

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.26413 of 2007

T.Nagarajan

.. Petitioner

vs

1. The Director of School Education,
Chennai.

2. The Governing Body,
rep. By the Correspondent,
St. Patricks'Anglo Indian
Higher Secondary School,
Gandhinagar, Adyar,
Chennai - 600 020.

3. M.Ramamurthy,
Enquiry Officer, C/o. Correspondent,
St. Patricks'Anglo Indian
Higher Secondary School,
Gandhinagar, Adyar,
Chennai - 600 020.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records made in the impugned dismissal order dated 29.07.2007 issued by the second respondent pursuant to the impugned ex parte enquiry dated 18.07.2007 by the third respondent, and the show cause notice dated 23.07.2007, to quash the same and to direct the second respondent to reinstate the petitioner with backwages and all attendant benefits.

For Petitioner

: Mr.V.Ravi

For Respondents

: Mr.A.Rajaperumal (for R1)
Addl. Government Pleader

Mr.Parthasarathy (for R2)
Senior Counsel
for Mr.R.Sunil Kumar

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records made in the impugned dismissal order dated 29.07.2007 issued by the second respondent pursuant to the impugned ex parte enquiry dated 18.07.2007 by the third respondent, and

the show cause notice dated 23.07.2007, to quash the same and to direct the second respondent to reinstate the petitioner with backwages and all attendant benefits.

2. The facts in a nutshell are as under: The petitioner was appointed as Physical Education Teacher in the second respondent school on 04.06.1990 and his services were made permanent with effect from 01.05.1992. The petitioner's son got admission in the second respondent school in the year 1998.

3. It is the case of the petitioner that the post of Director of Physical Education of the second respondent school fell vacant and petitioner was the senior-most person eligible for being appointed to the said post. However, the second respondent school issued advertisement calling for applications for recruitment of the post of Director of Physical Education. Assailing the same, the petitioner filed W.P.No.4145 of 2007 and this Court is said to have granted an interim order restraining the second respondent school from appointing any person to the said post.

4. It is the specific case of the petitioner that in view of the filing of the writ petition referred to in the preceding paragraph, the the second respondent school placed him under suspension, by proceedings dated 19.02.2007, and directed him to give his explanation. The said suspension order, which was alleged to be issued by the Correspondent of the second respondent school, was stayed by this Court by order dated 03.03.2007 made in W.P.No.8710 of 2007, of course, making it clear that the said interim order shall not stand in the way of the school committee to take appropriate action.

5. Pursuant to the above said order, the petitioner was permitted to join duty. Thereafter, a charge memo was issued to the petitioner on 22.03.2007, which was challenged before this Court in W.P.No.12956 of 2007 and ended in dismissal. On appeal, a Division Bench of this Court, by judgment dated 19.04.2007, while dismissing the appeal in W.A.No.621 of 2007, made it clear that on receipt of the reply of the petitioner herein, the second respondent will reopen the enquiry and after granting personal hearing to the petitioner, complete the same and pass orders in accordance with law.

6. Thereafter, the petitioner submitted his reply to the charge memo on 03.07.2007 and on 05.07.2007, the second respondent intimated the petitioner about the reopening of the enquiry by the third respondent (Enquiry Officer) and such enquiry was scheduled on 09.07.2007. However, the second respondent informed the petitioner that the date of enquiry has been rescheduled to 10.07.2017. It is the specific allegation of the petitioner that the postponement of the enquiry should be intimated by the third respondent/Enquiry Officer and not the second respondent school.

7. The petitioner's request to engage a lawyer to assist him in the disciplinary proceedings was rejected by the third respondent on the ground that the representative of the school was not a legally qualified person. Thereupon, the petitioner filed W.P.No.24272 of 2007 to permit the petitioner to have assistance of a lawyer and the said writ petition was posted for hearing on 02.08.2007.

