



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.2839 of 2013

and

M.P. (MD)No.1 of 2013

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... Petitioner

vs.

1.The District Elementary Educational Officer,
District Elementary Educational Office,
Tirunelveli, Tirunelveli District.

2.The Assistant District Elementary
Educational Officer,
Senkottai, Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the first respondent in Na.Ka.No.10717/Aa1/2008, dated 06.07.2012 and quash the same and consequently to direct the first respondent to restore all increment benefits and other monetary benefits forthwith.

For Petitioner : Mr.D.Sasikumar

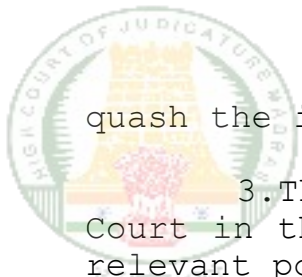
For Respondents : Mr.N.Shanmuga Selvam

Additional Government Pleader

ORDER

This writ petition is filed challenging the impugned order passed by the first respondent in his proceedings dated 06.07.2012 and to direct the first respondent to restore all increment benefits and other monetary benefits to the petitioner.

2.The petitioner was working as a Secondary Grade Teacher in the Government Elementary School, Kilangadu, Tirunelveli District. A departmental proceedings was initiated under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, against the petitioner and he was removed from service by order of the first respondent, dated 22.12.2009. In the writ petition filed by the petitioner in W.P.(MD)No.32 of 2010, the order of removal was set aside and the matter was remitted back to the first respondent for passing fresh order insofar as quantum of punishment is concerned. It was thereafter, the first respondent has passed the impugned order, dated 06.07.2012 and the present writ petition is filed to



quash the impugned order.

3. The charges against the petitioner is considered by this Court in the earlier writ petition in W.P.(MD)No.32 of 2010 and the relevant portion of which, reads as follows:

"6. A perusal of the charge-memo would show that in sum and substance, the petitioner was accused of two acts of misconduct. However, both these acts have been split into a total of nine charges. The charges read as follows:-

- ♦ i) that in violation of G.O.Ms.No.1228, Education Department, dated 30.12.1994, the petitioner joined B.Ed Degree without obtaining prior permission of the District Elementary Educational Officer;
- ♦ ii) that the petitioner sought permission to join the course, after having secured admission to the course without obtaining prior permission, thereby violating Rule 20(1) of the Tamil Nadu Service Conduct Rules;
- ♦ iii) that even while continuing to be a regular student in the College, the petitioner had signed the attendance register on certain dates;
- ♦ iv) that the petitioner had signed the attendance register in the School, after having joined the College;
- ♦ v) that on certain dates, the petitioner had signed the attendance register and took salary;
- ♦ vi) that for May 2008, the petitioner had attended the College, but also took salary from the joining date;
- ♦ vii) that without obtaining relieving order from the Assistant Elementary Educational Officer, the petitioner joined the course in November, 2007;
- ♦ viii) that as per Rule 14 of the Tamil Nadu Leave Rules, the petitioner is entitled only to earned leave and unearned leave on private affairs for a period of six months, but the petitioner joined the course without applying for leave and
- ♦ ix) that after completion of the course of study, the petitioner ought to have obtained prior permission for re-joining duty, but he failed to do so.

7. A careful reading of the above charges would show that all the nine charges can be grouped into three fundamental imputations, namely,

- ♦ (1) that the petitioner joined a regular course of study, without obtaining prior permission;
- ♦ (2) that the petitioner underwent the course of study without obtaining study leave and



- ♦ (3) that during the period when he attended the course of study, the petitioner received the salary from the Government.

8. But, insofar as the first charge is concerned, the petitioner has produced a copy of the order in O.Mu.No.4776/B5/08, dated 17.06.2008. The said order shows that the petitioner was granted permission to undergo the B.Ed course for the Academic Year 2007-2008. The said order was issued by the District Elementary Educational Officer. The said order also contains a condition to the effect that the petitioner can be granted leave to which he is eligible.

9. Inasmuch as the said order dated 17.06.2008, granting permission to the petitioner to undergo the course for the Academic Year 2007-2008, the same naturally amounts to post-facto permission. Therefore, the sting is taken out of the first allegation of misconduct, inasmuch as the second respondent had in fact granted post-facto permission. If the second respondent had refused permission or if he had taken disciplinary action during the said period, then it would have been a different matter.

