



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.04.2019

Delivered on : 26.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.16672 of 2016

V.Nagaraj Kannan

: Petitioner

Vs.

1.The Joint Director of School Education (Secondary),
Office of the Director of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Office of the Chief Educational Office,
Ramanathapuram,
Ramanathapuram District.

3.The District Educational Officer,
Paramakudi,
Ramanathapuram District.

4.The Secretary,
K.H.N.Nadar Higher Secondary School,
Perunali,
Kamuthi Taluk,
Ramanathapuram District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his order Moo.Mu.No.53743/G2/E1/2015, dated 10.07.2015 passed pursuant to order of dismissal dated 12.04.2014 passed by the fourth respondent and quash the same and consequently, direct the respondents to reinstate the petitioner with continuity of service with full salary.

For Petitioner : Mr.N.Sundareshan

For Respondents 1to3 : Mrs.S.Srimathy,
Special Government Pleader

For Respondent No.4 : Mr.N.Dilip Kumar

ORDER

Lord Siva in Guru Form being praised in Thirumanthiram by Thirumoolar as follows:

“தெளிவு குருவின் திருமேனீ காண்டல்

தெளிவு குருவின் திருநாமம் செப்பல்

<https://hcservices.ecourts.gov.in/hcservices/> தெளிவு குருவின் திருவார்த்தை கேட்டல்

தெளிவு குருவுரு சிந்தித்தல் தானே.”

In English version;



"Guru's Role in Soul's Illumination

It is but to see the Guru's Holy Form,

It is but to chant the Guru's Holy Name,

It is but to hear the Guru's Holy Word,

It is but to muse the Guru's Holy Being

--Thus, it is the soul its illumine receives."

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2. This is the reason why, we, Indians, bow to Guru - a teacher and place a teacher on a pedestal just below the parents. The character and conduct of a teacher is expected to be more like a 'Rishi'. In this regard, it is profitable to refer to two judgments of the Supreme Court.

3. The Supreme Court in the case of Avinash Nagra v. Navodaya Vidyalaya Samiti, [1997(2) SCC 534] had an occasion to explain the importance of the character and conduct of a teacher in the following words:

"10. Mahatma Gandhi, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the words to their students but do not inculcate truth and purity amongst them, they will have betrayed them....

In the same paragraph, it is further observed thus:

...Dr. S. Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is andhakaraniridhata gurur itya bhidhiyate. Andhakar is not merely intellectual ignorance, but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?" Swami Vivekananda had stated that "the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis."

In the same judgement, further giving the background as to why in our Indian society, teachers are placed on the pedestal below the parents, the Supreme Court has observed thus:



11. It is in this backdrop, therefore, that the Indian society has elevated the teacher as "Guru Brahma, Gurur Vishnu, Guru Devo Maheswaraha." As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. Obviously, therefore, the teacher was placed on the pedestal below the parents.

Particularly when we are concerned with teachers employed for teaching girl students, the teacher by his character and conduct must exhibit and justify the status so given to him by the Indian society, especially when such a teacher is a male. In the same judgement in *Avinash Nagra (supra)*, the Supreme Court has observed thus:

"12. It is axiomatic that percentage of education among girls, even after independence, is fathom deep due to indifference on the part of all in rural India except some educated people. Education to the girl children is nation's asset and foundation for fertile human resources and disciplined family management, apart from their equal participation in socio-economic and political democracy. Only of late, some middle-class people are sending the girl children to co-educational institutions under the care of proper management and to look after the welfare and safety of the girls. Therefore, greater responsibility is thrust on the management of the schools and colleges to protect the young children, in particular, the growing up girls, to bring them up in disciplined and dedicated pursuit of excellence. The teacher who has been kept in charge, bears more added higher responsibility and should be more exemplary. His/her character and conduct should be more like Rishi and as loco parent is and such is the duty, responsibility and charge expected of a teacher."

4. In another judgement delivered by the Supreme Court in the case of *Manager, Nirmala Senior Secondary School, Port Blair v. N.I. Khan* [2003(12) SCC 84], regarding the importance of the character of a teacher, it has been observed thus:

2. ...An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important.



