

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.26662 OF 2013

AND

M.P. NO. 1 OF 2013

S.Kavitha

.. Petitioner

- Vs -

1. The Director of Elementary Education
College Road, Chennai - 6.
2. The District Elementary Education Officer
Vellore - 4.
3. The Assistant Elementary Education Officer
Vellore Urban, Vellore.

.. Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the entire records connected with the impugned proceedings passed by the 2nd respondent in Na. Ka. No.2801/Aa3/2013 dated 11.09.2013 and quash the same.

For Petitioner : Mr. S.N.Ravichandran

For Respondents: Mr. S.Suresh Kumar, GA (Edn.)

ORDER

It is the case of the petitioner that after completing her education and registering her name in the employment exchange, she was appointed as B.T. Assistant (Maths) through Teachers Recruitment Board at Panchayat Union Middle School, Kollamangalam, Madhanur Union on 6.3.06. On 14.8.08, the petitioner was transferred to Panchayat Union Middle School, V.O.C. Nagar, Sathuvachary and, thereafter, she was promoted as Middle School Headmistress by the order of the 2nd respondent dated 28.5.13 and transferred to Panchayat Union Middle School, Puliyamedu.

2. It is further averred by the petitioner that the said school had 1 Headmaster, 5 Secondary Grade Teachers, 3 B.T. Assistants and 4 Special Teachers. It is further averred by the petitioner that one of the Secondary Grade Teacher, viz., Valarmathy did not have cordial relations either with the staff of the school or the parents from the very day of her joining the said school. It is also further averred by the petitioner that the said Valarmathy had caused much harassment to the previous Headmaster and on the basis of false complaint, disciplinary action was initiated against the said Headmaster and he was transferred to another school. Similarly another Headmaster prior to the petitioner also met with the same fate. It is the further case of the petitioner that there was no harmony between the said Valarmathy and other teachers and that they were threatened by the said Valarmathy with the aid of the provisions of the SC/ST Act.

3. It is the further averment of the petitioner that on 25.6.13, the said Valarmathy wanted to go out of the school during working hours, which was refused by the petitioner. But the said Valarmathy threw an unsigned letter seeking permission to go out and walked away from the school and went to the house of the Panchayat President and threatened him and the act of the said Valarmathy in leaving the school during school hours was questioned by the Panchayat President. On 4.7.13, during the visit of the 3rd respondent, a detailed representation was submitted to the 3rd respondent about the misbehaviour and non-cooperation of the said Valarmathy with the teachers and parents, thereby derailing the smooth functioning of the school. Based on the said representation and the complaint of the President of the Village School Committee, report was submitted by the 3rd respondent to the 2nd respondent recommending for deputation of the said Valarmathy to some other school.

4. In the aftermath of the above arrogant attitude of the said Valarmathy, the President of the Village Education Committee along with members and public gathered in the petitioner's room on 5.7.13 and made complaints about the act of the said Valarmathy. While the petitioner was trying to pacify the complaining party, the President went to the classroom of the said Valarmathy and after asking the students to come out, locked the classroom with Valarmathy inside. Coming to know about the said act, the petitioner rushed to the said classroom and asked the lock to be removed and since the same was not acceded to by the public, left with no other choice, the petitioner contacted the 3rd respondent over phone and informed about the incident. The 2nd and 3rd respondent along with the Block Development Officer reached the school and with the aid of

the police, the lock was removed. Complaint was given against the said Valarmathy by the Village Education Committee and the teachers of the school also gave written complaint against the said Valarmathy. However, on the basis of the complaint given by Valarmathy, a first information report was registered against the Panchayat President, Annamalai, one Karthim Palani and Devendran under various sections of IPC and also the SC/ST Act by the Ariyalur Police Station.

