



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.19706 of 2015

and

M.P.(MD)No.1 of 2015

R.Sudalaimani

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Principal Secretary,
School Education Department,
Secretariat,
Chennai.

2.The Director of Elementary Education,
O/o. Directorate of Elementary Education,
DPI Campus, Nungambakkam,
Chennai - 600 006.

3.The District Elementary Educational Officer,
Thoothukudi District,
Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in connection with the impugned order of punishment imposed in his proceedings in Na.Ka.No.20108/I4/11 dated 02.07.2013 and the consequential rejection of appeal by the first respondent vide his impugned order passed in G.O.(2D) No.71, School Education (Tho.Ka.1(1)) Department, dated 08.06.2015 (received on 02.09.2015) and quash both as illegal and arbitrary and consequently, direct the respondents to grant all service and monetary benefits within the time limit that may be stipulated by this Court.

For Petitioner

: Mr.G.Thalaimutharasu

For Mr.K.Gurunathan

For Respondents

: Mr.K.Guru

Additional Government Pleader

O R D E R



2.The present writ petition has been filed challenging the impugned order of punishment of stoppage of increment for a period of three months without cumulative effect excluding the leave period, passed vide proceedings in Na.Ka.No.20108/I4/11 dated 02.07.2013 and the consequential rejection of appeal by the first respondent in his impugned G.O.(2D) No.71, School Education (Tho.Ka.1(1)) Department, dated 08.06.2015.

3.The learned counsel appearing for the petitioner would submit that the petitioner was inducted in the Education Department as a Secondary Grade Teacher on 11.09.1987 and after twelve years of satisfactory service, he was promoted to the post of Primary School Head Master on 17.03.1999. Again after three years of his further satisfactory service, he was promoted as Tamil Pandit on 20.06.2001, as Middle School Head Master on 05.06.2002 and finally he was promoted as Assistant Elementary Education Officer on 09.12.2004.

4.While holding the said post, the petitioner was issued with a charge memo by the second respondent in Na.Ka.No.20108/I4/11 dated 21.12.2011, which came to be served on the petitioner on 23.01.2012, under Rule 17 (b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules containing five charges. Since the charges were not specific and absolute and on the face of it, the petitioner made a request in writing to the second respondent through the third respondent on 03.02.2012, seeking documents referred to in the charge memo dated 21.12.2011, more importantly, one of the documents issued by the District Elementary Educational Officer in Na.Ka.No.6050/A1/2009 dated Nil.07.2011. Finding no response, a reminder was also sent again through the third respondent seeking the said documents.

5.Adding further, it is pleaded that despite the personal request made by the petitioner and the proceedings of the third respondent giving reminder to the second respondent to furnish the aforesaid documents, the petitioner was not furnished with the copy of the document dated Nil.07.2011 issued by the District Elementary Educational Officer, Thoothukudi. Again, with the available materials for the unspecified charges, the petitioner has submitted his reply on 06.07.2012, denying the charges, even before furnishing the aforementioned documents which were shown as one of the important documents going to be relied against the petitioner in Annexure 3.

6.Explaining further, it is contended that the petitioner in the detailed explanation given on 06.07.2012, had also indicated that charge No.1 is so bald and baseless, since no period has been mentioned during which period the petitioner had failed to undertake inspection of the schools. Moreover, the names of the schools the petitioner failed to inspect was also not furnished. However, the Enquiry Officer proceeded against Charge No.1, and fortunately, the Enquiry Officer after completing the enquiry and having fully



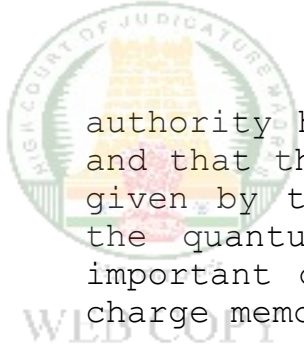
satisfied with the explanation offered by the petitioner, declared that charges 2 to 5 were not established by the department.

