

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.Nos.1616 & 1617 OF 2016 &
C.M.P.Nos.19995 & 19996 of 2016

The Management of Papanasam
Labour Welfare Association
Higher Secondary School
rep. By its Secretary
Vickramasingapuram,
Tirunelveli District.

.. Appellant in both W.As

-vs-

1.The District Educational Officer
Cheranmahadevi at Tirunelveli
Tirunelveli District.

..R1 in W.A.No.1616 OF 2016

2.The Chief Educational Officer
Cheranmahadevi at Tirunelveli
Tirunelveli District.

..R2 in W.A.No.1616 OF 2016 &
R3 in W.A.No.1617 OF 2016

3.Joseph Tharamsekar

..R3 in W.A.No.1616 OF 2016 &
R1 in W.A.No.1617 OF 2016

The School Committee,
Rep. by its President
The papanasam Labour Welfare Association,
Higher Secondary School, Vickrama Singapuram,
Tirunelveli District.

.. R2 in WA. 1617 of 2016

Writ Appeals filed under clause 15 of the Letters
Patent against the order dated 03.06.2016 rendered in
W.P.Nos.22367 of 2012 & 4436 of 2004.

WP. NO. 22367/2002:- Filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari calling for the records of the Ist respondent relating to proceedings hearing No.Na.Ka.No. 2881/A3/2096 dated 31/05/2002 and to quash the same.

WP.No. 4436/2004:- Filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari calling for the records of the Ist respondent relating to Order dated 06/08/2003 dismissing the Petitioner from service of the Ist respondent School and to quash the same and to further direct the respondent to the State the Petitioner in Service with fall Wages and all other benefits from 06/08/2003.

For Appellant : Mr.S.Jayaraman
(in both W.As.)

For Respondents : Mr.P.S.Siva Shanmuga Sundaram-
Spl.Govt. Pleader
(WA.1616/2016) -R1 & R2
(WA.1617/2016) R3

Mr.K.M.Vijayan, Sr.Counsel
for Mrs.R.T.Shymala
(WA.1616/2016) -R3
(WA.1617/2016) R1

COMMON JUDGEMENT

NOOTY.RAMAMOHANA RAO, J.

These two Writ Appeals are preferred by the same Management, which is running a Higher Secondary School at Vickramasingapuram, Tirunelveli District. W.A.No.1616 of 2016 is directed against the Judgment rendered in W.P.No.22367 of 2012, which Writ Petition in turn has laid a challenge to the proceedings dated 31st May, 2002 passed by the District Educational Officer, Cheranmahadevi, Tirunelveli District and for quashing the same.

2.The third respondent in W.P.No.22367 of 2002/ W.A.No.1616 of 2016, was working as a Junior Assistant in the Higher Secondary School run by the Writ Appellant-Management. The said School was receiving grant-in-aid from the State Government. Alleging certain financial irregularities said to have been committed by the third respondent, he was placed under suspension to begin with on 20th July, 2001. That order was the subject matter of challenge in W.P.No.13541 of 2001. Pursuant to the interim order of suspension of the order dated 20th July 2001, granted by this Court, the third respondent has resumed duty back in the School on 6th August, 2001. That Writ

Petition was finally disposed of on 28th April, 2003, granting four weeks time to the respondents in that Writ Petition to deal with the representation said to have been filed by the petitioner in that case. It is pursuant to the said order, the District Educational Officer, Cheranmahadevi, Tirunelveli, passed orders on 31st May, 2002, directing the Writ Appellant-Management to claim salary arrears for the period from 12th March, 1996 to 25th May, 1996 and to continue to pay the salary and allowances as per the revised scales of pay for the subsequent period. That order was the subject matter of challenge in W.P.No.22367 of 2002, from out of which W.A.No.1616 of 2016, has been preferred.

3. Heard Mr.S.Jayaraman, learned counsel for the Writ Appellant-Management, Mr.K.M.Vijyan, learned Senior counsel appearing for the delinquent employee and Mr.P.S.Siva Shanmuga Sundaram, learned Special Government Pleader appearing for the official respondents in both the Writ Appeals.

