

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.27892 of 2007

P.Venkateswara Perumal

... Petitioner

Vs

The District Elementary Educational Officer,
Villupuram,
Villupuram District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Na.Ka.No.0972/A4/2002 dated 09.07.2007 and quash the same and direct the respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Rajendran

For Respondent : Mr.S.Gunasekaran,
Additional Government Pleader

O R D E R

Heard Mr.P.Rajendran, learned counsel for the petitioner and Mr.S.Gunasekaran,, learned Additional Government Pleader appearing for the respondent.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Na.Ka.No.0972/A4/2002 dated 09.07.2007 and quash the same and direct the respondent to reinstate the petitioner in service with all attendant benefits."

3. The case of the petitioner is as follows:-

According to the petitioner, he had studied Diploma in Teacher Education Course at St.Xavier Teacher Training Institute, Arni, during the period 1986-88. On completion of the Teacher Training, he had registered his name in the local Employment Exchange for appointment to the post of Secondary Grade Teacher. On being sponsored by the Employment Exchange,

the petitioner was appointed as Secondary Grade Teacher on 13.12.2000, vide proceedings of the District Elementary Educational Officer, Villupuram.

4. A charge memo was issued to the petitioner on 17.03.2004, charging him for an act of misconduct for producing bogus Diploma in Teacher Education Certificate. The petitioner submitted his explanation to the charge memo on 12.04.2004. A police complaint was also registered in regard to the production of bogus certificate.

5. However, according to the learned counsel for the petitioner, the police complaint has not progressed from the FIR stage till date. As regards the departmental enquiry was concerned, the same was proceeded with and the statement of petitioner was obtained from the petitioner and no witnesses were examined in the enquiry.

6. The respondent, on the basis of the enquiry report, which was not furnished to the petitioner admittedly, imposed a penalty on 09.07.2007, canceling the appointment of the petitioner by dismissing him from service. Since the respondent not followed the mandatory procedure for disciplinary action of not providing the copy of the enquiry report, straight away imposed a penalty of dismissal from service, the petitioner has approached this Court, challenging the dismissal order dated 09.07.2007, without exhausting an appeal remedy.

7. Upon notice, learned Additional Government Pleader appearing for the respondent, entered appearance and filed a detailed counter affidavit. In the counter affidavit, in more than one paragraph, it is mentioned that the marks as found in the Certificate produced by the petitioner did not tally with the marks contained in the original records maintained by the Director of Examination and the Director of Elementary Education. Therefore, the petitioner was proceeded with departmental action and also criminal action. Since the charge framed against the petitioner was very serious in nature, the respondent thought fit to cancel the appointment. Therefore, such order does not require any intervention from this Court.

8. On the other hand, learned counsel for the petitioner would submit that the petitioner is at a loss to understand as to the basis of the enquiry report, since the same had not been furnished to him. In the absence of report being furnished to the petitioner, he was prevented from making worthwhile and effective representation as to the basis of the report by the Enquiry Officer. The fact of non-furnishing of the enquiry report to the petitioner has not been disputed in the counter affidavit filed on behalf of the respondent. It is trite in law to say non-furnishing of the enquiry report has

vitiated the disciplinary action initiated against the petitioner, particularly, in this case, when the report was adverse to the petitioner's interest.

9. This Court time and again held that non-furnishing of enquiry report would result in negation of valuable right of the employee concerned for making effective representation against the finding of the Enquiry Officer. Furnishing of the enquiry report is held to be mandatory. Any infraction of following such procedure will automatically result in disciplinary action being vitiated on that ground alone.

10. In the above said circumstances, this Court set aside the impugned order of dismissal from service dated 09.07.2007 and remit the matter back to the respondent to conduct a fresh enquiry against the petitioner and furnish the copy of the enquiry report. Thereafter, the disciplinary authority can pass orders on the basis of the enquiry report and also basis of the representation of the petitioner.

11. It is made clear that although the dismissal order dated 09.07.2007 is set aside, the petitioner is not entitled to any back wages for the period of his non-employment on the ground that "No work, no pay". The period of non-employment shall be regulated as per the fundamental rules and other instructions issued by the Government on the subject matter. The respondent is also directed to complete the enquiry and furnish the copy of the enquiry report to the petitioner and pass final orders within a period of 12 weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsk

To

The District Elementary Educational Officer,
Villupuram,
Villupuram District.

+1cc to the Government Pleader, S.R.No.

W.P.No.27892 of 2007

PA (CO)

RMP(09/02/18)

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