7. However, a wrong finding has been given against the charge No.1, that the petitioner had failed to inspect some of the schools. For the first time, the Enquiry Officer had given the names of the schools which were neither found in the charge memo nor furnished to the petitioner, before submitting his explanations. Therefore, the finding given by the Enquiry Officer on the first charge is wholly misconceived. The reason is when the charge memo is devoid of details of the names of the village and the period during which the petitioner failed to undertake inspection, it is not open to the Enquiry Officer to develop or re-draft Charge No.1. Therefore, the finding given against the petitioner that Charge No.1 was established, cannot be accepted legally, he pleaded.

8. Based on the report submitted by the Enquiry Officer, the petitioner was again furnished with a copy of the report along with second show cause notice dated 25.02.2013, calling upon him to submit his explanations. Again, taking the opportunity of submitting a reply to the enquiry report dated 20.02.2013, the petitioner had given a detailed explanation on 19.03.2013, stating that even Charge No.1 cannot be accepted for a simple reason that the names of the schools which were left uninspected by the petitioner was not mentioned. Moreover, the period during which the petitioner failed to undertake inspection was also not mentioned. Therefore, the Charge No.1 fails, he pleaded.

9. Even after submission of the enquiry report by the Enquiry Officer, the respondents have not come forward to pass any final order. The huge delay caused by the department for passing final order in the disciplinary proceedings compelled the petitioner to approach this Court with W.P.(MD)No.702 of 2013, on the ground that the respondents have not considered the explanation properly and that the enquiry was not completed within a time frame. This Court vide order dated 11.01.2013, directed the respondents to complete the enquiry and pass final order within a period of two months thereon.

10. Although, the said order was passed on 11.01.2013, even without obtaining any further order for extension of time to complete the enquiry, the second respondent passed a final order only on 02.07.2013, imposing a punishment of stoppage of increment for three months excluding leave period without cumulative effect. Aggrieved by the imposition of the said punishment, the petitioner preferred an appeal before the first respondent taking a strong ground that the Disciplinary Authority had failed to furnish a copy of the document dated Nil.07.2011, issued by the District Elementary Educational Officer, Tuticorin, which is shown as one of the important document under Annexure 3. Further, the disciplinary



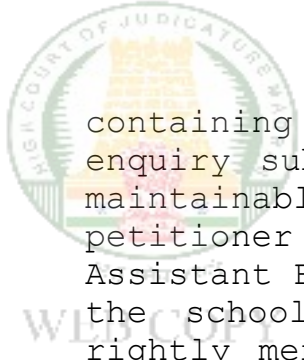
authority had failed to see that charge No.1 is vague and baseless and that the petitioner was not furnished with a copy of the opinion given by the Tamil Nadu Public Service Commission, with regard to the quantum of punishment and that he was not issued with the important documents relied on by the disciplinary authority in the charge memo.

11.The learned counsel for the petitioner would further submit that the appellate authority without referring to any one of the grounds raised by the petitioner, simply confirmed the punishment of stoppage of increment for three months without cumulative effect excluding leave period. Accordingly, the original order passed by the Disciplinary Authority dated 02.07.2013, was wrongly confirmed by the appellate authority. Hence, the grounds taken by the petitioner are deserved to be allowed.

12.In support of his submission, the learned counsel for the petitioner has relied upon the following judgments. In spite of adhering to the time limit fixed by the Court, the learned counsel appearing for the petitioner relied upon the judgment of the Apex Court in the case of Bilaspur Raipur Kshetriya Gramin Bank and another Vs. Madanlal Tandon reported in (2015) 4 MLJ 487 (SC), in which the Apex Court has held that if relevant documents relied on by the department were not made available to the delinquent officer, it would vitiate the entire disciplinary proceedings. It would not only vitiate the entire proceedings but even the order of punishment. Therefore, in the present case, the order of punishment cannot be sustained in law, he pleaded.

