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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A.(MD)No.1413 of 2017

and

C.M.P(MD)No.10467 of 2017

B.Srinivasan

: Appellant

Vs.

1.The Chief Educational Officer,
C.E.O's Office,
Tirunelveli.

2.The District Educational Officer,
Cheranmadevi,
Tirunelveli District,
Tirunelveli.

3.The Secretary,
Thirithapathy Higher Secondary School,
Ambasamudram,
Tirunelveli District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 08.08.2017 passed in W.P(MD)No.14720 of 2017.

Prayer in WP(MD). 14720/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari to call for the records of the Impugned Charge Memo Ref.No.913/2017-2018 dated 14.06.2017 on the file of the Respondent No.3 and quash the same as illegal.

For Appellant

: Mr.Fazil,

For Mr.T.Lajapathi Roy

For Respondents 1&2

: Mr.VR.Shanmuganathan,

Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **M.VENUGOPAL, J.**]

Heard the Learned Counsel for the Appellant and the Learned Special Government Pleader appearing for the Respondents 1 and 2.



2. To avoid an avoidable delay, notice to the third Respondent is dispensed with.

3. The Appellant/Writ Petitioner has preferred the instant intra-Court Writ Appeal as an 'aggrieved person' as against the order dated 08.08.2017 in W.P.(MD)No.14720 of 2017 passed by the Learned Single Judge.

4. The Learned Single Judge, while passing the impugned order on 08.08.2017, in W.P.(MD)No.14720 of 2017 (filed by the Appellant/Writ Petitioner) at Paragraph Nos.7 to 9 had observed the following:

"7. A reading of every charge clearly makes out a clear case against the petitioner. Therefore, firstly, the petitioner has to submit his detailed explanations and without the same, he cannot come to this Court.

8. Secondly, the Management Rules sought for by the petitioner is always available with the respondents and the same shall be provided to the petitioner. But this Court, finding that the charges levelled against the petitioner are not vague in nature, is unable to entertain the writ petition. However, the request for furnishing copy of Management Rules is required to be furnished to the petitioner for submitting his explanations.

9. The learned counsel for the petitioner submitted that when the matter was listed for hearing, it has been adjourned without specifying any date for further enquiry and therefore, the third respondent is directed to furnish a copy of the Rules within a period of one week from the date of receipt of a copy of this order and on receipt of the same, the petitioner shall submit his explanation within two weeks thereafter and thereafter, it is for the disciplinary authority to proceed further."

and disposed of the Writ Petition by issuing necessary directions.

5. Being dissatisfied with the order dated 08.08.2017, in W.P. (MD)No.14720 of 2017 passed by the Learned Single Judge, the Appellant/Writ Petitioner has preferred the present Writ Appeal by taking a plea that the Learned Single Judge had failed to consider that the charge memo issued by the third Respondent dated 14.06.2017 is an illegal one. Moreover, it is represented on behalf of the Appellant/Writ Petitioner that a reading of the charge memo reveals that there was no breach of conduct and the same was issued with a *mala fide* intention.



6. The Learned Counsel for the Appellant/Writ Petitioner contends that the charge memo does not contain any 'list of witnesses to be examined'. As such, the Learned Single Judge had committed a serious error in observing that a case was made out against the Appellant/Writ Petitioner.

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7. The other plea taken on behalf of the Appellant/Writ Petitioner is that the Learned Single Judge had thoroughly ignored the fact that as per Section 18(c) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, only the School Committee is empowered to take disciplinary action against the teachers. But, in the instant case, the third Respondent had given a go-by and arbitrarily went ahead and called for explanation by issuing the Appellant/Writ Petitioner's suspension order dated 09.06.2017 and issued a charge memo dated 14.06.2017 and appointed an Enquiry Officer on 22.07.2017.

