



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2018

CORAM:

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHANW.P. (MD) Nos. 10255 and 18146 of 2014
andM.P (MD) .Nos. 1 & 2 of 2014
in W.P. (MD) .No. 10255 of 2014
and M.P (MD) .No. 1 of 2014
in W.P. (MD) .No. 18146 of 2014**W.P. (MD) No. 10255 of 2014:**

A. Mujeebur

... Petitioner

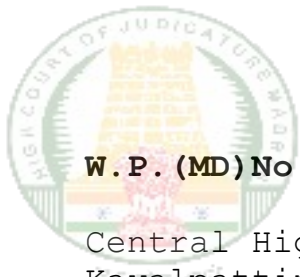
Vs.

1. The Director of School Education,
O/O. the Director of School Education,
College Road, Chennai-6.
2. The Chief Educational Officer,
O/o. the Chief Educational Officer,
Thoothukudi District.
3. The District Educational Officer,
O/o. the District Educational officer,
Thoothukudi District.
4. The Central Higher Secondary School,
Kayalpattinam,
rep. by The Correspondent,
Thoothukudi District.-628 204.
5. The Headmaster,
Central Higher Secondary School,
Kayalpattinam,
Thoothukudi District.-628 204.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of removal from service dated 19.04.2014 on the file of the respondent No.4 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner with consequential benefits within the period that may be stipulated by this Court.

For Petitioner
For Respondents: Mr.T.Lajapathi Roy
: Mr.M.Jeyakumar
Additional Government Pleader
for RR-1 to 3
Mr.M.E.Ilango for RR-4 & 5



W.P. (MD) No.18146 of 2014

Central Higher Secondary School,
Kayalpattinam - 628 204,
Tuticorin District,
rep. by its Correspondent.

... Petitioner

Vs.

1. The Chief Educational Officer,
Tuticorin District,
Tuticorin.
2. The District Educational Officer,
Tuticorin District,
Tuticorin.
3. J.Ayesha Beevi,
P.G. Assistant (Physics)
Central Higher Secondary School,
Kayalpattinam-628 204
Tuticorin District.

4. A.Mujeebur

... Respondents

(R-4 is impleaded vide court order dated 27.06.2017
in W.M.P. (MD) .No.16398/16)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings O.Mu.No.5258/A1/14 dated 20.10.14 and quash the same as illegal and consequently direct the respondents to approve the appointment of the 3rd respondent with effect from 01.08.2014 and to release salary grant and other benefits thereon to her within the period that may be stipulated by this Court.

For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader
for RR-1 & 2
No appearance for R-3

COMMON ORDER



2.By consent of both sides, both the writ petitions are taken up for final disposal and disposed of by a common order.

3.The Central Higher Secondary School, Kayalpattinam, is a private aided school. It is a religious minority institution. One Mr.A.Mujeebur was working as a Post Graduate Assistant (Physics) in the said school. He was issued with a notice dated 17.01.2014 calling upon him to submit his explanation with regard to the improper answer sheet valuation. The delinquent submitted his reply dated 28.01.2014. He was placed under suspension by an order dated 20.02.2014. The order of suspension was composite in nature. It contained 10 articles of charge. The students had gone on a strike and the same was widely reported in the media. A reminder was issued to the said A.Mujeebur on 12.03.2014 to offer his explanation in response to the charge memo.

4.The said A.Mujeebur submitted his explanation, dated 15.03.2014, denying the charges and sought to be furnished with the copies of the documents, based on which, charge-memo has been issued. The Correspondent of the School issued an enquiry notice dated 19.03.2014, informing the delinquent that one Thiru.S.S.Sathyan has been appointed as Enquiry Officer and that enquiry would be conducted on 26.03.2014. The said Mujeebur appeared before the Enquiry Officer on that date and sought copies of as many as 15 documents which were not furnished. The delinquent therefore filed W.P.(MD).No.5599 of 2014. This Court, by order dated 01.04.2014, dismissed the writ petition. It however made it clear that the delinquent was at liberty to seek relevant documents to face the enquiry and as and when any such request is made by the petitioner, during the time of enquiry, the same has to be considered and appropriate orders to be passed by the respondent without loss of further time. The Tamil Nadu State Post Graduate Teachers Association also made an application to the District Educational Officer, Thoothukudi District, requesting that subsistence allowance may be disbursed to Mr.A.Mujeebur. The delinquent gave one more letter, dated 04.04.2014 to the Enquiry Officer, requesting him to furnish the requisite documents. But the Enquiry Officer went ahead and submitted a report dated 09.04.2014, holding that the charges stood proved. A copy of the said enquiry report was furnished along with the second show cause notice dated 12.04.2014. Since the delinquent did not respond, the impugned order of dismissal from service dated 19.04.2014 came to be passed. The said dismissal order has been challenged in W.P.(MD).No.10255 of 2014 at the instance of the delinquent.

5.In the resultant vacancy caused by the dismissal of Mr.A.Mujeebur, one Ayesha Beevi was appointed. The Management forwarded a proposal for approval of appointment to the District Educational Officer. But, the District Educational Officer, Thoothukudi, by order dated 20.10.2014, returned the proposal, pointing out that final decision can be taken in the matter only after disposal of W.P.(MD).No.10255 of 2014. Challenging the said



order, at the instance of the management, W.P.(MD).No.18146 of 2014 has been filed.