13.Again referring to the Division Bench Judgment of this Court in the case of the State of Tamil Nadu Vs. Dr.S.Manimegalai reported in (2009) 5 MLJ 435, the learned counsel appearing for the petitioner would submit that when a similar issue arose for consideration in respect of vague allegations / charges levelled against the petitioner, this Court allowing the petition, quashed the charges levelled against the petitioner therein stating that if the allegations are vague and there is absolutely no substance, then it may not be possible for the delinquent officer to give any explanation to such allegations. Moreover, in a similar circumstances, this Court has repeatedly held in innumerable cases that if the charges are vague then they can be quashed by this Court on the ground that no delinquent officer will be in a position to give any explanation to the vague charges. Finally, it is contended that since the first charge issued against the petitioner is not precise and definite, which has not been considered by the disciplinary and appellate authority, the impugned punishment imposed against the petitioner is liable to be quashed.

14.A detailed counter affidavit has been filed. The learned Additional Government Pleader appearing for the respondents would submit that although the petitioner was issued with a charge memo



containing five charges, the enquiry officer on completion of the enquiry submitted a report, dismissing the charges 2 to 5 as not maintainable. However, with regard to the first charge, the petitioner was found guilty. The reason is, while he was working as Assistant Elementary Education Officer, he failed to inspect some of the schools coming under the jurisdiction. The Enquiry Officer rightly mentioning the names of the schools and the period during which the petitioner had failed to undertake inspection, found him guilty of charge No.1. The disciplinary authority also after furnishing the copy of the enquiry report issued second show cause notice dated 25.02.2013, called upon the petitioner to submit his explanations. Later, accepting the report of the Enquiry Officer with regard to the first charge, the second respondent imposed a punishment of stoppage of increment for three months without cumulative effect excluding the leave period. The said punishment was further challenged before the appellate authority / first respondent. After considering the case of the petitioner and finding no substantial merits in the appeal, the first respondent rejected the same. Therefore, no infirmity can be found in the impugned order, he pleaded.

15. This Court is unable to find merits in the explanation offered by the respondents for the reason that the learned counsel appearing for the petitioner drawing the notice of this Court to Annexure 3, issued along with the charge memo dated 21.12.2011, submitted that the copy of the document issued by the District Elementary Educational Officer bearing Na.Ka.No.6050/A1/2009 dated Nil.07.2011, was not furnished to the petitioner in spite of his repeated request made through the third respondent to the second respondent vide his letter dated 03.02.2012 followed by various representations and at one point of time the third respondent in his reminder to the second respondent dated 03.02.2012, mentioned the need for furnishing the said document. But, the same was not provided to the petitioner, as a result, he could not have given suitable reply to the charge memo which is in violation of all canons of law.

16. Therefore, this Court directed the learned Additional Government Pleader appearing for the respondents to furnish the copy of the said proceedings relied upon by the respondent in Annexure 3. After taking time, the Additional Government Pleader submitted before this Court that the said document was not available with them. That itself clearly shows that the documents which was relied upon by the department against the petitioner was not furnished to the petitioner.

17. At this point of time, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of Bilaspur Raipur Kshetriya Gramin Bank and another Vs. Madanlal Tandon reported in (2015) 4 MLJ 487 (SC), which reads as follows:

"6. The Division Bench of the High Court further



observed that in the instant case neither the list of witnesses nor the list of documents was supplied to the respondent along with the charge-sheet. Though during the course of inquiry some documents were supplied to him but those documents, on which the reliance was placed by the Inquiry Officer for holding various charges proved, were not supplied to the respondent.

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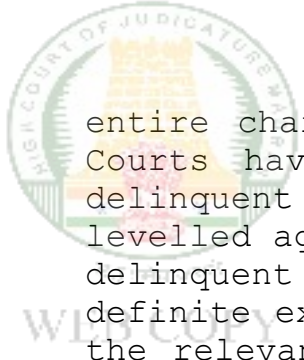
9. Indisputably, no documents were supplied to the respondent along with the charge-sheet on the basis of which charges were framed. Some of the documents were given during departmental inquiry, but relevant documents on the basis of which findings were recorded were not made available to the respondent. It further appears that the list of documents and witnesses were also not supplied and some of the documents were produced during the course of inquiry."

The Hon'ble Apex Court in the above said case, by following a catena of decisions, came to the conclusion that the order of punishment cannot be sustained in law.

