

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.07.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.1396 of 2017

V.Jeganathan

.. Petitioner

versus

1. The District Elementary Educational Officer,
Office of the District Elementary Education,
Namakkal.

2. The Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Paramathi,
Namakkal District.

3. The Secretary,
Sri Ram Aided Primary School,
Vasanthapuram,
Paramathi Velur,
Namakkal District-637 206.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent made in Proceedings in NA.KA.No.4191/A5/2012 dated 20.09.2016, quash the same and consequently, direct the respondents to disburse the petitioner's retirement benefits including the Provident Fund, Gratuity, Computation of Pension, Earned Leave Salary and all other attendant monetary benefits applicable to the petitioner with applicable rate of interest within the stipulated time as that may be fixed by this Court.

For Petitioner : Mr.N.Umapathi

For Respondents : Mr.C.Munusamy, Spl.GP.

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to
call for the records of the first respondent

made in Proceedings in NA.KA.No.4191/A5/2012 dated 20.09.2016, quash the same and consequently, direct the respondents to disburse the petitioner's retirement benefits including the Provident Fund, Gratuity, Computation of Pension, Earned Leave Salary and all other attendant monetary benefits applicable to the petitioner with applicable rate of interest within the stipulated time as that may be fixed by this Court.

2. The petitioner was originally employed as a Secondary Grade teacher in 3rd respondent school and was promoted as Headmaster and retired as such after attaining the age of superannuation on 30.04.2015. While he was working as Headmaster, he was placed under suspension on 3.8.2012 in regard to certain acts of misconduct relating to the year 2011-12. The substance of the charge against the petitioner was that he did not properly disburse scholarships meant for the children of sanitary workers. The petitioner offered his explanation on 17.8.2012 denying the allegations stating that the scholarships meant for children had been fully disbursed to them. Subsequently, by order dated 11.2.2013, suspension came to be revoked without prejudice to the pending disciplinary proceedings. Later, an enquiry was conducted into the charges and a report was submitted holding the charges 3 and 4 were not proved. Even in respect of charges 1 and 2, the report did not indict the petitioner. In view of the report of the Enquiry Officer, 3rd respondent passed an order on 29.7.2014, exonerating the petitioner from all charges and the period of suspension from 3.8.2012 to 10.2.2013 has been treated as duty period. Subsequently, on the petitioner attaining the age of superannuation, he was allowed to retire and a relieving order was also issued to that effect on 30.4.2015 by the 3rd respondent. On retirement of the petitioner, 3rd respondent had also issued a certificate to the effect that there was no criminal/departmental enquiry was pending against him.

3. While matters stood thus, 1st respondent appears to have sent a communication dated 9.12.2015 to 3rd respondent school management stating that the enquiry officer came to the conclusion that the charges 1 and 2 were proved, however, 3rd respondent school management without taking into account the same, exonerated the petitioner and hence, 3rd respondent was directed to offer its explanation. In response to the above direction, 3rd respondent submitted a letter dated 31.12.2015 stating that the petitioner had not committed any act of misconduct and he rendered nearly 30 years of service. In the circumstances, the petitioner approached in this Court in W.P.No.25515 of 2016. This Court, by order dated 22.7.2016,

directed the respondents to consider the representation of the petitioner dated 20.6.2016. In pursuance of the direction of this Court, first respondent, vide proceedings dated 20.9.2016 rejected the request of the petitioner and refused to accept the exoneration order passed by 3rd respondent management and also treatment of the suspension period as duty. According to 1st respondent, similarly placed persons involved in the same act of misconduct were imposed punishment of stoppage of increment for a period of 15 months without cumulative effect as the petitioner was also involved in similar act of misconduct, the authority was not inclined to accept the exoneration order passed by 3rd respondent management. The said order passed by 2nd respondent dated 20.09.2016 is put to challenge in the present writ petition.

4. Upon notice, Mr.C.Munusamy, learned Special Government Pleader entered appearance for respondents 1 and 2 and filed a detailed counter affidavit. The substance of the objection raised in the counter affidavit as found in para 10, is extracted below:

"10. Regarding the averments in para 9 of the affidavit of the petitioner, it is submitted that though the 3rd respondent passed orders on 29.1.2015 relieving the petitioner from all the charges against the petitioner, the 3rd respondent has not sent any proposal for the approval of the same along with complete records based on which the 3rd respondent has come to such conclusion. It is also submitted that in the absence of approval of the final orders on the disciplinary proceedings by the 1st respondent as on the due date of retirement of the petitioner, the 3rd respondent has no authority to allow the petitioner to retire from service on 30.4.2015. It is submitted that the 3rd respondent has no authority to issue certificate to the petitioner as if no departmental proceedings is pending against the petitioner since the order passed by the 3rd respondent dated 29.1.2015 and 15.9.2015 is still pending approval. Hence this contention of the petitioner has no merit."