4. There are three main allegations levelled against the employee/third respondent. First of them was that during the academic year 1998-99, a sum of Rs.49,450/- appears to have been collected as Special Fee and Tuition Fee from those students pursuing the English Medium of instructions. It was the specific case of the Appellant-Management that the said amount has not been remitted to the Government Account, but was misappropriated by the employee/third respondent. The second charge was that one of the Teachers has retired from service by name Shri Navaneetha Krishnan and while settling his terminal benefits, a sum of Rs.3,630/-, was paid in excess. Therefore, the Audit has raised an objection and though the said excess amount was realized from Shri Navaneetha Krishnan, the same has not been remitted by the third respondent to the Government Account, but, instead he misappropriated the same. It was further alleged that a sum of Rs.11,00,000./- (Rupees Eleven Lakhs only) has been encashed by the third respondent for the purpose of disbursement of four months salary representing July - September, 1997. It is stated that the third respondent has disbursed only a sum of Rs.10,90,991/- and the balance amount of Rs.9,009/- has not been remitted back and hence the School Management passed an order dated 06.08.2003, inflicting the punishment of removal from service on the third respondent. Calling in question the said order dated 06.08.2003, removing him from service, the third respondent instituted another Writ Petition in W.P.No.4436 of 2004. The accompanying Writ Appeal i.e. W.A.No.1617 of 2016, is in fact directed against the Judgment rendered in W.P.No.4436 of 2004. Hence, the issues being common in both the cases, we heard both the Writ Appeals together and dispose them of by this common Judgment.

5. When we look at the charges in isolation, they appear to be pretty grave in content. It is a well settled principle of law that howsoever a serious nature of allegations levelled against the delinquent may be, the said charge should be carried home by bringing on record proper and relevant evidence after a fair and reasonable opportunity is provided to the employee concerned to meet the allegations squarely and neutralize the adverse material brought on record against him. Unfortunately, the Writ Appellant-Management, except framing charges against the employee concerned, has not moved in the right direction against the said employee thereafter. No one was examined before or at the time of domestic enquiry. Consequently, no document was exhibited to vouch for the fact that firstly, it is the employee concerned who has collected the sum of Rs.49,450/- towards the Special Fee and Tuition Fee from the students pursuing English Medium instructions in the School and that it is his responsibility to remit the said amount to the Government Account later on. Similarly, when it is alleged that Shri Navaneetha Krishnan, has paid the differential amount of Rs.3,630/-, which he has received in excess of his entitled terminal benefits, it is Shri Navaneetha Krishnan out ought to have been examined in the presence of the employee concerned to vouch for the fact that he paid the excess amount received by him to the employee concerned. Far from examining the said Shri Navaneetha Krishnan to establish that he who has tendered the said amount to the third respondent in the Writ Appeal, who in turn has failed to remit the said amount back to the Government Account, Shri Navaneetha Krishnan has not been examined at all and on the other hand, he is now working as the President of the School Management Committee. One way, Shri Navaneetha Krishnan became an interested person in the charge laid against the employee concerned and consequently, in his capacity as the President of the School Management Committee, he should not have discharged the functions as the Head of the Managing Committee while dealing with the case of the third respondent. But, the Record does disclose that Shri Navaneetha Krishnan has discharged his functions as the President of the School Management Committee while dealing with the subject matter of proceedings against the third respondent herein. Hence, the proceedings taken up against the third respondent herein are clearly vitiated.

6. Finally, there is no material that was brought on record that it is the third respondent who encashed the cheque in question and withdrew the amount of Rs.11,00,000/- from the Bank Account, that he has disbursed only a sum of Rs.10,90,991/-, that he is yet to disburse the insignificant amount of Rs.9,009/- therefrom and that he has misappropriated the said amount.

7. In the absence of any material being brought on record as to who has withdrawn the money from the Bank and as to who has disbursed the arrears of salary and wages to the employees and who has totalled it and as to how the amount of Rs.10,90,991/-, has been worked out and without calling for any explanation as to where the balance amount of Rs.9,009/- is lying, the third respondent could not have been held guilty of any such charge. In these circumstances, the learned single Judge absolutely has no hesitation to set aside the order of punishment imposed on the third respondent and allowed W.P.No.4436 of 2004. We find no warrant to interfere with the said order passed by the learned single Judge.

