

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2020

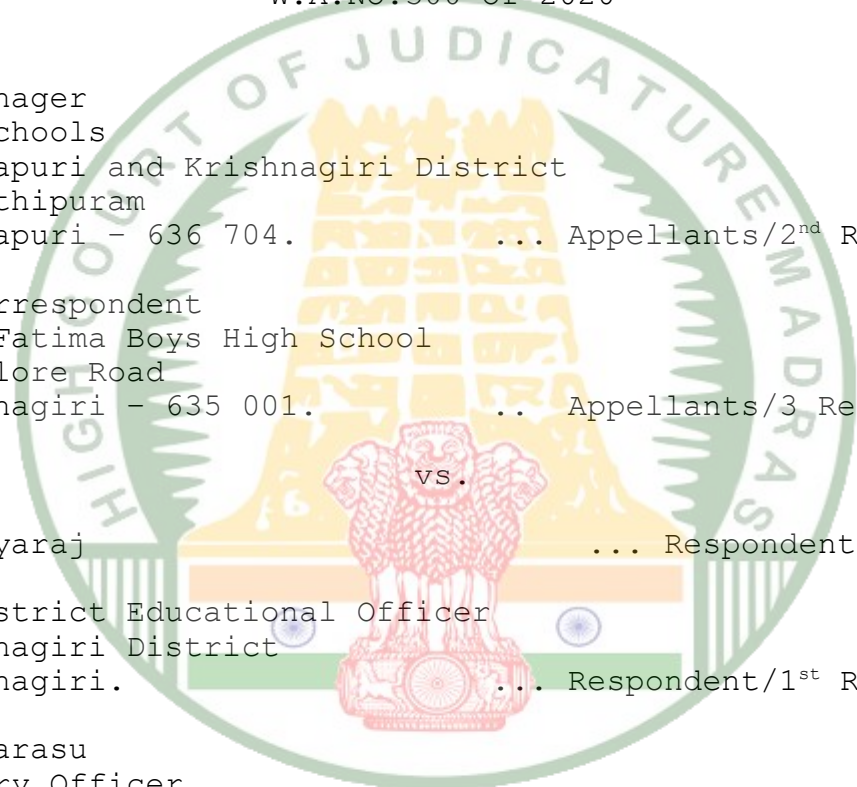
CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.300 of 2020

- 
1. The Manager
R.C.Schools
Dharmapuri and Krishnagiri District
Bharathipuram
Dharmapuri - 636 704. ... Appellants/2nd Respondent
2. The Correspondent
R.C. Fatima Boys High School
Bangalore Road
Krishnagiri - 635 001. ... Appellants/3 Respondent
- vs.
1. C.Sagayaraj ... Respondent/Petitioner
2. The District Educational Officer
Krishnagiri District
Krishnagiri. ... Respondent/1st Respondent
3. G.Mutharasu
Enquiry Officer
No.459, New Additional Chambers
High Court Buildings
Chennai - 600 014. .. Respondent/4th Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order dated 9.1.2020 and made in W.P.No.7227 of 2018.

W.P.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 reinstating the petitioner in service.

For Appellants : Mr.Father Xavier Arul Raj
Senior Counsel
for M/s.Father Xavier
Associates

For Respondents : Mr.A.Ilayaperumal
for 1st respondent

Mr.C.Munusamy
Spl. Government Pleader
for 2nd respondent

Mr.G.Mutharasu
3rd respondent

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The challenge in this appeal is to the judgment of the learned Single Judge whereby an order of dismissal of the respondent/petitioner has been set aside on the ground that the enquiry proceedings were vitiated broadly on account of violation of principles of natural justice.

2. The background in which the disciplinary proceedings were initiated against the respondent No.1/petitioner is that he had been transferred on 29.5.2015 from R.C.Fathima Boys High School, Krishnagiri to St.Antony's Higher Secondary School, Elathagiri, which is stated by the appellants to be at a very short distance. Aggrieved by the transfer order, the first respondent filed W.P.No.17585 of 2015. The transfer order came to be approved by the competent statutory authority of the Education Department, which again came to be challenged by him in W.P.No.30872 of 2015. Both the writ petitions were dismissed by a common judgment dated 21.10.2016. One of the issues raised by the respondent/petitioner was that his status would be altered by such transfer and would also affect his seniority. The respondent/petitioner was admittedly a Mathematics teacher, who initially came to be appointed in the year 1991 on a regular basis in another school of the then Diocese, namely John Britoo High School, Anandam Nagar, Krishnagiri District. After the bifurcation of the Diocese, by an order dated 1.6.2005, the first respondent was transferred to R.C.Fathima Boys High School, which comes now under the Dharmapuri Diocese. By virtue of such transfer, the first respondent came to occupy the post In-charge Headmaster in the said school. While rejecting the

plea of the first respondent about the alteration in the status of his employment vide transfer order dated 29.5.2015, the learned Single Judge observed in paragraph (17) as follows:

"17. Further, the materials placed before this Court would show that the post of In-charge Headmaster is not a separate category and it is not a sanctioned post and there is no scale of pay or separate grade or allowances for the In-charge Headmaster. In this factual background, the submission of the learned counsel for the petitioner that the petitioner, who is functioning as In-charge Headmaster, cannot be transferred as BT Asst in another school, cannot be accepted, as the functioning of In-charge Headmaster is only an administrative arrangement.