8. It is stated that the petitioner's counsel intimated the pendency of the writ proceedings regarding seeking of assistance of a lawyer and notice ordered by this Court, but despite the same, the third respondent closed the proceedings behind the back of the petitioner and submitted enquiry report dated 20.07.2007 to the second respondent. The second respondent issued show cause notice to the petitioner on 23.07.2007 (which is stated to be received by the petitioner on 24.07.2007) granting him five days to submit his comments on the report of the Enquiry Officer.

9. It is stated that assailing the enquiry report and the show cause notice, supra, the petitioner filed W.P.No.25324 of 2007 and this Court, by order dated 26.07.2007, granted an order of interim stay. Despite communication of the said order of interim stay to the second respondent school, it is alleged that on 29.07.2007, the second respondent school passed the impugned order of dismissal, which according to the petitioner is before the expiry of five days period granted to him from the date of receipt of the show cause notice.

10. Calling into question the said order of dismissal, the present writ petition is filed for the relief stated supra.

11. The main plank of the argument advanced by the learned counsel for the petitioner is that the order of dismissal has been passed in haste, prior to the expiry of five days from the date of receipt of a copy of the show cause notice.

12. It is further argued that the the presenting office on behalf of the second respondent school is also a witness in the proceedings and, therefore, the enquiry proceedings are vitiated.

13. It is submitted that when the petitioner has filed a writ petition seeking assistance of a lawyer in the proceedings before the Enquiry Officer and the same is pending, the Enquiry Officer, despite intimation of the said fact, closed the enquiry proceedings and submitted enquiry report to the second respondent school. It is the specific plea of the learned counsel that the petitioner was set ex parte in the enquiry proceedings, without any notice, and, therefore, the entire enquiry proceedings are in violation of the principles of natural justice.

14. Lastly, it is submitted that despite stay of the proceedings granted by this Court in W.P.No.25324 of 2007, by order dated 26.07.2007, the passing of the dismissal order by the second respondent school shows that the said order was passed with malice afterthought.

15. Per contra, the learned counsel appearing on behalf of the second respondent, while reiterating the reasons that weighed with the second respondent in passing the impugned order, submitted that the allegations levelled against the petitioner are grave in nature, to wit, tampering with school records by unauthorisedly accessing them and changing the date of birth of his son, who was studying in the second respondent school.

16. He further submitted that all well established principles of law have been followed before passing the impugned proceedings and, therefore, the order passed by the second respondent does not warrant interference.

17. I heard Mr.V.Ravi, learned counsel appearing for the petitioner, Mr.A.Rajaperumal, learned Additional Government Pleader for the 1st respondent and Mr.Parthasarathy, learned Senior Counsel for M/s.R.Sunilkumar, learned counsel for the 2nd respondent and perused the documents on record. No representation on behalf of the 3rd respondent.

18. It is not necessary to delve deep into the factual aspects. Let us start with the enquiry proceedings conducted by the third respondent.

19. It is beyond any cavil that the petitioner has sought assistance of a lawyer in the enquiry proceedings and the same was rejected by the third respondent (Enquiry Officer) based on the objection of the second respondent school. Assailing the same, the petitioner has filed W.P.No.24272 of 2007 and this Court posted the same for hearing on 02.08.2007. Even though this Court has not passed any order restraining the Enquiry Officer from proceeding further with the enquiry, the petitioner sent a letter through his advocate on 18.07.2007 informing the Enquiry Officer that this Court was seized of the matter at that stage. However, the Enquiry Officer proceeded further with the matter and concluded the enquiry proceedings and submitted his report on 20.07.2007. At this juncture, it is to be noted that a Division Bench of this Court, by judgment dated 19.04.2007 made in W.A.No.621 of 2007, observed as under:

"... Learned counsel for the third respondent/School submitted that if the appellant files his reply to the show cause notice within a period of two weeks from the date of receipt of a copy of this judgment, the third respondent will reopen the enquiry and after granting personal

hearing to the appellant, complete the same and pass orders in accordance with law." However, the petitioner was set ex parte in the enquiry proceedings and the Enquiry Officer submitted his report.

