

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WP.NO.4745 of 2015

and WMP.No.8615 of 2020

L.Girinivasan

... Petitioner

Vs

1.The Govt. of Tamilnadu, ... Respondents
Rep.by the Secretary to Government,
School Education Department,
Secretariat, Chennai.

2.The Director of School Education,
College Road,
Chennai -6.

3.Joint Director (Personnel)
College Road,
Chennai -6.

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in connection with the order passed in G.O.(1D) No.263 School Education Department (PAKA-1(2)) dated 20.08.2013 and G.O.(1D) No.252, School Education (PAKA-1(2)) Department dated 18.11.2014 and quash the same and directing the respondents to give all the monetary and services benefits with effect from the date of promotion given to his junior.

For Petitioner : Mr.V.Prakash, SC., for
M/S.S.N.Ravi Chandran
T.V.Padmanabar

For Respondents : Mr.S.Sureshkumar, G.A., (Education)

ORDER

This Writ petition has been filed by the petitioner, to call for the records on the file of the first respondent in connection with the order passed in G.O.(1D) No.263 School Education Department (PAKA-1(2)) dated 20.08.2013 and G.O.(1D)

No.252, School Education (PAKA-1(2)) Department dated 18.11.2014 and quash the same and direct the respondents to give all the monetary and services benefits with effect from the date of promotion given to his junior.

2. The case of the petitioner is that he was selected for appointment to the post of Junior Assistant by way of compassionate appointment and joined service in the year 1981, and subsequently promoted as Assistant in the year 1994 and as Superintendent in the year 2001. According to the petitioner, he joined as Superintendent in the office of District Project Coordinator, Vellore on 01.02.2008 and worked in the said office till 28.05.2008. Thereafter he was transferred as Superintendent in the office of Chief Educational Officer, Vellore. Based on the allegation published in the newspaper, the Government has passed G.O.Ms.No.385 dated 01.12.2008 directing to take disciplinary action under Rule 9(a) of Tamil Nadu Civil Service (D&A) Rules against the petitioner along with other five officers, who were involved in misappropriation relating to disbursement of travelling allowances to the teacher trainee in the office of the District Project coordinator, Vellore District. Pursuant to the order of the Government, the 2nd respondent herein, by proceeding dated 18.02.2008, framed charges against the petitioner under Rule 17(b) of the Rules by framing five charges against them. The allegation as against the petitioner was that the travelling allowances statement was not approved by the District Project Coordinator and the acknowledgements were not obtained from the concerned teachers who received money.

2.1.It is the case of the petitioner that he is not responsible for the procedure in disbursement of the Travelling Allowance to the Teachers concerned, and he had only followed the instructions of his superiors, i.e., the Superintendent in the office of the Chief Educational Officer, Vellore, however he had been victimized, though he was posted in the said post of superintendent only for a short period, even there is no evidence available against him as he has put his signature in the impugned cheques, therefore he is not at all responsible for any of the allegations levelled against him, is unsustainable one.

2.2.It is the further case of the petitioner that though the charge framed is on the basis of the documents mentioned in Annexure-2, the same was not furnished to him. He submitted his explanation without the documents relied upon by the respondents and specifically denied the charges levelled against him. However, not satisfied with his explanation, enquiry was initiated in which neither oral evidence was let in nor any documents were marked and after a lapse of 2 ½ years, the enquiry officer submitted his report on 31.05.2011 holding the

petitioner guilty of the charges. Based on that report, further show cause notice dated 30.06.2011 was issued annexing copy of the enquiry report and the petitioner was directed to submit his explanation, to which the petitioner submitted his explanation on 18.07.2011. Without considering the explanation in proper perspective and without giving an opportunity of personal hearing, the 1st respondent/Appellate Authority, without any independent application of mind passed a non speaking order, by imposing punishment of stoppage of increment for a period of 2 years with cumulative effect vide G.O.(1D) No.263, dated 20.08.2013. Aggrieved by the said order, review was preferred before the 1st respondent, which was rejected confirming the order of punishment leading to the filing of the present petition.

