



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :28.06.2019

CORAM
THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.18541 of 2019
and
W.M.P.Nos.17855, 17857 & 17858 of 2019

M.A.Mohideen Abdul Khader

... Petitioner

Vs.

1.The Secretary & Correspondent
Islamiah College (Autonomous)
Vaniyambadi - 635 752.

2.Paul Das (Retd.) Judge,
Enquiry Officer,
No.82/106, Peerambur High Road
Zamalia, Chennai - 600 012.

3.The Joint Director of Collegiate Education,
Vellore Region, Vellore.

... Respondents

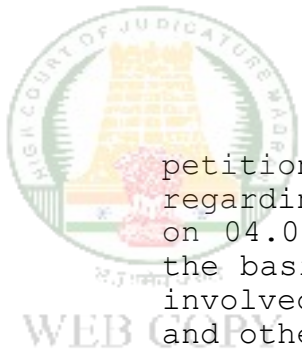
Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent is connections with impugned order dated 24.06.2019 and quash the same and direct the respondents to keep the disciplinary proceedings issued by the first respondent in his proceedings No.A/DP/MAMAK/2019/01 dt.29.4.2019 in abeyance pending disposal of the criminal case registered in crime no.157/2019 on the file of Vaniyambadi Town police station.

For Petitioner : Mr.K.Venkat Ramani
Senior Counsel
For Mr.Muthappan M.

For 3rd Respondent: Mr.V.Kathirvelu
Special Government Pleader

ORDER

The petitioner was appointed as Physical Education Director in the 1st respondent College, which is an autonomous aided institution. His services were regularised on 14.09.2012. According to the petitioner, he was falsely implicated in a criminal case on 04.04.2019 in view of a family dispute between he and his in-law. While so, a charge memo was issued to the



petitioner on 29.04.2019 framing five articles of charges regarding the incident which took place in the College premises on 04.04.2019. The incident which took place in the College was the basis of filing a criminal case against the petitioner as it involved physical assault and violence between the petitioner and others.

2. In response to the charge memorandum, the petitioner submitted a reply denying the charges on 10.05.2019. Thereafter, not being satisfied with the reply, an Enquiry Officer was appointed to conduct an enquiry into the charges on 20.05.2019. The Enquiry Officer called the petitioner for enquiry by his proceedings dated 13.06.2019 and in response to the same, the petitioner appears to have sent a representation on 20.06.2019 to keep the proceedings in abeyance pending disposal of the criminal case. However, the 2nd respondent/ Enquiry Officer rejected the request and directed the petitioner to appear for an enquiry vide order dated 24.06.2019. The said rejection order dated 24.06.2019 is put to challenge in the present writ petition.

3. Mr. K. Venkat Ramani, learned Senior Counsel would submit that once the criminal case is set in motion, the disciplinary action cannot be simultaneously initiated and proceeded with as that would hamper the defence of the petitioner herein in the criminal case. He would therefore submit that the rejection of the petitioner's request to keep the disciplinary action in abeyance is illegal and in fact, is contrary to various decisions of the Hon'ble Supreme Court of India and this Court.

4. Although the Hon'ble Supreme Court and this Court have held that in certain situation that it is not desirable to proceed with the departmental action when the criminal case is initiated and pending, but the principles as laid down by the Courts cannot be applied across the board in all situation. It all depends on the facts and circumstances of each case. In this case, the criminal case is just registered and not even a charge sheet has been filed. Therefore, the Department cannot endlessly wait for the completion of the criminal case initiated against the petitioner.

5. The Courts in fact have also held that pending criminal case, there is no bar to proceed with the departmental action. The standard of proof in the criminal proceeding and the departmental proceeding is completely different and it is always open to the Department to establish the departmental charges against the petitioner in the enquiry, completely independent of what would happen in the criminal case. In any event, the charge sheet itself has not been filed in the criminal case and therefore, it is too early for the petitioner to seek a request to keep the departmental proceedings in abeyance. Ultimately, it



depends on what the charges are going to be framed against the petitioner in criminal case and the documents and the witnesses to be relied on in the criminal case.

6. In view of the above, this Court is unable to appreciate as to how this Court could be called upon to interfere with the departmental proceeding when nothing has crystallised as yet in the criminal case. Therefore, the Department hands are not tied to proceed with its action against the petitioner on the basis of departmental charges.

7. Therefore, this Court is of the view that the writ petition is devoid of merits and substance and liable to be dismissed. Hence, the Writ Petition is dismissed at the admission stage itself. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (Insp. Cell)

//True Copy//

Sub Assistant Registrar

Sgl

To

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Zamalia, Chennai - 600 012.

3. The Joint Director of Collegiate Education,
Vellore Region, Vellore.

4. The Government Advocate
High Court, Madras.

+1cc to Mr. M. Muthappan, Advocate, S.R.No. 55061

W.P.No. 18541 of 2019

RSV (CO)

RRS (21/08/2019)