

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM

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

W.P.No.18769 of 2004 and
WPMP.Nos.22475 and 43564 of 2004

K.Rajkumar

.. Petitioner

Vs.

1. The Chief Educational Officer,
Nagapattinam,
Nagapattinam District.
2. The District Educational Officer,
Myladuthurai,
Nagapattinam District.
3. K.S.O. High School,
Manganallur,
rep. by its Secretary S.Ganapathy,
Nagapattinam District.
4. The Principal,
DIET,
Kurukathi & Post,
Nagapattinam District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the charge memo issued by the third respondent dated 17.05.2004 and the consequential suspension order dated 17.5.2004, the enquiry proceedings and the final show cause notice issued by the third respondent in Na.Ka.No.58/K/2004/5, dated 28.06.2004 and quash the same.

For Petitioner

: Mr.K.M.Vijayan
Senior Counsel
for M/s.K.M.Vijayan
Associates

For Respondents : Mr.A.Rajaperumal
Addl. Government Pleader
for respondents 1 and 2

Mr.A.Muthukumar
for 3rd respondent

ORDER

The petitioner seeks to issue a writ of certiorari calling for the records relating to a charge memo dated 17.05.2004 and the consequential suspension order dated 17.05.2004 issued by the third respondent as also the final show cause notice dated 28.06.2004 and to quash the same.

2. The case of the petitioner is that he was appointed as a Secondary Grade Teacher on 02.06.1997 in Oriental Arabi High School, Akkur and thereafter, he was transferred on migration to the third respondent school on 27.08.1997 and was continuously working. While so working, the third respondent issued a charge memo dated 17.05.2004 and the charges, as stated in the affidavit, read as follows:

- (1) The petitioner having not attended the full course of full month of the Child Psychology training, he was given completion certificate.
- (2) No permission from the Management was obtained prior to joining the B.Sc. (Maths) correspondence course and thereby violated the rules.
- (3) The petitioner having need relieved only for attending Child Psychology training, he appeared for four examinations in B.Sc. (Maths) on four days during the period of training and there was a doubt regarding the certificate.

3. According to the petitioner, on 17.05.2004, he was suspended from service and an Enquiry Officer was appointed to inquire into the charges levelled against the petitioner. The Enquiry Officer has given his finding that charges levelled against the petitioner have been proved. Thereafter, on 28.06.2004, the third respondent issued a show cause notice calling upon the petitioner to submit his explanation as to why the services of the petitioner should not be terminated. Challenging the same, the petitioner has filed the present writ petition.

4. Refuting the averments in the writ petition, the third respondent filed counter stating that since the petitioner was not possessing requisite qualification for the Secondary Grade Teacher's post, as per the directions of the Government, he was relieved from the third respondent's school on 30.04.2003 to undergo one month training. It is stated that on 02.06.2003, the petitioner produced a certificate as if he had attended classes of Child Psychology Course at the fourth respondent Institute from 02.05.2003 to 31.05.2003. Thereafter, the petitioner was reappointed as Secondary Grade Teacher on a new scale of pay in the third respondent's school.

5. It is stated that the petitioner applied for promotion to the post of B.T. Assistant on 17.03.2004 stating that he had obtained B.Sc. (Maths) Degree. On verification, it was found that the petitioner wrote B.Sc. (Maths) final examinations on the following days, viz., 20.05.2003, 21.05.2003, 23.05.2003 and 24.05.2003, without attending the training. Therefore, on 03.05.2004, the petitioner was issued with a show cause notice calling for an explanation. Since the explanation given by the petitioner was found not satisfactory, the third respondent school Committee initiated disciplinary proceedings against the petitioner. Pursuant to the decision of the School Committee, a charge memo dated 17.05.2004 was issued to the petitioner and he was placed under suspension.

6. It is stated that Enquiry Officer was appointed and the petitioner was found guilty of all charges and a copy of the report was also furnished to him. Thereafter, a second show cause notice was issued to the petitioner. According to the third respondent, the petitioner has not challenged the order of suspension or charge memo before issuance of the second show cause notice. The petitioner has approached this Court with unclean hands. Hence, prayed for dismissal of the writ petition.

7. I heard Mr.K.M.Vijayan, learned Senior Counsel for M/s.K.M.Vijayan Associates appearing for the petitioner, Mr.A.Rajaperumal, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.A.Muthukumar, learned counsel appearing for the 3rd respondent and also perused the materials available on record.

