



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)No.914 of 2018

and

C.M.P(MD)No.5963 of 2018

S.H.Meera Sahib

... Appellant/Writ Petitioner

Vs.

1. The District Educational Officer,
Thoothukudi,
Thoothukudi District.

2. The Correspondent/Secretary,
Central Higher Secondary School,
Kayalpatnam,
Thoothukudi District - 628 204.

3.S.Rose Getzi

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 05.03.2018 made in W.P(MD)No.7410 of 2014, on the file of this Court.

Prayer in WP(MD). 7410/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order of dismissal dated 16.4.2014 of the 2nd respondent and to quash the same and consequently direct the respondents to reinstate the petitioner with full back wages and other attendant benefits.

For Appellant	: Mr.J.Ashok
For R - 1	: Mr.A.K.Baskarapandian, Special Government Pleader.
For R - 2	: Mr.M.E.Ilango

JUDGMENT

(Judgment of the Court was delivered by **M.DURAI SWAMY, J.**)



2.The appellant/writ petitioner filed the writ petition to issue a Writ of Certiorari Mandamus, to call for the records relating to the impugned order of dismissal dated 16.04.2014 of the second respondent and to quash the same and consequently direct the respondents to reinstate the petitioner with full backwages and other attendant benefits.

3.According to the writ petitioner, he was a teacher under the second respondent School and that based on the charges framed against him, he was suspended from service with effect from 20.02.2014. Pursuant to the charges framed against the petitioner, an enquiry officer was appointed. However, the petitioner did not participate in the enquiry proceedings. Therefore, the enquiry officer set him ex-parte and submitted his report holding that the charges framed against the writ petitioner are proved. Thereafter, the management issued second show-cause notice dated 12.04.2014 and the writ petitioner submitted his reply on 15.04.2014. After considering the reply submitted by the writ petitioner, the second respondent passed the order of dismissal on 16.04.2014. Aggrieved over the same, the writ petitioner has filed the Writ Petition.

4.Before the learned Single Judge, the only submission made on behalf of the writ petitioner was that the order of dismissal is liable to be set aside on the ground that he was not paid the subsistence allowance during the period of suspension. However, the learned Single Judge did not agree with the submission made on behalf of the petitioner and also found that mere non-payment of subsistence allowance will not vitiate the proceedings. The learned Single Judge ultimately found that the charges framed against the writ petitioner were grave in nature and therefore, the order of dismissal made by the second respondent is proper. While dismissing the writ petition, the learned Single Judge considering the charges framed against the appellant also incidentally observed in paragraph Nos.13 and 16 as follows:-

"13.Even though, the charges framed against the petitioner pertain primarily to his indisciplined and defiant conduct, witness No.11, one Niyaz, has levelled serious allegations against the petitioner. The deposition of Niyaz is to the effect that during an excursion held in the year 2013, the petitioner allegedly involved in homosexual activities. The said witness, which called into question the moral character of the petitioner, had not earlier lodged any complaint to the Management, since the students in this case are minor boys and since the petitioner is said to have been threatened the said Niyaz. The said witness Niyaz has also stated that he has seen the petitioner hug and kiss the male students. This allegation is very serious. Though the same does not form part of the



charge memo, at the same time, this Court cannot ignore it considering the safety and moral well being of the students. However, this Court gave an option to the petitioner and posed a specific question to the learned counsel for the petitioner as to whether the petitioner would be ready for re-enquiry. In this regard, the learned Counsel appearing for the petitioner, on instructions, submitted that this Court can pass an order on merits.

.....

16. This Court finds no reason to interfere with the order of dismissal. It is made clear that this Court has gone only by the findings given by the enquiry officer based on the deposition of the Headmaster, Sahul Hameed and the teacher, Alicia Rodrigo. It is made clear that this Court has not taken cognizance of the allegations of homosexuality made against the petitioner in the deposition of the School teacher, Niyaz because the same does not form part of the charge memo."

5. On a perusal of the materials available on record, it could be seen that the appellant had acted in an unbecoming manner before the enquiry officer and also walked out of the enquiry proceedings. Hence, the enquiry officer left with no other option, set him ex-parte and filed a report before the second respondent. Before the enquiry officer, 13 witnesses were examined in support of the charges and 21 documents were marked as Exs.M.1 to M.21 on the side of the management. In spite of the same, no witness was examined on the side of the appellant/delinquent. That apart, the management witnesses were not cross-examined by the appellant before the enquiry officer. The Headmaster of the School, who was examined as a witness before the enquiry officer, had deposed that during prayer meeting when National Anthem is used to be played, the appellant used to conduct himself in a disrespectful manner. The Headmaster also deposed that the appellant had created a big scene and insulted the Headmaster in front of the students by demanding that Adbul Khadar Khan, who is a teacher in the Secondary School, alone should be asked to address the students.

6. On a reading of the charges framed against the appellant are concerned, it is clear that the charges are grave in nature and the finding of the enquiry officer that all the charges framed against him are found to be proved would support the order of dismissal passed by the second respondent. The appellant has not given any reason for not appearing before the enquiry officer for the domestic enquiry and put forth his case. The Headmaster of the School had also deposed before the enquiry officer that when he was present in the school, the appellant went to the extent of abusing him and even showed his shoe. The other colleagues of the appellant have also deposed against the appellant which cannot be brushed



aside.

7.The learned counsel appearing for the second respondent also submitted that even before the learned Single Judge an opportunity was given to the appellant by the learned Single Judge to appear for re-enquiry. However, the appellant had refused to go for re-enquiry and requested the Court to pass orders on merits. This would also establish the conduct of the appellant.

8.When the grave charges framed against the appellant were proved by adducing oral and documentary evidences, the learned Single Judge has rightly confirmed the order of dismissal made against the appellant and dismissed the Writ Petition.

9.In these circumstances, we find any ground to interfere with the order passed by the learned Single Judge and the Writ Appeal is devoid of merits and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The District Educational Officer,
Thoothukudi,
Thoothukudi District.

+1cc to Mr.J.Ashok, Advocate SR.No.75741
+1cc to Mr.M.E.Ilango, Advocate SR.No.75195
+1cc to SPECIAL GOVERNMENT PLEADER, SR.No.75343

Ps

MK/MMS/SAR 1/13.08.2018/4P/5C

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