



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.03.2018

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 7410 of 2014 and
M.P. (MD) No. 1 of 2014 and
W.M.P. (MD) No. 12374 of 2016

S.H. Meera Sahib

... Petitioner

Vs.

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

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

3. S. Rose Getzi

... Respondents

[R.3 is impleaded vide order dated 27.06.2017
made in W.M.P. (MD) No. 16395 of 2016]

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari and Mandamus, calling for the records relating to the impugned order of dismissal dated 16.04.2014 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 Petitioner : Mr. J. Ashok

For Respondents : Mr. J. Gunaseelan Muthiah,
Additional Government Pleader for R.1
Mr. M. E. Ilango for R.2
No representation for R.3

ORDER

The second respondent is an aided minority School. It is said to be almost 100 years old. The petitioner was appointed as BT Assistant in the said School with effect from 29.09.2011. The petitioner was an old student of the second respondent School. While so, he was placed under suspension with effect from 20.02.2014. The order of suspension also set out the charges framed against the petitioner. An enquiry officer was appointed. The petitioner did not take full part in the enquiry. Therefore, the enquiry officer set him ex-parte and submitted his report, holding that the charges framed against the petitioner stood proved. The management issued



second show cause notice dated 12.04.2014. The petitioner submitted his reply on 15.04.2014. Thereafter, the impugned order of dismissal came to be passed on 16.04.2014. Aggrieved by the same, this writ petition has been filed.

2. Heard the learned Counsel on either side.

3. The petitioner's Counsel would submit that the proceedings will have to be quashed, as the petitioner was not paid the subsistence allowance.

4. This Court is unable to agree with the said submission. As rightly pointed out by the learned Counsel for the School Management, mere non-payment of subsistence allowance will not vitiate the proceedings. The petitioner will have to show prejudice. In this case, there is no plea of prejudice in the affidavit filed in support of the writ petition.

5. The suspension order was passed on 20.02.2014. The order of dismissal was made on 16.04.2014. The provisions of the Tamil Nadu Private Schools (Regulation) Act, 1973, contemplates suspension of a teacher only for a period of two months. It is the expectation of the legislature that the enquiry itself has to be speedily concluded by then. Only if the enquiry could not be concluded within two months, the suspension is extended for a further period of two months. Unlike other cases of employer-employee relationship, a teacher in a recognized private School could not be kept under suspension for a period beyond four months.

6. In this case, keeping in mind the legislative insertion to conclude the proceedings expeditiously, final order has been passed within the initial period of two months itself. Therefore, the petitioner cannot really say that he was put to prejudice on account of non-payment of subsistence allowance. Therefore, the first contention raised by the writ petition stands rejected.

7. It is seen that a number of charges were framed against the petitioner. The crux of the charge memo is that the petitioner exhibited insubordination and had misbehaved during the prayer meeting. It is also specifically alleged that the petitioner had conducted himself in an unbecoming manner towards his colleagues.

8. This Court went through the entire materials on record. It is seen that the prayer meetings were to be addressed by teachers on turn basis. One Janab Abdul Kadhar Khan had earlier spoken in an derogative manner. Therefore, the Headmaster took a decision that he will not address the boys in the prayer meeting. On 08.02.2014, it was the turn of Janab Abdul Kadhar Khan. But, the Headmaster stopped him from addressing the meeting and asked one Janab Syed Ayub Ali to address the students. At that stage, the petitioner herein intervened and told Janab Syed Ayub Ali that it was Janab Abdul Kadhar Khan, who should address the gathering. When the Headmaster



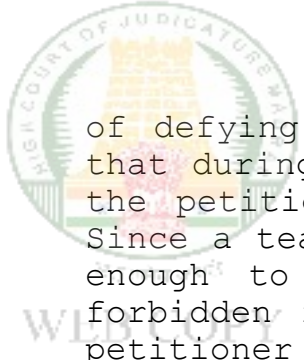
interjected, the petitioner had challenged the authority of the Headmaster before the students and entered into a heated argument.

9. Since the conduct of the petitioner would have an adverse impact on the students' discipline, a teacher, namely, Alicia Rodrigo gave a complaint to the Correspondent on the same date. Angered by the complaint of Alicia Rodrigo, the petitioner had misbehaved with her and threatened her. On the succeeding day, during prayer meeting, the petitioner went to the extent of spitting on her legs. He also rode his vehicle in a threatening manner, so as to endanger her safety. This led to registration of Crime No.54 of 2014 on the file of Arumuganeri Police Station against the petitioner for the offences punishable under Section 294(b) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002. The petitioner had also given a complaint against some of the School staffs and the same was registered as Crime No.55 of 2014. The petitioner claims that he was assaulted by an Office Junior Assistant, which led to his hospitalization. Be that as it may, an enquiry was conducted, after issuance of the charge memo cum suspension order dated 20.02.2014.