5. According to the learned Special Government Pleader, 3rd respondent ought not to have allowed the petitioner to retire from service when charges framed against him stood proved since similarly placed teaching staff had been punished, it was not open for 3rd respondent management to let off the petitioner from being imposed with appropriate penalty for the act of proved misconduct. In any event, 3rd respondent cannot

unilaterally take decision without prior approval of the official respondents.

6. At this, the learned counsel for the petitioner would submit that in regard to initiation and conclusion of the disciplinary action against the school personnel, it is entirely within the prerogative of the school committee to take action against its employees and once a decision is taken to exonerate the petitioner on the basis of the materials made available, it was not open to 1st respondent or any other official respondents to reopen such case. The learned counsel placed reliance on a decision rendered by the Full Bench of this Court reported in "2006 (4) CTC 471 (K.M.Valliapan versus Joint Director of School Education (Higher Education) and Appellate Authority, College Road, Nungambakkam, Chennai and another)", wherein, he would draw the attention of this Court to paragraph 12 of the order, which is extracted herein below:

"12. The statutory provisions themselves contemplate certain powers as well as laid down certain procedures. Section 18(c) of the Act contemplates that the School Committee is empowered to take disciplinary action against the teachers and other employees of the private school. It is obvious that the essential features relating to disciplinary control vested with the School Committee, which is also envisaged in the contract entered into in Form VII-A, cannot be whittled down. Essential functions as to the decision to initiate any disciplinary proceedings, to frame charge, to consider finally the guilt or otherwise of the delinquent and to impose appropriate punishment are matters which are coming within the specific jurisdiction of the School Committee and such essential functions obviously cannot be delegated. However, holding of an enquiry cannot be said to be one of the essential functions which is required to be performed by the School Committee in all events and by none-else. Following the well settled principle in Service Jurisprudence, holding of actual enquiry can be delegated to any other Sub-Committee or person. It is obvious that the report made by such sub-committee or enquiry officer is to be placed before the School Committee for consideration and obviously the School Committee is free to take any decision and it is not bound by the decision taken by the sub-committee. The fact that the

disciplinary authority is not required to hold the enquiry itself is quite well recognized in service jurisprudence."

7. Therefore, the learned counsel would submit that once a decision is taken and the petitioner was allowed to retire and he was also relieved from service and once a certificate was issued that there was no criminal or disciplinary action was pending against the petitioner, it is not within the power of 1st respondent or 2nd respondent to reopen the case in order to proceed with the disciplinary action against the petitioner. He would further submit that because of the impugned communication, even after the retirement, the terminal benefits were not settled to the petitioner. Therefore, he would submit that the petitioner is entitled to the relief as prayed for in the writ petition.

8. Upon consideration of the above submissions, this Court is in agreement with the contentions raised on behalf of the petitioner that once the school committee had taken a conscious decision to exonerate the petitioner from all the charges and also allowed him to retire on his attaining the age of superannuation, the subsequent action initiated by 1st respondent is contrary to relevant provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and such action which was sought to be initiated against the petitioner on his retirement, is without any justification.

9. From the materials and the pleadings placed on record and the findings, it appears that the petitioner was not found guilty of the charges. The findings rendered in this regard are too sketchy and the act of misconduct was apparently not established. Probably taking note of such factors, the school committee had taken a conscious decision to exonerate the petitioner from all the charges. This Court does not find any infirmity in such decision taken by the school committee and in the absence of any infirmity or perversity therein, the action taken by 1st respondent for reviving the disciplinary action against the petitioner, cannot stand the test of judicial scrutiny. In view of the impugned action by 1st respondent, the petitioner though retired in April 2015 itself, unfortunately, his retirement benefits were not settled so far. In any event, nothing has been stated on behalf of the respondents whether approval is necessary at all when the management of an aided school exonerates its employee from all the charges. Once the school committee alone is vested with the power to initiate and complete disciplinary action, that power cannot be usurped by 1st respondent and the power was also not subjected to any ratification or approval by the official respondents. In any event, as held above, this Court does not find anything wrong in

exonerating the petitioner from the charges by the school committee.

10. For the above said reasons, the impugned order in NA.KA.No.4191/A5/2012 dated 20.09.2016 passed by 1st respondent is hereby set aside. The respondents 1 and 2 are directed to sanction all the retirement benefits admissible and payable to the petitioner with arrears from the date when they became due, i.e. from the date of retirement on 30.4.2015, within a period of eight weeks from the date of receipt of a copy of this order.

11. The Writ Petition stands allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

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To

1. The District Elementary Educational Officer,
Office of the District Elementary Education,
Namakkal.

2. The Assistant Elementary Educational Officer,
Assistant Elementary Educational Office,
Paramathi,
Namakkal District.

3. The Secretary,
Sri Ram Aided Primary School,
Vasanthapuram,
Paramathi Velur,
Namakkal District-637 206

+lcc to Mr.N.Umapathi, Advocate SR.No.45676

+lcc to Government Pleader SR.No.46126

GJII(CO)
RMP(24/09/2018)

W.P.No.1396 of 2017