8. When once the said Writ Petition stands allowed, the issue that remains in W.P.No.22367 of 2002, itself lies in a very narrow compass. An employee can be denied salary and allowances or wages if he is genuinely guilty of proven misconduct. If on the other hand, if he is not guilty of any misdemeanor, there is no way, the salary and allowances payable for the period of work discharged by him or for the period during which he is so prevented from discharging said duties, the said amounts can be withheld. It is in recognition of this principle that the District Educational Officer passed the impugned order dated 31st May, 2002, asking the Management to draw the salary and allowances payable to the third respondent/employee for the period he was under suspension. The action of the District Educational is in fact in conformity with the legal principles on the subject.

9. For the aforesaid reasons, we are in agreement with the view taken by the learned single Judge and consequently, the orders passed by the learned single Judge in the respective cases from out of which the present Writ Appeals arose, do not warrant any interference at our hands.

10. In the result, both the Writ Appeals fail and they stand dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

To
1. The District Educational Officer
Cheranmahadevi at Tirunelveli
Tirunelveli District.

2.The Chief Educational Officer
Cheranmahadevi at Tirunelveli
Tirunelveli District.

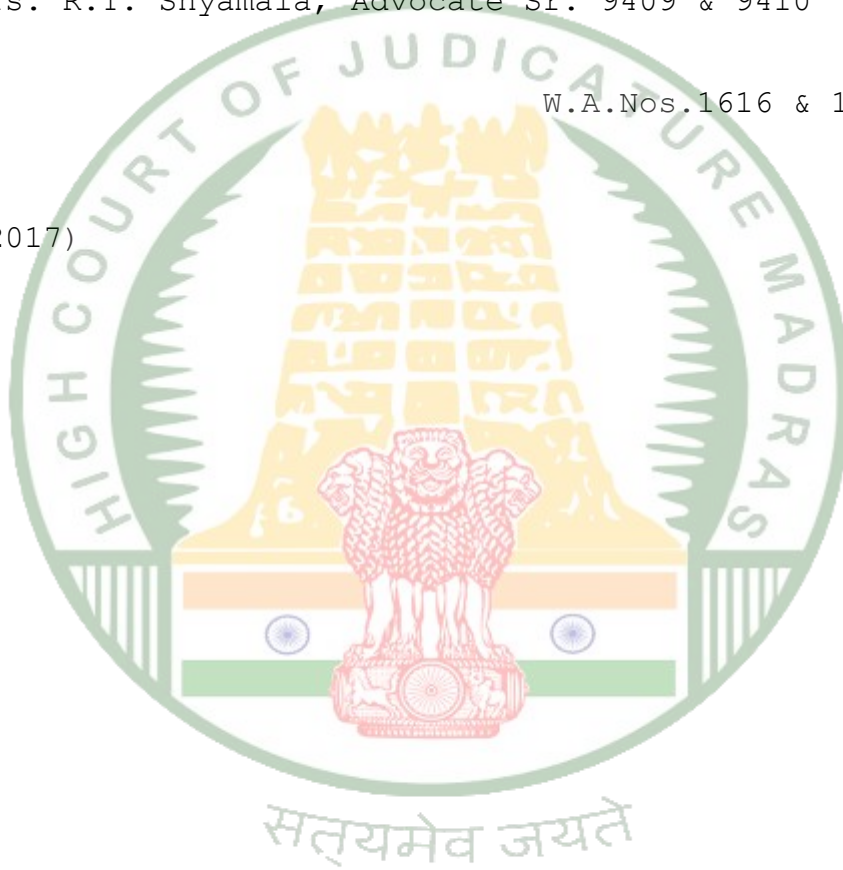
3.The School Committee,
Rep. by its President
The papanasam Labour Welfare Association,
Higher Secondary School, Vickrama Singapuram,
Tirunelveli District.

+2cc to Mr.S. Jayaraman, Advocate Sr. 9454 & 9455

+2cc to Mrs. R.T. Shyamala, Advocate Sr. 9409 & 9410

W.A.Nos.1616 & 1617 OF 2016

EV(CO)
VR(17/03/2017)



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