When that being the legal position, I do not find any force in the submission made by the learned counsel for the petitioner that his juniors have been promoted as Headmasters and he was transferred as BT Asst. So long as there is no alteration in service conditions and loss of seniority & emoluments, there cannot be any bar for transferring the petitioner from one school to another school."

The learned Single Judge then after having discussed the contract of appointment, held in paragraph (18) as under:

"18. That apart, in the Form of Agreement entered into between the management and petitioner dated 18.08.1992, in Clause 1(a) it has been clearly stated that the teacher/petitioner is liable to be transferred within the management. The petitioner has also agreed for the said condition. Hence, he is bound by the said appointment condition. Though the learned counsel for the petitioner submitted that Form of Agreement was entered into on 18.08.1992 and the Dharmapuri Diocese Society was formed with effect from 24.10.2005; but, after the formation of Dharmapuri Diocese Society, new Form of Agreement was not entered into, in my considered opinion, transfer is not a fresh appointment and it is only a continuation of the appointment made earlier. So, there is no need for fresh agreement. It is clear that the transfer is one of the service conditions. Under such circumstances, I am not inclined to accept the submission made by the learned counsel for the petitioner in this regard. I do not find any merit in the writ petitions and the writ petitions are liable to be dismissed."

3. The writ petitions were dismissed with the aforesaid

findings, against which writ appeals were filed by the first respondent that remained pending. Taking shelter of the pendency of the writ appeals, the respondent/petitioner did not choose to join the transferred place, upon which the appellant/Management sent a letter dated 30.1.2017 informing him that he has failed to abide by the transfer order even after he was given a direction on 2.12.2016 to join duty and, therefore, the management was placing him under suspension. The order of suspension dated 30.1.2017 was followed by a show cause notice on 4.7.2017 calling upon the respondent/ petitioner to join the institution or else disciplinary proceedings would be initiated against him. The respondent/petitioner instead of complying with the directions, gave a reply on 11.7.2017 that since he has preferred writ appeals, which are pending and are being pursued, the allegation of not having respected the judgment of the learned Single Judge was wrong, and that he has also not been paid subsistence allowance. On receiving this letter, the management vide charge sheet dated 11.8.2017 found the explanation given by the respondent/petitioner to be unsatisfactory and called upon the respondent/petitioner to explain as to why he has remained unauthorisedly absent and has failed to join duty, which amounts to dereliction and disobedience of the orders of the management. The respondent/petitioner instead sent a letter on 21.8.2017 for payment of subsistence allowance and on 21.8.2017, the suspension order was revoked with a direction to the respondent/petitioner to join at the transferred institution. He was called upon to submit a separate application demanding subsistence allowance vide letter dated 4.9.2017.

4. One Mr.G.Mutharasu, who is a practising advocate, came to be appointed as the Enquiry Officer. The respondent/petitioner was called upon to appear before him vide notice dated 18.9.2017. The respondent/ petitioner also submitted his non-employment certificate altering its contents and then submitted his reply to the charge sheet on 21.9.2017. Simultaneously, he sent a letter that conducting the enquiry was not necessary and also raised an objection against the appointment of the Enquiry Officer, Mr.G.Mutharasu. This letter is also on record.

5. The Enquiry Officer, vide letter dated 3.10.2017, informed the respondent/petitioner about the date and time of enquiry to be held on 7.10.2017. The respondent/petitioner gave another letter on 6.10.2017 that he has not received any reply to his objection against the Enquiry Officer, whereafter the enquiry report was submitted, after considering the explanation of the respondent/petitioner dated 21.9.2017 that was filed in response to the charge sheet. The charges were found to be proved after discussing the entire evidence, including the

statement of the witnesses during the enquiry, whereafter, on 12.10.2017, a second show cause notice was given to the respondent/petitioner by the disciplinary authority calling upon him as to why the enquiry report should not be accepted and the respondent/petitioner be not dismissed from his services. The final order of dismissal came to be passed on 7.11.2017, with a further stipulation therein that in the event the respondent/petitioner chooses to do so, he may prefer an appeal before the Bishop as per the rules applicable in this regard.

