

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.08.2017

Pronounced On : 07.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.Nos.9862 of 2010 and 11650 of 2011

R.Abdul Kareem ... Petitioner
in both Wps.

Vs.

1. The Manager,
Sulthanpet Aided Muslim Primary School,
Tiruvannamalai.

2. The District Elementary Educational Officer,
Tiruvannamalai. ... Respondents
1 and 2 in both Wps

3. B.Kamal Basha
(R3 in WP.No.11650/2011 was impleaded as
per order dated 18/07/2017 in ... 3rd respondent
MP.NO.1/2013) in WP.11650/2011

Prayer in W.P.No.9862 of 2010: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records of the first respondent in its charge memo dated 18.02.2010 in A/1/2010, to quash the same and to forbear the first respondent from proceeding with the enquiry pursuant to the charge memo dated 18.02.2010.

Prayer in W.P.No.11650 of 2011: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records relating to the impugned order in A/1/2010, dated 31.03.2011 on the file of the first respondent imposing the punishment of reduction in rank and quash the same.

For Petitioner : Mr.S.N.Ravichandran
for M/s.G.Jermiah in
WP.No.9862/2010
Mr.S.N.Ravichandran in
WP.NO.11650/2011

For Respondents : Mrs.Dakshayini Reddy
for 1st respondent
in both writ petitions

Mr.R.Govindasamy
Spl. Government Pleader
for 2nd respondent
in both writ petitions

Mr.P.Ganesan for
M/s.C.S.Associates
for 3rd respondent
in W.P.No.11650 of 2011

COMMON ORDER

The petitioner has filed W.P.No.9862 of 2010 seeking issuance of a writ of Certiorari of Mandamus to call for the records of the first respondent in its charge memo dated 18.02.2010, to quash the same and to forbear the first respondent from proceeding with the enquiry pursuant to the charge memo dated 18.02.2010.

2. The petitioner filed another writ petition, being W.P.No.11650 of 2011, seeking issuance of writ of certiorari to call for the records relating to the impugned order in A/1/2010, dated 31.03.2011 on the file of the first respondent imposing the punishment of reduction in rank and quash the same.

3. The facts in a nutshell leading to the filing of these writ petitions are as under: The petitioner claims to be the Headmaster of the first respondent school, having been in the said post since 03.01.1993. He states that the management of the first respondent school underwent changes and the Manager, who assumed office, put the petitioner to all sorts of hardship and harassment.

4. It is stated that the first respondent framed frivolous charges against the petitioner and issued a charge memo dated 14.08.2003 containing six charges. Subsequently, another charge memo is stated to have been issued on 06.09.2003 containing twelve charges, including the earlier six charges. The

petitioner submitted his explanation on 16.09.2003 to the first respondent refuting the charges levelled against him.

5. It is stated that the first respondent, without conducting any enquiry, issued an order dated 29.11.2003 holding all the charges proved, of course without imposing any penalty and reserving the right to take further action against the petitioner. Thereafter, by order dated 01.12.2003, the first respondent reduced the rank of the petitioner from the post of Headmaster to that of a Secondary Grade Teacher.

6. Assailing the said order, the petitioner filed W.P.No.39031 of 2003, which was allowed by this Court, by order dated 11.01.2010, with liberty to the first respondent to conduct a detailed enquiry qua the charges levelled against the petitioner, after following the principles of natural justice.

7. It is stated that thereafter the first respondent issued a fresh charge memo dated 18.12.2010 containing new charges which did not form part of the earlier charge memos and it is stated that the charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

8. Assailing the said charge memo dated 18.12.2010, the petitioner has filed W.P.No.9862 of 2010.

9. In the above said writ petition (W.P.No.9862 of 2010), no interim order was passed by this Court. Pending disposal of the said writ petition, first respondent appointed an Enquiry Officer, who submitted a report on 12.11.2010, holding that out of the nine charges, only one charge of refusing to receive the registered post is proved and all other charges were not proved.

10. It is stated that the first respondent differed with the finding of the Enquiry Officer and issued a show cause notice on 11.02.2001, followed by another show cause notice on 12.03.2011, to which the petitioner submitted his explanation on 12.03.2011 and 16.03.2011. However, the first respondent, by the impugned order dated 31.03.2011, reiterated the earlier stand and once again imposed the punishment that was imposed earlier.