18. In the light of the above decision, since the petitioner was not furnished with a copy of the important document relied upon by the Enquiry Officer, the entire disciplinary proceedings is liable to be set aside. Secondly, finding no response to his request letter made by the petitioner through the third respondent to the second respondent to furnish a copy of the document issued by the District Elementary Educational Officer, Tuticorin in Na.Ka.No.6050/A1/2009 dated Nil.07.2011, the petitioner submitted his detailed explanation on 06.11.2012 denying the charges.

19. The Enquiry Officer without giving any reason for not furnishing the aforementioned document proceeded with the enquiry, finally found him not guilty in respect of charge No.2 to 5. However, with regard to charge No.1 he was found guilty. It has been stated in Charge No.1 that the petitioner while serving as Assistant Elementary Educational Officer had failed to undertake inspection on some of the schools. A perusal of Charge No.1 would show that first of all, the names of the schools which were left uninspected by the petitioner were not mentioned. Secondly, during which period he had failed to undertake such inspection was also found missing. Therefore, it is not known how the Enquiry Officer can give a finding that the petitioner had failed to undertake inspection in respect of certain schools. When the names of the schools and the period during which he failed to undertake the inspection are not even made known to the petitioner, it would have been highly impossible for the petitioner to give his explanation.

20. Therefore when charge No.1 is so vague, the Enquiry Officer, while dismissing four other charges namely charges 2, 3, 4 and 5 levelled against the petitioner should have also dismissed the



entire charge memo including charge No.1. The reason is that the Courts have repeatedly held that the charge memo issued by the delinquent officer should be precise / definite. If any charge levelled against the petitioner is not definite or precise, then the delinquent officer also would not be in a position to give his definite explanation. In this regard, it will be useful to extract the relevant portions of the reported judgment of mine in the case of Dr.G.Natarajan Vs. The District Collector, Madurai and others reported in 2015 Writ L.R.1111.

"32.A Charge memo issued against a delinquent officer should be precise, definite on the charges for which the delinquent is required to explain. In the charge memo, the disciplinary authority must make out a prima facie case to have an enquiry conducted against the erring official, so that the delinquent would be in a position to give an explanation. If the delinquent fails to give explanations to a definite charge that itself will be a ground to proceed against the delinquent to hold him guilty for not giving full and satisfactory explanation. In this regard, neither the charge memo throws any light nor the notice issued by the District Collector prima facie makes out any case for enquiry. All these proceedings are hurriedly proceeded. As a matter of fact, it is not in dispute that the entire episode is originated from the complaint given by the Inspector of Police, Othakadai Police Station followed by the complaint given by the Superintendent of Police, Madurai. When the complain given by the Inspector of Police, Othakadai Police Station has not mentioned the correct specific particulars about the date, month, year, name of the corpse, atleast the Superintendent of Police, Madurai who has entertained the complaint, should have called for all the particulars before making a complaint to the District Collector. That apart, atleast the District Collector who has received the complaint by issuing notice should have first of all satisfied himself that there has been a definite cause of action to proceed against he delinquent doctor. Finally, the disciplinary authority who has issued the charge memo on the basis of the original complaint given by the Inspector of Police, Othakadai Police Station could have received more and clear particulars from the complainant with regard to the delay in doing post-mortem of various corpse, but this also has not been done, that shows the original complaint given by the Inspetor of Police, Othakadai Police Station is bereft of materials. Similarly and secondly, the notice issued by the District Collector, Madurai is again bereft of any particulars to call for the enquiry. Thirdly, the charge memo issued by the disciplinary authority being vague is fully bereft of any material particulars, and top of all, as highlighted above, the counters filed by the District



Collector do not throw any light on the instances of the delay in committing any post-mortem. Moreover, the other counter affidavit filed by the Director of Medical Education also has failed to substantiate their case from any angle that the charges levelled against the petitioners are valid and supported with documents. In addition thereto, two earlier enquiries held against the petitioner also failed to fix him, therefore, from looking at any angle, none of the impugned orders can stand to the test of reasonableness under Article 14 of the Constitution of India.

