

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.18319 of 2007
(O.A.No.917 of 2004)

P.Jothi

..Petitioner

Vs

1. The State of Tamil Nadu
Rep. by the Secretary,
School Education Department
Fort.St.George, Chennai-600001

2.The Director of School Education
College Road, Chennai-600 006

..Respondents

Prayer : Writ Petition filed praying to issue a writ of Certiorarified

Mandamus to call for the records relating to the 1st respondent proceedings made in G.O.(4D).No.1 School Education Department dated 23.02.2004 to quash the same and consequently direct the respondents to extend all benefits with service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.P.Raja, Addl.Govt.Pleader

ORDER

The Petitioner originally filed O.A.No.917 of 2004 before the State Administrative Tribunal. Subsequently, due to abolition of the Tribunal, the matter stands transferred to this Court and renumbered as Writ Petition No.18319 of 2007.

2. The case of the petitioner is that he was working as Head Master, Government Boys Higher Secondary School at Arani. Originally, he was appointed as B.T.Assistant on 05.07.1971. He came to be promoted as P.G.Assistant on 03.07.1978 and thereafter Head Master, Higher Secondary School on 02.04.1993 and he was continuing in the said post till the impugned order was passed against him.

3. While working as Head Master, Higher Secondary School, Arani, he received a Charge Memo along with suspension order passed by the 2nd respondent dated 02.03.2000 whereby, totally five charges levelled against

the petitioner stating that the petitioner being a Chief Examiner had misutilised the Dummy Main Answer Sheets, Additional answer sheets for the purpose of his son writing the examination and by using his office has also used his daughter as a Special Assistant and thereafter, had made her as an Assistant Examiner to correct the answer sheets and connected other charges.

4. The petitioner sent an explanation dated 06.04.2000 refuting the charges and also categorically pointed out that none of the charges are maintainable and also by producing documentary evidence to show that there was no such misutilisation of dummy answer sheets, additional answer sheets etc, and that the entire allegation was out of certain other teachers who were inimically disposed towards the petitioner and sought for personal hearing. The Statutory Rules and Regulations have not been followed in the disciplinary proceedings and enquiry was completed without Presenting Officer and proper examination of witnesses both prosecution and defence witness, on the same day. The enquiry was not conducted in the manner known to law. After the enquiry, along with the enquiry report, further explanation was called for by Proceedings dated 12.02.2002. The petitioner also submitted his further explanation on 08.03.2002 to reiterate his defence

and pointed out various irregularities, infirmities not only in the conduct of enquiry but also that of the other lacunae and sought for dropping of the charges and also sought for holding the enquiry as prescribed under law. However, the 3rd respondent not considered his representation and the points mentioned therein and given findings that the charges against the petitioner are proved. The Chief Educational Officer, Vellore District also endorsed the findings of the Disciplinary Authority.

5. Based on the findings of the Enquiry Report, the Secretary, Tamil Nadu Public Service Commission, addressed a letter dated 01.08.2003 to the 1st respondent, pointing out that the charges levelled against the petitioner are grave in nature and therefore, suggested that the petitioner can be awarded punishment of dismissal from service. The 1st respondent by G.O.(D).No.1 School Education Department, 23.02.2004 passed the impugned order of Dismissal from Service.

6. The learned counsel for the petitioner would submit that the enquiry proceedings has been conducted in a single day and closed the proceedings without giving reasonable opportunity to the petitioner to take his defence.

