

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WP.No.23736 of 2013

P.Pinagapani

.. Petitioner

Vs.

1. The Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai - 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bala Salai,
Chennai - 600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records culminating in passing of the G.O.(1-D)No.212, School Education (A2) Department, dated 26.06.2012, imposing the punishment of removal from service upon the petitioner and the records relating to the G.O.(1-D)No.99, School Education A2 Department, dated 17.04.2013 dismissing the Review Petition filed by the petitioner and to quash the same with a direction directing the First Respondent to grant all service benefits to the petitioner as if the petitioner had been retired from service in the normal course.

Petitioner : Mr.A.Fathimanathan

Respondents : Mr.S.T.S.Murthi, Additional Advocate General
Assisted by Mr.R.Govindasamy,
Special Government Pleader

O R D E R

I have heard Mr.A.Fathimanathan, learned counsel appearing for the petitioner, Mr.S.T.S.Murthi, learned Additional Advocate General, assisted by Mr.R.Govindasamy, learned Special Government Pleader appearing for the State / 1st respondent and Mr.M.Devendran, learned Standing Counsel appearing for the 2nd respondent.

2.The present writ petition has been filed challenging two orders of the Government in G.O.(1-D)No.212, School Education (A2) Department dated 26.06.2012 resulting in the removal of the petitioner from service and G.O.(1-D)No.99, School Education (A2) Department dated 17.04.2013 whereby which the Review Petition preferred by the petitioner has been dismissed.

3.The brief facts of the case involved herein is that the petitioner, who initially entered the Government Service as a P.G. Assistant in the year 1978 was promoted to the post of Head Master of Government Higher Secondary School, Marungulam on 07.02.1994. While he was serving as the Head Master, he was also given the additional responsibility of District Educational Officer (DEO), Thanjavur from 25.10.2002 to 06.01.2004, after which, the petitioner was relieved from the said Additional charge as DEO. However, after a period of six months from then, a huge fire accident occurred in a school premises in Kumbakonam comprising of three schools namely, Saraswathi Nursery and Primary School, Sri Krishna Aided Primary School and Sri Krishna Girls High School.

4.A total of 94 children suffered a tragic death in the said accident and in view of that, a one man Commission headed by Justice Sampath (Retired) was appointed to investigate into the entire circumstances and persons responsible for the said accident. As a result of the said investigation, several persons were identified to be responsible for the said accident and separate Criminal Cases were filed against them. As a consequence of the same, the Government issued a letter dated 24.04.2007 framing the following charges against the petitioner:

"Charge 1:

Thiru P.Pinagapani (petitioner) had inspected the Sri Krishna High School on 04.12.2002 in connection with granting of continuance of recognition to the said School. Sri Krishna Primary School had been functioning in the ground floor and the Sri Krishna

Girls High School had been functioning in the first floor of the same building. Though he was a DEO, he had failed in his duties by not finding out why two Schools were functioning therein. The petitioner after the visit ought to have examined whether there were facilities such as sufficient accommodation, and sufficient safeguards have been provided by the Management to protect the students in accordance with the Rules. Without considering those things he had recommended for continuance of recognition. If the petitioner had pointed out the deficiencies, if he would have taken appropriate action at the appropriate time for rectifying those deficiencies, the fire accident which took place on 16.07.2004 could have been prevented in which many students had died. Hence, the petitioner is charged that he had violated Rule 20 (1) of the Tamilnadu Government Servant Conduct Rules.

Charge 2:

Thiru.P.Pinagapani, (Petitioner) had not perused the Certificates properly. If he had seen, he would not have taken into account the unregistered document pertaining to the playground. Hence, he had recommended for recognition without perusing the relevant documents properly.

Charge 3:

Thiru.P.Pinagapani, (Petitioner) failed in his duties by recommending to the Superior officer without properly examining the location of the School and by taking into account the unregistered document pertaining to the playground. This is in violation of Rule 20(1) of the Tamilnadu Government Servant Conduct Rules."

5.The petitioner by way of reply dated 11.05.2007 submitted his explanations to the above charges denying the same. Thereafter, Mr.V.C.Rameswara Murugan, then Joint Director of School Education was appointed as the Enquiry Officer and upon enquiry being conducted, has come to a finding in his enquiry report dated 06.11.2008 holding the petitioner as guilty of all the three charges levelled against him. Thereafter, it appears that the petitioner has given a second reply by way of letter dated 30.06.2009 and after considering all the records, the Disciplinary Authority has accepted the enquiry officer's report and accordingly, the first impugned order came to be passed. Thereafter, the review petition filed by the petitioner against the said impugned order was also dismissed by the 1st respondent on 17.03.2014 and the said order of dismissal has also been challenged in this writ petition.

