

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.11.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.31067 of 2019

and

W.M.P.Nos. 31180 & 31181 of 2019

V.Venkatesan

..Petitioner

vs

1. The State of Tamil Nadu,  
Rep. by its Principal Secretary to Government,  
School Education Department,  
Secretariat, Fort St. George,  
Chennai-600 009
2. The Director of Elementary Education,  
DPI Campus, College Road,  
Chennai-600 006
3. The Director,  
State Council for Education Research and Training,  
DPI Campus, College Road,  
Chennai-600 006
4. The Chief Educational Officer,  
Krishnagiri District,  
Krishnagiri.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue an appropriate order or direction or Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 3<sup>rd</sup> respondent in Na.Ka.No.5767/PCSCERT/2019 dated 18.10.2019 and to quash the same and consequently directing the 3<sup>rd</sup> respondent to take appropriate decision on the Appeal petition submitted by the petitioner dated 06.08.2018 on merits and in accordance with law within a time frame to be fixed by this Court.

|                 |   |                            |
|-----------------|---|----------------------------|
| For Petitioner  | : | Mr. G.Sankaran             |
| For Respondents | : | Mr. C.Munusamy             |
|                 |   | Special Government Pleader |

## O R D E R

The petitioner filed this Writ Petition seeking quashment of the impugned proceedings issued by the 3<sup>rd</sup> respondent in Na.Ka.No.5767/PCSCERT/2019 dated 18.10.2019 and consequently to direct 3<sup>rd</sup> respondent to take appropriate decision on the Appeal petition submitted by the petitioner dated 06.08.2018.

2. The case of the petitioner is that the petitioner was initially appointed as Secondary Grade Teacher in Elementary Education in 1988. Thereafter, he was promoted to the post of Middle School Headmaster in the year 1998. He was then transferred and posted as Assistant Elementary Educational Officer (AEEO) in the year 2000. As per G.O.Ms. No.101 dated 18.05.2018, the post of AEEO has been re-designated as Block Educational Officer (BEO). Thereafter, he was posted as BEO in Thally Union, Krishnagiri District on 01.06.2018. While working so, certain anonymous complaints were made against the petitioner and thereafter a notice was issued by the District Elementary Educational Officer, Krishnagiri on 30.12.2010 to appear before the Vigilance and Anti Corruption Department, Krishnagiri on the allegation of possession of properties disproportionate to his known source of income. The petitioner was issued with notice dated 10.02.2014 by referring to certain properties purchased in the name of his wife and properties gifted by his father-in-law in favour of his wife and car purchased by petitioner's wife. Even the statement annexed to the notice contains double entry with reference to the car purchased. For that the petitioner submitted a detailed explanation.

3. Consequently, the second respondent issued a charge memo dated 03.11.2015 stating that the petitioner is in possession of disproportionate assets to the tune of Rs.5,69,382/- and purchase of movable and immovable assets in the name of his wife which include gifting of properties by his father-in-law for the period from 01.01.2002 to 30.06.2008. The petitioner also submitted a detailed explanation. Thereafter, the fourth respondent issued an order dated 24.07.2018 imposing punishment of stoppage of increment for five years with cumulative effect, which remains to be a major penalty having serious cascading effects in the salary benefits including pensionary benefits.

4. Aggrieved by the said penalty, on 06.08.2018, the petitioner filed an appeal against the order of the fourth respondent dated 24.07.2018. Subsequently, the first respondent on entertaining the appeal petition, issued a notice to the petitioner dated 01.04.2019 calling upon the petitioner to offer

