

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.Nos.19197 to 19200 of 2010

and

M.P.Nos.1,1,1,1,2 and 2 of 2010

R.Elumalai

.. Petitioner
in WP:19197/2010

P.Sekar

.. Petitioner
in WP:19198/2010

A.Govindasamy

.. Petitioner
in WP:19199/2010

G.Mani

.. Petitioner
in WP:19200/2010

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Secretariat, Chennai -9.

2. The Director of School Education,
College Road, Chennai-6.

.. Respondents
in all WPs.

PRAYER in W.P.No.19197 of 2010: Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records pertaining to the order passed by the 1st Respondent in G.O.Ms.No.4 School Education Department dated 2.1.2008 as confirmed in G.O.(2D) No.27 School Education Department dated 18.6.2009 and quash the same and direct the Respondents to confer all the consequential benefits to the petitioner.

PRAYER in W.P.No.19198 of 2010: Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records pertaining to the order passed by the 1st Respondent in G.O.Ms.No.7 School Education Department dated 2.1.2008 as confirmed in G.O.(2D) No.30 School Education Department dated 18.6.2009 and quash the same and direct the Respondents to confer all the consequential benefits to the petitioner.

PRAYER in W.P.No.19199 of 2010: Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records pertaining to the order passed by the 1st Respondent in G.O.Ms.No.3 School Education Department dated 2.1.2008 as confirmed in G.O.(2D) No.26 School Education Department dated 18.6.2009 and quash the same and direct the Respondents to confer all the consequential benefits to the petitioner.

PRAYER in W.P.No.19200 of 2010: Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records pertaining to the order passed by the 1st Respondent in G.O.Ms.No.6 School Education Department dated 2.1.2008 as confirmed in G.O.(2D) No.29 School Education Department dated 18.6.2009 and quash the same and direct the Respondents to confer all the consequential benefits to the petitioner.

For Petitioners : Mr.P.Ganesan
for M/s.C.S.Associates
For Respondents : Mr.R.Govindasamy
Special Government Pleader

COMMON ORDER

Assailing the proceedings of the first respondent even dated 02.01.2008, as confirmed in the order even dated 18.06.2009, the petitioners have filed these writ petitions.

2. The facts in a nutshell are as under: The petitioners were working as P.G. Assistant Teachers in Government Higher Secondary School, Thandrampet, Thiruvannamalai. The said school conducted an educational tour from 18.11.2005 to 21.11.2005, in which 45 girl students and 25 boy students participated. In order to take care of the students during the tour, six Post Graduate Teachers, including a female Post Graduate Teacher, were nominated. The four petitioners went for the educational tour accompanying the children.

3. It is stated that on their return from the educational tour, by proceedings dated 23.11.2005, the petitioners were placed under suspension on the allegation that they consumed alcohol in tour bus and misconducted in the bus. Such order was passed based on the letter given by the President of the Parent Teachers Association. It is stated that a detail enquiry was conducted, but nobody deposed against the petitioners. The Enquiry Officer appointed held the charge of consumption of alcohol is proved. Explanation was called for from the

petitioners, which they submitted. However, punishment of stoppage of increment with cumulative effect for four years was imposed vide orders even dated 02.01.2008.

4. Calling in question the said orders, the petitioners preferred review petitions before the Government. However, ultimately, the Government rejected the review petitions by orders even dated 18.06.2009. Hence, the present writ petitions for the relief stated supra.

5. The learned counsel appearing for the petitioners submitted that there was no complaint whatsoever from any of the students who participated in the educational tour and only due to personal animosity, without any evidence, the President of the Parents Teacher Association had lodged a complaint against the petitioners to tarnish their image and the respondent authorities without any independent application of mind have merely accepted the report of the Enquiry Officer, which held the charge proved, purely based on conjectures and surmises and/or a priori considerations.

6. Per contra, the learned Special Government Pleader appearing on behalf of the respondents reiterated the reasons that weighed with the respondent authorities in passing the impugned orders and prayed for dismissal of the writ petitions, while contending that the procedure adopted by the respondent authorities was in accordance with law and warrants no interference.

7. I heard Mr.P.Ganesan, learned counsel for M/s.C.S.Associates, appearing for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader for the respondents in all the writ petitions and perused the documents available on record.

8. It is beyond any cavil that the petitioners went on educational tour between 18.11.2005 and 21.11.2005 along with four others. It is seen from the records that on 22.11.2005, the parents of students and local public agitated before the School seeking initiation of action against the teachers and the Head Master concerned. The Chief Educational Officer, who went in person to the school premises, received the complaints given by the President of the Parents and Teacher Association and a joint complaint given by 18 students (9 boys and 9 girls) of the school. The said incident was, in fact, reported in the local dailies.