6. Immediately thereafter, the two writ appeals that were pending against the judgment of the learned Single Judge in respect of the challenge raised to the transfer order came to be dismissed on 5.12.2017, after it was brought to the notice of the Court that a final dismissal order has already been passed against the respondent/ petitioner. It was further observed therein that the issues raised by the respondent/petitioner can also be taken in appeal if a challenge is raised to the dismissal order. The judgment of the Division Bench dated 5.12.2017 is extracted herein under:

" Heard the learned counsel appearing for the parties.

2. It appears that against challenging the order passed by the second respondent transferring the appellant to St. Antony's Higher Secondary School Elathagiri from the post of In-charge Headmaster to BT Assistant and the order of approval of such transfer passed by the first respondent, the appellant had filed the writ petitions, which came to be dismissed. Challenging the order passed by the learned Single Judge, the present writ appeals have been filed.

3. It is brought to the notice of this court that in the meanwhile, the appellant had been dismissed from service for not reporting for duty to the transferred place, on conduct a Departmental enquiry and having found that he is guilty of the charges. However, it is submitted that remedy open to the appellant as of now is to file an appeal against the penalty imposed.

4. Since the writ appeals are filed against the order passed by the learned Single Judge wherein the order of transfer and its approval were the subject matters and now, his services were terminated, nothing survives for consideration in these writ appeals. It is for the appellant to get file appeal before the appellate authority to get

an order of reinstatement first and only thereafter, the question of cancellation of transfer order would arise for consideration. Therefore, the writ appeals are disposed of. It is left open to the appellant to raise all the tenable grounds in the appeal before the Department as against the order of termination of his services. No costs. The connected miscellaneous petitions are closed."

7. The respondent/petitioner instead of filing an appeal before the Bishop, filed a writ petition before this Court that has given rise to the present appeal.

8. The learned Single Judge while allowing the writ petition in paragraph (7) has observed about the availability of remedy of appeal, but also came to the conclusion that the enquiry, according to the opinion of the learned Single Judge, was biased and the dismissal order had been passed in complete violation of principles of natural justice, hence the petition could be entertained.

9. The learned Single Judge also found that the Enquiry Officer, who was also an advocate, had appeared and represented the counsel appearing on behalf of the management and, therefore, it was not understood as to why the management continued with the same advocate as Enquiry Officer, which not only indicates a procedural lapse, but also embarrasses the learned counsel who acted as an Enquiry Officer.

10. The learned Single Judge thereafter has concluded in paragraph (10) that the disciplinary proceedings on the face of it were a farce and were vitiated on the ground of bias and has also held that the respondent/petitioner was awarded a disproportionate punishment of dismissal, as he challenged the transfer order. The learned Single Judge was of the opinion that the whole proceedings indicated a bias on the part of the management to somehow or the other get rid of the respondent/petitioner from the school. Consequently, the entire proceedings being in violation of the principles of natural justice, the enquiry report as well as the order of dismissal were quashed with a direction of reinstatement at the transferred place, leaving it open to the management to appoint some other neutral Enquiry Officer and conduct a fresh enquiry by affording sufficient opportunity to the respondent/petitioner.

11. Questioning the conclusions drawn by the learned Single Judge, the learned Senior Counsel for the appellants contends that neither the factual premise and assumptions drawn on the basis whereof the enquiry was held to be vitiated are correct,

nor the legal principles have been correctly traversed to arrive at such a conclusion. The contention is that the institution is a minority institution, even though is aided by the Government, and the Management, therefore, has full control in respect of the service conditions of its employees, including transfer and other disciplinary proceedings. It is urged by the learned Senior Counsel that the very foundation of the dispute was the transfer order dated 29.5.2015. The said order, according to the learned Senior Counsel, has attained finality with the dismissal of the writ petitions challenging the same before this Court, and the writ appeals against the same having been dismissed, the respondent/petitioner was undisputedly bound to obey the said transfer order, which he has admittedly not done. This admitted position of fact has been not appreciated by the learned Single Judge appropriately, which was the foundation of the very charge against the delinquent that he has voluntarily disobeyed to comply with the transfer order, which amounts to insubordination. The said fact having not been dislodged by the respondent/petitioner and his plea that his transfer order was vitiated in any form having been specifically negatived by this Court, the learned Single Judge ought to have recorded this accomplished fact as an undisputed foundation for adjudication of the controversy. The learned Single Judge, according to the learned Senior Counsel, appears to have been still presuming that there was some valid challenge raised to the transfer order, which could not be a presumption, once the matter has been settled in judicial review by this Court upholding the order of transfer and its approval by the educational authorities.