The learned counsel for the petitioner further submits that since the entire enquiry proceedings have been completed on a single day, the petitioner has not put forth his objections to the charges during the enquiry and subsequently he cannot take his defence. Secondly, after giving findings and filing the enquiry report, the disciplinary authority not passed the order, but the Government straight away passed the order, hence, the petitioner lost the opportunity of filing the appeal and therefore, the impugned order is liable to be set aside. The enquiry proceedings conducted without following the principles of natural justice and enquiry procedures not strictly followed in the case and the punishment awarded is shockingly disproportionate. Both the 2nd respondent and 1st respondent-Appellate Authority have not properly appreciated the explanation offered by the petitioner and simply endorsed the view of the Disciplinary Authority. The Enquiry held was neither in conformity with the rules and regulations nor with the settled principles which would prescribe the Presenting Officer, a Defence Helper and production of statement, Examination of witnesses in Chief and Cross marking all the documents those that are placed reliance upon by furnishing copy of the same, affording an opportunity, muchless reasonable opportunity and thereafter arriving at a conclusion as to whether the charges have been held proved or not. In the instant case, all the above procedure, principles and

statutory obligations cast upon the respondent's department has been miserably failed to be followed. Therefore, the impugned order suffers for want of reasonable opportunity, hence liable to be set aside. Further, he would submit that the settled principles and Rules contemplated in the Rules not been strictly adhered to in the enquiry. The petitioner had rendered 30 years of unblemished record of service and therefore, seek for compulsory retirement, so as to avail the pensionary benefits. The impugned charge memo followed by the penalty having been made as an outcome of malafides at the instance of certain persons inimically disposed without proper and due verification of records thereto the impugned order is unsustainable. It is also submitted by the learned counsel for the petitioner that the authorities before imposing the penalty of dismissal from service, failed to take into account the entire service rendered by the petitioner, thereby the penalty imposed runs shockingly disproportionate to the alleged occurrence and also not commensurate, virtually shocking to the conscience, assuming without admitting the alleged occurrence had taken place, the punishment could be modified and the punishment is liable to be modified to that of compulsory retirement.

7. The learned Special Government Pleader would submit that the

petitioner while working as Head Master, Higher Secodnary School, Arani, was placed under suspension and charge memo was issued. Five charges were levelled against the petitioner and all are grave in nature. In the year of 1999, during the Board Examination, she was appointed as Chief Examiner. During that time, he misutilised the dummy main answer sheets, additional answer sheets for the purpose of his son writing the examination and by using his office has also used his daughter as a Special Assistant and thereafter, had made her as an Assistant Examiner to correct the answer sheets. Further, she gave additional answer sheet to his house and other man has written the answers and give his son to tag it with main answer sheet. Thus, the additional answer sheets from the petitioner school were sent to the house and asked other man to write the answer and subsequently, arranged to give it to school, in order to help his son to score high marks. Therefore, the charges involved against the petitioner was relating to grave misconduct and therefore, the explanation offered is not satisfied. The Enquiry Officer who was appointed to conduct enquiry, after due enquiry, found that the charges levelled against the petitioner were proved. Though the 2nd respondent as a disciplinary authority found the charges proved against the petitioner, called for further explanation from the petitioner and thereafter on careful perusal of the explanation, held that the charges are proved and the misconduct

committed by the petitioner is grave in nature and therefore, the authority recommended for punishment of removal from service. Subsequently, he filed the appeal. The 1st respondent-Appellate Authority also applied the mind and dismissed the appeal and thereby, confirmed the punishment imposed by the Disciplinary Authority. The learned Special Government Pleader submits that even on the day of enquiry, the petitioner has not raised any objection with respect to the charges framed against him and further not even sought time for explaining his defence, therefore, the points raised by the counsel for the petitioner that the petitioner has not been given opportunity to raise his defence, is not sustainable.

8. Though the petitioner has stated that the punishment imposed against the petitioner is shockingly disproportionate, the charges levelled against him shows that they are grave in nature and further it is a clear case where the petitioner misused his official position and appointed his daughter as Special Assistant and thereafter, had made her as an Assistant Examiner to correct the answer sheets. Therefore, the punishment is not shockingly disproportionate and there is no merit in the writ petition and therefore, liable to be dismissed.