8. The learned Senior Counsel appearing for the petitioner submitted that nowhere it is stated in the Code of Conduct governing teachers issued under the Tamil Nadu Private Schools Regulation and Rules that prior permission was required to be obtained before joining any course privately. He submitted that the four examinations attended by the petitioner were

during the summer vacation, when the third respondent school was closed.

9. He further submitted that the petitioner duly obtained permission to appear for attending the four examinations from the fourth respondent and in lieu of attending the morning session of the course, the petitioner attended special classes and the same was clear from the communication of the fourth respondent to the third respondent dated 21.05.2004.

10. The learned Senior Counsel argued that even assuming arguendo that there was any violation, the proposed penalty of dismissal from service is disproportionate to the alleged charges. To fortify his submission, the learned Senior Counsel cited the decisions in Secretary, School Committee, Thiruvalluvar Higher Secondary School v. Government of Tamil Nadu and others, reported in (2003) 5 SCC 200 and A.Johnson v. Director of School Education, Nungambakkam and others, reported in 2004 (3) LLN 33.

11. The learned counsel appearing for the third respondent submitted that noting the gravity of charges, the School Committee had decided to initiate disciplinary proceedings against the petitioner. He argued that teachers must emulate as good citizens and then only they can nurture the children. If the teachers like the petitioner could violate the rules and obtain certificates which cannot be true by any stretch of imagination, they should face consequences. Therefore, the action of the third respondent in issuing charge memo; conducting of enquiry; and issuing of second show cause notice calling for an explanation, are all as per the rules and the same cannot be doubted and interfered with by the Court.

12. It appears that along with the writ petition, the petitioner filed W.P.M.P.No.22475 of 2004 praying to stay the operation of all further proceedings pursuant to the order of the third respondent in charge memo and suspension order dated 17.05.2004 and the consequential enquiry and final show cause notice dated 28.06.2004 so as to enable the petitioner to continuously function as a Secondary Grade Teacher in the third respondent school with salary and other benefits pending disposal of the writ petition.

13. By an order dated 14.07.2004 in W.P.M.P.No.22475 of 2004, this Court passed the following order:

"Mr.Muthukumaran, Advocate takes notice on behalf of the third respondent. The learned counsel for the third respondent submits that the period of suspension is coming to an end on 17.7.2004 and as such unless necessary permission is granted by

the statutory authorities for extension, the third respondent has to pass final order one way or other.

2. In these circumstances, liberty granted to the third respondent to approach the authorities for the extension of period of suspension. However, there will be an order of stay of passing final orders until further orders.

3. Post this WP.M.P.No.22475 of 2004 after two weeks."

14. On a perusal of the records, I find that the writ petition was admitted on 14.07.2004 and not listed thereafter. Only on 02.08.2017, the matter was listed.

15. According to the third respondent, though by an order dated 16.07.2004, the first respondent granted sanction to dismiss the petitioner from service, because of stay order of this Court passed in W.P.M.P.No.22475 of 2004, the order of the first respondent could not be implemented.

16. From the above, it is seen that the petitioner having obtained an order of stay of operation of the proceedings, did not take any step to proceed further with the writ petition. The third respondent has also not taken any efforts to vacate the interim order.

17. The sum and substance of the charges are that the petitioner had not undergone the course of Child Psychology as per the orders of the second respondent, but he had produced a certificate as if he had undergone the course. According to the third respondent, the petitioner has not obtained prior permission for joining B.Sc. (Maths) Degree course.

18. The third respondent contended that the petitioner has produced a certificate as if he had attended all classes of Child Psychology course at the fourth respondent's Institute from 02.05.2003 to 31.05.2003. The third respondent under the bona fide belief that the petitioner had attended the classes and the certificate issued by the fourth respondent Institute was based on such attendance, re-appointed the petitioner as Secondary Grade Teacher in a new scale of pay.

19. While working, the petitioner has sought promotion to the post of B.T. Assistant by producing B.Sc. (Maths) Degree certificate. When the third respondent verified the said certificate, it was found that the petitioner had attended the final examinations for B.Sc. Degree on 20.05.2003, 21.05.2003, 23.05.2003 and 24.05.2003 at Annamalai University.

20. The purpose for relieving the petitioner on 30.04.2003 is to enable him to attend the Child Psychology course as per the directions of the second respondent. But, violating the terms, the petitioner has attended B.Sc. Degree final year examinations during the period of Child Psychology course.

