representation dated 15.10.2009 to the third respondent through proper channel.

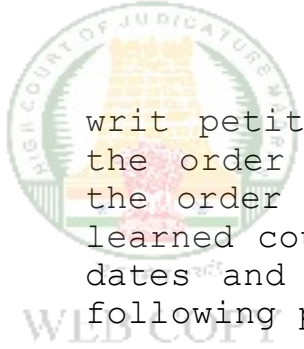
2(c).After considering the explanation submitted by the petitioner, the fourth respondent by proceedings in Na.Ka.No.081627/W3/E3/2009, dated 18.11.2009, passed an order imposing punishment of stoppage of increment for a period of three years with cumulative effect. During the proceedings, the petitioner has also submitted a representation dated 07.12.2009 to the fourth respondent to the effect that the petitioner is a BT



Assistant (Tamil). This representation is just to bring it to the notice of the fourth respondent that the petitioner cannot be brought under his jurisdiction.

2(d). Pursuant to the order passed by the fourth respondent, dated 18.11.2009, the petitioner has submitted a representation to the fourth respondent to reconsider his case on merits, as the punishment imposed on him would affect him permanently with a huge monetary loss. The Headmistress of the school in which the petitioner was in service also recommended to the fourth respondent for reconsideration of the punishment imposed on the petitioner. Strangely, it appears that the third respondent in the name of the appellate authority namely the Director of School Education, vide proceedings Na.Ka.No.078377/C5/E3/09, dated 27.12.2009 has passed a final order stating that the decision of the third respondent to impose punishment of stoppage of increment for the period of three months against the petitioner under Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, is confirmed by that order. This order, though it is passed as a proceedings of the second respondent, has been signed only by the third respondent. Hence, the petitioner has also preferred a representation to the second respondent through proper channel challenging the order signed by the third respondent vide proceedings Na.Ka.No.078377/C5/E3/09, dated 27.12.2009. The Headmistress of the school also sent a communication on 09.01.2009 to reconsider the order dated 27.12.2009.

2(e). Thereafter, the Chief Educational Officer, the fifth respondent herein, has sent a communication, dated 23.02.2010, requesting the fourth respondent to cancel the first order vide proceedings dated 18.11.2009 wherein the fourth respondent has imposed a punishment of stoppage of increment for a period of three years with cumulative effect, in view of the order passed in the proceedings of the second respondent, dated 27.12.2009, which was signed by the third respondent. Thereafter, the third respondent has passed the impugned proceedings vide Na.Ka.No.078377/C5/E3/2009, dated 19.03.2010 cancelling the order signed by the third respondent dated 27.12.2009 which was referred to as a proceeding of the second respondent. In the same order, the third respondent has stated that in view of the final order passed by the fourth respondent dated 18.11.2009, the order of the third respondent dated 27.12.2009 for the same incident, has to be cancelled and that the order of fourth respondent dated 18.11.2009 imposing the punishment of stoppage of increment for a period of three years with cumulative effect against the petitioner is upheld. Consequently, the second respondent has also passed an order dated 13.04.2010 indicating that the appeal petition filed by the petitioner before the second respondent does not require consideration as the same has been cancelled by the third respondent in the impugned order dated 19.03.2010. The present



writ petition is, therefore, filed by the petitioner challenging the order passed by the fourth respondent, dated 18.11.2009 and the order passed by the third respondent, dated 19.03.2010. The learned counsel for the petitioner after referring to the relevant dates and proceedings of the respondents 2, 3 and 4 raised the following points;

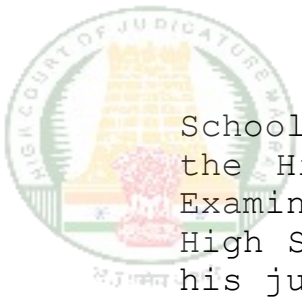
(a) The third respondent alone is the competent authority, who can initiate disciplinary proceedings and impose punishment against the petitioner. Hence, the impugned order of the fourth respondent dated 18.11.2009 is without jurisdiction and the confirmation of the same by the third respondent by the impugned order dated 19.03.2010 without independently considering the case on merits, is improper and illegal.

(b) The proceedings were initiated against the petitioner only under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. There was no enquiry conducted by following the procedure contemplated under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules.

3.The impugned order imposing major punishment is vitiated. In this regard, the counsel for the petitioner also pointed out the discrepancy in the proceedings dated 27.12.2009 and the manner in which it was cancelled by the third respondent. On merits, the counsel for the petitioner submitted that the Assistant Examiner and the Chief Examiner who are also responsible for the mistake in recording the marks in the answer script were not proceeded against and the petitioner alone is singled out even though the mistake is not that of the petitioner alone. In this regard, the petitioner also referred to the model examination mark sheet wherein the Assistant Examiner and the Chief Examiners are held to be the persons who are personally responsible for any error in recording of correct particulars in the answer script and the marks sheet resulting in non-supply of information for processing by the computer. It is also brought to the notice of the Court that the mistake committed by the Assistant Examiner and the Chief Examiner, for wrongly writing the actual marks obtained by the candidate is admitted by the respondents 3 and 4 even in their preliminary notice and that the failure to proceed against the examiners would establish that there is discrimination without any explanation.