12. The second contention of the learned Senior Counsel for the appellants is that even otherwise the transfer order per se did not suffer from any infirmity causing service disadvantage to the respondent/petitioner, in as much as he was a Mathematics teacher and he had been transferred on the very same post in the other institution without affecting either his service emoluments or his seniority. There was no loss of status as well, in as much as holding the post of an In-charge Headmaster is not holding of the post of Headmaster and this plea had also been negatived by the learned Single Judge in the previous round of litigation, which aspect has also escaped the notice of the learned Single Judge in the impugned judgment.

13. The third argument of the learned Senior Counsel is that there cannot be a presumption of bias or mala fide unless it is actually established by any substantive material. Mr.G.Mutharasu, advocate, who acted as an Enquiry Officer, according to the learned Senior Counsel for the appellants, did not actually appear in the writ appeals that were ultimately dismissed, which is being denied by the learned counsel for the

respondent/petitioner, as the respondent/petitioner had made a specific allegation in this regard and had also pleaded it before the learned Single Judge. The learned Senior Counsel for the appellants contends that even assuming for the sake of argument, though not admitting the same, the counsel was neither the complainant nor had he influenced the enquiry proceedings or the charges levelled against the respondent/petitioner. The charge sheet had been issued by the Management on account of the insubordination and disobedience of the respondent/petitioner in not obeying his transfer order, wherein G.Mutharasu had no role to play. Thus, to assume bias even remotely against him, merely because he is an advocate, does not amount to establishing mala fides either personally or malice in law. It is, therefore, submitted that the learned Single Judge erroneously assumed bias merely because the Enquiry Officer was an advocate.

14. The fourth argument is that the learned Single Judge found that the enquiry was concluded and for which the argument of the respondent/petitioner is that it was done hurriedly - the enquiry was concluded and report was submitted within three days, whereafter the dismissal order came to be passed and thus the conduct of the enquiry and its conclusion have been found to have violated the principles of natural justice. Learned Senior Counsel submits that this finding also is in error, in as much as repeatedly the respondent/petitioner had been called upon to join at the transferred place and as a matter of fact, the Management also became lenient even after dismissal of the writ petitions by revoking his suspension order on 21.8.2017 and asking him to join in the transferred place, but the respondent/petitioner allowed time to lapse by raising objections on the pretext of the pendency of the writ appeals, which is evident from the communications discussed herein above. It is, therefore, submitted that the respondent/petitioner was given an unusually long rope firstly to join at the transferred place and then he was given ample opportunity to defend himself, which was availed of by him by replying to the charge sheet, and when it came to the actual oral enquiry, the respondent/petitioner set up a new excuse of not attending the same because it was being conducted by an advocate. It is urged that it was not necessary at all to enter into this request of the respondent/petitioner, as the advocate was neither the complainant nor had he anything to do with the levelling of charges against the respondent/petitioner, nor was he a witness in support of the charges. Thus, there was no disqualification in the Enquiry Officer and, therefore, the lame excuse of not attending the enquiry was squarely the voluntary choice of the respondent/petitioner because of his own perception of alleged bias. It is urged that the respondent/petitioner had no answer to the finality attached to the transfer order and his consequential conduct of not obeying the same and, therefore, he

set up this excuse when the enquiry was about to be concluded, and in such circumstances, the presumption drawn by the learned Single Judge without discussing these facts is a perverse assumption, bereft of the factual background of the controversy and without any actual malice existing.

15. The fifth argument of the learned Senior Counsel for the appellants is that the learned Single Judge has failed to appreciate that an adamant and stubborn indisciplined conduct of the respondent/petitioner in not obeying the transfer order after he lost the legal battle was itself sufficient to deny him the discretionary relief and, therefore, this very conduct which stood established on record and was found by the Enquiry Officer as well as the Disciplinary Authority after giving the second show cause notice to the respondent/petitioner, did not in any way violate the principles of natural justice. To contend that no indulgence should be granted to such a delinquent, learned Senior Counsel has relied on two decisions of the Apex Court, namely: *Vijay S. Sathaye v. Indian Airlines Ltd.*, (2013) 10 SCC 253 and *Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu*, (2014) 4 SCC 108.

16. The sixth argument of the learned Senior Counsel for the appellant is that the conduct of the Management in giving full leverage to the respondent/petitioner cannot be assumed to be a fact against the Management to conclude as if the respondent/petitioner has been targeted and the Management had already made up its mind to get rid of him. It is urged that this conclusion drawn by the learned Single Judge is bereft of discussing any of the facts referred to herein above and, therefore, to direct his reinstatement on such findings is erroneous.

