

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
07.01.2020

Delivered on
09.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.7227 of 2018
and
WMP Nos.8966 & 24580 of 2018

C.Sagayaraj

... Petitioner

.Vs.

1.The District Educational Officer,
Krishnagiri District,
Krishnagiri.

2.The Manager,
R.C.Schools,
Dharmapuri & Krishnagiri District,
Bharathipuram,
Dharmapuri-636 704.

3.The Correspondent,
R.C.Fathima Boys High School,
Bangalore Road,
Krishnagiri-635 001.

4.Mr.G.Mutharasu,
The Enquiry Officer,
No.459, New Additional Chambers,
High Court Buildings,
Chennai 600 104.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Enquiry Report dated 09.10.2017 of the 4th respondent and the impugned proceedings issued by the 2nd Respondent dated 07.11.2017 and to QUASH the same and consequently directing the respondents to pay the consequential benefits to the petitioner by einstanting the petitioner in service.

For Petitioner : Mr.P.Ganesan
Mr.A.Ilayaperumal

For R 1 : Mrs.V.AnnaLakshmi
Government Advocate

For R 2 & R 3 : SR.A.Arulmary
for M/s.Father Xavier Associates

For R 4 : No Appearance

O R D E R

This writ petition has been filed challenging the order passed by the 2nd respondent, dated 07.11.2017, dismissing the petitioner from service and for a consequential direction to the 2nd respondent to reinstate the petitioner into service.

2.The case of the petitioner is that he was appointed as a B.T. Assistant [Maths] on a regular vacancy in the year 1991. He was thereafter posted as a Headmaster incharge in the 3rd respondent School in the year 2005. The petitioner claims to be the senior most B.T. Assistant [Maths] and he was entitled to be considered to the post of Headmaster, which was falling vacant due to the retirement of the incumbent. It was in this post, the petitioner was given incharge as a Headmaster. He was continuing to be incharge Headmaster for nearly 10 years.

3.The petitioner was issued with an order of transfer on 09.05.2015, transferring him from the 3rd respondent School to St.Antony's Higher Secondary School, Elathagiri. Aggrieved by the same, the petitioner filed a writ petition before this Court in W.P.No.17585 of 2015, challenging the transfer order. This transfer order was approved by the department and therefore, one more writ petition came to be filed in W.P.No.30872/2015. Both the writ petitions were dismissed by an order dated 21.10.2016 and the same was also confirmed in the writ appeal.

4.During this point of time, the petitioner was suspended from service on the ground of unauthorised absence, since he did not join the School to which he was transferred. It is the further allegation made by the petitioner that the subsistence allowance was not paid to him during the suspension period. A charge memo came to be given to the petitioner on 11.08.2017 and the petitioner gave a detailed reply on 21.09.2017.

5. One G.Mutharasu, Advocate was appointed as the Enquiry Officer to conduct the enquiry on the charges levelled against the petitioner. The petitioner was objecting to the appointment of G.Mutharasu, as the Enquiry Officer since this Advocate had appeared on behalf of the counsel on record, who was appearing for respondents 2 to 4 in the writ appeal. Therefore, the petitioner found that there will be bias in the entire enquiry and therefore, he was objecting to the enquiry being conducted by G.Mutharasu, Advocate. The objections made by the petitioner did not evoke any response and a report was given by the Enquiry Officer on 09.10.2017, to the management holding that the charges have been approved and the management on receipt of the enquiry report, issued a Show Cause Notice on 12.10.2017, calling upon the petitioner to give a reply and ultimately the order of dismissal came to be passed by the 2nd respondent on 07.11.2017. The petitioner has challenged the enquiry conducted and the consequent order of dismissal mainly on the ground that it is biased and is opposed to principles of natural justice.

6. Heard Mr.P.Ganesan, learned counsel appearing for the petitioner and Mrs.V.Annalakshmi, learned Government Advocate appearing for the 1st respondent and Ms.SR.A.Arulmary, learned counsel appearing on behalf of the respondents 2 and 3.

7. This Court would not have entertained this writ petition under normal circumstances since the petitioner has an alternative remedy of appeal. However, this writ petition is entertained since the enquiry itself is totally biased and the dismissal order has been passed in complete violation of principles of natural justice. Therefore, the alternative remedy does not come in the way of the Court exercising its jurisdiction under Article 226 of the Constitution of India.

8. The petitioner was pursuing a legal remedy available to him by challenging the transfer order. Even while, the writ appeal was pending before the Court, the charge memo was issued against the

petitioner on the ground that he did not join the place to which he was transferred. It is important to note that one G.Mutharasu, was appointed as an Enquiry Officer to conduct enquiry. The petitioner had taken a very specific objection by his letter dated 21.09.2017, to the effect that the said G.Mutharasu, Advocate had appeared and represented the counsel on record viz; M/s. Arulmary, who was the counsel on record for respondents 2 to 4 (Management) in the writ appeal that was filed before this Court in W.A.Nos.30 & 31 of 2017.