11. Calling into question the said order dated 31.03.2011, the petitioner filed W.P.No.11650 of 2011. Pending this writ petition, this Court granted an order of interim stay of the impugned order, which was extended periodically.

12. It is the contention of the learned counsel appearing on behalf of the petitioner that the impugned proceedings are in gross violation of the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder and in any event, the elementary principles of natural justice have been

given a go-bye.

13. It is further contended that when this Court earlier set aside the impugned order of punishment and directed holding of fresh enquiry in due compliance of the principles of natural justice, the respondents in gross disobedience of the said order framed fresh set of charges and imposed the very same punishment of reduction in rank, differing from the view taken by the Enquiry Officer.

14. It is also contended that the service of the petitioner is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, as the first respondent is a private school, and therefore invocation of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is erroneously.

15. It is further contended that almost seven years had lapsed since the alleged incident and the gross delay in conducting of the enquiry greatly prejudices the petitioner, inasmuch as he will not be in a position to procure witnesses after the lapse of so many years.

16. Per contra, the learned counsel appearing on behalf of the first respondent submitted that the petitioner participated in the enquiry and even cross-examined the witnesses of the management and also examined the witnesses on his side and, therefore, it does not lie in his mouth to state that there is violation of principles of natural justice.

17. It is further contended on behalf of the first respondent that the enquiry report was considered in detail and on consideration of the explanation submitted by the petitioner, the first respondent passed the impugned order of punishment and, therefore, the same does not warrant interference.

18. It is further contended that quoting of wrong provision of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, would not divest the authority from exercising its powers.

19. I heard Mr.S.N.Ravichandran, learned counsel appearing for the petitioner and Mrs.Dakshayini Reddy, learned counsel for the 1st respondent, Mr.R.Govindasamy, learned Special Government Pleader for the 2nd respondent in both the writ petitions and Mr.P.Ganesan, learned counsel for the 3rd respondent in W.P.No.11650 of 2011 and perused the documents available on record.

20. In the case on hand, the petitioner approached this Court on an earlier occasion by filing W.P.No.39031 of 2003 seeking to quash the order dated 01.12.2003 reducing the post of the petitioner from Headmaster to that of the Secondary Grade Teacher. This Court, by order dated 11.01.2010, allowed the writ petition noting that "no enquiry was conducted based on the explanation submitted by the petitioner and the present case is a classic example of violation of principles of natural justice in regard to the non conduct of the domestic enquiry" and ultimately held as under:

"In the result, this writ petition is allowed. The impugned order passed by the first respondent dated 1.12.2003 is quashed. It is open to the first respondent/Primary School to conduct a detailed enquiry against the petitioner in regard to the charges levelled against him by following the principles of natural justice and by means of conducting a domestic enquiry in the manner known to law, if, so they advised in this regard, the first respondent/Primary School shall provide due opportunity to the petitioner and in any event to complete the process of domestic enquiry within a period of six weeks from the date of receipt of a copy of this order."

21. A reading of the above said order makes it clear that the first respondent was granted liberty to conduct a detailed enquiry against the petitioner in regard to the charges levelled against him by following the principles of natural justice.

22. However, it is seen from the records that the first respondent had issued a fresh memo dated 12.02.2010 referring to various other shortcomings and acts of omission on the part of the petitioner, to which the petitioner submitted his explanation. Thereafter, the first respondent issued another charge memo dated 18.12.2010 under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. This Court is at a loss to understand the authority of the first respondent to invoke the said provision. The very initiation of proceedings under Rule 17(b) of the Rules shows non application of mind on the part of the first respondent. The charges levelled in this charge memo are also not the charges levelled in the original charge memo. However, in reply to this charge memo, the petitioner submitted his explanation.

23. When this Court has granted liberty to the first respondent to conduct enquiry in regard to the charges levelled against him by following the principles of natural justice, the first respondent had chosen to level fresh charges, rather than proceeding as per the direction of this Court. This Court even

at the earliest point of time granted an interim order and the same was also made absolute subsequently.

