

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MS.JUSTICE P.T.ASHA

Writ Appeal No.1478 of 2019  
and  
C.M.P.No.10089 of 2019

1. The Joint Director of School,  
DPI Campus, Chennai - 600 006.
  2. The Chief Educational Officer,  
Coimbatore. .... Appellants/Respondent
- Vs.
- K.Gunaseakran ..... Respondent/Petitioner

APPEAL filed under Clause 15 of the Letters Patent to set aside the order passed by this Honble Court made in WP.No.29082 of 2018 dated 03.01.2019.

Prayer in WP No.29082 of 2018 : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certioraified mandamus Calling for the records of the first respondent in RC No.17689/A3/S2/2018 dated 2.05.2018 quash the same and consequently direct the respondents to reinstate the petitioner by following the judgment of the Honble supreme the petitioner by following the judgment of the honble supreme Court in the case of Asjay kumar Choudrays case.

For Appellants : Mr.C.Munusamy, Spl.G.P.

For Respondent : Ms.Dakshayani Reddy

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The respondent who working as a Superintendent in the office of the District Educational Office, Pollachi, was involved in the Teachers Recruitment scam and is an accused in a

case in Cr.No.468 of 2017, registered by the Cyber Crime Cell, Chennai. He was suspended from service along with two other accused, pending initiation of disciplinary proceedings.

2. The suspension order was challenged in W.P.No.29082 of 2018.

3. The learned single Judge quashed the order of suspension dated 2 May 2018 and directed the appellants to reinstate the respondent into service. Feeling aggrieved by the said order, the State has come up with this intra Court appeal.

4. The factual matrix indicate that the respondent was involved in an examination scam in which money was taken from 197 candidates for altering the marks and to select them as Government Polytechnic Lecturers. The accused, in association with M/s.Datatec Methodex Private Limited, an outsourcing agency, engaged by the Teachers Recruitment Board for undertaking the selection process, indulged in the act of tampering with the marks for illegal gratification and the same resulted in cancellation of the entire examination by the Teachers Recruitment Board. The case was referred to the Central Crime Branch. The initial investigation revealed that the respondent and two other employees by name, Chinnasamy, Headmaster, Panchayat Union Middle School, P.Malaiyoor, Naththam Union, Dindugal District and S.Vinayagamoorthy, Junior Assistant, Assistant Elementary Educational Office, Chennai were also involved in the act of fabrication of records, by accepting a sum of Rs.25 lakhs from each of the 197 candidates. The Investigating Officer collected materials to substantiate the allegation that the respondent and two others acted as touts and received a sum of Rs.25 lakhs per candidate. The investigation is now pending.

5. The learned single Judge without any reference to the gravity of the misconduct and the pendency of the criminal case directed the appellants to reinstate the respondent and post him in any one of the non-sensitive posts.

6. The question whether the employee should be continued to be kept under suspension is essentially a matter to be decided by the disciplinary authority. The authority has to consider string of factors before passing an order of reinstatement. The order passed by the learned single Judge does not contain any reason much less justifiable reason for quashing the order of suspension.

7. The learned counsel for the respondent contended that another accused by name Thiru.Chinnasamy, who was the Headmaster, Panchayat Union Middle School, was also involved in the scam and his suspension was revoked pursuant to the order

passed by the Madurai Bench of the Madras High Court.

8. The learned Special Government Pleader in answer to the said contention submitted that the Madurai Bench directed the appellants to reinstate the said Thiru.Chinnasamy into service. The learned Special Government Pleader who appeared on behalf of the Government at the Madurai Bench has given a legal opinion to the District Educational Officer (hereinafter referred to as "the DEO") certifying that it is not a fit case for appeal. According to the learned Special Government Pleader pursuant to the opinion given by the learned Special Government Pleader at Madurai, the order was complied with by the D.E.O.

9. We are of the view that the Government is not consistent in the disciplinary proceedings. The Government has now come up with a contention that the respondent is involved in a very serious crime and as such he should be placed under suspension. However, the very same Government accepted the opinion given by the learned Special Government Pleader at Madurai and directed reinstatement of Thiru.Chinnasamy, who was also involved in the very same scam and a co-accused.

10. In case there are three delinquents, and they are arrayed as accused in the criminal case, the Government must adopt a uniform and consistent stand. In case the misconduct of the respondent is serious, the very same yardstick should have been adopted in the case of the co-delinquent.

11. We direct the Principal Secretary to Government, School Education Department to consider the issue as to whether the District Educational Officer at Madurai was correct in closing the matter and reinstating Thiru.Chinnasamy, by accepting the opinion given by the learned Special Government Pleader that it is not a fit case for filing appeal, notwithstanding the fact that two other employees were also involved and one among them has already approached this Court. The Principal Secretary shall also look into the larger question whether the issue was brought to the notice of the Director of Education, before reinstating Thiru.Chinnasamy into service.

12. The learned counsel for the respondent is now claiming equity by taking shelter under Article 14 of the Constitution of India. Merely because the D.E.O. passed an order reinstating Thiru.Chinnasamy into service, it cannot be said that the illegality should be perpetuated. The respondent is involved in a huge scam, the investigation of which is pending before the Central Crime Branch. We are therefore of the view that the learned single Judge was not justified in directing the appellants to reinstate the respondent into service.

13. We direct the appellants to review the suspension of the respondent taking into account the progress in the investigation undertaken by the Central Crime Branch. In any case, the review should be conducted within a period of six (6) months from today and a decision should be taken as to whether the suspension of the respondent should be continued indefinitely.

14. The intra Court appeal is allowed with the above direction for review. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CS-IV )

//True copy//

Sub Assistant Registrar

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1. The Principal Secretary to Government,  
School Education Department,  
Chennai.
2. The Joint Director of School,  
DPI Campus, Chennai - 600 006.
3. The Chief Educational Officer,  
Coimbatore.

+1cc to Mr.Dakshayani Reddy, Advocate SR.No.54759

+1cc to Government Pleader SR.No.54945

W.A.No.1478 of 2019  
and  
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