

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.4325 of 2010
and M.P.No.1 of 2014

J.S.Burhanuliah

.. Petitioner

Vs.

1.The District Educational Officer
Thirupattur
Vellore District.

2.The Secretary and Correspondent
Islamiah Boys Higher Secondary School
Vaniyambadi, Vellore District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records in R.C.No.244 of 2008-2009, dated 13.12.2008 on the file of the 2nd respondent, quash the same as illegal and direct the 2nd respondent to re-instate the petitioner into service with backwages and attendant benefits.

For Petitioner : Mr.S.Nambirajan
For R1 : Mr.P.Raja
Government Advocate

For R2 : Mr.V.R.Rajasekaran

ORDER

The writ petition is filed for issuance of a writ of Certiorarified Mandamus calling for the records in R.C.No.244 of 2008-2009, dated 13.12.2008 on the file of the 2nd respondent, quash the same as illegal and direct the 2nd respondent to re-instate the petitioner into service with backwages and attendant benefits.

2. According to the petitioner, he was appointed as Secondary Grade Teacher in the 2nd respondent school on 29.03.1998. His service was regularised on 29.03.2000. The Headmaster of the school in order to accommodate some of his relatives, made false complaint against the petitioner. Based on the said complaint, charge memo was issued to the petitioner on 27.09.2007. The petitioner was placed under suspension on 27.09.2007 stating that he consumed liquor while he was on duty. The 2nd respondent conducted domestic enquiry by appointing two advocates of the 2nd respondent and the Enquiry Officers are biased and prejudiced against the petitioner. Contrary to the procedure in the domestic enquiry, the Enquiry Officers allowed the management witnesses to cross-examine the petitioner. Based on the perverse report of the Enquiry Officers, the 2nd respondent terminated the service of the petitioner. The 1st respondent did not confirm the order of the 2nd respondent. In view of the same, order of termination is not valid. The 2nd respondent is a minority institution and amenable to the writ jurisdiction. The charges levelled against the petitioner are false and without properly considering the denial of the petitioner, the 2nd respondent terminated the service of the petitioner, which is invalid and illegal and prayed for allowing the writ petition.

3. The 2nd respondent filed counter affidavit denying various allegations made by the petitioner and the learned counsel appearing for the 2nd respondent contended that the petitioner has come to the school in an intoxicated condition on various days. Complaints were received against the petitioner. The petitioner by his letters permitted to correct himself, but failed to do so. Apart from this, the petitioner has committed various misconduct and a detailed charge memo was issued to the petitioner. The petitioner in his explanation to the charge memo admitted that he has consumed liquor not for pleasure, but only to give company for the blood donors, who are donating blood for his son, who is suffering from blood cancer. The domestic enquiry was conducted in a fair and proper manner by following the principles of natural justice. The petitioner fully participated in the enquiry. The 2nd respondent examined four witnesses and marked 47 documents. The petitioner was permitted to cross-examine the witnesses produced by the 2nd respondent. The Enquiry Officers after conducting enquiry submitted their report holding that all the charges levelled against the petitioner were proved. The petitioner was given another opportunity by issuing 2nd show cause notice

proposing punishment of terminating the petitioner from service. The 2nd respondent has sent the proposal for terminating the petitioner from service on 04.02.2009 to the Chief Educational Officer through the District Educational Officer and again reminder was sent on 27.03.2009 to the Chief Educational Officer, through the 1st respondent/District Educational Officer. After considering all the materials including the explanation given by the petitioner, the petitioner was terminated from service. The charges proved against the petitioner are grave in nature and in violation of code of conduct. The petitioner's conduct was unfit to be a teacher and the petitioner was terminated from service for proven grave charges after due enquiry. The petitioner is not entitled for the relief sought for in the writ petition and prayed for dismissal of the writ petition.

4.The learned Government Advocate appearing for the 1st respondent contended that the proposal sent by the 2nd respondent was rejected by the proceedings of the 1st respondent dated 04.02.2009 bearing Na.Ka.No.7681/a3/08 and the same was communicated to the petitioner also by the letter dated 11.03.2009.

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6.The learned counsel appearing for the petitioner as well as the 2nd respondent made submissions on merits. The learned counsel appearing for the petitioner mainly contended that the petitioner can be dismissed from service only after obtaining prior permission from the District Educational Officer, Tirupattur and referred the letter given by the District Educational Officer dated 31.12.2008 bearing Na.Ka.No.5055/a3/2008, whereby the request of the 2nd respondent to terminate the service of the petitioner was not recommended to the Chief Educational Officer, Vellore and no permission was granted to the 2nd respondent to terminate the service of the petitioner.

7.The learned Government Advocate has also produced proceedings dated 04.02.2009 issued by the District Educational Officer, whereby the 2nd respondent was instructed to impose a lesser punishment on the petitioner and reinstate him in service. The learned counsel appearing for the 2nd respondent has contended that the 2nd respondent has filed writ petition on 11.07.2019 challenging the proceedings of the 1st respondent and notice was ordered. The learned counsel appearing for the 2nd respondent

contended that only new members of the management filed writ petition challenging the proceedings of the 1st respondent. From the materials on record, it is seen that the order of dismissal is dated 13.12.2008 and the proceedings of the 1st respondent are dated 31.12.2008 and 04.02.2009. The same are in force and is not set aside by any competent Court. The 2nd respondent has failed to obtain prior permission from the competent authority as per Section 22(1) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, before dismissing the petitioner from service. The learned counsel appearing for the 2nd respondent has not stated that the 2nd respondent obtained prior permission before dismissing the petitioner from service. In view of the failure of statutory provision, order of the 2nd respondent dismissing the petitioner from service is invalid.

8. For the above reason, the writ petition stands allowed. The 2nd respondent is directed to re-instate the petitioner into service with backwages and attendant benefits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The District Educational Officer
Thirupattur
Vellore District.

2. The Secretary and Correspondent
Islamiah Boys Higher Secondary School
Vaniyambadi, Vellore District.

+5ccs to Mr.S.Nambirajan , Advocate SR.No. 63039

+1cc to Mr.V.R.Rajasekaran , Advocate SR.No. 63487

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and M.P.No.1 of 2014

A.SK (22/08/2019)