6.This Court carefully went through the materials on record. The petitioner was suspended from service on 20.2.2014. The order of suspension also contains articles of charges which are 10 in number. It is relevant to mention here that when a charge memo is issued to a delinquent, it will be accompanied by annexures. The imputations of misconduct containing detailed particulars will be spelt out in the accompanying annexures. The list of documents will also be furnished in the annexures. The charge memo will itself contain the articles of charge. If there are no accompanying details and particulars, the charge memo by itself will only appear vague. In the present case, the delinquent wanted all copies of documents to be furnished. In fact, this Court, while dismissing the writ petition filed by the delinquent, specifically gave him liberty to ask for documents in this regard. The delinquent has enclosed the request letter, submitted by him, asking for copies of documents. There is nothing on record to indicate as to whether the said request was formally disposed of before finalising the enquiry. It is not the case of the management that the request of the delinquent was complied with. Probably because of this reason, in the enquiry report, it is stated that the delinquent was given an opportunity to peruse the documents. The right of perusal is one thing and right to be furnished with copy is another thing. Only if the documents are bulky and voluminous and it is not possible to furnish the same, then the question of permitting the delinquent to peruse would arise. Such is not the case here. Therefore, this court holds that conducting the enquiry without furnishing copies of the documents to the delinquent is a clear violation of the principles of natural justice.

7.The sequence of events would also indicate that the management was determined to terminate the service of the delinquent. For instance, the notice dated 17.01.2014 gave a mere two days' time to the delinquent to submit his reply. Likewise, the suspension order dated 20.02.2014 gave just three days time to the delinquent to offer his explanation. The enquiry report is dated 09.04.2014. On 12.04.2014, second show-cause notice was issued and on 19.04.2014, termination order itself was passed.

8.It is also relevant to note that even though the petitioner was suspended on 20.02.2014, he was not paid even his subsistence allowance. Not only the delinquent, but also the Post Graduate Teachers' Association called upon the Management to disburse the subsistence allowance. Conducting an enquiry without paying subsistence allowance can only be termed as illegal. In the present case, the delinquent has specifically pleaded that he was prejudiced on account of non-payment of subsistence allowance. Only if the subsistence allowance is paid, the delinquent can make both the ends meet. Further, in the domestic enquiry, the delinquent will have to necessarily consult a counsel for effectively defending him. If the



economic pipeline is choked, it would have adverse impact. Therefore, in this case, the management had acted illegally by not paying the subsistence allowance, during the period of suspension to the delinquent. Hence, the delinquent was put to prejudice, on account of the non-payment of subsistence allowance.

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9.The management had appointed one Ms.Ayesha Beevi in the resulting vacancy. The management had forwarded the proposal for approving her appointment to the Department. But, the Department rightly took a stand that the termination order of Mr.Mujeebur has been challenged by way of filing W.P.(MD).No.10255 of 2014 and at that stage, the proposal of approval of appointment of Ms.Ayesha Beevi would obviously depend on the outcome of the writ petition. In view of the matter, the Department had returned that proposal. This by no stretch of imagination can be said to be incorrect or improper.

10.The learned counsel for the Management would point out that the School in question is a minority institution. In view of Article 30 of the Constitution of India, this Court will have to defer to the decision of the Management in such matters. This Court is however of the view that while Article 30 of the Constitution of India is sacrosanct, it cannot be applied in a manner as to confer arbitrary powers to a school management. The Honourable Supreme Court, long ago, held that right to administer cannot mean license to mal-administer. In this case, it is seen that a school teacher has been unfairly victimized. Long before becoming a Judge Mr.Justice.K.Chandru wrote an essay in the wake of St. Xavier decision, "Saviour for whom?" Article 30 of the Constitution of India is intended to act as bulwark against unlawful or unreasonable State interference. Of course, it confers freedom of administration on the school management. But, then, the minority managements cannot use it as a shield to defend their unlawful and unfair actions against their own staff.

11.In view of the above, the impugned order dated 19.04.2014 is set aside. W.P.(MD).No.10255 of 2014 is allowed. The fourth respondent/management is directed to reinstate the delinquent in service forthwith within a period of four weeks from the date of receipt of copy of this order. If the reinstatement is made and the management abides by this decision, the writ petitioner shall be entitled to only continuity of services but not any backwages. But, if the management does not comply with the direction for reinstatement of Mr.A.Mujeebur within a period of four weeks from the date of receipt of copy of this order, it is directed that the management will have to reinstate him not only with continuity of service, but also pay backwages. No costs. Consequently, connected miscellaneous petitions are closed.

In view of the order passed in W.P.(MD).No.10255 of 2014, [https://hcservices.ecourts.gov.in/hcservices/cases/W.P.\(MD\).NO.10146](https://hcservices.ecourts.gov.in/hcservices/cases/W.P.(MD).NO.10146) of 2014 has to be necessarily dismissed. Accordingly, the same is dismissed. No costs. Consequently,



connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

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/True Copy/

Sub Assistant Registrar

To

1. The Director of School Education,
O/O. the Director of School Education,
College Road, Chennai-6.
2. The Chief Educational Officer,
O/o. the Chief Educational Officer,
Thoothukudi District.
3. The District Educational Officer,
O/o. the District Educational officer,
Thoothukudi District.

+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 49602
+ 2 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR Nos. 49614 & 49615

VS

TE/JC/SAR-3 : 08/06/2018 : 6P/7C

W.P. (MD) Nos. 10255 and 18146 of 2014
16.02.2018