

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.32154 of 2019 and
W.M.P.Nos.32442 & 32445 of 2019

S.Vasudevan

... Petitioner

Vs.

1.The Secretary,
Jaigopal Garodia National Higher Secondary School,
East Tambaram, Chennai - 600 059

2.Girija Seshadri

3.R.Vijaya

4.The Chief Educational Officer,
Kancheepuram District, Kancheepuram

5.The District Educational Officer,
St.Thomas Mount at Chrompet,
Chennai - 600 044

.... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of suspension issued by the first respondent in the proceedings No.D1/2019-20 dated 20.09.2019 and quash the same and consequently to direct the fourth and fifth respondents to conduct a free and fair enquiry on the issues stated by the first respondent in the impugned suspension order, since the second respondent is already personally prejudiced against the petitioner.

For Petitioner : Mr.T.Ranganathan

For Respondents : M/s.P.Kavitha,
Government Advocate (Edn.)

O R D E R

By consent, the writ petition is taken up for final disposal at the admission stage itself.

2.The case of the petitioner is that the petitioner is working as P.G.Assistant in Geography subject in the first respondent school from 1999. He is the senior most PG Assistant in the school having 13 years of B.T.Assistant service and seven years of PG Assistant service. While being so, the management appointed one, R.Vijaya, who was appointed as PG Assistant, thereby she is possessing only 15 years of service. Aggrieved by the objections raised by the petitioner, the said R.Vijaya in connivance with the second respondent created evidences and placed the petitioner under suspension on 20.09.2019, which is against the provisions of law. Under Section 23(3) (a) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, a preliminary enquiry should be conducted before placing the petitioner under suspension. However without following the procedures, the petitioner was placed under suspension. Challenging the suspension order dated 20.09.2019, the present petition has been filed.

3.Heard both sides.

4.The learned counsel appearing for the petitioner would submit that the School Committee is the competent authority to take disciplinary action against the erred teacher. In the present case, the School Committee passed the suspension order without conducting enquiry and further in a partial manner, the School Committee passed the impugned order and with a malafide intention, the impugned suspension order was issued.

5. On perusal of the impugned suspension order, the petitioner misbehaved with 11th std girl and based on the complaint, suspension order was issued under Section 22(3)(a) of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, on 20.09.2019 and on the same day, the suspension order was implemented and thereafter in order to conduct enquiry, charge memo has also been issued on 22.10.2019 alleging four charges including the above said charge. It is not appropriate to discuss the charges elaborately on merits and the disciplinary authority has to consider whether the charges levelled against the petitioner are correct or not. As this Court cannot render any opinion on the same, challenging the impugned order at the initial stage is not maintainable. To that effect, the following decisions are relied upon.

6.The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri) has held in paragraph 7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension

is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

7.Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

Further, in paragraph 11 of the judgment, it was observed as follows:

"11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which

would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence...."

8. Therefore, the writ petition challenging the suspension order cannot be entertained and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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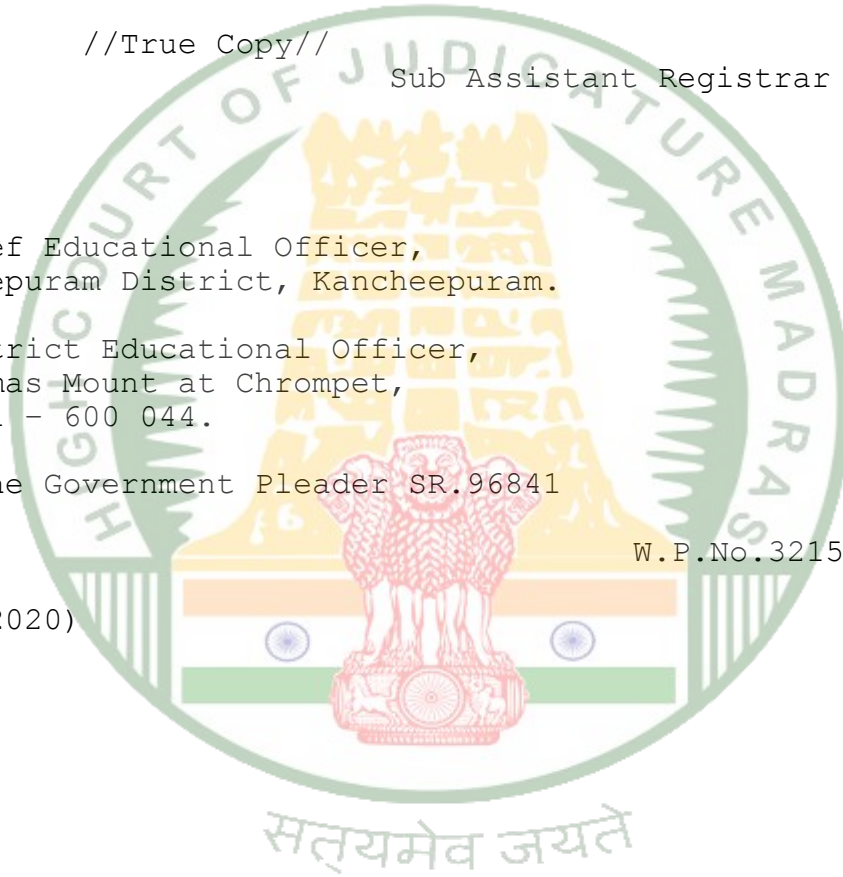
1. The Chief Educational Officer,
Kancheepuram District, Kancheepuram.

2. The District Educational Officer,
St. Thomas Mount at Chrompet,
Chennai - 600 044.

+1cc to the Government Pleader SR.96841

W.P.No.32154 of 2019

GMR (CO)
CB (08/01/2020)



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