24. The first respondent also took a divergent stand from the findings of the Enquiry Officer. When such is the view to be adopted by the first respondent, it is incumbent upon them to follow the procedure of giving opportunity to the petitioner. The said view of this Court is fortified by a decision of this Court in K.Ramasamy v. The General Manager (Administration), Tamil Nadu Civil Supplies Corporation Ltd. and others (Order dated 23.11.2010 in W.P.No.24776 of 2004), wherein it was held as under:

"When once the second respondent has decided to differ from the report of the Enquiry Officer, whose report is of course in the favour of the delinquent, necessarily at least at that stage the second respondent should have followed the procedure by giving opportunity to the petitioner, by letting in evidence, either by conducting enquiry himself or by appointing Enquiry Officer. In the absence of such procedure having been followed, even though the second respondent is certainly entitled to differ from the views of the Enquiry Officer, I am of the considered view that the matter has to be remanded to the second respondent for fresh enquiry so as to give adequate opportunity to the petitioner and to come to a final conclusion. It is unfortunate that even the first respondent/Appellate Authority has not taken note of the said deficiency."

25. Moreover, there is no clarity as to under what provision the first respondent had taken the decision to disagree with the findings of the Enquiry Officer.

26. One another aspect which gains prominence is the fact that instead of proceeding with the charges as originally framed and directed to be considered if so advised by this Court, the first respondent had framed fresh charges. The act of the first respondent is proceeding with fresh charges, taking a different view from that of the Enquiry Officer and imposing the very same punishment which was set aside by this Court shows that there is more to it than meets the eye and all is not well with the procedure adopted by the first respondent and the ultimate punishment imposed is a pre-mediated decision of the first respondent.

27. In my considered opinion, at this stage, after a delay of these many years, it would be unfair to grant liberty to the first respondent to once again proceed with the disciplinary proceedings against the petitioner.

28. For the foregoing reasons, these writ petitions are allowed and the orders impugned are set aside. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

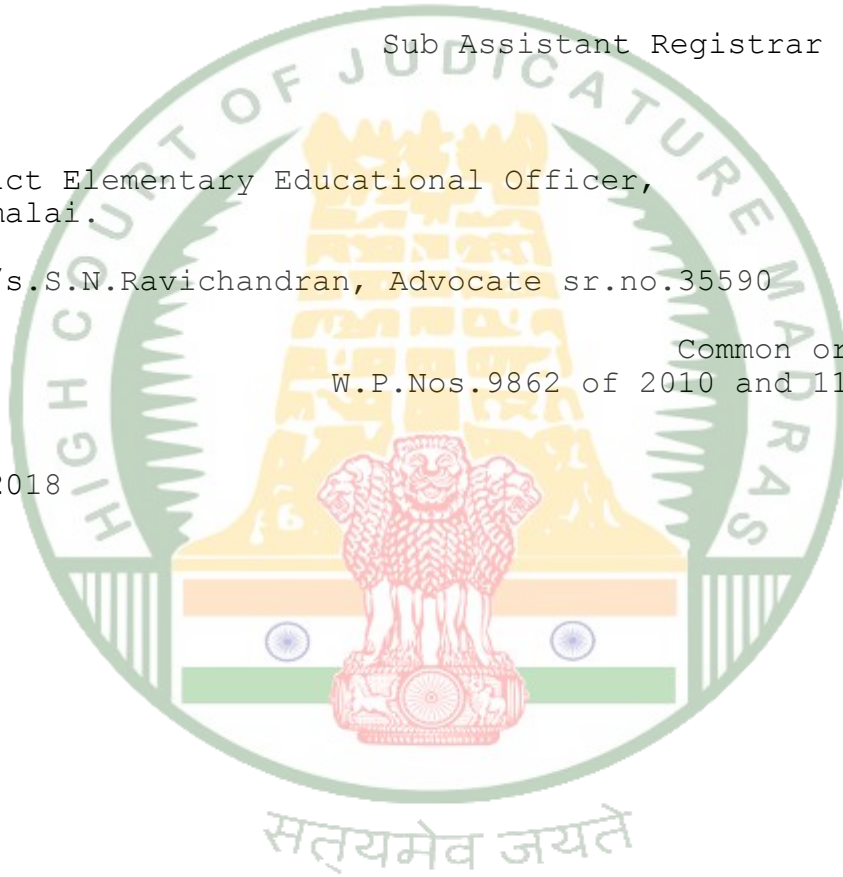
To

The District Elementary Educational Officer,
Tiruvannamalai.

+1cc to M/s.S.N.Ravichandran, Advocate sr.no.35590

Common order made in
W.P.Nos.9862 of 2010 and 11650 of 2011

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