10. Insofar as the second issue is concerned, it is true that the petitioner had not taken study leave from the respondent. This is certainly a misconduct. The petitioner appears to have applied for small spells of leave then and there and had continued his course of study. This is not permitted by the Rules. Therefore, the finding on the second fundamental imputation of misconduct that the petitioner underwent a regular course of study, in a College, without obtaining study leave, is clearly proved.

11. Insofar as the third charge is concerned, the petitioner has indicated the days on which the School was on leave. He has given a tabulation, matching the days of leave for the School with the days on which he attended the classes in the College. Therefore, to this extent, the third imputation is diluted.

12. On a cumulative consideration of the defence taken by the petitioner and the effect of the post-facto permission granted by the second respondent, it is seen that the punishment of removal from service is disproportionate to the gravity of the misconduct that could be held to be proved. Therefore, I am of the view



that the impugned order is to be set aside and the matter remitted to the respondents for the purpose of re-considering the quantum of penalty."

4.It is only pursuant to the order of remand, the quantum of punishment is reconsidered by the first respondent. The major charge against the petitioner is only on two grounds that the petitioner has joined B.Ed., decree without obtaining prior permission from the first respondent and that therefore, the petitioner secured admission to the course of B.Ed., in violation of Rule 20(1) of Tamil Nadu Government Servants' Conduct Rules, 1973. The second major charge is that the petitioner joined and pursued the course without applying for leave.

5.As regards, the main charge that the petitioner has joined B.Ed decree without obtaining prior permission, the post approval granted to the petitioner was taken as a strong ground by this Court earlier to absolve him from charge. Hence, it is only on the basis of the observation made by this Court that the other charge is proved, the first respondent proceeded to impose the punishment of stoppage of increment for a period of three years with cumulative effect.

6.All other charges were not considered by the first respondent and hence it can be presumed that the petitioner was found guilty of the second charge, that too on the basis of the observation of this Court in the earlier writ petition filed by the petitioner in W.P.(MD)No.32 of 2010. It is in the factual context, this Court would like to examine the contentions of the petitioner and the defence in the counter statement filed by the respondents.

7.It is admitted before this Court that the entire period during which he was undergoing B.Ed., course was regularised. As a matter of fact, no salary was allowed to the petitioner for the period, during which he was undergoing B.Ed., course. In leave application filed by the petitioner, it is stated that reason for applying the leave was for undergoing higher study. Enriching knowledge by undergoing B.Ed., course will be more beneficial to the students and therefore, the Institutions, in which the petitioner was working, may not have any grievance at all. It is not, as if, permission for undergoing higher studies and study leave cannot be granted to the petitioner or that the petitioner is not eligible to get permission, if he applied.

8.From the conduct, the petitioner has not suppressed any fact all these days, even though he had not obtained prior approval for getting admission for higher studies. The petitioner was not paid any salary for the period during which he was on leave, while he was undergoing B.Ed course for the academic year 2007-08. Though study leave was not granted the alternate is by regularising the period by creating the period on other counts, to which the



petitioner is entitled to. It is in these circumstances, merely because, the petitioner had not taken study leave from the respondents, the same cannot be taken as a serious misconduct, when the major charge that the petitioner was doing higher study without getting prior permission is found bad by this Court earlier.

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9.In such circumstances, the misconduct is only negligence. This Court is unable to treat such misconduct as intentional, as it appears that the petitioner was not aware of the requirements at the relevant point of time. In the above circumstances, this Court does not find any charge, as one attracting major punishment. Going by the records, the petitioner has not committed any willful negligence or serious misconduct for imposing a punishment of stoppage of increment for a period of three years with cumulative effect. The impugned order without considering the nature of charge and the attending circumstances cannot be sustained.

10.In view of the above, the writ petition is allowed and the order of punishment is modified as one of stoppage of increment for a period of three years without cumulative effect.

11.The writ petition is allowed and the punishment is modified to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD I)

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Sub Assistant Registrar(CS)

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To

1.The District Elementary Educational Officer,
District Elementary Educational Office,
Tirunelveli, Tirunelveli District.

2.The Assistant District Elementary
Educational Officer,
Senkottai, Tirunelveli District.

+1 CC to M/s.D.SASIKUMAR, Advocate (SR-87360[F] dated 18/09/2019)

+1 CC to M/s.SPL GP (SR-87927[F] dated 19/09/2019)

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