9. Heard and perused the records.

10. Admittedly, the petitioner was working as Head Master in Higher Secondary School, Arani, from 02.04.1993 to 02.03.2000. In the year 1999 March Examination, the petitioner was appointed as Chief Examiner and also during that period, his son was writing the Higher Secondary Examination and the enquiry report, statements of witnesses, show that the petitioner had misutilised the dummy answer sheets for the purpose of son writing the examination and he also removed the sheets and sent it to his house and arranged to write the answer and sent the same to the school and attached with the answer sheet of his son in order to get higher mark which is certainly a grave misconduct and the petitioner committed serious irregularity. Since the petitioner has committed grave misconduct, charge memo was issued against him and at the same time, he was placed under suspension. Subsequently after getting explanation, Enquiry Officer was appointed and disciplinary proceedings were conducted and further explanation of the petitioner was called for. However, a reading of the explanation given by the petitioner shows that it is not satisfactory. The charges against the petitioner are that petitioner misused his official position, appointed his daughter as Assistant Examiner to correct answer sheets; dummy answer sheets were sent from his

examination centre to his house with the help of another person and his son written the answer so as to send it to his son's exam centre, in order to help his son to score higher marks in the examination and thereby committed irregularity using his official position.

11. Admittedly, at the relevant point of time, the petitioner's daughter was assigned the duty of Additional Examiner to correct the answer sheets. Therefore, though the petitioner has given the explanation refuting all the charges levelled against the petitioner, a perusal of the oral and documentary evidence and the explanation offered by the petitioner are not satisfactory. Therefore, the Disciplinary Authority categorically stated that the charges levelled against the petitioner were proved. Though the petitioner has stated that the procedures has not been followed as contemplated under the Service Rules, a perusal of the enquiry report shows that the Enquiry Officer adopted and adhered strictly to the procedures and conducted enquiry. The findings of the enquiry officer is that the charges levelled against the petitioner was found proved and no doubt, the enquiry was conducted in accordance with the principles of natural justice.

12. In this case, considering the nature of allegations levelled and the

charge memo issued against the petitioner on one hand and taking note of the gravity of irregularity on the other hand, even though the conduct of enquiry has been concluded in a single day by examining all witnesses, for the sole reason that the enquiry proceedings had been conducted in a single day, the impugned order cannot be quashed. It is to be seen that the charges are showing grave misconduct and also more particularly it was a sensitive issue and all the witnesses were staff of the school and the officers involved were persons those who were working in the education department. Therefore, if the enquiry proceedings had been conducted by giving more time, there is possibility of tampering of evidence and in such circumstances, the enquiry officer chose to complete the enquiry within a single day.

13. When the enquiry report was furnished to the petitioner, the 2nd respondent disciplinary authority called for further explanation by issuing second show cause notice and also the petitioner's explanation shows that he reiterated the same explanation as offered by him earlier. Therefore, the other contention raised by the learned counsel for the petitioner that no opportunity was given to the petitioner is not acceptable.

14. The narration of charges make it clear that the petitioner was

assigned the duty of Chief Examiner during 1999 and he misused his official position and appointed his daughter as Special Assistant and also made her as an Assistant Examiner to correct the answer sheets and therefore, the enquiry findings are to the effect that the petitioner misutilised the dummy main answer sheets, additional answer sheets for the purpose of his son getting high marks in the examination by using his office. Therefore, the Enquiry Officer found that the charges levelled against the petitioner are proved. The 1st respondent after going through the entire records, applied his mind and recorded the reasoning for rejection of appeal whereby confirmed the findings and passed the impugned order of removal from service.

15. On going through the entire facts of the case and a careful perusal of the records, this court does not find any violation of principles of natural justice in the enquiry proceedings. Answering the submissions raised by the learned counsel for the petitioner, firstly, the appeal remedy before the Government is lost, is concerned, considering the serious nature of the allegations and the charges faced by the petitioner, for the reason that the first respondent passed the impugned order and the appeal remedy not available to the petitioner cannot be considered to be a valid ground to quash the impugned order. Taking into consideration the nature of allegations and the

misconduct alleged against the petitioner, especially when he was serving as Head Master of the school and appointed as Chief Examiner of the Higher Secondary Examination and at which time, his son was writing the examination committed misconduct and was caught hold by Police, this court does not find any substantive reason to interfere with the order impugned in the writ petition.

