



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No. 5316 of 2014

and

M.P. (MD) Nos. 1 & 2 of 2014

T.B.Ravichandran,
Tamil Pandit,
Vivekananda Higher Secondary School,
Thiruvedagam West, Madurai.

... Petitioner

Vs.

1.The Chief Educational Officer,
Thallakulam, Madurai.

2.The District Educational Officer,
Thallakulam, Madurai.

3.The Secretary,
Vivekananda Higher Secondary School,
Thiruvedagam West,
Solavandan Viz., Madurai Distirct.

4.Swami Niyamananda,
Vivekananda Higher Secondary School,
Thiruvedagam West, Solavandan Via.,
Madurai District.

5.Lakkumanan
Head Master,
Vivekananda Higher Secondary School,
Thiruvedagam West, Solavandan Via.,
Madurai District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned charge memo dated nil issued by the third respondent and quash the same.

For Petitioner	: Mr.T.C.S.Thillainayagam
For R1 & R2	: Mrs.S.Srimathy, Special Government Pleader
For R3 & R4	: Mr.S.Anwar Sameem
For R5	: No appearance

ORDER

The charge memo dated 12.02.2014 is under challenge in the present writ petition.



2. When the case was taken up for hearing, the learned counsel appearing for the respondents 3 & 4/School made a submission that the writ petitioner has misguided this Court by filing a writ petition without even enclosing the first page of the charge memorandum issued to him in proceedings, dated 12.02.2014. The first page of the charge memorandum categorically enumerates that based on the resolution, dated 01.02.2014, the Management has taken a decision to institute disciplinary proceedings and issued the charges. By not enclosing the first page, the present writ petition is filed raising a ground that the School Committee has not passed any resolution. Thus, the very filing of the writ petition itself is misleading the Court and by suppressing the first page of charge memorandum, the writ petitioner has obtained an order of interim stay and kept the matter pending for about 5 years.

3. Hearing such arguments made by the learned counsel appearing on behalf of the School, this Court has verified the typed set of papers filed by the writ petitioner, which shows that the impugned order starts with page No.27. Annexure-I provides Articles of charge and the proceedings issued by the Secretary of the School, dated 12.02.2014 has not been enclosed along with the charge memo. Thus, the writ petitioner has obtained an order of interim stay by suppressing the fact that the School Committee passed a resolution and by not enclosing the proceedings issued by the Correspondent on 12.02.2014. Though the writ petition is liable to be rejected on this ground itself, this Court is inclined to consider the merits also.

4. The writ petitioner is working as Tamil Pandit, in M.A.B.Ed., Virudhunagar. On account of certain allegations, the charge memorandum was issued in proceedings, dated 12.02.2014 pursuant to the resolution passed by the School Committee on 01.02.2014. The charges against the writ petitioner are extracted hereunder:-

"Article-1

That the Headmaster of Vivekananda Higher Secondary School, Thiruvadakam West issues the circular dated 06.01.2014 with regard to arranging special classes for children studying in Std-VI to IX during lunch hours and that Thiru T.B.Ravichandran Tamil Pandit not only declined to co-operate for implementing the program but also refused to affix signature in the circular and thereby had contravened clause-I of the Code of Conduct for Teacher and other persons employed in Private Schools as set out in annexure-II of the Tamil Nadu Recognized Private Schools (regulation) Rules, 1974.

In view of the alleged conduct of the delinquent, the Secretary of the school issued a communication dated



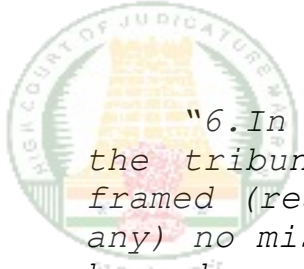
06.01.2014 to him calling upon him to explain his conduct-Instead of submitting a proper explanation the delinquent gave a reply dated 09.01.2014 and 13.01.2014 leveling false allegations against the Headmaster and the fellow teacher. By leveling such allegations and marking copies of his letter dated 09.01.2014 the departmental authorities, the delinquent has lowered the reputation of the school by doing so, the delinquent has violated Clause-1 and 9 of the Code of Conduct for Teachers and other persons employed in private schools as set out in annexure II of the Tamil Nadu Recognized Private Schools (Regulation Rules 1974."

Annexure-2 to the charge memo provides imputation of misconduct and Annexure-3 provides list of documents. Annexure-4 contains list of witnesses to be examined. Thus, there is no infirmity as such in respect of the charge memorandum issued against the writ petitioner.

5.The writ petitioner raised a ground that the charges were issued on malafide ground. However, there is no incriminating evidences or sufficient materials to establish that the charges were issued on malafide grounds. Though the allegations set out in the charge memo are in relation to the recruitment notification, this Court is of the considered opinion that the charge memo is no way connected with such allegations of publication of recruitment notification. Thus, the allegations of malafides raised against the respondents 4 & 5 are unconnected with the allegations raised against the writ petitioner. Under these circumstances, the ground of malafide intention has not been established by the writ petitioner, so as to quash the charge memo.

6.A writ against the charge memo cannot be entertained in a routine manner. Intermittent intervention in departmental disciplinary proceedings are not preferable. Only on exceptional circumstances, the High Court can interfere with the charge memorandum and not otherwise. In the present case on hand, though the allegations of malafide are raised against the respondents 4 & 5, the writ petitioner has not substantiated the same so as to arrive at a conclusion that the memorandum of charge was issued with some ulterior motive. In the absence of any such incriminating materials to establish that the charge memorandum was issued with malafide or with an ulterior motive, the Court cannot quash the charge memo, which is otherwise to be proceeded in accordance with the Discipline and Appeal Rules.

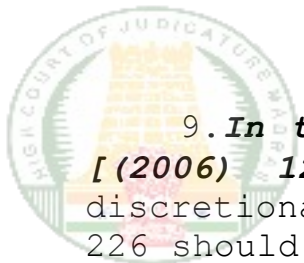
7. The Honourable Supreme Court of India **in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357** and the paragraph 6 which is extracted hereunder:



"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons*. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p.317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

8. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.



9. **In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28]**, it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal."

10. In view of the facts and circumstances, the writ petitioner is bound to participate in the departmental disciplinary proceedings and establish his innocence or otherwise by procuring the documents and by adducing evidences. This being the principles to be followed, the respondents are directed to proceed with the enquiry proceedings and conclude the same and pass final orders by following the procedures, as expeditiously as possible. Long pendency of the departmental disciplinary also would cause prejudice to the interest of the employee concerned. Thus, the respondents should ensure that the disciplinary proceedings are concluded at the earliest possible. The writ petitioner should also co-operate for the early disposal of the departmental disciplinary proceedings. In the event of non cooperation on the part of the writ petitioner, the same shall be recorded in the proceedings itself. This being the legal principles to be followed, the present writ petition deserves no merit consideration.

11. With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Chief Educational Officer, Thallakulam, Madurai.

2. The District Educational Officer, Thallakulam, Madurai.

+1 CC to Mr. T. ANTONY ARUL RAJ, Advocate SR-76832.

+1 CC to SPL GP SR-76929.

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