5. This Writ Petition is directed against the order of the first respondent dated 10.07.2015 as well as the order of the fourth respondent dated 12.04.2014.

6. The case of the petitioner, in brief, is as follows:

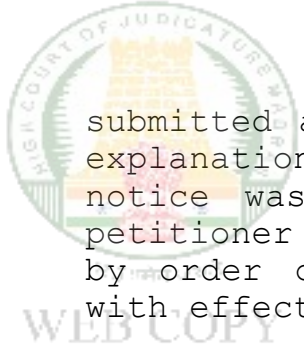
(i) The petitioner joined as Drawing Master on 10.07.1995 in the fourth respondent School. He was discharging his duties to the utmost satisfaction of his superiors. During 2007, he took medical leave for treatment. While so, the fourth respondent, with an ulterior motive and in order to eliminate the petitioner from service, adopted such tactics, which resulted in suspension of the petitioner from service with effect from 04.01.2007.

(ii) Aggrieved over the suspension, the petitioner filed a Writ Petition being W.P.No.507 of 2007 before this Court and this Court granted an order of interim stay, pursuant to which, he was allowed to do his duty. After joining, on believing the words given by the fourth respondent School that they will not initiate any proceedings against him, the petitioner withdrew the Writ Petition. But, contrary to the words, the fourth respondent, without any rhyme or reason, prevented the petitioner to sign in the attendance register on 01.03.2012 and threatened him to give a letter to the effect that he misbehaved with a 6th standard girl student, failing which, he will be dismissed on such allegations. With that letter, he was asked to attend for an enquiry on 02.03.2012 with his wife, which he denied, as no such occurrence took place at all.

(iii) When that being so, the fourth respondent issued a show cause notice dated 27.03.2012 making allegations on 5 counts. The petitioner gave a reply to the said show cause notice, but, without considering the same, again he was suspended from service with effect from 09.04.2012.

(iv) Against the charge memo and the suspension order, he filed two Writ Petitions before this Court in W.P.(MD)Nos.6927 and 6928 of 2012. This Court, by a common order dated 10.01.2013, disposed of the same with a direction to proceed with the enquiry from the stage where it was stopped and pass final orders, within four months, with further direction either to reinstate him in service or pay full salary for the period of suspension beyond four months.

(v) Pursuant to the aforesaid order, an enquiry was conducted on 16.02.2013. Since the Enquiry Officer conducted the same in a biased manner, he gave a representation to permit him to engage a lawyer to assist him during the enquiry, but, the same was rejected. Challenging the same, he filed a Writ Petition in W.P.(MD) No.3678 of 2013. Despite the request made by the petitioner to postpone the enquiry, the Enquiry Officer conducted the same setting him as *exparte* by examining 10 witnesses behind his back and



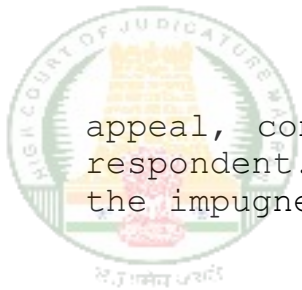
submitted a report, for which, the petitioner offered his detailed explanation, but, without considering the same, a second show cause notice was issued. Notwithstanding the explanation given by the petitioner to the second show cause notice, the fourth respondent, by order dated 12.04.2014, dismissed the petitioner from service with effect from 21.06.2013.

(vi) Aggrieved against the dismissal order, he preferred an appeal to the first respondent, who, in turn, has simply rejected the same, vide order dated 10.07.2015. Those orders are under challenge in the present Writ Petition.

7. With the above factual scenario, the learned counsel for the petitioner submitted that the fourth respondent dismissed the petitioner from service based on the *exparte* enquiry conducted, which is violative of the principles of natural justice. While doing so the fourth respondent has not at all followed the procedures as contemplated under the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules, 1974. The appellate authority also, without proper perusal of the records and without application of mind, has simply affirmed the order of dismissal passed by the fourth respondent. Therefore, the learned counsel prays to set aside those two orders.