10. The learned Counsel appearing for the petitioner contended that the petitioner gave more than one representation seeking assistance of a lawyer to represent him during enquiry. But, this request was rejected on 12.03.2014. The petitioner's case was that because the enquiry officer was a lawyer, he should also have the assistance of a lawyer to defend him. The petitioner's plea has no legal basis. Only if the Management is represented by a lawyer, the delinquent can also seek the assistance of a lawyer. The fact that the enquiry officer happens to be a lawyer is not a ground for insisting that the delinquent should also be represented by the lawyer. Therefore, the petitioner's request was rightly rejected.

11. The petitioner had acted himself in an unbecoming manner before the enquiry officer and also walked out of the enquiry proceedings. The enquiry officer was, therefore, left with no other option but to set him ex-parte. The enquiry report is a very detailed one. The same has been enclosed in the typedset of papers by the petitioner as well as the Management. It is seen that as many as 13 witnesses were examined in support of the charges and 21 documents were marked as Exs.M1 to M21. The delinquent did not choose to examine himself as a witness. He did not mark any document. He also did not cross examine the witnesses. Instead, he sent two letters dated 08.03.2014 and 15.03.2014 to the management as well as the enquiry officer.

12. This Court went through the contents of the enquiry report. The witnesses examined in support of the charges were mostly the colleagues of the petitioner. The deposition of the Headmaster, Thiru.K.Shahul Hameed inspires the confidence of this Court. The said K.Shahul Hameed has been serving the School since 01.06.1983. He has deposed that the petitioner has been in the consistent habit



of defying his directions. The Headmaster has specifically alleged that during prayer meeting, when National Anthem used to be played, the petitioner used to conduct himself in a disrespectful manner. Since a teacher, by name, Abdul Khadar Khan was not found to be fit enough to address the students in the prayer meeting, he was forbidden from doing so on 08.02.2014 by the Headmaster. But, the petitioner created a big scene and insulted the Headmaster in front of the students by demanding that Abdul Khadar Khan alone should be asked to address the students. The manner in which the petitioner conducted himself towards Alicia Rodrigo has also been spoken to by the Headmaster. Alicia Rodrigo has been examined as the fourth witness by the management. It is interesting to note here that the petitioner was once a student of the said Alicia Rodrigo. Thus Alicia Rodrigo was not only his colleague and a lady, but also his former teacher, but, because of the conduct of the petitioner, she was driven to lodge a police case against him, which was registered as Crime No.54 of 2014. Only as a counter blast, the petitioner lodged Crime No.55 of 2014 against the Headmaster and other colleagues.

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 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.

14. This Court is of the view that the petitioner was not justified in boycotting the enquiry. The petitioner ought to have taken part in the enquiry and cross-examined the witnesses. In this case, the allegations made against the petitioner are fairly direct. The allegation is that the petitioner had been insubordinate and conducted himself in a manner of unbecoming of a teacher. In this case, the Headmaster, Thiru.Sahul Hameed had deposed that when he was on his rounds, the petitioner went to the extent of abusing him and even showed his shoe. Number of teachers, who are the colleagues of the petitioner, have also consistently deposed not only with regard to what happened on 08.02.2014 in the prayer meeting, but also on other occasions. This Court is, therefore, of the view that



the enquiry officer rightly came to the conclusion that the charges framed against the petitioner have been proved to be true.

15.The question that next arises is whether the punishment of dismissal from service ought to have been imposed. The petitioner had joined the institution as a regular staff only on 29.09.2011. Even within a span of three years, he had conducted himself in an unbecoming manner. The School campus is meant not only for imparting knowledge, but also for discipline. If the petitioner could challenge the authority of the Headmaster right in front of the students, that too in the prayer meeting, then such a conduct cannot be condoned. It will only have an adverse impact on the overall discipline and morale of the students. An organization cannot be run with persons like the petitioner in its ranks. Therefore, the management was entirely justified in taking the view that it had lost all its confidence in him and that therefore, he is liable to be dismissed.

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.

17.In result, this writ petition is liable to be dismissed and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The District Educational Officer,
Thoothukudi,
Thoothukudi District.

+ 1 CC TO Mr.M.E.ILANGO, ADVOCATE IN SR No. 53225
+ 1 CC TO Mr.J.ASHOK, ADVOCATE IN SR No. 53135

GK/PS

TE/JC/SAR-3 : 08/06/2018 : 5P/4C