4.The learned Additional Government Pleader appearing for the respondents 1 to 5 relied upon the counter affidavit filed by the fifth respondent on behalf of all the respondents. On the question of jurisdiction, the learned Additional Government Pleader appearing for the respondents referred to paragraph No.7 of the counter affidavit wherein it is stated as follow:

"7.It is submitted that the Joint Director of



School Education Higher Secondary was the authority for the Higher Secondary Sections and the Higher Secondary Examination came under the purview of the Joint Director, High School and hence, the order passed by him was within his jurisdiction."

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5.The learned Additional Government Pleader further submitted that the order passed by the fourth respondent dated 18.11.2009 was duly informed to the third respondent and that the third respondent having confirmed the order by another order dated 19.03.2010, the impugned order cannot be questioned on the ground of jurisdiction.

6.It is not in dispute that the fourth respondent is not the competent authority to proceed against the petitioner for the charges either under Rule 17(a) or Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Hence, the order passed by the fourth respondent dated 18.11.2009 is without jurisdiction. This order, of course, has ultimately confirmed by another order of the third respondent who is not an appellate authority, but an authority who is expected to pass an order on merits.

7.From the reading of the impugned order of third respondent dated 19.03.2010, he has not independently considered the explanation of the petitioner nor the case on merits. The order dated 19.03.2010 passed by the third respondent appears to have been the one passed in supersession of the earlier order passed by him on 27.12.2009 wherein he has imposed a punishment of stoppage of increment for a period of three months with cumulative effect. Though the third respondent is competent to pass an independent order, as the disciplinary authority in exercise of his discretion and power of original authority, he is not expected to surrender his discretionary power to another authority, who is not competent. Hence, both the orders of fourth respondent dated 18.11.2009 and third respondent dated 19.03.2010, are illegal and unseasonable in law.

8.It is not in dispute that the respondents 3 and 4 initially proposed to initiate proceedings against the petitioner only under Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules. However, without conducting an enquiry and following the procedure as contemplated under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules impugned orders have been passed. It is not in dispute that no enquiry was conducted before passing the impugned order imposing a major punishment of stoppage of increment for a period of three years with cumulative effect. Hence, the impugned orders passed by the fourth respondent dated 18.11.2009 and the third respondent dated 19.03.2010 are liable to be set aside.



9. On the merits of the case, the petitioner himself has admitted in his explanation that he has failed in his duty to verify the entries in the mark sheet in the manner as it was expected from him while he was discharging his duty as a Tabulator. However, the specific plea of the petitioner that the Chief Examiner and the Assistant Examiners, Scrutiny Officers and Mark Verification Officers are also responsible for the valuation of the answer sheets and award of marks and enter the marks in the mark sheets is not in dispute. According to the petitioner, the duty of the Tabulator is to verify the page-wise total, question-wise total and the grant total entered in the tabulation sheet annexed as first page to the answer scripts. The Marks Verification Officer is also required to cross-check the marks awarded in the answer sheets when the Tabulator read out loudly the marks. It is only after verification and checking, the mark sheets would be sent to the computer section. By referring to the procedure that is being followed, the petitioner's counsel pointed out that it is a collective responsibility of all the persons and it is a team work. Hence, in the absence of any other disciplinary proceedings against any other officer, the contention of the petitioner challenging the impugned orders on the ground of discrimination cannot be brushed aside. The impugned order of the fourth respondent dated 18.11.2009 and the third respondent dated 19.03.2010 are liable to be set aside on the ground of discrimination and violative of Article 14 of the Constitution of India.

10. For all the above reasons, the writ petition is allowed and the impugned order issued by the fourth respondent, Joint Director of School Education (Higher Secondary), Chennai, vide Na.Ka.No.081627/W3/E3/2009, dated 18.11.2009 withholding the increment of the petitioner for a period of 3 years with cumulative effect and the subsequent proceedings issued by the third respondent, Joint Director of School Education (Personnel), Chennai, vide Na.Ka.No.078377/C5/E3/2009, dated 19.03.2010 are quashed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

1.The Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

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

3.The Joint Director of School Education (Personnel),
College Road, Chennai - 600 006.

4.The Joint Director of school Education,
(Higher Secondary),
College Road, Chennai - 600 006.

5.The Chief Educational Officer,
Tuticorin District,
Tuticorin - 628 002.

6.The Headmistress,
Government Higher Secondary School,
Tharuvaikulam, Tuticorin District.

+1 cc to MR.XAVIER RAJINI, Advocate SR.No.42842

Order made in
W.P. (MD) No.3665 of 2011
and
M.P. (MD) No.2 of 2011
08.08.2016

SMA/DB/17/08/2016 :7P/8C