

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33342 of 2018

And

W.M.P.Nos.38696 and 38697 of 2018

Sebastiammal

.. Petitioner

vs

1. The District Collector,
Collector Office,
Udhagamandalam.

2. The Principal,
Breeks All India Secondary Schools,
Udhagamandalam.

3. The Chief Education Officer,
Breeks All India Secondary Schools,
Udhagamandalam.

4. The Administrative officer,
Breeks All India Secondary School,
Udhagamandalam.

.. 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 of the fourth respondent in proceeding Na.Ka.No.1/ 21208/2018 dated 24.10.2018, quash the same and further direct the fourth respondent to reinstate the petitioner in the post of Sub-Staff (Aaya) at fourth respondent's primary school by releasing pending salary dues that not paid from 26.10.2018 during petitioner's suspension.

For Petitioner

:Mr.J.Arokhiaraj

For Respondent-1

:Mr.A.N.Thambidurai,
Special Government Pleader.

For Respondent-3

:Mr.A.Raja Perumal,
Additional Government Pleader.

O R D E R

The order of suspension dated 24.10.2018, issued by the fourth respondent, is under challenge in the present writ petition.

2. The writ petitioner was working as Aayah in Breeks All India Secondary School, Udhagamandalam.

3. On account of certain complaints submitted by the parents of the children stating that the writ petitioner was not taking care of their children during the Noon Meal Session and further, the writ petitioner has disobeyed the orders of the superiors. In this regard, based on the complaint, the timings of the work were modified and a memo also has been issued to the writ petitioner to submit her explanations.

4. The writ petitioner, instead of submitting her explanations, requested certain documents and attempted to prolong and protract the issue. Thereafter, the authorities found it difficult to control the activities of the writ petitioner and transferred her from Breeks Primary School to Breeks All India Secondary School.

5. The writ petitioner has not joined in the transferred place. The writ petitioner was continuously committing the misconduct of insubordination and questioning the administrative decision taken by the competent authorities. Thus, the District Collector, Udhagamandalam instituted the departmental disciplinary proceedings to conduct an enquiry into the allegations of misconduct and insubordination and placed the writ petitioner under suspension. The writ petitioner sent a legal notice through her lawyer on 15.11.2018 to withdraw the order of suspension within 7 days and reinstated her by stating that the suspension is unfair. This Court is of the considered opinion that such a legal notice, sent through the lawyer of the writ petitioner itself, is not in consonance with the service conditions and the rules.

6. When an employee is placed under suspension on account of the initiation of departmental disciplinary proceedings is bound to submit his/her explanations to the competent authority and not by issuing a legal notice through the advocate for revocation of suspension by fixing the time limit of 7 days. Such a legal notice itself is untenable as the employer and employee relationship is the contractual obligation and the writ petitioner, being the public servant, is bound to submit her explanations to the authorities competent for the purpose of conducting an enquiry into the allegations set out against the writ petitioner.

7. The order of suspension was issued in proceedings dated 24.10.2018. Under these circumstances, the respondents are bound to conduct the enquiry at the earliest possible and without causing any undue delay. The Disciplinary Authorities, on initiation of departmental disciplinary proceedings, must ensure that all such proceedings are concluded within the reasonable period of time. Long pendency of the departmental disciplinary proceedings would also cause prejudice to the service rights of the employees.

8. In the present case on hand, the departmental disciplinary proceedings are initiated against the writ petitioner for certain misconducts and for insubordination. Thus the files and the documents are very much available with the respondents and the respondents are bound to proceed with the departmental disciplinary proceedings by affording an opportunity to the writ petitioner and conclude the same as expeditiously as possible.

9. However, the revocation of suspension order, at this juncture, is certainly undesirable. The writ petitioner is under suspension for about 4-1/2 months and therefore, the respondents are bound to conclude the departmental disciplinary proceedings without causing any undue delay.

10. Under these circumstances, the respondents are directed to continue the departmental disciplinary proceedings and conclude the same. The writ petitioner is directed to cooperate for the early disposal of the departmental disciplinary proceedings. If the Enquiry officer as well as the Presenting Officer are not the Law Graduates, then the writ petitioner cannot seek the assistance of a lawyer in the departmental disciplinary proceedings.

11. Only in the event of appointing a Law Graduate as an Enquiry Officer, the writ petitioner would be eligible to seek the assistance of a lawyer for conducting her case in the departmental disciplinary proceedings. In all circumstances, the delinquent employees are entitled to seek the help of a co-employee or retired employee for the purpose of assisting them during the course of enquiry proceedings.

12. This being the principles to be followed, the writ petitioner cannot protract and prolong the departmental disciplinary proceedings and the writ petitioner should cooperate for the early completion of the departmental disciplinary proceedings and in the event of non-cooperation on the part of the writ petitioner, the same shall be recorded by the authorities competent in the proceedings or in the minutes.

13. With the above observations, this Court is not inclined to revoke the order of suspension issued by the fourth respondent against the writ petitioner in proceedings Na.Ka.No.1/21208/2018 dated 24.10.2018. However, the respondents are directed to proceed with the enquiry proceedings, conclude the same and pass orders as expeditiously as possible.

14. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The District Collector,
Collector Office,
Udhagamandalam.
2. The Principal,
Breeks All India Secondary Schools,
Udhagamandalam.
3. The Chief Education Officer,
Breeks All India Secondary Schools,
Udhagamandalam.
4. The Administrative officer,
Breeks All India Secondary School,
Udhagamandalam.

+1 cc to Mr.J.Arokhiaraj, Advocate, S.R.No.31814

+1 cc to the Government Pleader, S.R.No.32730

RK(CO)
SSM(30/04/2019)

W.P.No.33342 of 2018