17. The seventh argument of the learned Senior Counsel for the appellants is that the respondent/petitioner could not have filed the writ petition challenging the dismissal order straight-away, in as much as he ought to have exhausted the remedy of appeal which lay before the Bishop, as the institution is a minority institution. This fact has been clearly stated in the dismissal order and has also been noticed in the judgment of the Division bench that dismissed the writ appeals on 5.12.2017 with a clear recital to that effect. The learned Single Judge completely overlooked this binding indication by the Division bench, whereunder the respondent/petitioner had to file an appeal and not straight-away file a writ petition before this Court. Accordingly, on this issue as well the impugned judgment is vitiated and the finding recorded that since order was in violation of the principles of natural justice, the writ petition was being entertained cannot hold water. It is urged that this amounts to virtually bypassing the remedy of appeal,

which remedy ought to have been availed of and the learned Single Judge should not have avoided it in spite of it being mentioned by the Division bench specifically in the order.

18. Apart from the other submissions, as referred to herein above, the learned Senior Counsel at last has submitted that the learned Single Judge has directed the respondent/petitioner to be reinstated at his transferred place, and this has been done without examining the fact that the post which had been offered to be respondent/petitioner by way of transfer, was the post of a Mathematics teacher and in the interest of the students, it could not have remained vacant, as it was the sole post of Mathematics teacher. In the said background one Mr.S.Panneer Selvam had been appointed against the said post to which a departmental approval has been granted and salary is being disbursed from the State funds to the said person. The said appointment of Mr.S.Panneer Selvam is not disputed by the learned counsel for the respondent/petitioner, who has submitted that any appointment made has to be subject to the outcome of the proceedings against the respondent/petitioner and his writ petition having been allowed the said person has to make way for the respondent/petitioner. He further submits that a representation had also been filed against this, but of no avail during the pendency of the proceedings before this Court.

19. Learned Senior Counsel for the appellants, therefore, on the basis of the aforesaid facts contends that the impugned judgment deserves to be set aside. As a natural corollary to this argument with regard to the occupancy of the post and the payment of salary, may also give rise to the issue of backwages, which has also not been determined by the learned Single Judge, nor any dictions have been given with regard to pecuniary benefits to the respondent/ petitioner. This Court cannot assume that the learned Single Judge intended to do so, but what can be gathered is that the learned Single Judge has directed the reinstatement of the respondent/ petitioner at the transferred place. This was obviously presuming as if the post is vacant, but as noticed above, this fact is neither here nor there and the post is already occupied by a third person, who is being paid salary from the State funds, which appointment was admittedly made after the dismissal of the respondent/petitioner.

20. After concluding his submissions, learned Senior Counsel for the appellants, even though has not conceded any part of his argument or the stand taken by the appellants, has submitted that even if this Court is otherwise inclined to uphold the findings recorded by the learned Single Judge in respect of the violation of principles of natural justice during enquiry, the enquiry can be conducted through any other person as Enquiry Officer, but at the same time, it is open to the

respondent/petitioner to accept compulsory retirement as a substitute for dismissal, which will save him from any further pursuit of disciplinary proceedings or otherwise any litigation. But, this is only in the form of a suggestion and is not a concession. We may record that this offer made by the Management can be considered in the event the respondent/petitioner accepts such an offer, but that can be done only in the course of disciplinary proceedings that might have to be undertaken in case the judgment of the learned Single Judge is to be complied with. We will say nothing further on the same.

21. Responding to the aforesaid arguments, learned counsel for the respondent/petitioner vehemently urged that the Management has in a predetermined way tried to shunt the respondent/ petitioner out of the institution without giving him any benefits of promotion and without allowing him to work as an In-charge Headmaster. He submits that the whole idea of removing the respondent/petitioner from the school by way of transfer was to harass him and to not allow him to enjoy the position of In-charge Headmaster. This was on account of persecution and not on account of any administrative exigency.

22. The enquiry was got conducted through a counsel who had appeared for the Management before the High Court and whose very presence as Enquiry Officer was, therefore, biased, being a representative of the Management in this litigative pursuit. Hence, the enquiry was bound to be vitiated and no fairness was expected, for which in spite of specific protest having been raised and not considered by the Management vitiates the enquiry process. The contention is that a specific request was made for change of Enquiry Officer on account of him being a lawyer of the Management, yet no heed was paid and without answering that request, the enquiry was concluded that too hurriedly within three days and, therefore, the enquiry conducted was unfair and the learned Single Judge was right in arriving at this conclusion.