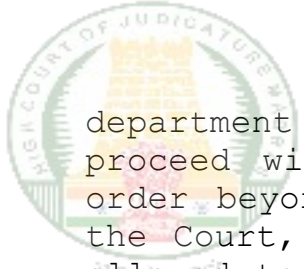
33. In the result,

(ii) W.P.(MD)No.10449 of 2013 is allowed and the impugned charge memo, dated 05.06.2013, in Ref.No. 28330/SCI/3/2013, issued by the Director of Medical Education, is quashed."

21. Therefore, the laws are well settled that if the charge memo issued against the delinquent officer is found indefinite and vague, the said charge memo is liable to be set aside. In the present case, as mentioned above, the charge memo is devoid of any clarity or precession and the same is liable to be set aside. Thirdly, when the petitioner came before this Court with W.P.(MD)No.702 of 2013, seeking a prayer for quashing the proceeding in Na.Ka.No.20108/I4/11 dated 21.12.2011 on the ground of vagueness, this Court declined to entertain the writ petition and disposed of the same by directing the respondents to complete the enquiry within a period of two months from the date of a copy of the order.

22. Although, the said order was passed on 11.01.2013, the final order was passed only on 02.07.2013, without taking any extension of time from this Court. The Hon'ble Division Bench of this Court in identical circumstances, in the case of The State of Tamil Nadu and another Vs. T.Ranganathan reported in 2010 (2) L.W. 867, has held that once a competent Court fixes an outer time limit to complete the enquiry and passes final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order. If on any reason the time fixed by the competent Court is unable to be adhered to and the proceedings are unable to be finalised, the party to the proceedings can approach the very same Court seeking extension of time stating sufficient reasons and once valid reasons are given, normally the Court/Tribunal would extend the time, depending upon the facts and circumstances of the case. If no such application is filed seeking extension of time, the department cannot proceed further if the time limit granted originally got expired.

23. Besides, if the party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. And if the



department in respect of the specific time limit given fails to proceed with the enquiry and passes final order or passes final order beyond the time limit without taking extension of time from the Court, such an order passed without prior permission cannot be allowed to stand. In view of the above, the Hon'ble Division Bench has set aside the punishment subsequently imposed beyond the time limit fixed by this Court by allowing the writ petition.

24. In the present case also when this Court has granted two months time on 11.01.2013, in W.P.(MD)No.702 of 2013, directing the respondents to complete the enquiry, the respondents without even taking leave of this Court seeking further extension of time, wrongly passed a final order on 02.07.2013, therefore, it clearly shows that the respondents have clearly violated the direction given by this Court. Besides, they have not considered the vagueness of the charge levelled against the party. Therefore, for all these reasons, the impugned order is liable to be set aside. Finally, when the disciplinary authority has sent a communication to the Tamil Nadu Public Service Commission, seeking their opinion on the quantum of punishment, in turn the Tamil Nadu Public Service Commission also after going through the only charge held against the petitioner gave their opinion agreeing with the punishment of stoppage of three months increment without cumulative effect excluding leave period. But, a copy of the opinion given by the Tamil Nadu Public Service Commission was not given to the petitioner to give his explanations. In this regard, the Hon'ble Apex Court in the case of S.N.Narula Vs. the Union of India and others reported in (2011) 4 SCC 591, has held that non-communication of the report of the Union Public Service Commission before the final order is passed would amount to denial of opportunity to the party to make effective representations. At this stage, it is pertinent to quote the relevant portion of the judgment.

"We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed."

25. In view of the aforementioned reasons, this writ petition deserves to be allowed and accordingly, the same is allowed, by quashing the impugned order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)



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

2.The Director of Elementary Education,
O/o. Directorate of Elementary Education,
DPI Campus, Nungambakkam,
Chennai - 600 006.

3.The District Elementary Educational Officer,
Thoothukudi District,
Thoothukudi.

+1cc to Special Government Pleader, SR.No. 70243
+1cc to M/S.K.Gurunathan, Advocate SR.No. 69932

W.P. (MD) No.19706 of 2015
02.08.2017

MR/MRN
JM/SKN RSK/SAR 2/15.11.2017/10P/6C