



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 20.06.2019

CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) No.623 of 2019

and

C.M.P. (MD) No.5206 of 2019

Vivekananda Higher Secondary School,
Rep.by its Secretary,
Tirupparaitturai,
Trichy District.
respondent

.. Appellant/3rd

Vs.

1) R.Palani

2)The Chief Educational Officer,
Trichy.

3)The District Educational Officer,
Trichy.

4)Swami Dhivyananda,
Secretary,
Ramakrishna Thapovanam,
Tirupparaiturai, Trichy District.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, against the order dated 23.01.2019 passed by the learned Single Judge made in W.P.(MD)No.16738 of 2012.

Prayer in WP(MD) No. 16738/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorari calling of the 3rd respondent herein in his order dated 23.11.2012 and quash the same and such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Appellant : Mr.T.ANTONY ARUL RAJ

<https://hcservices.ecourts.gov.in/hcservices/> For R2 & R3 : Mr.N.Shanmugaselvam,
Additional Government Pleader

**JUDGMENT**

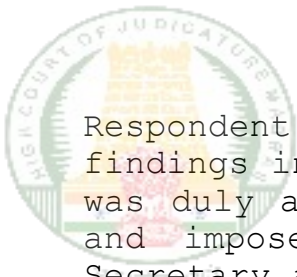
(The Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J**)

This Writ Appeal is filed by the third Respondent in the Writ Petition. By order dated 12. 10. 2018, the Writ Court allowed the Writ Petition filed by the first Respondent herein and thereby quashed the order dated 23.11.2012 on the file of the third Respondent in the Writ Petition.

2.The case of the Appellant is that the Secretary of the School is authorised by the School Committee to conduct the enquiry and impose punishment. According to the Appellant, the School Committee was not satisfied with the explanation submitted by the first Respondent on 24. 9. 2012 and, therefore, decided to initiate disciplinary proceedings against the first Respondent. Therefore, pursuant to a resolution of the School Committee, a charge memo dated 26. 10. 2012 was issued to the first Respondent and the first Respondent was permitted to submit an explanation thereto. It is further stated that the first Respondent submitted an explanation to the charge memo on 5. 11. 2012 and, on consideration thereof, the charges against the first Respondent were proved. Based on the enquiry, the first Respondent was provided a further opportunity to explain as to why he should not be punished. For this purpose, a second show cause notice dated 9. 11. 2012 was issued and the first Respondent submitted an explanation thereto on 10.11.2012. Because the impugned order was issued after considering the explanation submitted by the first Respondent, the Appellant states that the principles of natural justice were not violated and that there is no illegality in the disciplinary proceeding against the first Respondent. Further, the appellant submits that the first respondent has a statutory appeal under the Tamil Nadu Private Schools Regulation Act, 1973 (the Private Schools Act), and that, therefore, the Writ Petition should have been dismissed.

3.On the other hand, the case of the first Respondent is that the School Committee cannot delegate its power to conduct disciplinary proceedings to the Secretary of the School. In this case, the first Respondent states that the charge memo was issued by the Secretary, who conducted the enquiry and, thereafter, also imposed punishment by the impugned order dated 23. 11. 2012. According to the first Respondent, this is directly contrary to the settled principles relating to the conduct of disciplinary proceedings and that the same person cannot conduct the enquiry and, thereafter, decide upon and impose the punishment. In this regard, the first Respondent relies upon the Full Bench judgment of this Court.

4.At the hearing, the learned counsel for the Appellant reiterated the submissions in the affidavit filed in support of the stay petition and in the grounds of appeal. In particular, it was submitted that the principles of natural justice were strictly adhered to and that reasonable opportunity was provided to the first



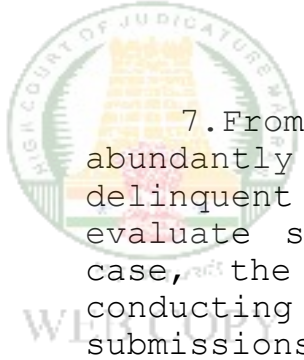
Respondent both to respond to the charge memo and also to the findings in the enquiry. It was further submitted that the Secretary was duly authorised by the School Committee to conduct the enquiry and impose punishment and that, therefore, the actions of the Secretary are not without jurisdiction.

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5. In response, the learned counsel for the first Respondent submitted that the same person cannot conduct the enquiry and impose punishment. Further, it was submitted that the Full Bench of this Court settled the position in the specific context of private schools by holding that the School Committee cannot delegate essential functions.

6. We carefully considered the pleadings, documents and oral submissions of the parties. It is the admitted position that the Secretary of the School issued the charge memo, conducted the enquiry and imposed punishment. This is clearly contrary to the settled position that the person who conducts the enquiry should not decide on punishment. As correctly contended by the learned counsel for the first Respondent, this issue is squarely covered by the decision of the Full Bench of this Court in *K.M. Valliappan vs. Joint Director of School Education* (2006) 4 CTC 471 (FB) wherein it was held that essential functions of the School Committee under Section 18 of the Private Schools Act, such as imposition of punishment, cannot be delegated to any person by the School Committee. In this regard, paragraph 19 of the judgment is relevant and reads as follows:

*" From the provisions contained in the Act along with the contents of Form VII-A, it is evident that the decision as to whether a disciplinary proceeding should be initiated or not, whether an employee should be placed under suspension or not, whether charges should be framed or not has to be taken by the School Committee. These powers are essential powers of the School Committee and the provisions contained in the Act do not envisage that such essential powers can be delegated. However, the duty of holding the enquiry can be delegated by the School Committee of course and not by any other authority. The subcommittee or the person appointed as enquiry officer is required to hold the enquiry and can submit his report. In view of the decision of the Supreme Court in *Managing Director, ECIL, Hyderabad, etc vs. B Karunakaran, etc* AIR 1994 SC 1074, a copy of such report is required to be served on the delinquent to enable him to make his submission. Such report is required to be considered independently by the School Committee and obviously such report is not binding on the School Committee. Once the School Committee comes to an independent conclusion regarding the delinquency of the charged employee, the question of punishment is again a matter to be decided by the School Committee and such authority cannot be delegated. "*



7. From the above paragraph of the Full Bench judgment, it is abundantly clear that the enquiry report should be provided to the delinquent and to the School Committee, which should independently evaluate such report and decide on punishment, whereas, in this case, the Secretary has also decided on the punishment after conducting the enquiry. The Writ Court carefully considered the submissions of all parties and held that the principles of natural justice were violated while issuing the impugned order because the same person issued the charge memo, conducted the enquiry and imposed punishment. The Writ Court further followed the above-mentioned judgment of the Full Bench of this Court. In view of the fact that the Secretary acted without jurisdiction, the existence of an alternative remedy does not preclude the exercise of jurisdiction by the Writ Court. We do not find any infirmity in the decision of the Writ Court. Therefore, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/ True Copy /

Sub Assistant Registrar (CS-)

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To

1. The Chief Educational Officer,
Trichy.

2. The District Educational Officer,
Trichy.

+1 CC to M/s. T. ANTONY ARUL RAJ, Advocate
(SR-70493[F] dated 21/06/2019)

W.A. (MD) No. 623 of 2019

and

C.M.P. (MD) No. 5206 of 2019

Dated: 20.06.2019

ES/04.07.2019/4P/4C