

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 18.01.2019

CORAM
THE HONOURABLE MR.JUSTICE T. RAJA

W.P. No.33457 of 2017 and W.M.P.
Nos.36947 of 2017 & 2991 of 2018

Sweetey Jeya Mary

... Petitioner

-vs-

1.The Director,
Directorate of School Education,
D.P.I. Campus, College Road, Chennai-6.

2.The Chief Educational Officer,
Panagal Building, Saidapet, Chennai-15.

3.The District Educational Officer,
Chennai North, Chennai-8.

4.The Secretary / Correspondent,
Gnanodhaya Girls High School,
No.165, Melpatti Ponnappan Street,
Vyasarpadi, Chennai-39.

5.The Enquiry Officer,
Dr.A.Sahib Ali,
Assistant Educational Officer,
No.9, First Cross Street,
Seethamma Extension,
Teynampet, Chennai-39.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records the impugned dismissal order dated 17.11.2017 on the file of the 4th respondent and quash the same and consequently direct the respondents to reinstate the petitioner with back wages and other benefits.

For Petitioner : Mr.M.A.R.Pragash

For Respondents: Mr.P.Raja,
Government Advocate
for R1 to R3
Mr.L.Chandra Kumar
for Mr.R.Saravana Kumar for R4
No appearance for R5

ORDER

The petitioner has filed the writ petition questioning the impugned dismissal order dated 17.11.2017 passed by the fourth respondent and seeking a direction to the respondents to re-instate her with back wages and other benefits.

2.The learned counsel appearing for the petitioner would submit that the petitioner, having completed M.Phil. in Tamil Nadu Physical Education and Sports university, Chennai in the year 2008, joined the Gnanodhaya Girls High School, Vyasarpadi, Chennai-39, the fourth respondent school viz., as Physical Education Teacher on 25.03.2014 and she has been working in the said school for the past 3½ years with unblemished records. Her service as a physical education teacher was highly appreciated by the management. While so, a direction was issued to the petitioner by the fourth respondent fixing the reporting time in the morning at 8.15 a.m. and departure time at 4.30 p.m. in the evening. According to the learned counsel for the petitioner, the petitioner used to work from morning 8.00 a.m. to evening 5.00 p.m. without any complaint. However, the fourth respondent has the habit of obtaining signed undated resignation letter from the teachers at the time of commencement of academic year and hence, the petitioner signed in the said letter for the past three years. After coming to know the fact that the fourth respondent has been used to keep the undated resignation letter for threatening the teachers, the petitioner did not sign the undated resignation. While so, in the month of June 2017, the fourth respondent insisted the petitioner to sign on the blank paper to continue her service as a Teacher in the fourth respondent school, but she refused to sign on the undated resignation letter on 06.06.2017.

Learned counsel appearing for the petitioner would further submit that taking note of the above refusal, the fourth respondent did not allow the petitioner to sign in the attendance register on 07.06.2017. Immediately, she approached the third respondent and gave a representation about the incident. As the third respondent did not respond properly, on 08.06.2017, she approached the Joint Director, who informed that he would take due action. In the meanwhile, the petitioner received four memos. The reasons given in the memo are that the petitioner committed error in entering the report card, she has treated the students harshly, she came late to school and she was absent from duty without prior permission. According to the learned counsel for the petitioner, there is no specific date or year or time in the memo and that the CCTV camera in the headmistress room would alone be sufficient to prove that she came to school on time.

Learned counsel appearing for the petitioner would further submit that despite the petitioner giving a reply to the fourth respondent on 20.06.2017 stating the above facts and to drop the unwanted proceedings, the fourth respondent passed the impugned order of suspension on 03.07.2017. However, the fourth respondent did not pay any subsistence allowance to the petitioner. While so, the impugned order dated 17.11.2017 has been passed by the fourth respondent dismissing the petitioner from service, which is motivated and the same is passed against the principles of natural justice and therefore, the same is liable to be set aside.

In this regard, referring to a judgment of the Hon'ble Supreme Court reported in 2018 (2) CTC 331 in the case of UCO Bank and others Vs. Rajendra Shankar Shukla, learned counsel for the petitioner would submit that the denial of allowance has prevented the delinquent from effectively participating in the disciplinary enquiry and that the employee is entitled to subsistence allowance during the enquiry pending against her and if the employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental enquiry. As the respondents, till date, have not paid the subsistence allowance, the petitioner is not able to meet out even the expenses to reach the enquiry and therefore, the impugned order is liable to be set aside. Secondly, after issuance of the memos, no enquiry report has been furnished to the petitioner.

Taking support from the judgment of the Hon'ble Supreme Court reported in 1993 (4) SCC 727 in the case of Managing Director and others vs. B. Karunakar and others, learned counsel for the petitioner would submit that the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at a conclusion in regard to the guilt or innocence of the employee with respect to the charges levelled against her and that right is a part of the employee's right to defend herself against the charges levelled against her and denial of the enquiry officer's report before the disciplinary authority takes a decision on the charges, is a denial of reasonable opportunity to the employee to prove her innocence and is a breach of the principles of natural justice. Therefore, it is incumbent on the part of the fourth respondent to furnish a copy of the report and that there is no valid allegation against the petitioner to subject her in a disciplinary proceeding and on failure to furnish a copy of the report, passing an order of dismissal from service is liable to be set aside as arbitrary and unreasonable. Hence, he prays for allowing the writ petition.