23. The next submission of the learned counsel is that the Management had no authority to fill up the post and ought to have waited as the dismissal order was already under challenge before this Court. Even otherwise the post has to be offered to the respondent/petitioner, having succeeded in the writ petition, as any appointment against the same post would be governed by the doctrine of lis pendens and, therefore, the right of the respondent/ petitioner to get reinstated is not vitiated. It is submitted in this context that the respondent/petitioner was getting salary from aided funds prior to this dismissal and, therefore, the same position has to continue with all backwages, which is the liability both of the

Management and the State. In this background, the order of reinstatement is perfectly justified and does not suffer from any infirmity.

24. It is then submitted that the transfer being mala fide and arbitrary for no valid reason, had been rightly challenged by the answering respondent and the Division bench while dismissing the writ appeals had left the questions open to be assailed, and in such a situation, it cannot be said that the dismissal of the writ petitions by the learned Single Judge in the year 2016 attaches finality to the adjudication of the cause of transfer as well. It is urged that the transfer was the basis of the entire dispute and the dismissal order is founded on the very same question of disobedience to the transfer order and hence, the said issue cannot be said to have attained finality and was open to consideration. The learned Single Judge has, therefore, taken these entire facts into notice and has rightly arrived at the conclusion and the impugned judgment does not call for any interference.

25. It is urged that the answering respondent is entitled for all backwages and all pecuniary benefits on account of such reinstatement. It was the Management which was adamant to somehow or other punish the answering respondent and hence, the learned Single Judge has not committed any error in allowing the writ petition.

26. We have considered the submissions at length and we may at the outset record that the institution, being a minority institution, the disciplinary control over the employees is that of the Management. The transfer of the respondent/petitioner vide order dated 29.5.2015 from R.C.Fathima Boys High School, Krishnagiri to St.Antony's Higher Secondary School, Elathagiri, took place about five years ago. The respondent/petitioner has resisted the same and has not joined the transferred institution. He has, therefore, failed to obey the transfer order and rather questioned it on the judicial side by filing writ petitions. The writ petitions were dismissed on 21.10.2016. What is relevant is that the transfer order dated 29.5.2015 had been approved by the educational authorities on 1.9.2015 and the challenged raised to the said order in W.P.No.30872 of 2015 was also dismissed.

27. The contention raised by the respondent/petitioner was that the order was without authority and each school was a separate unit and hence, the transfer was vitiated. The second contention was that one Sekar had been transferred in place of the respondent/petitioner. Both these contentions had been

rejected by the High Court and the writ appeals were ultimately dismissed with no relief on this score relating to transfer. Thus, it was the bounden duty of the respondent/petitioner to have at least joined the institution immediately after the dismissal of the writ petitions on 21.10.2016. A mere pendency of appeal against the judgment of the learned Single Judge without any interim order cannot be a ground for the respondent/petitioner to resist the transfer. He did this willingly, as he was himself not willing to join the transferred place. Not only this, the respondent/petitioner had been suspended by the Management, but the said suspension order dated 30.1.2017 was later on revoked on 21.8.2017, even though the disciplinary proceedings were kept pending. Even then, the respondent/petitioner did not choose to join at the transferred place in order to end the impasse. The question of his claiming the post of In-charge Headmaster was also repelled by the learned Single Judge, as the respondent/ petitioner was made in-charge in the place where he was working and he was not appointed as a Headmaster. This was an admitted position that since May, 2015 till 7.11.2017, which is the date of dismissal order, the respondent/petitioner did not join the institution in spite of the fact that the challenge raised against the transfer order had already failed before this Court. The learned Single Judge could not have left this fact unappreciated in the background aforesaid while dealing with the issue of enquiry, where it was the respondent/ petitioner who was resisting the same at every stage and as a matter of fact did not give any valid reply to the second show cause notice dated 12.10.2017 issued to him. This important fact, therefore, could not have been ignored and given a disproportionate weight. The frame of the impugned judgment, therefore, having failed to have included this as a vital part of the discussion before arriving at a conclusion, dents into the conclusion drawn by the learned Single Judge. The event of the judicial review of the transfer order was not an unrelated event to the controversy, and which had ended in a judgment against the respondent/petitioner. There was therefore no perceivable disadvantage to the respondent/petitioner on getting transferred to the other institution.

