

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2660 of 2013

Dr.M.Janakiraman

... Petitioner

vs.

The Secretary and Correspondent,
S.B.I.O.A. Educational Trust,
18, School Road,
Anna Nagar West Extension,
Chennai 600 101.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the Respondent in SBIOA/COR/25/2013, dated 28.01.2013 and quash the same.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.C.Jagadish

O R D E R

Petitioner has come up with this Writ Petition challenging the impugned proceedings of the Respondent in SBIOA/COR/25/2013, dated 28.01.2013.

2. According to the Petitioner, he was appointed as Trained Graduate Teacher in Physical Education in SBOA Matriculation Higher Secondary School, Anna Nagar West Extension, Chennai, as per the proceedings, dated 19.07.1988 of the Respondent herein. Subsequently, he was issued with an order of re-appointment as Trained Physical Education Teacher in the same School, with effect from 01.06.1989. After the completion of probation, he was brought under regular establishment and his services were regularized in the said School.

3. The grievance of the Petitioner is that, he was issued with an order of transfer dated 07.01.2012 by the Respondent herein, transferring him from SBIOA Matriculation Higher

Secondary School, Chennai to SBIOA Model Matriculation and Higher Secondary School, Mogappair, Chennai, without adducing any reason. However, the Petitioner understood that, the said order of transfer was issued on account of an incident which took place on 06.01.2012 at 11.15 a.m., wherein, the students of X Standard 'C' Section were not taken by the Watchman to the playground located 500 metres away and the same was enquired by the Petitioner, during which time, the Physical Director interfered and shouted at the Petitioner.

4. Challenging the order of transfer, the Petitioner filed a Writ Petition in W.P.No.907 of 2012 and the same was admitted and an order of interim stay was granted on 12.01.2012. However, the Petitioner was issued with an order of suspension dated 09.01.2012, by the Principal of the School. Hence, the Petitioner was again constrained to file another Writ Petition in W.P.No.1415 of 2012, wherein, this Court granted an order of interim stay on 23.01.2012. Pursuant to the said interim order, the Petitioner was allowed to join the post. However, according to the Petitioner, he was harassed by not providing any class work and was made to sit in a single room or in the verandah throughout the day. As W.P.No.907 of 2012 came to be dismissed on 30.08.2012, challenging the order passed therein, the Petitioner filed a Writ Appeal in W.A.No.2491 of 2012 and the same is pending.

5. It is further stated by the Petitioner that, he was issued with a Memorandum dated 12.09.2012 on the charge that, he had used abusive language against the Watchman of the School on 06.01.2012 and Physical Director, viz. Martin Rathinaraj. On receipt of the Charge Memo, the Petitioner submitted his representation dated 05.10.2012. Thereafter, on 31.08.2012, the Petitioner sent a telegram to the Principal for availing Medical Leave on health grounds and he sent a letter of request dated 26.10.2012 seeking Medical Leave enclosing his Medical Certificate dated 30.08.2012, for severe low back pain. He made another representation on 15.11.2012 seeking extension of Medical Leave from 28.10.2012 till 20.12.2012.

6. While so, the Respondent herein issued a communication dated 03.12.2012 instructing the Petitioner to appear before the Medical Board at Government General Hospital, before 17.12.2012. The Petitioner forwarded a communication dated 14.12.2012 to the Respondent stating that, he is not in a position to appear before the Medical Board due to ill health. He sent another representation dated 19.12.2012 requesting extension of Medical Leave for one month from 21.12.2012 and a further representation on 19.01.2013, seeking extension of Medical Leave for yet another month from 20.01.2013.

7. In the said circumstances, the Respondent issued the impugned communication dated 28.01.2013 that, the Petitioner has not shown any interest in joining duty and thereafter, it has been decided to treat that, the Petitioner had voluntarily left the service with effect from 31.08.2012, as per the Notice dated 18.10.2012. The said impugned communication is under challenge in the present Writ Petition.

8. Learned counsel for the Petitioner submitted that, the Petitioner is a regularly appointed Physical Education Teacher working in the Respondent-School for the past 24 years and he has been conferred with several Awards in appreciation of his meritorious and tireless services to the benefit of the students undergoing education. It is his contention that, when the Petitioner has reportedly sent Medical Leave Certificate along with Leave Letter and the same has been duly received by the Respondent, the impugned order of termination of services of the Petitioner, without conducting any enquiry, is ex-facie illegal and liable to be set aside.

9. In reply, learned counsel appearing for the Respondent submitted that, the Petitioner was absent from duty for a long period, which amounts to abandonment of service, resulting in voluntary vacation from service and termination automatically, and that, the Management of the Respondent-School has complied with all necessary mandatory provisions.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. On a perusal of the records, it is seen that, the Petitioner has sent a letter dated 26.10.2012 to the Respondent seeking Medical Leave along with Medical Certificate dated 30.08.2012 for severe low back pain. Thereafter, he has made another representation on 15.11.2012 seeking extension of medical leave from 28.10.2012 till 20.12.2012. Pursuant to the Respondent's communication dated 03.12.2012 instructing the Petitioner to appear before the Medical Board before 17.12.2012, the Petitioner has reportedly forwarded a communication dated 14.12.2012 to the Respondent, stating that, he is not in a position to appear before the Medical Board due to ill health. He has further sent another representation dated 19.12.2012, requesting extension of Medical Leave for one month from 21.12.2012, as could be seen from the Typed Set of Papers.

12. In the said circumstances, unmindful of the Petitioner's past services and without conducting any enquiry as to the continuous absence of the Petitioner from duty, the Respondent-School ought not to have issued the impugned order,

terminating the Petitioner from service. Hence, this Court feels it appropriate to remand the matter to the Respondent-School for conducting an enquiry and the learned counsel for the Petitioner has no serious objection to the same.

13. In view of the above, to secure the ends of justice, the impugned order dated 28.01.2013 passed by the Respondent, is set aside and the matter is remanded to the Respondent for fresh consideration. The Respondent herein is directed to conduct full-fledged enquiry on the issue in question, after giving notice to the Petitioner, and pass appropriate orders within a period of six months from the date of receipt of a copy of this order.

The Writ Petition is allowed with the aforesaid direction. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To

The Secretary and Correspondent,
S.B.I.O.A. Educational Trust,
18, School Road,
Anna Nagar West Extension,
Chennai 600 101.

+1 cc to M/s.C.Jagadesh, Advocate, Sr.No. 34075
+1 cc to Mr.G.Sankaran, Advocate, Sr.No. 34047

W.P.No.2660 of 2013

PP(CO)
RMP(16/10/2020)