9. On the basis of the said complaints, the Chief Educational Officer, Thiruvannamalai, on 22.11.2005, addressed a communication to the second respondent explaining the happenings in the educational tour. Based on the same, the Joint Director

(Higher Secondary) of School Education, vide proceedings dated 23.11.2005, placed the petitioners under suspension.

10. Thereafter, a charge memo was issued to the petitioners on 20.02.2006, to which an explanation was submitted by the petitioners. The charges levelled against the petitioner were grave to quote from counter affidavit it reads "...teachers refused to stop the moving bus when the girl students plead for attending to nature's call, instead stopped the vehicle in front of TASMAC outlet, drunken and danced with other teacher in indecent dress and misbehaved with girl students thereby violation Rules 20 and 21 of the Tamil Nadu Government Servants Conduct Rules, 1973."

11. An enquiry was conducted by the Joint Director of School Education (Secondary) and Enquiry Officer convened two meetings with the President of the Parents Teacher Association in the presence of the delinquents and categorically held that "it may be inferred from the evidence given by the students to the effect that liquor smell enacted from the teachers including the petitioner. As such consuming liquor or not prohibiting others from consuming liquor is a dereliction of duty. As such the charge made against them is proved."

12. It is seen from the records that only after examining the recommendation of the Enquiry Officer and considering the further representations of the petitioners and obtaining the views of the Tamil Nadu Public Service Commission with relevant records, the punishment of stoppage of increment for four years with cumulative effect was imposed by proceedings dated 02.01.2008. It is also seen that the review applications were examined carefully and independently.

13. The above facts clearly establish that the respondent authorities have adopted proper procedure and when the procedure cannot be found fault, it does not lie in the mouth of the petitioners to state that inasmuch as the students have not been examined the enquiry is vitiated.

14. The special status of a teacher in the Indian society has been highlighted in a decision of the Supreme Court in Avinash Nagra v. Navodaya Vidyalaya Samiti, (1997) 2 SCC 534, in the following words:

"11. the Indian society has elevated the teacher as "Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha". As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives.

As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents. The State has taken care of service conditions of the teacher and he owes dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing constitutional ideals enshrined in Article 51-A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an enquiring mind but not with blind customary beliefs. The education that is imparted by the teacher determines the level of the student for the development, prosperity and welfare of the society. The quality, competence and character of the teacher are, therefore, most significant to mould the calibre, character and capacity of the students for successful working of democratic institutions and to sustain them in their later years of life as a responsible citizen in different responsibilities. Without a dedicated and disciplined teacher, even the best education system is bound to fail. It is, therefore, the duty of the teacher to take such care of the pupils as a careful parent would take of its children and the ordinary principle of vicarious liability would apply where negligence is that of a teacher. The age of the pupil and the nature of the activity in which he takes part are material factors determining the degree and supervision demanded by

a teacher."

15. When such is the duty of the teacher towards the students, the conduct of the teachers should be above reproach. In the case on hand, the respondents have specifically averred in the counter affidavit that a joint complaint given by 18 students (9 boys and 9 girls) of the school.

16. In *Byrne v. Kinematograph Renters Society Ltd.*, (1958) 2 All ER 579, it was observed "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

17. Rules of natural justice cannot remain the same applying to all conditions. The girls who alleged misbehaviour by the teachers would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a Court of law were to be imposed in such matters, the girls would have had to go under the constant fear of harassment by the delinquent teachers. Under the circumstances, the procedure adopted by the respondent authorities cannot be pulled to pieces. In the case on hand, the petitioners were informed of the accusation made. They had been given sufficient opportunity to put forth their case and the respondent authorities, by the procedure followed, which has been narrated above, in my considered opinion, acted in good faith. This Court does not think that the facts and circumstances of this case require anything more to be done.

18. In *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi*, (1991) 2 SCC 716, the Hon'ble Supreme Court held as under:

"37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on

degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

19. In the instant case, the respondent authorities based on material available on record, after following the due procedure contemplated under law, have imposed the punishment. This Court finds no reason warranting interference.

For the foregoing reasons, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department,
Secretariat, Chennai -9.

2.The Director of School Education,
College Road, Chennai-6.

+4cc to M/s.C.S.Association.*, Advocate, S.R.No.62275.

+4cc to the Government Pleader, S.R.No.62844,62845,62846 and 62847

सत्यमेव जयते

W.P.Nos.19197 to 19200 of 2010 and
M.P.Nos.1,1,1,1,2 and 2 of 2010

PP(CO)

rrs 03/10/2018

WEB COPY