3. Learned counsel appearing for the petitioner submitted that when the writ petition was taken up for final hearing, the respondent filed additional typed set of papers containing new documents in the form of payment voucher, pay and arrears of acquittance which were not part of the documents, which were annexed with the charge memo and nor marked in the departmental enquiry. IN such a backdrop, it is not open to the respondents to rely on fresh evidence and reappraise the evidence against the petitioner. It is further submitted that in any event the documents furnished to this Court in the form of typed set of papers is no way related to the charges levelled against the petitioner. In this regard, learned counsel for the petitioner relied on the duties and responsibilities enumerated under Sarva Shiksha Abhiyan Scheme, wherein the District Project Coordinator, Accounts Manager, and Assistant District Project Coordinator alone are held accountable as per the work allotment ordered by the State Project Director, Chennai vide order dated 23.03.2017. It is further submitted that neither any oral evidence was let in nor any documents were marked in the enquiry which is not denied by the respondents. It is the vehement contention of the petitioner that when a charge u/r 17 (b), which attracts major penalty is framed against the petitioner, the minimum cardinal principle requires the department to let in evidence in the presence of the delinquent employee by giving a statement based on the documents and thereafter the delinquent employee must be afforded an opportunity to cross examine the departmental witness and thereafter the delinquent employee should be examined and cross examined following which any other defense witness can be examined. However, in the present case, a bare perusal of the enquiry report dated 31.05.2011 reveals a complete departure from the well established procedures. In the absence of evidence, the very finding of the enquiry officer is perverse and the order of punishment passed on the basis of enquiry report is unsustainable in law and is liable to be quashed. Learned counsel placed specifically referred to the case of one Tmt. Jansi Rani, who also suffered very same order

of punishment vide G.O.Ms.No.265 dated 20.08.2013, and in the writ petition filed in W.P.No.20289 of 2014 before this Court, this Court by its order dated 08.11.2016, allowed the petition, taking note of the fact that, the disciplinary proceedings were conducted by authorities in utter violation of principles of nature justice, which case is identical in all aspects and, accordingly, he prays for allowing the present writ petition, by extending the benefits to the petitioner in the light of the above order passed by this Court.

4. Per contra, learned Government Advocate appearing for the respondent filed a detailed counter affidavit on behalf of the respondents and contented that while the petitioner was working as Superintendent in the office of the Additional Chief Educational Officer, Sarva Shiksha Abiyan (SSA), Vellore, based on a complaint received against the officials in the said office regarding misappropriation of funds and poor maintenance of records, an inspection was conducted, which revealed non-maintenance of records, which was the duty of the petitioner and other persons in the higher hierarchy, which warranted disciplinary proceedings under rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules against all the erred government officials which had been taken in a common proceedings. It is the further submission of the learned Government Advocate the enquiry ended against the petitioner leading to imposition of punishment of stoppage of increment for 2 years with cumulative effect. The punishment imposed on the petitioner has been inflicted after due and independent application of mind on the part of the respondent and the punishment imposed on the petitioner is commensurate with the charges levelled against the petitioner and, therefore, unless the punishment is so very disproportionate and shocking the conscience of this Court, this Court shall not interfere with the said punishment and, accordingly, prays for dismissal of the petition.

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

6. The facts in issue are not in dispute. It is pertinent to note that the enquiry must be conducted in a proper manner and care must be taken to see that the enquiry does not become an empty formality; in an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent to prove the charges and, thereafter, give an opportunity to him to cross examine the witnesses wherein after the workman/delinquent be asked whether he wants to lead any evidence and to give any explanation about the evidence led against him. However, in the present case, neither oral or documentary evidence has been let in by the respondents to prove

the culpability of the petitioner, more so when the charge framed against the petitioner attracts a major penalty. Further, as rightly pointed out by the learned senior counsel for the petitioner, only at the time of final hearing of the petition, the respondents filing a typed set of papers, are seeking to introduce new documents, which did not form part of the annexure to the charge memo given to the petitioner. It is for the respondents, at the time of enquiry, to prove that the petitioner had not acted within the four corners of law in the discharge of his duties and committed illegalities and irregularities, which necessitated the invocation of major penalty against the petitioner. A bare perusal of the enquiry report dated 31.05.2011 reveals that in the enquiry, no one was examined and no documents were marked which factum is not denied by the respondents in their counter affidavit and this clearly vindicates the stand of the petitioner that he has not signed the cheques.