28. The second issue which deserves consideration is about the assumption drawn about the Enquiry Officer, who was an advocate. The fact that the Enquiry Officer had appeared in the writ appeals that were later on dismissed, but were pending on the date of the enquiry, does not, in our opinion, per se disqualify him from being an Enquiry Officer. Nonetheless, the learned Advocate, Mr.G.Mutharasu, was neither a witness nor was he the complainant, nor was he the disciplinary authority. He was not even on the staff of the institution to have any correlation or any personal bias against the respondent/petitioner. His stated alleged relationship as a counsel of

the Management, which was being disputed, was taken as a last measure during the enquiry proceedings by the respondent/petitioner to put a spanner into the wheel of enquiry. There might be an apprehension in the mind of the respondent/petitioner, but a mere apprehension does not get translated into a prejudicial bias in an enquiry proceeding while assessing the role of an Enquiry Officer. The Enquiry Officer simply collects facts after investigating the material placed before him and submits a report. The respondent/petitioner himself did not choose to appear before him and was rather resisting his continuance as an Enquiry Officer. There was no tangible material except the allegation that he was a counsel in the writ appeals. Even assuming for the sake of argument that the lawyer was in some sort of a fiduciary relationship with the Management, mala fides or bias is not established against the lawyer which remains an allegation and, therefore, the learned Single Judge while concluding that the proceedings were vitiated has indicated that the advocate has been unnecessarily embarrassed. This, in our opinion, does not in any way amount to recording a conclusion of actual bias or mala fide against the lawyer.

29. However, the learned Single Judge goes on further to state that the enquiry report was submitted at a very rapid pace finding that the charges had been proved. At this juncture, we would like to refer to the fact that the Enquiry Officer has also noticed the entire detailed reply submitted by the respondent/petitioner to the charge sheet and to the second show cause issued to him. The reply of the respondent/petitioner again rests almost on the very same ground that had been raised in the writ petitions challenging his transfer order. There is no failure on the part of the Enquiry Officer in noticing the same or even recording the evidence in this regard. The Enquiry Officer, therefore, cannot be blamed for his conduct of not having noticed any fact or not given any opportunity to the delinquent. The only doubt which has occurred in the mind of the learned Single Judge is about the rapid pace in which the enquiry report was submitted. At this juncture, the learned Single Judge has not delved into the fact that the report of the enquiry was given to the respondent/petitioner along with the second show cause notice dated 12.10.2017 by the disciplinary authority, calling upon him to give a reply and it is almost one month thereafter that the dismissal order had been passed. The Enquiry Officer, after giving opportunity, that was not availed of voluntarily, had no option but to proceed thereafter and conclude the same. The period of enquiry has, therefore, been taken as a too short period for the conclusion of a fair enquiry, but in our opinion, the enquiry had proceeded much before in September, 2017 itself and ended almost after a month. We, however, would not delve into this issue any further, as we

find that in order to remove any such element of apprehension of bias of the lawyer concerned acting as Enquiry Officer, we without agreeing with the reasons of the learned Single Judge, for the reasons given herein above, find that the enquiry can be re-conducted in order to do substantial justice in the matter.

30. The learned Senior Counsel for the appellants is right in his submission that the respondent/petitioner himself had avoided the enquiry proceedings for any reason whatsoever and had also avoided acceptance of the transfer order for no valid reason after the dismissal of the writ petitions. We may, however, like to add that once the Division Bench in the writ appeals had observed that against the order of dismissal the respondent/petitioner ought to avail the remedy of appeal, the said issue ought to have been discussed by the learned Single Judge in stead of simply quashing the proceedings on the ground of violation of principles of natural justice. Natural justice is not a strait-jacket formula and from what has been narrated above, it is clear that the respondent/petitioner had some contribution to make so as to hold him equally responsible, as it was he who did not choose to join the transferred place in spite of losing the litigative battle up to the High Court. These small facts have, therefore, been not considered in an appropriate manner and the impugned judgment has proceeded on expectations of strict observance of the principles of natural justice and impressions of bias. As noted above, there were certain incorrect assumptions and omissions that led to this conclusion, as the focus was more on allegation of violation of principles of natural justice than on the facts that gave rise to the entire controversy. The very conceptualization of the entire episode and the narration of facts that has been noticed by us in the arguments advanced by the learned counsel for the appellants as also the respondents do not appear to have been appreciated in correct perspective in the impugned judgment.

31. Nonetheless, the respondent/petitioner had put in more than two decades of service in the institution as a Mathematics teacher and to dispense with his job will be pre-eminently touching the livelihood of the respondent/petitioner and even the subsistence of his family. In this background that the dispute arose on the issue of transfer, we find that the enquiry can be held again with a new Enquiry Officer to ultimately satisfy the perception of fairness in the proceedings so that the respondent/petitioner may not have any doubt on the part of the Management in conducting the enquiry. We may again reiterate that the respondent/petitioner had been given a long rope and as a matter of fact, it is he who appears to have brought about the result of his own dismissal by not obeying the transfer order. Accordingly, we direct that the enquiry shall be held again with a new Enquiry Officer as directed by the

learned Single Judge. The Management shall, independent of the previous enquiry report and dismissal order, take a decision in accordance with principles governing service disciplinary matters.