9. After the petitioner had taken such a stand, it is not known as to why the respondent School insisted in continuing with G.Mutharasu, Advocate as the Enquiry Officer

in this case. By doing so, the respondent School has only unnecessarily embarrassed the Advocate. The charge against the petitioner was that he did not join the place to which he was transferred and he had absented himself unauthorizedly. The said G.Mutharasu therefore proceeded to give an enquiry report on 09.10.2017, by finding that all the charges have been proved. The proceedings continued at a very rapid pace and ended with a dismissal order passed by the 2nd respondent on 07.11.2017.

10.The entire disciplinary proceedings, on the face of it, is a farce. It is vitiated on the ground of bias and the petitioner has been targeted for having challenged the transfer order and a disproportionate punishment of dismissal from service has also been imposed against the petitioner. The manner in which the entire proceedings went on shows the predetermined attitude on the part of the respondent School to some how get rid of the petitioner from the School. The proceedings which started with an enquiry and ended with a dismissal, is completely opposed to principles of natural justice and requires the interference of this Court.

11. In the result, the enquiry report dated 09.10.2017 and the consequent dismissal order passed by the 2nd respondent dated 07.11.2017, are hereby quashed. There shall be a direction to the 2nd and 3rd respondents to reinstate the petitioner in service in the transferred place. This process shall be completed within a period of two weeks from the date of receipt of copy of this order. It is left open to the school Management to appoint some other neutral Enquiry Officer and conduct the enquiry by affording sufficient opportunity to the petitioner. This order will not stand in the way of the respondent/school from continuing with the enquiry by following the principles of natural justice and in accordance with law.

This writ petition is allowed with the above directions. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

KP
To

1.The District Educational Officer,
Krishnagiri District,
Krishnagiri.

+1cc to Mr.A.Ilayaperumal, Advocate SR.No.2159

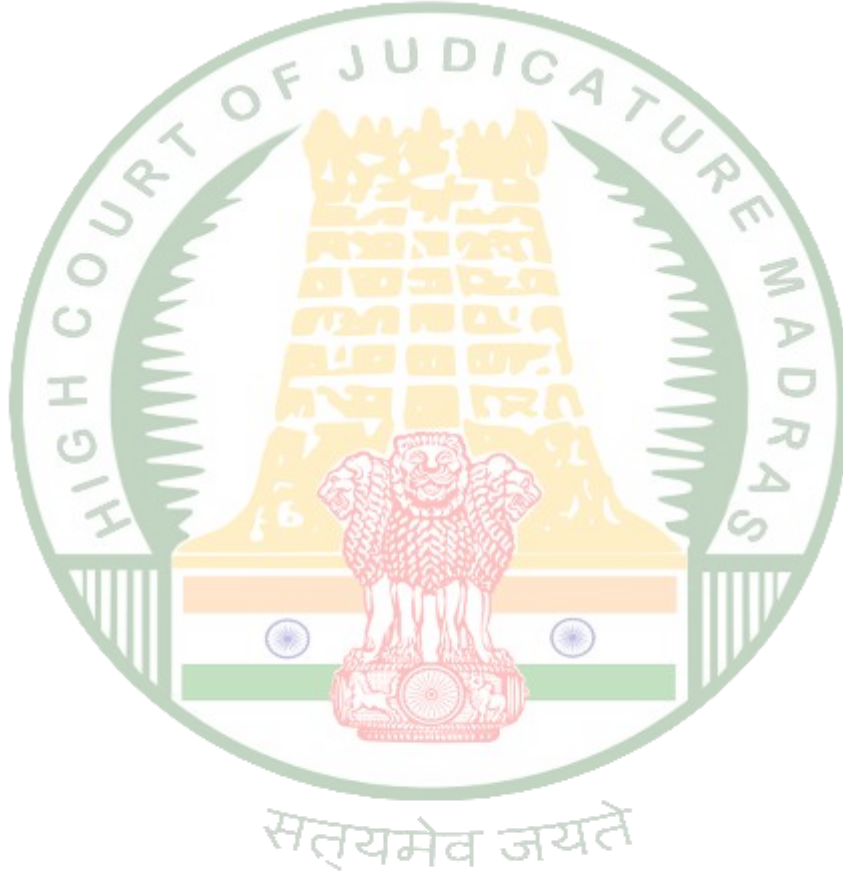
+1cc to Mr.G.Mutharasu, Advocate SR.No.2688

+1cc to M/s.Father Zavier Associates, Advocate SR.No.2688

+1cc to Government Pleader SR.No.3253

W.P.No.7227 of 2018

PA (CO)
GMY (04/02/2020)



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