6.The learned counsel appearing for the petitioner would submit that the petitioner has been scapegoated for the fault of the administration in general as a result of which the unfortunate incident which took away the lives of 94 tender children took place. It is also his contention that neither the provisions of the Tamilnadu Recognised Private Schools (Regulations) Act, 1973 nor the Tamilnadu Recognised Private Schools (Regulations) Rules, 1974 have prohibited the management from establishing more than one school in the same premises. It has also been submitted that the Government Order passed by the School Education Department vide G.O.Ms.No.131, School Education Department, dated 10.08.2006 revealed that at the time when the inspection was made by the petitioner on 04.12.2002, no rules or guidelines were in force prohibiting the establishment of more than one school in the same premises. Hence, the petitioner cannot be found fault with in this regard. It is also the contention of the learned counsel appearing for the petitioner that in the matter of granting recognition to the school, the 1st respondent has issued charge memo against six Government Servants of the Education Department, but however, instead of conducting the enquiry together, has conducted separate enquiries, which is against the letter in spirit of Rule 9A of the Tamil Nadu Civil Services (D&A) Rules, 1955. It is also peculiar to point out that though proceedings were initiated against six persons, the petitioner alone has been found guilty, and the remaining five others have been exonerated.

7.Another aspect that has been submitted is regarding the manner in which the Review Petition has been decided. It has been brought to the notice of this Court that the 1st respondent while forwarding the petition to the 2nd respondent, has not taken any provisional decision over the Review Petition and without doing so, the act of the 2nd respondent by usurping the powers of the 1st respondent and rejecting the Review Petition on its own motion is ex facie illegal. It has also been pointed out that the punishment imposed does not have any rational basis and is also disproportionate to the charges levelled against the petitioner.

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

- (i) Union of India vs. R.P.Singh, (2014) 7 SCC 340
- (ii) Anant.R.Kulkarni v. Y.P.Education Society and others, (2013) 6 SCC 515
- (iii) State of Uttar Pradesh and others v. Raj pal singh, (2010) 5 SCC 783

- (iv) Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78
- 8 (v) State of Uttaranchal and others v. Kharak Singh, (2008) SCC 236
- (vi) Bongaigaon Refinery & Petrochemicals Ltd. and others v. Girish Chandra Sarma, (2007) 7 SCC 206
- (vii) Surath Chandra Chakravarty v. State of W.B. 1970 (3) SCC 548

9. Relying upon the aforesaid judgments, Mr. Fathimanathan would submit that the entire manner in which the disciplinary proceedings have been conducted is ex facie arbitrary, illegal, discriminatory and unsustainable. It has been pointed out that in the instant case, the most important aspect that the respondents have not considered is the singling out of the petitioner alone and exonerating the other similarly situated delinquents without any rhyme or reason. As it can be said that if all fish stink, to pick one and say only it stinks is unfair. Further, it has been brought to the notice that the vagueness of the charges would stultify the very basis of the charges itself since it has been pointed out by the Hon'ble Supreme Court in a long line of decisions that vagueness of a charge memo cannot be simply ignored and the charges ought to be specific, definite and giving details of the incidents which form the basis of the charges and no enquiry can be sustained on vague charges. It has also been pointed out that the department also ought to provide satisfactory evidentiary proof to substantiate the guilt of the delinquent and by not doing so, drawing of a mere adverse inference alone cannot be sufficient to sustain the charges. Hence, it is prayed by the learned counsel that the writ petition deserves to be allowed and the impugned orders are liable to be set aside and the 1st respondent be directed to grant all service benefits to the petitioner as if he has retired from service in the normal course.

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10. Per contra, Mr. S.T.S. Murthi, learned Additional Advocate General appearing for the State assisted by the learned Special Government Pleader Mr. R. Govindasamy, would strenuously contend that there can be no fault found with the respondents and he has highlighted to this Court that this incident whereby 94 young children had lost their lives has shocked the conscience of not only our state but the entire country and the petitioner being responsible for the occurrence of the incident by his omissions cannot in any manner justify and seek to absolve his responsibilities and liabilities. It has been further contended by the learned Additional Advocate General that the petitioner cannot defend his delinquency on the ground that there was no applicable regulating to restrict one school per premises at

that point of time, for the reason that even the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 itself indicate that every premises can have only one school. Further, it was his contention that once when the petitioner was deputed to inspect a school premises, it is his bounden duty to ensure that all safety measures are in proper form in the said school. However, the petitioner, without any regard to any of his duties, has acted in a negligent and callous manner which led to the occurrence of the gruesome fire accident. It has also been submitted by the learned Additional Advocate General that Criminal Cases were also registered against the persons in charge for the lapse and in total, 12 officials were brought under the ambit of the disciplinary proceedings and disciplinary proceedings were proposed to be conducted and after the enquiry report was submitted and it was found that against 6 persons, the charges were not substantiated and accordingly, the same were withdrawn and as against 5 persons, charges were found to be proved.