8. Per contra, the learned Special Government Pleader appearing on behalf of the respondents 1 to 3, through the counter-affidavit filed by the third respondent, submitted that pursuant to the issuance of charge memo, the petitioner was placed under suspension. Surprisingly, an Enquiry Officer was appointed and on enquiry, he submitted his report holding that the charges were proved. The Enquiry Officer pointed out in the report specifically that the petitioner himself has given a letter tendering apology for taking liquor during working hours. The documents produced also proved the unauthorized absence of the petitioner.

9. It is also contended by the learned Special Government Pleader for the respondents 1 to 3 that the fourth respondent School, being an aided non-minority school, is receiving grant-in-aid from the Government and is governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules, 1974. As per Section 21 of the Act, the teachers and other persons employed in the private school are governed by the Code of Conduct and Section 22 of the Act clearly speaks about the mode of dismissal, removal or suspension of teachers or other persons employed in the private school. Thus, the school proceeded with the domestic enquiry and the petitioner was dismissed from service followed by the enquiry report. On appeal, the first respondent, after affording personal hearing to the petitioner and carefully perusing the enquiry officer's report as well as the statements of the witnesses, came to the conclusion that the charges levelled against the petitioner were proved and accordingly, dismissed the

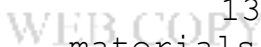


appeal, confirming the order of the dismissal passed by the fourth respondent. Thus, the learned Special Government Pleader justified the impugned orders and prayed for dismissal of the Writ Petition.

10. The learned counsel appearing on behalf of the fourth respondent, reiterating the averments made in the counter-affidavit filed by the fourth respondent, contended that the petitioner is an intoxicant and he used to come to school consuming alcohol and despite the repeated opportunities, he continued to do the same. Furthermore, he was also in the habit of frequently absenting himself unauthorisedly and thereby, causing inconvenience to the students and their education. On 01.03.2012, the petitioner misbehaved with a 6th standard girl student with sexual desire and when the student reported the matter to her parents, the villagers assembled in front of the school and agitated over the manner in which he behaved with the girl student and demanded immediate action against him. The petitioner, in his confession statement dated 02.03.2012, admitted his misbehaviour with the girl student and subsequently, went on medical leave unauthorisedly.

11. It is further submitted by the learned counsel for the fourth respondent that as the misbehaviour of the petitioner had gone beyond all the tolerable limits and the same brought disrepute to the School, the Management thought it fit to initiate suitable disciplinary action against the petitioner. Accordingly, disciplinary proceedings against the petitioner was initiated and charge memo dated 27.03.2012 was issued directing him to submit his explanation within 15 days time and as the explanation of the petitioner was neither convincing nor satisfactory, he was placed under suspension pending enquiry over the charges framed against the petitioner.

12. The learned counsel for the fourth respondent also submitted that the order of dismissal and rejection of appeal were made only after giving sufficient opportunities to the petitioner, by complying with the principles of natural justice and also based on the findings of the enquiry and also taking into account all aspects and the petitioner only failed to avail the opportunities provided to him and prove his innocence if any. Furthermore, all the procedures, as enumerated under the Act, were followed scrupulously and the allegations of the petitioner in this regard are false. There is no victimization nor personal bias, since the charges in which the petitioner involved himself, are grave in nature, which warrants maximum punishment. There is no pre-determination in arriving at the conclusion and the order is based on the findings of the enquiry conducted. The contention of the petitioner is clumsy and there is no illegality nor is there any abuse of powers in the orders passed. The subsistence allowance was paid to the petitioner during the period of suspension. The appellate authority had rejected the appeal, after having thoroughly gone through the charges levelled against the petitioner, his explanation and the



14. Before going through the facts and before considering the submissions made on either side, it is worthwhile to refer to the role of teachers in the following words:

"Teachers typically do not think of themselves as role models, however, inadvertently, they are. Students spend a great deal of time with their teacher and, therefore, the teacher becomes a role model to them. This can be a positive or negative effect depending on the teacher. Teachers are there not only to teach the children, but also to love and care for them. Teachers are typically high respected by people in the community and, therefore, become a role model to students and parents."