5. In the above circumstances, the petitioner was transferred to some other place where she was not able to join due to various other reasons and, therefore, she made representations to the competent authorities against the same. However, curiously on 25.7.13, the 2nd respondent issued a show cause notice relating to the incident that happened in the school when Valarmathy was locked and the failure of the petitioner to prevent the same to which the petitioner submitted a reply on 2.8.13 denying the allegations. However, without considering the said reply, a charge memo was issued u/r 17 (a) of the Tamil Nadu Government Servant (Discipline & Appeal) Rules on 16.8.13 to which the petitioner submitted her explanation on 10.9.13. However, to her shock and surprise, the charge memo issued u/r 17 (a) was withdrawn and a charge memo u/r 17 (b) was issued and the petitioner was also transferred to Panchayat Union Middle School, Gurumalai on the basis of the report of the SC/ST Commission dated 29.8.13 and the proceedings of the 1st respondent dated 10.9.13. It is further averred by the petitioner that her transfer to Gurumalai is only by way of punishment, as she had to face several hardships daily to reach the said school. Therefore, left with no other alternative, the present writ petition has been filed.

6. Learned counsel appearing for the petitioner vehemently submits that though the initial charge memo u/r 17 (a) was issued against the petitioner containing one charge on 16.8.13, for which show cause notice was issued and the petitioner submitted her explanation, however, without any notice to the petitioner, the charge u/r 17 (a) was dropped and charges u/r 17 (b), in all containing five charges were framed, which is wholly unsustainable. It is the further submission of the learned counsel for the petitioner that the sum and substance of the charges u/r 17 (a) and 17 (b) are one and the same. Therefore, it is submitted that when the substance of the charges u/r 17 (a) and 17 (b) are one and the same, without notice, framing the charges u/r 17 (b) cannot be maintained, as there is total violation of principles of natural justice and, therefore, the same needs to be interfered with.

7. Per contra, learned Government Advocate appearing for the respondents submit that the overall circumstances, on analysis revealed that the act of the petitioner had been detrimental for the school and, therefore, the competent authority was of the opinion that charge u/r 17 (b) needs to be framed and, accordingly, the charges u/r 17 (a) was dropped and charges u/r 17 (b) were framed. There is no embargo in the rules to alter the charges and once notice has been issued, there is no necessity for issuing a second show cause notice, when the same set of charges are framed under different provision of the rules. It is the submission of the learned Government Advocate that alteration of charges from under one rule to another rule is an administrative procedure and so long as the principles of natural justice have been complied with by issuing show cause notice while initially charges were framed, in the absence of any rule, it is not necessary for the concerned authority to once again issue a show cause notice when the charges are one and the same. It is therefore prayed that no interference is called for with the impugned charge memo.

8. This Court bestowed its best attention to the submissions advanced by the learned counsel on either side and perused the materials available on record.

9. A perusal of the records reveal that there are two impugned orders, one relating to transfer of the petitioner and the other relating to alteration of charges. It is to be pointed out that the entire averments of the petitioner in the present petition relates to the happenings that culminated in the issuance of the initial charge and the alteration of charge thereafter and the main thrust of the petitioner is one relating to transfer. However, a perusal of the materials reveal that two writ petitions have been filed by the petitioner, wherein in the other writ petition, viz., W.P. No.26663/13, the same was disposed of by this Court, wherein it was basically argued that it related to challenging the transfer and the same was closed for reasons recorded therein. It is observed that the impugned order in both the petitions carry the No. 2801/Aa3/2013 dated 11.09.2013 issued by the 2nd respondent. Since the other writ petition, viz., W.P. No.26663/2013 has been argued that it pertains to transfer and the same has been disposed of, the present petition is taken as one relating to the alteration of charge and, on the said issue alone, this writ petition is proceeded with. However, it is to be pointed out that the above fact was neither submitted by the learned counsel for the petitioner nor the learned Government Advocate, but it stood revealed only on the basis of the careful consideration of the whole case by this Court.

10. Be that as it may. The one and only contention advanced by the learned counsel for the petitioner relates to non-issuance of show cause notice before alteration of charges from u/r 17 (a) to u/r 17 (b). On a query by this Court as to the rule which contemplates issuance of second show cause notice on the alteration of charge from under one provision to another, learned counsel for the petitioner fairly conceded that there is no rule, which imposes a pre-condition on the authority to issue a show cause notice once over on the alteration of charge from u/r 17 (a) to 17 (b). It is also equally accepted by the respondents that this Court in many cases has set aside the second charge memo for non-issuance of show cause notice. Therefore, it transpires that this Court has held in favour of either side, but it is to be pointed out that it is based on the facts and circumstances of each case, on the set of facts projected therein. That being the factual position, as the present issue pertains to a legal issue, the same can be answered by this Court on the facts of the present case.

