

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2017

Pronounced on : 21.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.12598 of 2012

and

M.P.No.1 of 2012

G.Kanakaraj ... Petitioner

Vs.

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai - 600 003.

2.The Secretary,
School Education Department,
Government of Tamilnadu,
Secretariat, Fort St. George,
Chennai - 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records pertaining to the order passed by the 2nd respondent vide impugned appellate order of the Government of Tamil Nadu in G.O.2D.No.46 (HR.E.D-1) (School Education Department), dated 22.11.2011 (Chennai) as affirming the order of the Commissioner, Corporation of Chennai, dated 03.06.2010, in Ka.Thu.Naka.No.E-6-71454/09 and to quash the same.

For Petitioner : Mr.R.Ananda Babu
Mr.J.Nagarajan

For Respondents: Mr.G.Anantharangan (for R1)
Standing counsel

Mr.K.Balamurugan (for R2)
Government Advocate

O R D E R

The present writ petition is filed seeking issuance of Writ of Certiorari, challenging the impugned order of the 2nd respondent in G.O.No.2D No.46 (HR.E.D-1) dated 22.11.2011 as affirming the order of the 1st respondent dated 03.06.2010 in Ka.Thu.Naka.No.E-6-71454/09.

2.The facts leading to filing of the present writ petition is that the petitioner was working in service at the Corporation Girls Higher Secondary School, Pulla Avenue, Shenoy Nagar as Post Graduate Assistant Teacher in Chemistry subject. It was alleged that on 08.07.2009, he has used abusive words and beaten the 12th Standard students and accordingly a complaint was filed against him by the students to the Headmistress. He was immediately transferred on administrative welfare grounds on 09.07.2009 to Nungambakkam Boys School.

3.Pursuant to the complaint, a charge memo was issued on 20.07.2009 containing two charges. The first charge was for abusing the students by using abusive words and also beating the students which is in violation of conduct Rule 20. The second charge was for unauthorized absence from 09.07.2009 to 17.07.2009. The charges are as follows:

“குற்றச்சாட்டு 1. 08.07.09 நாளிட்ட தலைமை ஆசிரியர் அவர்களின் புகார் கடிதத்தில் திருஜிகனகராஜ், முதுகலை பட்டதாரி ஆசிரியர் 12 ரு வகுப்பு, மாணவிகளை அடித்ததாகவும் தகாத வார்த்தைகளை உபயோகப்படுத்தியதாகவும், மாணவிகளிடமிருந்து 08.07.09 அன்று பெறப்பட்ட கடிதங்கள் மூலம் தெரியவந்துள்ளது. தனியரின் இச்செயல் நடத்தை விதி 20னை மீறிய செயலாகும்.

குற்றச்சாட்டு 2. நிர்வாக நலன் கருதி தனியர் பணியிட மாறுதலில் நுங்கம்பாக்கம் ஆண்கள் பள்ளிக்கு 09.07.09 நாளிட்ட ஆணை மூலம் மாற்றப்பட்டுள்ளார். ஆனால் 08.07.09 சம்பவ நாளிலிருந்து இது நாளவரை பணிக்கு வராமலும் தற்செயல் விடுப்பு மற்றும் மருத்துவ விடுப்பு, சான்றுடன் 08.07.09 முதல் 17.07.09 வரை மனு சமர்ப்பித்துள்ளார். தனியரின் மேற்படி செயல் அலுவலக விதிகளுக்கு முரணானது.”

4.In reply to the Charge Memo, the petitioner has given his explanation on 07.08.2009 stating that since certain students who have secured very poor marks in Chemistry subject, the petitioner keeping in mind that the Higher Secondary Examinations for 12th Standard was scheduled in a few months time, he has cautioned the students firmly that they have to work harder and study properly. Apart from that, he has not at all used abusive words and certainly not beaten the children at any point of time.