7. The enquiry officer has to take into consideration not only the conduct of the petitioner but also the material evidence placed before him and the absence of any materials to substantiate his side of the case, the conclusion arrived at by the enquiry officer is not only bad, but equally the act of the respondents in accepting the said enquiry report and imposing the punishment against the petitioner definitely deserves interference. It is not the punishment which shocks the conscience of this Court, but it is the act of the respondents, that shocks the conscience of this Court. If this Court allows the punishment to stand, it would only be travesty of justice and denying the due justice due to the petitioner. Therefore, for the discussion aforesaid, this Court is of the considered view that the materials available on record clearly leads this Court to the irrefutable inference that the punishment imposed on the petitioner is *per se* unsustainable and deserves interference at the hands of this Court.

8. For the reasons aforesaid, the writ petition stands allowed and the impugned order passed by the 1st and 2nd respondents dated 20.08.2013 and 18.11.2014 are hereby quashed and the respondents are directed to extend all the monetary and services benefits to the petitioner to which he is duly entitled with effect from the date of promotion given to his junior. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

jrs

To

1.The Govt. of Tamilnadu,
Rep.by the Secretary to Government,
School Education Department,
Secretariat, Chennai.

2.The Director of School Education,
College Road,
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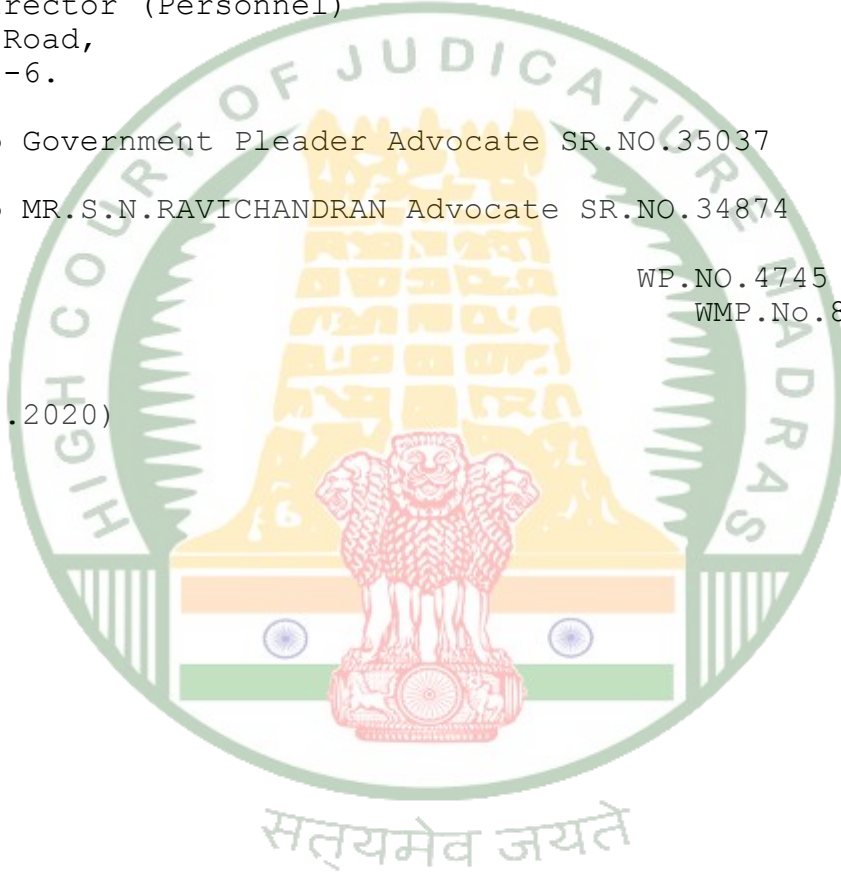
3.Joint Director (Personnel)
College Road,
Chennai -6.

+1 C.C. to Government Pleader Advocate SR.NO.35037

+1 C.C. to MR.S.N.RAVICHANDRAN Advocate SR.NO.34874

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SRA (CO)
UMY (18.12.2020)



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