

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.35144 OF 2013

AND

M.P. NO. 2 OF 2013

P.Prabhakaran

.. Petitioner

- Vs -

1. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006.
2. The District Elementary Education Officer
Thiruvarur District, Thiruvarur.
3. The Assistant Elementary Education Officer
Mannarkudi, Thiruvarur District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records of the 2nd respondent herein in Na.Ka. No.3735/A3/2009 dated 25.02.2013 and quash the same.

For Petitioner : Mr. S.V.Karthikeyan

For Respondents : Mr. S.Suresh Kumar, GA

ORDER

It is the case of the petitioner is working as Graduate Teacher in the Panchayat Union Middle School at Marakkadai in Mannarkudi Taluk. It is further averred by the petitioner that while working in the Panchayat Union Elementary School, Vadipati Mangalam in the year 2007, construction and renovation of the school building was done. It is the case of the petitioner that in order to make best use of all the things, utilised the card boards from the school for which a complaint was given by the Parent Teacher Association. Though on the explanation of the petitioner, the complaint was withdrawn on 23.7.07, however, the 2nd respondent, proceeded with the complaint and issued a charge memo dated 13.2.10 to which explanation was given by the petitioner. It is further averred by the petitioner that without conduct of any enquiry, further explanation was sought for from

the petitioner to which the petitioner gave explanation on 16.8.13. However, without considering the said explanation, punishment of postponement of one increment with cumulative effect was ordered on 25.2.2013. Aggrieved by the said order, the present writ petition has been filed by the petitioner.

2. Learned counsel appearing for the petitioner, while reiterating the contentions raised in the grounds filed in support of the affidavit, submitted that the complaint having been withdrawn by the Parent Teacher Association, it was not justiciable on the part of the 2nd respondent to proceed with the enquiry, as there was no complaint in the eye of law. It is the further submission of the learned counsel for the petitioner that punishment was inflicted on the petitioner without conduct of any enquiry, which is not in accordance with the well established legal procedures and, therefore, the said punishment is liable to be interfered with.

3. Per contra, learned Government Advocate appearing for the respondents submitted that charge u/r 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules was initiated against the petitioner charging the petitioner not only for utilisation of the materials without prior approval, but also taking in personal possession the construction materials intended for the school building. The further allegation against the petitioner being that even after accepting the offence, the petitioner has not handed over the materials and that an amount of Rs.18,800/- was not handed over to the School Committee, which is misappropriation and which has been accepted by the petitioner. Further, the petitioner has also acted in an improper manner which is unbecoming of a Headmaster. It is further submitted by the learned Government Advocate that the enquiry was conducted in accordance with law and report was submitted and based on the enquiry report, punishment was imposed on the petitioner.

4. It is the further submission of the learned Government Advocate that the Courts shall not interfere with the punishment unless it is arbitrary and illegal and that the said punishment awarded is not disproportionate to the offence committed by the petitioner. Learned Government Advocate, therefore, submitted that the enquiry having been conducted in accordance with law and a punishment, which could not be said to be shocking and disproportionate being awarded, the punishment imposed on the petitioner does not warrant interference.

5. This Court heard the learned counsel appearing on either side and also perused the materials available on record.

6. Before proceeding to analyse the facts of the present

case to find out whether the punishment awarded to the petitioner is just and reasonable, it is just and necessary to adumbrate the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

7. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

8. In the case on hand, a perusal of the materials available on record reveal that the allegation levelled against the petitioner is a grave one, in that the petitioner has not only taken personal possession of the materials meant for the

school building, but was also in possession of an amount of Rs.18,800/-, which has been accepted by the petitioner. However, it appears that subsequently, the said amount was repaid by the petitioner back to the Parent Teacher Association. The delinquency of the petitioner is not one which is expected of the position being held by the petitioner. Further, the enquiry report having found the petitioner guilty of the offence, and the disciplinary authority, on proper appreciation of the materials, having imposed the punishment of postponement of one increment with cumulative effect.

9. Though the petitioner has raised a ground that no enquiry was conducted by appointment of an enquiry officer, a perusal of the typed set of documents filed by the petitioner reveals that on an enquiry by the petitioner through the Right to Information Act about the explanation given by the petitioner and the status of the same, the designated officer has replied to the petitioner vide order dated 29.6.2010 that enquiry officer had been appointed and action would be based on the enquiry report by the said officer. In such view of the matter, the necessary inference that needs to be drawn is that the enquiry was conducted which has culminated in the impugned order herein. On a holistic consideration of the entire issue, this Court is of the considered view that pursuant to proper enquiry and based on the enquiry report and the materials, the disciplinary authority has imposed the punishment on the petitioner, which could in no way be said to be disproportionate or shocking the conscience of the Court warranting interference. The petitioner has not proved that the punishment imposed on him is arbitrary or bad or the punishment is disproportionate to the gravity of the proved charges and is in contravention of the rules. In such circumstances, this Court is of the considered view that the punishment imposed on the petitioner is just and reasonable and the same does not warrant any interference at the hands of this Court.

10. For the reasons aforesaid, this writ petition is devoid of merits and deserves to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

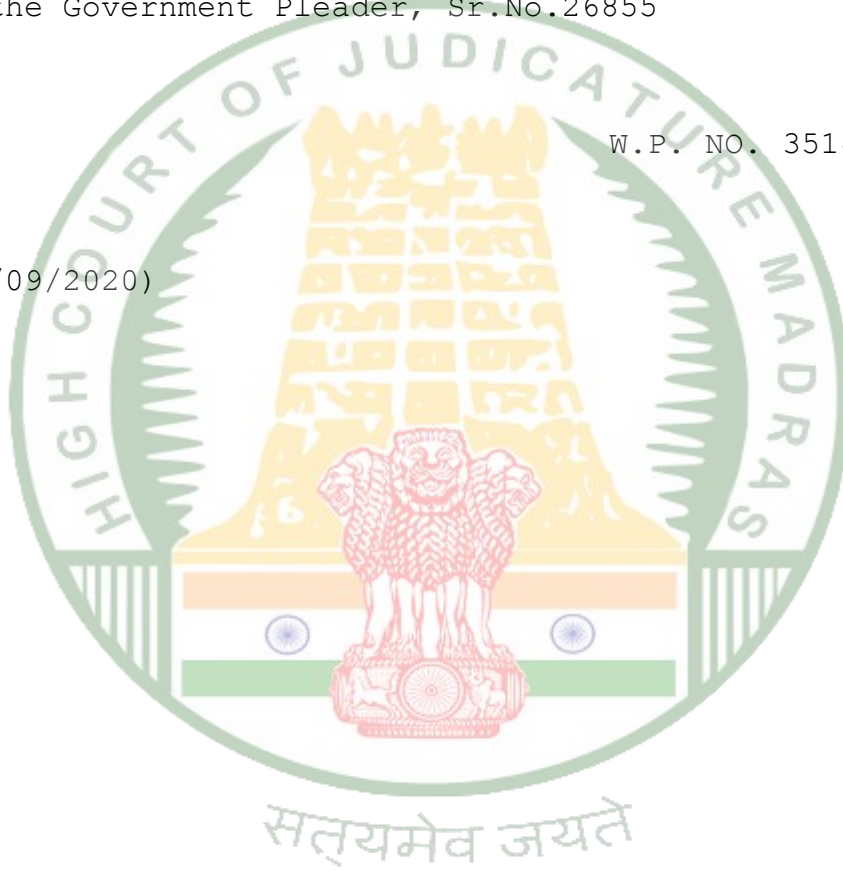
To

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+1 cc to the Government Pleader, Sr.No.26855

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