11. Further, it has been submitted by the learned Additional Advocate General Mr.S.T.S.Murthi that the Commission of enquiry which was constituted under the Chairmanship of Retired Hon'ble Justice K.Sampath has also found that the petitioner and Mr.Govindarajan, Superintendent in the office of the D.E.O., Thanjavur are guilty for the lapse that has been committed and it is only after this, the proceedings have been commenced against them. The learned Additional Advocate General also denied the allegations that the petitioner alone has been singled out and submitted that the charges that were proved against the petitioner would establish that the petitioner is guilty for the lapse and it is only due to this reason, the said punishment has been imposed as against the petitioner.

12. It is further contended that there is no discrepancy or lacunae in the conduct of the disciplinary proceedings and the petitioner was awarded the appropriate punishment only and he has no reason to justify his wrong doing which has led to the brutal incident to take place.

13. An analysis of his controversy would reveal that the petitioner has been found guilty whereas 5 persons who were working along with him at the relevant point of time when the accident took place were exonerated but the petitioner alone has been found guilty without any satisfactory reason being available for exonerating these individuals and these individuals held the positions of Director of Elementary Education, District Educational Officer (In-charge) Thanjavur,

District Educational Officer (In-charge) Thanjavur, Chief Educational Officer (In-charge) Thanjavur and Superintendent to District Educational Officer (In-charge) Thanjavur. Apart from this, it could be evidently seen from the counter affidavit itself that the disciplinary proceedings were initiated only at the behest of the report submitted by the Justice K.Sampath Commission of enquiry. As rightly pointed out by the learned counsel appearing for the petitioner that the Hon'ble Supreme Court has clearly laid down in the State of Uttar Pradesh and others v. Raj pal Singh, (2010) 5 SCC 783 that though it might be open to the disciplinary authority to deal differently with different delinquents, however, once when the charges are similar and in relation to the same incident, the same would amount to discrimination if only one delinquent is singled out and several others who could have been equally responsible for the same have been exonerated without any sufficient material basis.

14. Another important and vital factor is that the recognition that was granted to the institution in which the accident took place was also granted by the erstwhile Chief Educational Officer, who has functioned till the year 2002. Further, once when it has been made clear that the charge memo was issued only after the Justice K.Sampath Commission's enquiry report, it would make it clear that it is only an after thought and in order to just project as if there has been some stern action taken, has the petitioner been arbitrarily proceeded against. This would demonstrate that the Government has not made any independent application of mind in issuing the charge memo.

15. In the light of the above said discussion, it becomes evidently clear that the charges that were leveled against the petitioner and the disciplinary proceedings that were conducted is clearly arbitrary and illegal and the petitioner alone cannot be allowed to face the hammer when the Government has cautiously exonerated other similarly situated persons. Even on merits, it has been found clear that the petitioner cannot be proceeded with and thus, this Court finds that the impugned orders that have been passed would have no legal sanctity and the same is liable to be quashed.

16. In the result:

(a) the writ petition is allowed and the impugned orders in G.O.(1-D)No.212, School Education (A2) Department, dated 26.06.2012 and G.O.(1-D)No.99, School Education A2 Department, dated 17.04.2013, are quashed;

(b) the respondents are directed to release all service and monetary benefits to the petitioner and treat him as retired from service in the normal course and ensure that his monetary and other attendant benefits are settled at the earliest within a period of eight weeks from the date of receipt of a copy of the order. No costs.

17. At this juncture, this Court would like to observe that Right to Education being a Fundamental Right as provided under Article 21A of the Constitution of India, also includes the Right to a safe environment to get education. It is the duty of the Government and the respective School Managements to follow the guidelines of the Hon'ble Supreme Court made in Avinash Mehrotra v. Union of India and others reported in (2009) 6 SCC 398.

18. Every School management, whether Government, aided or private, should provide adequate safeguards and ensure that the roof under which they provide the service of imparting education to young children should be a safe place without any potential hazards. If the same is ensured in every School all over this country, then access to education to young children would be made much better and safer.

19. Therefore, this Court issued the following directions:

(a) the Government may direct the concerned officials to conduct surprise checks in all Schools within its supervision and verify whether the facilities provided in the schools are complying with the rules and regulations or not?

(b) In the event there is non compliance, the Government shall initiate severe action against the violating schools.

(c) the Authorities, School Managements and Teachers shall at all times ensure the safety of the young and tender children.

20. Let's not forget that the young children are the asset of his country and it is duty of the Government to provide the safest environment for them in all their endeavors.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Principal Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bala Salai, Chennai - 600 003.
3. The Director of School Education,
College Road, Chennai -6
4. The Director of Primary Education
College Road, Chennai- 6
5. The Chief Educational Officer,
College Road, Chennai - 6
6. The Asst Educational Officer,
College Road, Chennai -6

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