11. Admittedly, when the initial charge memo was issued, show cause notice was issued to the petitioner for which explanation has also been submitted. It is, in fact, the case of the petitioner that the charges u/r 17 (a), which has been subsequently altered to one u/r 17 (b) are identical. In spite of the same being identical and in respect of the charges u/r 17 (a), the petitioner having already submitted her explanation, this Court is at a loss to understand as to what the petitioner intends to submit by way of second explanation to the charges, which are identical to the previous charges. Further, it is to be pointed out that the charge memo is not a punishment. It is mere contemplation of an action, which is sought to be taken to find out the facts and circumstances surrounding a particular happening, of which the petitioner is charged and whether the petitioner is responsible for the said happening and the dereliction of the petitioner in his duties. It is a mere administrative act to find out the truth or otherwise surrounding a particular incident. Charge memo is by no means a punishment inflicted on the petitioner. A person is subjected to an enquiry to find out the truth or otherwise of the matter, in which finger is pointed on the said person, so as to arrive at a subjective opinion as to the delinquent's role in the said issue and whether such act is against the duties and responsibilities of the said individual. Contemplation of enquiry by issuing charge memo, if precluded, and interfered at the threshold, would defeat the very purpose of the object and intent of the said provisions, as no person could be proceeded with departmentally. Likewise, if for each and every change in

circumstance, a show cause notice is to be issued, there would be no end to the departmental proceeding. The departmental proceeding is a complete and comprehensive procedure, where the delinquent is offered all the opportunities to put his defence and establish his innocence. In fact, the said procedure vindicates the position of the delinquent in the departmental enquiry rather than skittling the wheel of the departmental proceeding by mere technicalities. Resorting to technicalities even at the inception not only derails the whole procedure, but prolongs the proceeding, thereby making the departmental proceeding an empty formality. Therefore, the Courts should be very circumspect while interfering with charge memo on mere technicalities, when such technicalities in no way affect the rights guaranteed to the delinquent by law.

12. In the case on hand, it is the accepted case of the petitioner that the charges u/r 17 (a), which are sought to be altered to one u/r 17 (b) are identical. It is also further admitted by the petitioner that for the charges u/r 17 (a), the petitioner has submitted his explanation to the show cause notice which was issued. In such a scenario, mere change of the provision by bringing the charges u/r 17 (b) would in no way alter the gravity of the charges. The punishment that could be imposed on the delinquent alone varies from the charges u/r 17 (a) to 17 (b). In the present case, the charges have been altered to another provision under the rules. The petitioner has not been inflicted with any punishment and in such a circumstance, acceding to the prayer of the petitioner, would not be in consonance with the spirit of the enactment or the rule of law that is to be adjudicated on the scales of justice. In such a background of circumstances, this Court is in complete disagreement with the submissions advanced by the learned counsel for the petitioner that non-issuance of show cause notice to the petitioner on the alteration of charges has violated the rights of the petitioner necessitating this Court to interfere with the said impugned order. The impugned order, altering the charges, in no way, violates the principles of natural justice or has detrimentally affected the petitioner, more so, when the altered charges are also the same as the previous charges, for which show cause notice was issued and explanation was also submitted. Therefore, in the above circumstances, the relief sought for by the petitioner cannot be acceded to and, accordingly, the petition is devoid of merits.

13. For the reasons aforesaid, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gln
To

1. The Director of Elementary Education
College Road, Chennai - 6.
2. The District Elementary Education Officer
Vellore - 4.
3. The Assistant Elementary Education Officer
Vellore Urban, Vellore.

+1 cc to Mr.S.N.Ravichandran Advocate sr29562
+1 cc to the Government Pleader High Court Madras
sr 29713

W.P. NO. 26662 OF 2013

mr(co)
aa28/10/2020