20. The second respondent school called for comments of the petitioner to the enquiry report by way of a show cause notice dated 23.07.2007 stating as under:

"You are hereby called upon to submit your comments on the report of the Enquiry Officer dated 20.7.2007 enclosed herewith within 5 (five) days of this communication failing which it will be presumed that you have no comments to offer and the same will be placed before the Governing Body of the School for consideration and further orders."

21. In the case on hand, the petitioner admits that he received the above said show cause notice on 24.07.2007. Admittedly, the petitioner challenged the show cause notice as well as the enquiry report before this Court in W.P.No.25324 of 2007 and this Court, on 26.07.2007, granted interim stay of the said proceedings and directed the matter to be listed along with W.P.No.24272 of 2007 (which writ petition, as stated supra, has been filed seeking legal assistance in enquiry proceedings).

22. According to the petitioner, on 27.07.2007, he got copy of the interim order passed by this Court and on 28.07.2007 he personally went to the school to submit the same, but the second respondent refused to receive the same and thereafter, he sent the same through speed post with acknowledgement due.

23. It is the specific case of the second respondent that by the time they received the said communication sent by the petitioner (which was on 30.07.2007), they passed the impugned order on 29.07.2007. What needs mention at this stage is the day on which the impugned order is passed 29.07.2007, which happens to be a Sunday. This Court is at a loss to understand as to what is the urgency behind the Governing Body of the second respondent School considering the case of the petitioner on 29.07.2007 and thereafter, the second respondent passing the order of dismissal on 29.07.2007 itself. This only shows that there is more to it than meets the eye.

24. The main allegation against the petitioner was that he has tampered with the records pertaining to the date of birth of his son as "16.07.1995" instead of "25.10.1994". The said allegation also seems to be baseless on a bare perusal of the Transfer Certificate issued to the petitioner's son by the Headmaster, Santhome Higher Secondary School, Mylapore, Chennai, wherein the date of birth is stated as "25.10.1994". It only shows that the petitioner has given the date of birth as 25.10.1994 and not as 16.07.1995.

25. In the case on hand, it is the specific case of the petitioner that the Enquiry Officer is the legal advisor of the second respondent school. That apart, it is the specific plea of the petitioner, which is not refuted by the respondent school, that the rescheduling of the enquiry was communicated by the second respondent school and not the enquiry officer. The Supreme Court time and again held that if any person who is or was a legal practitioner is appointed as an Enquiry Officer, the denial of assistance of a legal practitioner to the charged employee would be unfair. In *Ramesh Chandra v. Delhi University and other*, (2015) 5 SCC 549, the Supreme Court held as under:

"66. We are of the opinion that if an Hon'ble retired Judge of a court before his appointment as a Judge was a lawyer of any of the party (Delhi University herein), the disciplinary authority should not engage such retired Judge as an enquiry officer, as the other party may allege bias against the enquiry officer and the reputation of the Hon'ble Judge may be at stake. The University is directed not to engage any Hon'ble retired Judge of any court, who was earlier a counsel of the University as an enquiry officer to hold an inquiry against any of its employees.

67. The enquiry officer herein being a retired Judge of the High Court is a person of vast legal acumen and experience. The presenting officer also would be a person who had sufficient experience in presenting case before the enquiry officer. In this background, it is also required to consider whether an application of a delinquent employee seeking permission to be represented through a legally trained and qualified lawyer should be allowed or not.

68. In *Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61], this Court observed: (SCC pp. 129-30 & 132, paras 10 & 12)

"10. ... Now if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiry officer whether looking to the nature of charges, the type of evidence and complex or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated."

69. In J.K. Aggarwal v. Haryana Seeds Development Corpn. Ltd. [(1991) 2 SCC 283 : 1991 SCC (L&S) 483 : (1991) 16 ATC 480] , this Court held that the denial of the assistance of a legal practitioner in inquiry proceedings would be unfair. This Court held as follows: (SCC pp. 286-87, para 8)

"8. It would appear that in the inquiry, the respondent Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include 'whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser'. In the last analysis, a decision has to be reached on a case-to-case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question 'whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself,

on his request, should be permitted to appear through a legal practitioner' which was kept open in *Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* [(1983) 1 SCC 124 : 1983 SCC (L&S) 61]. However, it was held in that case: (SCC p. 132, para 12)

'12. ... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.'"

70. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as an enquiry officer in an inquiry initiated against an employee, the denial of assistance of a legal practitioner to the charged employee would be unfair."

(emphasis supplied)

26. When a departmental inquiry is conducted against the employee, it cannot be treated as a casual exercise. The enquiry proceedings cannot be conducted with a close mind. The enquiry officer has to be wholly unbiased, impartial and fair. The rules of natural justice are required to be observed to ensure not only that justice is done, but is manifestly seen to be done. The object of rules of natural justice is to ensure that a employee is treated fairly in proceedings, which may culminate in imposition of punishment, including punishment of dismissal and/or removal from service.

27. The conduct of the second respondent in not allowing legal assistance to the petitioner in the enquiry proceedings, despite a pending writ petition before this Court seeking legal assistance, and proceeding with the imposition of punishment of dismissal, despite grant of stay by this Court to the enquiry report and the show cause notice, only shows the manifest intent of the authority to complete the formality in law, without strictly observing it.

28. In the result:

(a) this writ petition is allowed and the impugned dismissal order dated 29.07.2007 issued by the second respondent pursuant to the impugned ex parte enquiry dated 18.07.2007 by the third respondent, and the show cause notice dated 23.07.2007, is set aside;

(b) the second respondent is directed to reinstate the petitioner into service with effect from 29.07.2007 and pay back all the service and monetary benefits to the petitioner;

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

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vs

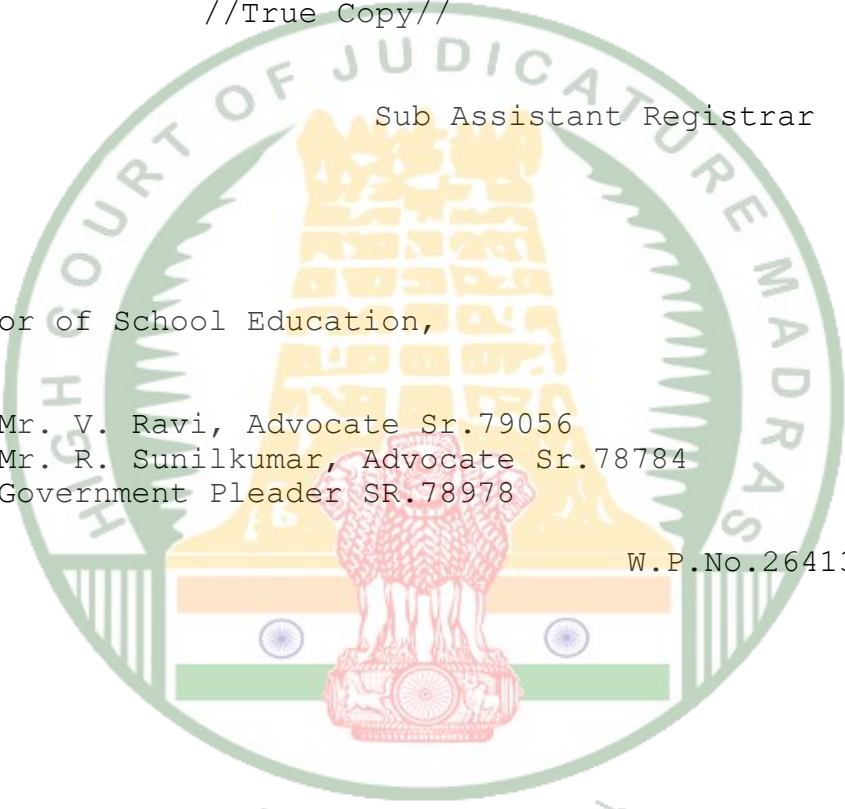
To

The Director of School Education,
Chennai.

+ 1 cc to Mr. V. Ravi, Advocate Sr.79056
+ 1 cc to Mr. R. Sunilkumar, Advocate Sr.78784
+ 1 cc to Government Pleader SR.78978

W.P.No.26413 of 2007

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