"The role of a teacher in society is both significant and valuable. It has far-reaching influence on the society he lives in and no other personality can have an influence more profound than that of a teacher. Students are deeply affected by the teacher's love and affection, character, competence and moral commitment."

"The clay-like minds of young children are shaped into beautiful moulds by teachers. They shape the future course of the students. To a great measure their behaviour, character, reputation leave imprints in the minds of the young children. If their conduct, behaviour and reputation is full of blemish that would not be in the



interest and for the welfare of the students."

15. Now, turning to the case at hand, the petitioner, who joined in service as Drawing Master in the fourth respondent School, was issued with a charge memo dated 27.03.2012. The charges are;

(i) He used to be under liquor administration during school hours and thereby he was improper in his duty.

(ii) He misbehaved with girl children to that effect children have given complaint.

(iii) He left on leave without obtaining permission.

(iv) He did not participate in the refreshment course.

(v) He did not report to the school properly.

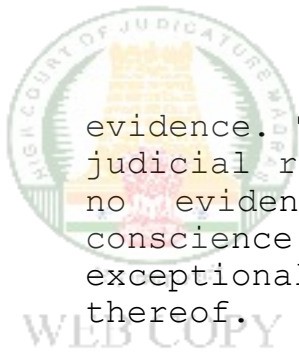
(vi) Even if reported, he used to be under liquor and behaved wrongly.

16. The petitioner submitted his reply to the charges and enquiry was conducted and after due formalities, the Enquiry Officer submitted his report holding the charges as proved, which was sent to the petitioner for his explanation. However, the petitioner, without submitting his explanation, challenged the same by filing Writ Petition before this Court, wherein, this Court directed the petitioner to submit his explanation.

17. Pursuant to the direction of this Court, the petitioner submitted his explanation on the findings of the enquiry. Having found the explanation of the petitioner unsatisfactory, the fourth respondent passed the order of dismissal of the petitioner from service with effect from 21.06.2013. The said order was challenged by the petitioner before the first respondent.

18. The first respondent, after analysing the case of the petitioner, enquiry officer's report and the statements of the witnesses, dismissed the appeal vide order dated 10.07.2015, confirming the punishment of dismissal.

19. The law is well settled with regard to the departmental proceedings. The disciplinary authority and on appeal, the appellate authority, being the fact finding authorities, have exclusive power to consider the evidence with a view to maintain discipline and they are vested with the discretionary power to impose appropriate punishment, keeping in view the magnitude or gravity of the misconduct. The High Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and arrive at its own conclusion. The judicial review is not an appeal from a decision, but, a review of the manner in which the decision is made. It is meant to ensure that the delinquent received fair treatment and not to ensure that the conclusion, which the authority reaches, is necessarily correct in the view of the Court or the Tribunal. When the conclusion reached by the authority is based on evidence, the High Court or the Tribunal has less powers to re-appreciate the



evidence. The only consideration is that the High Court, having its judicial review, is to consider whether the conclusion is based on no evidence. Further, if the punishment imposed shocks the conscience of High Court, it would properly mould relief in exceptional and rare cases by giving cogent reasons in support thereof.

20. In view of the foregoing reasons and also in the light of the legal position, this Court is of the view that the charges proved against the petitioner are very serious in nature and do not benefit "a teacher". Having taken such a view, this Court holds that the impugned orders are sustainable in the eye of law and the same do not warrant any interference.

21. The Writ Petition stands dismissed with the above observation. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Joint Director of School Education (Secondary),
Office of the Director of School Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Office of the Chief Educational Office,
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Ramanathapuram District.

3.The District Educational Officer,
Paramakudi,
Ramanathapuram District.

+1cc to Mr.N.SUNDARESAN, Advocate, SR.No.63194
+1cc to Mr.N.DILIPKUMAR, Advocate, SR.No. 63012

W.P.[MD]No.16672 of 2016
26.04.2019

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