32. However, the other reliefs of reinstatement and the arguments pertaining thereto have to be noticed more particularly in the background that a third person has already been appointed, against the very post to which the respondent/petitioner had been transferred, and his appointment has been approved after the dismissal of the respondent/petitioner. The new appointee, Mr.S.Panneer Selvam, had not been made a party to the writ proceedings and his appointment has been approved by the educational authorities and he is also, according to the learned counsel, getting salary from the State aided funds. In this view of the matter, the contention of the learned counsel for the State that two persons cannot be provided with salary against one post has to be accepted. The learned Single Judge has directed reinstatement of the respondent/petitioner on a post which is already occupied and the occupancy whereof is approved by the educational authorities. This was not under challenge, nor was it brought to the notice of the learned Single Judge, in spite of the fact that the respondent/ petitioner also knew about it. This we can presume, as nothing is written in the impugned judgment about this fact. Nonetheless, this has now been noticed by us and not disputed by either of the parties.

33. An additional typed set of papers had been filed during the course of arguments bringing on record the appointment order of Mr.S.Panneer Selvam dated 8.6.2018 and its approval by the competent authority on 23.1.2019. Even though the said facts are not disputed by either of the parties, the learned counsel for the State, Mr.C.Munusamy, submits that against one post, two persons cannot be allowed to work and the order of reinstatement by the learned Single Judge would result in an anomalous situation, hence, it would be the liability of the Management to make any payments to the respondent/petitioner. It will be seen from the facts on record that this fact of appointment of a third person does not seem to have been brought to the notice of the learned Single Judge and the learned Single Judge did not even enquire about the status of vacancy of the post, which obviously was lying vacant since 2015 and the respondent/petitioner had admittedly not joined on the post. It is in this background that the appointment of Mr.S.Panneer Selvam was made in 2018, long after the dismissal of the writ petitions challenging the transfer order by the respondent/petitioner and after the dismissal of the writ appeals against the same. Thus, it cannot be said that the appointment made was not necessary in the larger interest of the

students. However, such an appointment would obviously be subject to any final decision in respect of the respondent/petitioner, in as much as had the respondent/petitioner been not dismissed, there would not have been any fresh appointment. However, the fact remains that the respondent/petitioner was dismissed on 7.11.2017 and the fresh appointment has been made thereafter on 8.6.2018 and approved on 23.1.2019. Thus, there was a vacancy as on the date of appointment on account of the dismissal of the respondent/petitioner and hence, the appointment of Mr.S.Panneer Selvam could not have been faulted with nor his approval, which is not under challenge by the respondent/petitioner nor Mr.S.Panneer Selvam is a party to this proceedings.

34. In this background, it is only Mr.S.Panneer Selvam who was entitled to receive payment of salary from the date of his appointment on wards from the State aided funds. This fact, therefore, ought to have been the basis while ordering reinstatement of the respondent/petitioner, which unfortunately has not been examined by the learned Single Judge, may be on account of such information not being brought before him, but the fact of the matter is that it has now been brought to our notice and it cannot be ignored, more particularly when the said fact is not disputed by either of the parties.

35. We find that it will not be possible to reinstate the respondent/ petitioner on the same post in the absence of any vacancy, as that will create complications relating to payment of salary. There is no direction by the learned Single Judge to this effect and there is yet another ancillary part of the argument, namely the entitlement of the respondent/petitioner to any backwages on the direction of reinstatement. We will, therefore, have to modify the impugned judgment in order to meet this peculiar situation, which could not be dealt with by the learned Single Judge.

36. We, accordingly, partly allow the appeal to this extent that the reinstatement of the respondent/petitioner or otherwise will take place only on the conclusion of the enquiry proceedings, which shall be concluded expeditiously, preferably within the time period as indicated by the learned Single Judge. Any emoluments to which the respondent/petitioner may be found entitled to would be clearly dependent on the outcome of the enquiry and disciplinary proceedings. This will have to be taken care of by the disciplinary authority while passing orders and then accordingly intimated to the educational authorities, who are under an obligation to make payments as the institution is aided.

37. Since a third party has been appointed and is receiving

salary, the said status would continue till the conclusion of the proceedings.

38. As noticed in the discussions above, the learned Senior Counsel for the appellants had also indicated that it is open to the respondent/petitioner to accept compulsory retirement as a substitute for the punishment so that his pecuniary benefits post service are not affected. We will say nothing on this and leave it open to the respondent/petitioner to either accept this offer or otherwise participate in the enquiry and await the outcome thereof.

The appeal is partly allowed, subject to the above directions. No costs. Consequently, C.M.P.No.5199 of 2020 is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sasi

To:

The District Educational Officer
Krishnagiri District
Krishnagiri.

W.A.No.300 of 2020

RLD(CO)
GN(30/07/2020)

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