explanation as to why the punishment of stoppage of increment of five years with the cumulative effect cannot be enhanced to dismissal from service on the premise that he was imposed with minor penalty under Rule 8 of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Aggrieved by the same, the petitioner filed a Writ Petition before this Court and then culminated into the order passed in the Writ Appeal in W.A.No.1941 of 2019 dated 25.06.2019. Pursuant to the order passed by this Court, show cause notice dated 01.04.2019 issued by second respondent was withdrawn and it was forwarded to third respondent for further action. As per the letter issued by DV & AC dated 29.07.2019, the Minutes of the review meeting has already been forwarded to School Education Department, Secretariat, Chennai, for taking necessary action and to inform that necessary action has been initiated by the School Education Department based on the Minutes of the review meeting and hence, a copy of the Minutes of the review meeting would be furnished to the petitioner on finalization of the said case. Thereafter, the petitioner filed W.P.No.29110 of 2019 wherein, this Court passed final order dated 21.10.2019 observing that the apprehension of the petitioner is unsustainable since it is internal communication between Disciplinary Authority and the Department of Vigilance and Anti Corruption. If any decision taken pursuant to the Department of Vigilance and Anti Corruption, it is open to the petitioner to file appropriate petitions. Thereafter, the proceedings impugned in the present Writ Petition have been passed by the third respondent dated 18.10.2019.

5. Mr.G.Shankaran, learned counsel for the petitioner submitted that second proviso to Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules makes it clear that the appellate authority shall give reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit. The learned counsel pointed out that in the present case, already the Disciplinary Authority imposed a punishment of stoppage of increment for a period of 5 years with cumulative effect and that itself is a major punishment and the impugned proceedings calling for explanation from the petitioner as to why major punishment of dismissal from service cannot be imposed against him, is unsustainable and liable to be set aside.

6.The learned counsel for the petitioner further submitted that the impugned show cause notice was issued by the third respondent clearly indicating as to why appropriate punishment should not be imposed pursuant to the nature of charges without reference to the specific penalty as envisaged in Rule 23. He would also submit that the third respondent without considering the fact that after explanation submitted by the petitioner, the

Vigilance and Anti Corruption Department has referred the matter to the Department to take Disciplinary action. Therefore, the statement given during the preliminary enquiry conducted by the Vigilance and Anti Corruption Department cannot be based for issuing show cause notice by the third respondent and the same is unsustainable.

7. On perusal of the impugned proceedings dated 18.10.2016, it would reveal that the Appellate Authority has proposed to impose the impugned punishment since according to the Appellate Authority the punishment imposed by the Disciplinary Authority imposing punishment of stoppage of increment for five years is minor one. The learned special Government Pleader submitted that though the criminal case which was registered by the Department of Vigilance and Anti Corruption against the petitioner was closed, however, the Department of Vigilance and Anti Corruption arrived the conclusion and no criminal case was against the petitioner. The Vigilance Commission suggested the Disciplinary Authority to take departmental action against petitioner. It is an internal communication between the Disciplinary Authority and the Department of Vigilance and Anti Corruption and consequently, the appellate Authority and the third respondent had decided to impose the major punishment of dismissal from service only in accordance with law, which cannot be interfered with.

8. In the present case already the second respondent inflicted major penalty as against the petitioner by imposing punishment of stoppage of increment for five years with cumulative effect, against which the petitioner filed W.P.No.1432 of 2019 before this Court and this Court vide order dated 16.05.2019 while disposing of the said Writ Petition, granted liberty to the petitioner to raise all the defence before the authority concerned.

9. According, to the learned counsel for the petitioner, the impugned order has been passed on the erroneous premise that the punishment already imposed by the Disciplinary authority is a minor one and it requires to be enhanced, which cannot be sustained since according to him, the imposition of the punishment by the disciplinary authority of stoppage of increment for a period of five years is itself a major punishment and is not a minor punishment which attracts major penalty and consequently, the impugned order cannot stand scrutiny of the Court. However, it is pertinent to note that in the order itself, the Appellate Authority has clearly stated that within a period of 15 days from the date of receipt of the impugned order, an explanation can be given. Therefore, the petitioner is granted time till 15.06.2019 to give further representation to the impugned order. In his explanation, the

petitioner can very well canvass his defence that the earlier punishment imposed regarding stoppage of increment for five years with cumulative effect is itself a major punishment and that the observation by the Appellate Authority that it is a minor punishment is not in consonance with the Rules. When such a representation is made, before imposing any further major punishment, there is an onus cast upon the Appellate Authority to answer this aspect as to why the punishment imposed by the Disciplinary Authority could not be set aside and impose a major penalty of dismissal from service when already a major punishment has been imposed against the petitioner.

