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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2019

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

WP No.35069 of 2019
and
WMP.Nos.35858 & 35860 of 2019

R.Periyasamy

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Erode District,
Erode.

3.The District Educational Officer,
Erode Education District,
Erode.

4.The Secretary,
Kasthuriba Gram High School,
Kasthuriba Gramam, Archalur Via,
Erode District.

5.R.Balamurugan

... Respondents

PRAYER: Writ petition has been filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings No. 75/2019-20 dated 03.12.2019 on the file of the fourth respondent and to quash the same and consequently direct the fourth respondent to pay a salary to the petitioner towards subsistence allowance beyond the statutory period of suspension from February 2019 onwards in lieu of re-instatement and to furnish with the documents requested by the petitioner as per the representation dated 09.11.2019 and 29.11.2019 in order to defend the charge memo issued by the fourth respondent dated 15.09.2019 immediately and consequently to conduct the departmental enquiry in the manner known to law.



For Petitioner : Mr.G.Sankaran

For Respondents: Mrs.V.Annalakshmi

Government Advocate for R1 to R3

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O R D E R

This writ petition has been filed challenging the impugned letter issued by the fourth respondent dated 03.12.2019 and for a direction to the fourth respondent to pay the subsistence allowance of the petitioner and furnish him with all the documents in order to effectively participate in the disciplinary proceedings.

2.The petitioner was issued with charge memo setting out some allegations against him. The petitioner approached this Court and challenged the charge memo proceedings on the ground that the petitioner was not furnished with all the documents and that the enquiry officer is not giving him sufficient opportunity to defend himself in the case. This Court passed an order dated 13.02.2019 in W.P.No.4194 of 2019, finally disposing of the Writ Petition. The relevant portion of the order is extracted hereunder:

"3.The learned counsel for the writ petitioner states that the documents sought for by the writ petitioner also had not been furnished. The enquiry officer is also not granting time to defend the case. Thus, he is afraid that he may not get fair opportunity of defending his case before the enquiry proceedings.

4.This Court is of the considered opinion that the delinquent officials must be provided with an opportunity to defend their case in accordance with law. The principles of natural Justice is also to be followed, the enquiry officer at the time of conducting of enquiry, must grant time to the delinquent officials to submit their defence statements to peruse all the documents and to produce their witnesses, if any, for the purpose of defending their case. The job of the enquiry officer is quasi-judicial in nature and therefore, they have to conduct the proceedings impartially and by providing reasonable opportunity to the delinquent officials to defend their case.



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5.The procedures to be followed by the enquiry officer are that, on receipt of the files from the Management in respect of the charges against the delinquent officials, the enquiry officer shall fix a date for enquiry. Thereafter, the enquiry officer must grant permission to peruse all the relevant files, which all are relied upon by the Management for the purpose of establishing the charges. If at all, the writ petitioner ask for any irrelevant documents, the same may be rejected by the enquiry officer as well as by the disciplinary authority. Therefore, it is made clear that the delinquent officials, should seek only the relevant documents, which all are relied upon by the Management for the purpose of establishing the charges against the delinquent officials.

6.In the present case on hand, the learned counsel for the writ petitioner states that the enquiry officer is an Advocate and therefore, the writ petitioner must be permitted to engage Lawyer for the purpose of defending his case. It is a settled principle that if the enquiry officer is a law graduate, then the delinquent officials is eligible to avail the services of a lawyer to defend his case. Accordingly, the petitioner may be granted with the permission to engage lawyer to defend his case before the enquiry officer. However, by engaging the lawyer, the writ petitioner cannot resort to seek unnecessary adjournments. Unnecessary adjournments must ensure that the lawyer appearing on behalf of the writ petitioner seeks unnecessary adjournments and in the event of any unnecessary adjournments, an enquiry officer has got a right to deny such adjournments and proceed with the enquiry in the manner known to law. While granting permission to the writ petitioner to engage a lawyer, it is needless to state that the lawyer, who is engaged by the writ petitioner also must ensure that he acts responsibly and cooperate for the early disposal of the enquiry by the enquiry officer by following the procedures as contemplated.

7.The enquiry officer must provide opportunity to the delinquent to defend his case in the manner known to law. The delinquent officials may be provided to submit his documents to examine his



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witnesses and to defend his case by submitting his report and arguments or otherwise. Thus, proceedings cannot be denied to the delinquent, so also, the delinquent should cooperative for the early disposal of the enquiry by the enquiry officer. In the event of non-cooperation either by the lawyer or by the delinquent, the enquiry officer shall record the same in his proceedings itself."