8. The Learned Counsel for the Appellant/Writ Petitioner draws the attention of this Court to the effect that the Appellant/Writ Petitioner made a request dated 12.07.2017 to the third Respondent/School Management to provide him the 'Rules framed by the Management' mentioned in the charge memo. Till date, it is the grievance of the Appellant/Writ Petitioner that the Management had not provided the requisite Rules to him.

9. Lastly, it is the submission of the Learned Counsel for the Appellant/Writ Petitioner that Rule 16(3) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 provides that disciplinary action has to be based on the violation of the Conduct Rules defined by the School Committee and in the present case, no such Code/Rules were framed by the School Management.

10. Conversely, it is the submission of the Learned Special Government Pleader for the Respondents 1 and 2 that there is no need for framing of separate Rules by the third Respondent/Management, because of the fact that the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 provides for Code of Conduct and the present charge levelled against the Appellant/Writ Petitioner is that he has violated the Code of Conduct.

11. At this juncture, this Court, on perusal of the impugned order dated 08.08.2017 in W.P.(MD)No.14720 of 2017 passed by the Learned Single Judge, is of the considered view that firstly, the Appellant/Writ Petitioner is to submit his detailed explanation and without the same, he cannot approach this Court. Till date, the Appellant/Writ Petitioner has not submitted his detailed explanation before the third Respondent. It cannot be gainsaid that in the instant case, an Enquiry Officer was appointed by the third Respondent/School Management (the enquiry was originally fixed on 04.08.2017). Even the request for providing a copy of the



Management Rules to the Appellant/Writ Petitioner was acceded to by the Learned Single Judge.

12. Admittedly, as on date, the Appellant/Writ Petitioner is taking part in the disciplinary enquiry initiated against him. In fact, the Appellant/Writ Petitioner had submitted his reply to the charge memo on 01.08.2017, wherein, at paragraph No.4, he had specifically mentioned that he had made a request through his letter dated 12.07.2017 to the third Respondent/Secretary of the School to supply him with the Rules in regard to the Code of Conduct, if any, framed by the School Management and the same was not provided to him. He had also proceeded to state that 'no list of witnesses to be examined in the disciplinary/departamental enquiry was annexed to the charge memo'.

13. At the risk of repetition, this Court pertinently points out that one Mr.B.M.Mani Ayyappan was appointed as an Enquiry Officer as per letter dated 22.07.2017 to conduct enquiry concerning the Petitioner. There is no dispute that the enquiry is in progress and the same is in mid-way process. The Learned Judge had only required the third Respondent/Management to furnish a copy of the Rules to the Appellant/Writ Petitioner for submitting his explanation and directed the School to furnish the same, within a period of one week from the date of receipt of copy of the order in W.P.(MD)No.14720 of 2017 and further, the Appellant/Writ Petitioner was directed to submit his explanation, within two weeks thereafter. Thereafter, it was mentioned that it is for the Disciplinary Authority to proceed further. Looking at from any angle, the impugned order dated 08.08.2017 in W.P.(MD) No.14720 of 2017 of the Learned Single Judge, is free from any legal flaw. Consequently, the Writ Appeal fails.

14. In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the order dated 08.08.2017 in W.P.(MD)No.14720 of 2017 passed by the Learned Single Judge, is affirmed by this Court for the reasons assigned in this Writ Appeal. Consequently, the connected Miscellaneous Petition is closed.

15. Before parting with the case, this Court directs the third Respondent/School Management to supply a copy of the Code of Conduct Rules of the Management, within a period of one week from the date of receipt of copy of the judgment. If there are no Rules governing the subject matter in issue, then, the hands of the third Respondent or Enquiry Officer are not fettered in any manner whatsoever to proceed further, of course, in the manner known to law and in accordance with law.

Sd/-

Assistant Registrar(Crl side)



To

1.The Chief Educational Officer,
C.E.O's Office,
Tirunelveli.

2.The District Educational Officer,
Cheranmadevi,
Tirunelveli District,
Tirunelveli.

SML

KK/JC/SAR 1/27.11.2017/ 5P- 3C/

W.A. (MD) No.1413 of 2017
16.11.2017