3. Reiterating the averments made in the counter affidavit, learned Government Advocate appearing for respondents 1 to 3 and

the learned Standing Counsel appearing for the fourth respondent would submit that the petitioner had the habit of passing sarcastic comments about the Headmistress and other staff in the presence of students and therefore, she was warned by the Headmistress. Thereafter, she was issued with three memos dated 07.06.2017, namely (i) in the report card of the student, the mark secured by a student was wrongly mentioned and the petitioner was requested to correct the marks, but she did not do so and therefore, the parent of the student lodged a complaint for corporal punishment (ii) treating the students harshly during physical education classes by abusing words and beatings and hence, one of the parents applied for transfer certificate and (iii) coming late to school during the last five months in the academic year 2016-17.

Adding further they would submit that since the petitioner was unauthorisedly absent from 07.06.2017, she was issued with another memo dated 19.06.2017 and advised to submit explanation. The petitioner did not submit any explanation to the three memos which tantamount to admitting the misconduct. Though the petitioner did not submit any reply to the memos, she made serious and derogatory allegations against the management and thereafter, an enquiry was contemplated for the misconduct, including the corporal punishment of a student and pending such enquiry, the petitioner was placed under suspension.

In reply to the contention made by the learned counsel for the petitioner with regard to the non payment of the subsistence allowance, they would submit that the petitioner is bound to make an application demanding the subsistence allowance explaining the fact that she was not gainfully employed, but the same has not been submitted and as a result, the fourth respondent has not come forward to pay the subsistence allowance.

4.Be that as it may. A perusal of the dismissal order dated 17.11.2017 shows that no enquiry was properly held. Although the petitioner was issued with three charge memos alleging various allegations, it is not known how the order of dismissal can be passed without furnishing a copy of the enquiry report. The counter affidavit filed by the fourth respondent also shows that the petitioner was not furnished with a copy of the enquiry report.

5.It is pertinent to extract para 61 of the above said judgment (Managing Director and others vs. B.Karunakar and others) as under:

'It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that the principles of natural justice are integral part of

Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311 (2) of the Constitution, but also the principles of natural justice. The contention on behalf of the Government / management that the report is not evidence adduced during such inquiry envisaged under proviso to Article 311(2) is also devoid of substance. It is settled law that the Evidence Act has no application to the inquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence' in the proviso to Article 311(2) is the totality of the material collected during the inquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both.'

6. It is an admitted fact that the respondents have not furnished a copy of the report of the enquiry officer, as held by the Apex Court in the case stated supra. The non-furnishing of a copy of the report of the enquiry officer would amount to denial of principles of natural justice. Moreover, the petitioner was also dismissed from service by the impugned order, without holding any enquiry, therefore, such an action of the respondent would vitiate the basic principles of no one should be condemned before being heard. In the light of the above, the impugned order is liable to go. Subsequently, from the date of placing the petitioner under suspension, namely 03.07.2017, till date the respondents have not come forward to pay the subsistence allowance. In this context, it is also relevant to extract the ratio laid down by the Hon'ble Supreme Court in the case stated supra (UCO Bank and others Vs. Rajendra Shankar Shukla)

"15. An Employee is entitled to Subsistence Allowance during an inquiry pending against him or her but if that Employee is starved of finances by

zero payment, it would be unreasonable to expect the Employee to meaningfully participate in a Departmental Inquiry. Access to justice is a valuable right available to every person, even to a Criminal, and indeed free Legal Representation is provided even to a Criminal. In the case of a Departmental Inquiry, the delinquent is at best guilty of a misconduct by that is no ground to deny access to Pension (wherever applicable) or Subsistence Allowance (wherever applicable). As far as Shukla is concerned he was denied his pension as well as Subsistence Allowance which prevented him from effectively participating in the Disciplinary Inquiry. On this ground as well, the proceedings against Shukla are vitiated."

7.The above ratio also clearly indicates that non-payment of subsistence allowance to an employee is unreasonable and unjustified, because, a starved employee would not be in a position to participate in the enquiry. Therefore, in the light of the above settled legal position, the impugned order is set aside. The respondents are directed to re-instate the petitioner with all back wages within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. Consequently, connected W.M.Ps are closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vga

To

1.The Director,
Directorate of School Education,
D.P.I. Campus, College Road, Chennai-6.

2.The Chief Educational Officer,
Panagal Building, Saidapet, Chennai-15.

3.The District Educational Officer,
Chennai North, Chennai-8.

+1cc to Mr.A.R.Pragash, Advocate, S.R.No.4080

+1cc to Mr.R.Saravanakumar, Advocate, S.R.No.3793

W.P. No.33457 of 2017 and
W.M.P.Nos.36947 of 2017 & 2991 of 2018

rrs 19/02/2019