3. It is clear from the above order that there is already a direction given by this Court to the enquiry officer to provide opportunity to the petitioner to defend his case and to provide with all the documents that are relied upon by the management in order to enable the petitioner to examine the witnesses and defend himself effectively. This Court also permitted the petitioner to be represented by a lawyer during the enquiry.

4. The petitioner again approached this Court by filling WP.No.29565 of 2019 on the ground that the petitioner is not being paid with subsistence allowance from February 2019 onwards. This Court again considered the entire case and directed the fourth respondent to consider the representation made by the petitioner and pass appropriate orders. Pursuant to the order passed by this Court, it is alleged that the fourth respondent School has denied the request made by the petitioner seeking for subsistence allowance. A letter dated 03.12.2019 has been given by the fourth respondent school to the petitioner stating that the petitioner is unnecessarily dragging on the proceedings and that the petitioner was paid the subsistence allowance for four months from 22.10.2018 to 22.02.2019 and thereafter, it was decided not to pay the subsistence allowance. By the impugned letter it was made clear that the petitioner must cooperate for the enquiry and the same must be completed within 31.01.2020, failing which no subsistence allowance will be paid to the petitioner.

5. Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that the petitioner is forced to knock the doors of this Court repeatedly, since the petitioner has not been treated in a fair manner and the petitioner has not been provided with all the documents and he has not been paid with the subsistence allowance. The learned counsel submitted that the petitioner is being kept under suspension for a prolonged period and the petitioner cannot be kept under suspension beyond the period of four months and that the petitioner is also entitled for full salary. The learned counsel submitted that the petitioner is not hesitating to participate in the enquiry and they only grievance that has been expressed is that the



petitioner has not been provided with all the documents relied upon by the management and the petitioner has not been paid the subsistence allowance.

6. The right of the petitioner has been sufficiently safeguarded by this Court by virtue of the earlier direction given by this Court, which has been referred supra. The petitioner cannot be permitted to approach this Court repeatedly during every stage of the proceedings and virtually this is the third time the petitioner approached this Court, pending the enquiry. Enquiry, assuming that there are some infirmities in the conduct of the enquiry, the same cannot be challenged before this Court at every stage. Ultimately, if in case, it ends up adversely against the petitioner, at that point of time the petitioner can take all the grounds and challenge the same. This Court exercising its jurisdiction under Article 226 of Constitution of India, cannot again and again poke its nose at every stage of the enquiry on the ground of the alleged illegality.

7. This Court is not inclined to entertain this Writ Petition. This Court had already directed the fourth respondent to provide with all the documents to the petitioner in order to enable the petitioner to effectively defend himself in the proceedings. Therefore, it goes without saying that every material that is relied upon by the fourth respondent must be given to the petitioner and that is the minimum requirement to fulfill the Fundamental compliance of the principles of natural justice. The enquiry will have to be completed within a time frame and it cannot be kept pending for such a long time and in this case, the enquiry has been pending for almost a year.

8. The fourth respondent should specifically deal with the issue as to whether the petitioner is entitled for payment of subsistence allowance during the period of suspension. It cannot be denied just because the fourth respondent do not want to pay it. The petitioner has been kept under suspension for almost a year and therefore, the petitioner has to eke his livelihood only from the subsistence allowance. It is a settled law that non payment of subsistence allowance itself is a ground for interfering with the proceedings against the delinquent employees, since it involves his sustenance. Therefore, the fourth respondent cannot reject the claim for payment of subsistence allowance without any reason. The fourth respondent is directed to pay the subsistence allowance to the petitioner in accordance with his entitlement.

9. This Writ Petition is disposed of accordingly and it is



made clear that the enquiry shall be completed within a period of six weeks from the date of receipt of a copy of this order and final order shall be passed within a period of four weeks thereafter. No costs. Consequently connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

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To

1.The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.

2.The Chief Educational Officer,
Erode District,
Erode.

3.The District Educational Officer,
Erode Education District,
Erode.

4.The Secretary,
Kasthuriba Gram High School,
Kasthuriba Gramam, Archalur Via,
Erode District.

+1 cc to M/s.G.Sankaran Advocate sr106092

+1 cc to the Government Pleader High court sr106256

WP No.35069 of 2019

and

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mp(co)
aa10/01/2020