16. Though the learned counsel for the petitioner would submit that the punishment imposed against the petitioner is shockingly disproportionate, this court, considering the charges levelled against the petitioner finds that the charges are grave in nature and the petitioner has committed serious irregularities, especially the petitioner being the Head Master should be the role model for the students but he misused his official position. He had gone down to the extent of committing grave misconduct in order to help his son to get higher marks in the examination. Further by using his official position, used his daughter as a Special Assistant and thereafter had made her as an Assistant Examiner to correct the answer sheets, which also shows that the petitioner misused his official position in order to do favour to his daughter. Before considering the nature of charges levelled against the petitioner, the statement of the witnesses and enquiry report clearly proved that certainly the

punishment imposed on the petitioner is not shockingly disproportionate. Though the petitioner counsel submits that the punishment imposed on the petitioner viz., dismissal from service may be modified to that of compulsory retirement in order to get the retirement benefits for the long service rendered by the petitioner, it is seen from the charge memo and enquiry report that the charges levelled against the petitioner are grave in nature and there is a clear finding that the petitioner committed grave misconduct. Therefore, the petitioner deserves punishment of dismissal from service and by no stretch of sympathy, he deserves any lesser punishment. This court does not find any merit in the writ petition and therefore, the writ petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

04.12.2020

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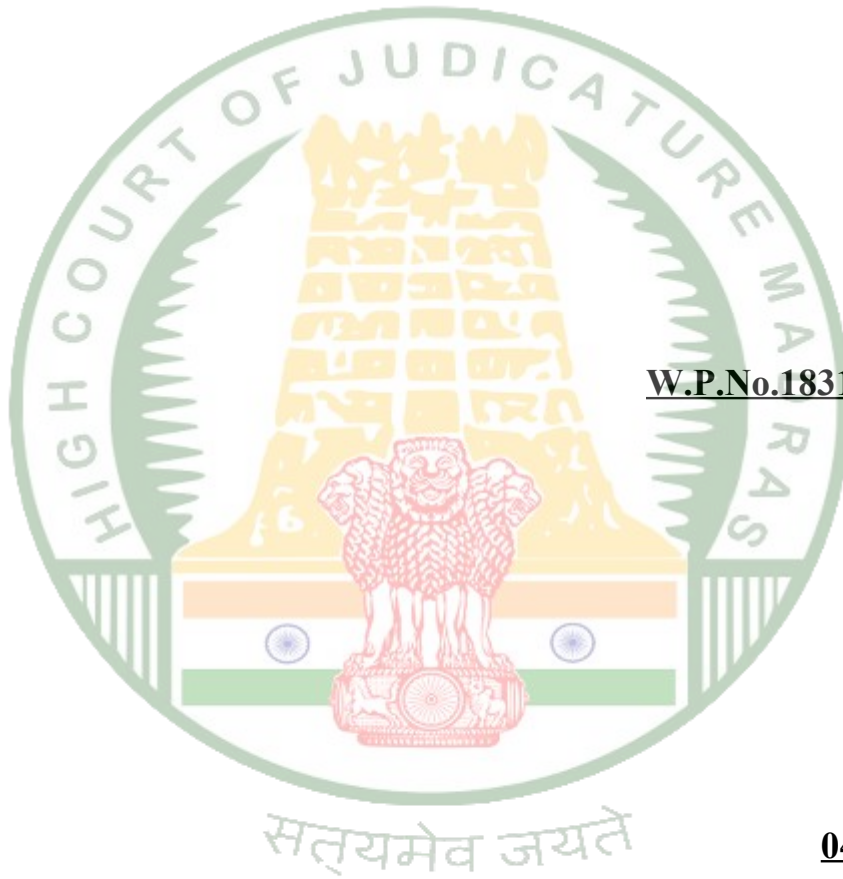
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