5.In fact, it was pointed out in the reply that on 14.07.2009, when the students who have alleged that the petitioner has behaved were enquired in the presence of all Post Graduate teachers and the Headmistress, the students have stated that they have no grievance against the petitioner and did not

complain anything against him. They also requested him to continue teaching the chemistry subject.

6.The petitioner has further submitted in the reply to the second charge that he has not deliberately absented himself from duty for the said period. It was only because he was not keeping good health and was advised to take rest, he has not attended duty. He had duly produced the medical certificate and conveyed the fact about his illness to the School authorities.

7.The enquiry proceedings were conducted in which the petitioner has participated and denied all charges leveled against him. The enquiry officer found that the first charge made against the petitioner was proved but the second charge was not proved. The petitioner has submitted further explanations on 02.12.2009 and 03.05.2010 to the 1st respondent denied all the charges against him. The 1st respondent, without considering the petitioners explanation held him guilty of the first charge and awarded him the punishment of stoppage of increments for 3 years with cumulative effect (excluding leave) and with a direction under Fundamental Rule 24 that the punishment with affect the pension.

8.The petitioner, pursuant to the order passed by the 1st respondent, preferred an appeal to the 2nd respondent vide letter dated 07.07.2010. The 2nd respondent vide G.O.No.2D No.46 (HR.E.D-1) dated 22.11.2011 upheld the order passed by the 1st respondent in regard to the stoppage of increment for 3 years with cumulative effect and pointed out that it should be inclusive of the leave availed. Challenging both the orders, the petitioner has filed the instant writ petition.

9.I heard the submissions of Mr.R.Ananda Babu, learned counsel appearing for the petitioner and Mr.G.Anantharangan, learned counsel appearing for the 1st respondent, Mr.K.Balamurugan, learned Government Advocate appearing for the 2nd respondent and perused the entire records.

10.The learned counsel appearing for the petitioner would contend that the manner in which the charge memo was issued, the conduct of the enquiry and the subsequent imposition of punishment are all vitiated and not in accordance with law. It has been canvassed that the deposition of the complainants and witnesses was not furnished to him and it was only after applying under the Right to Information Act, 2005, was he provided with the copy of the report on 23.02.2012 after a long delay.

11.The petitioner has also submitted that there was a recommendation sent by the Tamil Nadu Public Service Commission

to the 2nd respondent dated 30.08.2011 in which the Commission has opined that the award of the punishment is proper and justified considering the larger interest of the students. The 2nd respondent while dealing with the Appeal without any independent application of mind has blindly accepted the findings of the 1st respondent and the views of TNPSC.

12.The contention of the petitioner is that once when an order of punishment is passed, the compliance with natural justice is essential and here the same has not been done. First, the depositions have not been furnished to the petitioner. It has also not been stated anywhere as to what words the petitioner has uttered and when he has allegedly beaten the children. It is his claim that the entire complaint was a vexatious one and was filed since certain persons had grievance with him as he has refused allotment of favourable groups to students seeking admission to 11th Standard.

13.It has been contended that the petitioner is innocent and has been trapped unnecessarily in the issue. Even the girl students when they were enquired in the class have refuted that they have been a complaint, but at a later stage have turned back. If at all the petitioner has allegedly used abusive or filthy words, the girls should have made it clear that what words were uttered. Admittedly, they have not explained the same before the enquiry officer and the petitioner was not permitted to cross examine them.

14.The Tamil Nadu Public Service Commission has also acted more like a child protection organization and has not viewed the matter dispassionately. The enquiry officer's report and its acceptance by the Government would show that there was a premeditated mind and the whole conduct of the enquiry proceedings is arbitrary and unconstitutional.