10. The main contention raised by the learned counsel for the petitioner that the punishment already imposed by the Disciplinary Authority is the major one and it does not require to be enhanced as proposed by the Appellate Authority is concerned, this Court is of the considered view that it is prerogative of the Appellate Authority to decide the issue of punishment while dealing with the Appeal in accordance with law and subject to its satisfaction in regard to the imposing of punishment proportionate to irregularities said to have been committed by the petitioner and proved against him while assessing the punishment imposed by the Disciplinary Authority. These are all matters in fact, are within realm of the Appellate Authority and even before deciding and imposing the major penalty, it is not appropriate for this Court to interfere at the stage of show cause notice itself. In fact in the impugned proceedings the petitioner was given 15 days time to give his explanation and subject to his explanation only, the Appellate Authority would pass orders thereafter. However, even before giving explanation as called for in the impugned proceedings, the petitioner has rushed to this Court, seeking interference of this Court by way of Writ of Certiorari of Mandamus which is in anticipatory nature expecting that as if the Appellate Authority is certainly going to impose punishment of dismissal from service. In fact, the petitioner has been given an opportunity to put forth his case by raising all the contentions which were canvassed before this Court including the one that he has already been imposed with major penalty by ordering stoppage of increment for five years with cumulative effect and that he can also defend that the assets possessed by him were proportionate to his known source of income through his explanation. Therefore, at this stage this Court is reluctant to interfere with the impugned proceedings.

11. In the present case, the appellate authority/3<sup>rd</sup> respondent issued a show cause notice by impugned proceedings dated 18.10.2019 calling upon the petitioner to show cause as to why a major punishment of dismissal from service should not be imposed on him since it was of the view that the punishment

already imposed by the Disciplinary Authority is a minor one and not proportionate to the proved charges against the petitioner. Therefore, it is incumbent upon the petitioner to respond to the said show cause notice and establish contrary to the proved charges by offering his explanation and based upon which only, the appellate authority can take a decision. Therefore, the appellate authority which is a decision maker in the matter of imposing punishment and before taking any decision by it, is not appropriate for this Court to interfere with the decision-making process of the appellate authority and usurp its jurisdiction. In this regard, it is worthwhile to refer to a decision of the Hon'ble Supreme Court reported in reported in 2004 (3) SCC 440 (Special Director v. Mohd. Ghulam Ghouse), wherein, in paragraph 5, it has been held as follows:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

Therefore, intervention of this Court at the stage of show cause notice and even before taking a decision by the appellate authority would amount to interfering with the jurisdiction of the appellate authority and the Writ Petition itself is a premature and certainly cannot be entertained.

12. For the foregoing reasons, the Writ Petition fails and the same is dismissed. No costs. However, since the time

granted by the appellate authority to the petitioner to offer his explanation has lapsed, the petitioner is directed to give explanation/representation within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to Government,  
School Education Department,  
Secretariat, Fort St. George,  
Chennai-600 009
2. The Director of Elementary Education,  
DPI Campus, College Road,  
Chennai-600 006
3. The Director,  
State Council for Education Research and Training,  
DPI Campus, College Road,  
Chennai-600 006
4. The Chief Educational Officer,  
Krishnagiri District,  
Krishnagiri.

+1 CC to The Govt. Pleader sr 92482.

सत्यमेव जयते

W.P.No.31067 of 2019  
and

W.M.P.Nos. 31180 & 31181 of 2019

EV(CO)  
SP(15/11/2019)

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