21. It is the say of the third respondent that for doing B.Sc. Degree course, the petitioner has not obtained any prior permission from the respondent authorities. The petitioner has failed to produce any record to show that due permission was obtained for doing B.Sc. Degree. In the absence of proof on the side of the petitioner, it is to be presumed that without obtaining prior permission, the petitioner did his B.Sc. Degree. A teacher who imparts education to children cannot be allowed to indulge in such act. There is no substance in the contention of the petitioner that for joining any course during his service, he need not obtain prior permission.

22. It is to be noted that the petitioner has not pleaded any bias on the Enquiry Officer and it is not the case of the petitioner that enquiry was conducted in his absence. The Enquiry Officer found that charges levelled against the petitioner stand proved. Thereafter, a second show cause notice was issued to the petitioner calling for an explanation.

23. It appears that on 16.07.2004, the first respondent granted permission to the third respondent school to dismiss the petitioner from service. According to the third respondent, the said order of the first respondent was not implemented in view of the stay order granted by this Court.

24. The role a teacher plays in shaping the career and future of a student needs no great emphasis. A teacher is considered equal to God. He is required to ensure good conduct of his pupils in addition to teaching lessons to them.

25. The petitioner who was imparting education to students has to maintain decorum of the post he holds and he cannot conduct himself like an ordinary layman. Therefore, the conduct of the petitioner in attending his final year B.Sc. degree examinations during the training period and producing a certificate to the effect that he had attended the training programme and not obtaining prior permission for pursuing B.Sc. Degree are unbecoming of a teacher.

26. As far as the punishment of dismissal recommended by the School Committee and the sanction accorded by the first respondent is concerned, because of the stay order the punishment was not implemented. Taking advantage of the order of stay, the petitioner has not proceeded the matter further.

27. Anyhow, for violation of the conditions of training and also for not obtaining prior permission for pursuing Degree course in correspondence, in my firm view, the punishment of dismissal from service is too harsh. For the alleged misconduct and gravity of charges, the punishment of dismissal, recommended by the School Committee which was accepted and accorded sanction for dismissal by the first respondent is against the rule of law. Further, the first respondent cannot recommend dismissal of service without affording an opportunity of hearing.

28. It is trite that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, the High Court can interfere.

29. In A.Johnson, supra, this Court held as under:

"8.6. It is settled law the Court should not interfere with the administrator's decision unless it was illogical or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in decision making process and not the decision, but, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal, this Court can interfere. Further, to shorten the litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed."

30. It is the say of the third respondent that after the order of suspension the whereabouts of the petitioner were not known to them and the petitioner had also not approached the third respondent.

31. According to the third respondent, they appointed M/s.Globe Detective Agency Private Limited to find out whereabouts of the petitioner. On investigation, the said Agency filed a report to the effect that the petitioner was working as Assistant Branch Manager on a monthly salary of Rs.33,000/- per month in M/s.Max New York Life Insurance Company Limited situated at No.2, 1st Floor, K.C.Sambandam Street, Kannaya Nagar, Tiruvallur.

32. As stated supra, the punishment imposed on the petitioner was disproportionate and considering the report of the Detective Agency that after the suspension, the petitioner was employing as Assistant Branch Manager in M/s.Max New York Life Insurance Company Limited, it is appropriate to remit the matter to the respondent authorities to consider the matter afresh by affording an opportunity to the petitioner.

33. In the result, the writ petition is disposed of with the following directions:

- (i) The charge memo dated 17.05.2004; the consequential suspension order dated 17.05.2004, and also the second show cause notice dated 28.06.2004 issued by the third respondent stand quashed;
- (ii) The matter is remitted back to the third respondent school to consider the case of the petitioner afresh, taking note of the long pendency of the matter and the subsequent developments, after affording an opportunity of hearing to the petitioner and pass appropriate order within a period of three months from the date of receipt of a copy of this order without being influenced by the order passed in this matter.
- (iii) No costs. Consequently, WPMP.Nos.22475 and 43564 of 2004 are closed.

Sd/-
Deputy Registrar (CS)

सत्यमेव जयते
//True Copy//

vs

Sub Assistant Registrar

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To

1. The Chief Educational Officer,
Nagapattinam,
Nagapattinam District.
2. The District Educational Officer,
Myladuthurai,
Nagapattinam District.
3. The Principal,
DIET, Kurukathi & Post,
Nagapattinam District.

+ 1 cc to Mr.M. Vijayan, Associates, AdvocateSr.38059
+ 1 cc to Mr.A. Muthukumat, Advocate Sr.37817

W.P.No.18769 of 2004
and

WPMP.Nos.22475 and 43564 of 2004

(CS-DR)
EU(26/06/2018)



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