15.To support his case, the learned counsel appearing for the petitioner would rely upon the following judgments:

(I) Indian Airlines and others v. W.B.Correya reported in 1978 LLJ 437

"Indian Airlines - Principles of Natural Justice-Standing Orders (Regulations)-Discipline and Appeal-S.O. 16 and 26-Domestic enquiry- Statements of witnesses recorded behind the back of the delinquent-Such statements being straightaway accepted by the enquiry officer who asked the delinquent to begin-cross-examination-Witnesses were neither asked to confirm nor deny the statements-Witnesses were also allowed to depose from the statements recorded ex parte-Whether these procedures are defective-Whether detrimental to the interests of the delinquent-Held,

because of this procedure the principles of natural justice are violated and the enquiry is vitiated.

If the statement (recorded behind the back of the delinquent employee) is not put to the witness and he had not been given an opportunity to deny or affirm the same there is, in fact, no evidence of that witness in the course of chief examination at all and it is very doubtful whether such a statement, notwithstanding copies thereof had already been furnished to the worker, can be used as substantive evidence against the worker concerned. It is this aspect of the matter that weighed with Ramanujam, J., who held that the failure to put these statements to the witnesses and the witnesses not having affirmed their statements - not having stated that they stood by their statements - violated the principles of natural justice. On the face of it, the procedure followed by the enquiry officer is certainly defective and prejudicial to the respondent herein.

8. It has always been recognised and efficacious test which law has devised for the discovery of truth. Consequently any impairment of this right, whether deliberately or accidentally, will have the effect of preventing a person who cross examines from establishing the truth."

(II) Central Bank of India Ltd., v. Prakash Chand Jain reported in AIR 1969 SC 983

"The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. AIR 1964 SC 719 (722) & AIR 1964 SC 708, Rel. on.

(Para 8)"

(III) Union of India and others v. R.P.Singh reported in AIR 2014 SC 2541

"5. Being dissatisfied with the said order, the respondent preferred the writ petition and the High Court placing reliance mainly on the decision in State Bank of India and others v. D.C. Aggarwal and another came to hold that non-supply of the copy of advice of UPSC at the pre-decisional stage did tantamount to violation of principles of natural justice for making effective representation. It further observed that

non-supply of such material could amount to denial of fair opportunity of being heard. Being of this opinion, the High Court directed as follows:-

"We direct the respondents to allow the petitioner to make his representation in respect of the UPSC advice, which was made available to him along with the order dated 28.1.2003 imposing punishment. The representation of the petitioner be duly considered and the Disciplinary Authority to take a decision afresh, taking into account the representation with regard to the disciplinary proceedings within a period of two months".

(IV) N.Rajaratnam v. State of T.N. and Another reported in (1996) 10 SCC 371

"The view of the Public Service Commission being only recommendatory, the Government was not bound to accept the recommendation made by the Public Service Commission."

(V) T.Sivasubramaniam v. Kasinath Pujari reported in (2000) 1 MLJ 25

"But where a finding arrived at by the Courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the Courts below."

16.The learned Government Advocate appearing for the 2nd respondent and the learned counsel appearing for the 1st respondent in unison have contended that the petitioner has behaved in a manner that is unbecoming of a good teacher and has created an unpleasant situation which will affect the well being of the school students. It has been contended by the respondents that the case against the petitioner is not a concocted story and the whole enquiry process and imposition of punishment was done in accordance with law. They have submitted that the writ petition does not require any consideration and is to be rejected.

17.This Court is now to decide on an issue which has to be described as 'delicate'. I am using the words 'delicate' because this matter has brought to light the issues that have started creeping up in today's educational system between the teachers and students. The manner teachers behave and the way the students behave are essentially to be looked into by this Hon'ble Court since the children are the future leaders of our nation.

18.We no more live in an archaic age where to condition or

train a young child abusive techniques can be adopted. Let it be parents or teachers, they ought not to abuse or threaten or manhandle young children.

19. In the last few months, our State has witnessed shocking cases of suicides by young school children since they were reprimanded by teachers. This Court has verified the details from news dailies and it has been brought to light that 6 young girls have committed suicide and died as their teachers have reprimanded them for not performing their duties properly. This shows that the young children's minds are very sensitive and they have resorted to taking their lives by themselves.

20. In those days, the school children feared their teachers as they would beat them very badly in the event they did not study or perform properly. Even if they were beaten, they would not take it seriously, thinking that it is for their welfare and teacher is behaving strictly. But that is not the case today. The children have access to worldly things in a click of a mouse or touching their smart phone. They have started taking the scolding's of teachers personally. They react immediately. There has to be a solution found for this problem.

21. In the instant writ petition also the petitioner's conduct is to be blamed since he has taken up his role too seriously. In the normal circumstances, this Court would not have interfered with the finding of the respondents since under Article 226 of the Constitution, this Court cannot substitute its view in place of the view already taken by the respondents. However, the facts disclose that the enquiry officer and the authority imposing punishment have acted improperly.

22. A perusal of the records would show that the petitioner was not allowed to cross examine the students. The contents of the complaint were not authenticated or cross-verified. The enquiry officer has also not furnished all depositions made by the witnesses. Apart from that the respondents have without properly appreciating the views independently have verbatim accepted the findings.

23. The Hon'ble Division Bench of this Court in 1978 LLJ 437 has held that if the statement (recorded behind the back of the delinquent employee) is not put to the witness and he had not been given an opportunity to deny or affirm the same, then it would be defective and prejudicial to the delinquent and be violative of principles of natural justice. The facts of the judgment referred above apply clearly to the facts of this case.

24. Apart from this, the views of the TNPSC also reflects that no independent view has been taken and the 2nd respondent

sitting as an Appellate authority has not in reality functioned independently. The defence taken by the respondents to sustain the impugned orders cannot be accepted. If the principles of natural justice are violated in a departmental enquiry/proceeding, then any subsequent act that follows it cannot be said to be sustainable in law. Thus, the whole process of enquiry and imposition of punishment is improper and illegal.

25. For the said reasons, the writ petition deserves to be allowed and accordingly the impugned orders are liable to be set aside.

26. In the result:

(a) the writ petition is allowed by setting aside the impugned orders in G.O.No.2D No.46 (HR.E.D-1) dated 22.11.2011, passed by the 2nd respondent, as affirming the order of the 1st respondent dated 03.06.2010 in Ka.Thu.Naka.No.E-6-71454/09;

(b) the petitioner shall be entitled for all monetary benefits and other attendant benefits;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27. As this Court has already pointed out that some immediate steps will have to be taken for ensuring the psychological welfare of young students and prevent any unfortunate incidents in future, this Court feels constrained to issue some directions:-

(a). The Secretary to Government, School Education Department shall constitute a Committee headed by the Director of School Education, the respective District Chief Educational Officers, renowned academicians and psychiatrists. The said committee shall assess broadly the psychological issues the young students face today in schools and identify the same.

(b). Upon identifying the issues and problems faced by these students in School, then there shall be dedicated counseling and orientation programme conducted for all school teachers and students throughout the State.

(c). The Teachers shall be appropriately advised and instructed how to effectively handle the children who are sensitive without using any abusive techniques.

(d). The Headmaster/Head of the particular school shall maintain periodic reports of the Counseling/Orientation and appropriate remedial action shall also be taken to address the grievances raised by the students.

(e). The Government shall take steps to ensure every School has a dedicated Counselors appointed to help children in need of emotional support.

(f).The Secretary to Government, School Education Department, Chennai, is hereby directed to file a report in respect of taking action by complying the above directions issued by this Court in this writ petition on or before 09.04.2018.

Registry is directed to list the case on 09.04.2018 for filing report.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vs

To

1.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai - 600 003.

2.The Secretary,
School Education Department,
Government of Tamilnadu,
Secretariat, Fort St. George,
Chennai - 600 009.

Copy To

The Section Officer,
Writ Section, High Court,
Madras.

+ 1 cc to Mr.J.Nagarajan, Advocate Sr.91950 (29/12/2017)

W.P.No.12598 of 2012
and
M.P.No.1 of 2012

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