

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01-12-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal Nos. 2291 and 2295 of 2019
& C.M.P.Nos.15149, 15132 & 15134 of 2019

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(Heard through Video Conferencing)

S. Valarmathi ...Appellant/Petitioner
in both the appeals

Versus

1. The State of Tamil Nadu
rep. by its Principal Secretary to Government
School Education Department
Secretariat, Fort St. George
Chennai - 600 009
2. The Director of School Education
DPI Campus, College Road
Chennai - 600 006

..Respondents/Respondents
in both appeals

WA No. 2291 of 2019:- Appeal filed under Clause 15 of The Letters Patent against the Order dated 14.02.2019 passed in W.P. No. 12478 of 2018 on the file of this Court.

WA No. 2295 of 2019:- Appeal filed under Clause 15 of The Letters Patent against the Order dated 14.02.2019 passed in W.P. No. 7415 of 2018 on the file of this Court.

WP No.12478 of 2018:- Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of mandamus, to call for the records relating to the impugned proceedings issued by the 1st respondent in G.O.(ID) No.168 School Education (SE1(2) Department dated 28.03.2018 and to quash the same and consequently direct the respondents to allow the petitioner to retire from service on the date of superannuation on 31.03.2018 from the post of District Educational Officer with all

consequential and other attendant benefits.

WP No.7415 of 2018:-Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified mandamus, to call for the relating to the impugned proceedings issued by the 2nd respondent in Na.Ka. No.56315/ A1/E2/ 2016-1 dated 8.3.2018 and the subsequent order of suspension issued by the 1st respondent in G.O.(1D) No.143 School Education (SE1(2) Department dated 22.3.2018 and to quash the same and consequently direct the respondents to allow the petitioner to retire from service on the date of superannuation on 31.3.2018 from the Post of District Educational Officer with all consequential and other attendant benefits.

For Appellants :Mr. G. Sankaran
in both the appeals
For Respondents :Mr. K. Kumaresh Babu
Additional Advocate General XII
assisted by Mr. A. Raja Perumal
Additional Government Pleader

JUDGMENT

R. SUBBIAH, J

Both these appeals are filed by the appellant, assailing the common order dated 14.02.2019 passed in WP Nos. 12478 and 7415 of 2018 respectively. By the said order, the learned single Judge refused to revoke the order of suspension passed against the appellant and dismissed the writ petitions filed by her.

2. The appellant was appointed as Post Graduate Assistant in Tamil Nadu Higher Secondary School Education Service on 17.10.1986. She was promoted to the post of Higher Secondary School Headmaster on 30.06.2008. On 01.08.2016, the appellant was promoted to the post of District Educational Officer and she was due for retirement on reaching the age of superannuation on 31.03.2018. While the appellant was working as District Educational Officer in Pattukottai, a charge memo dated 02.03.2007 was issued to her by the second respondent. The charge against the appellant was that when she was working as Headmaster of Government Girls Higher Secondary School, Pattukottai during the academic year 2016-2017, she had collected fees at the rate of Rs.500/-, Rs.1,000/- and Rs.700/- from the students without following the regulation of the Government. The further charge against her is that she had retained the money collected thereof with her without remitting

it in the Bank Account and thereby she had violated Rule 20 (1) (2) of the Government Servant Conduct Rules.

3. On receipt of the charge memo, the appellant submitted her explanation on 02.03.2017 denying the charges. According to the appellant, she worked as Headmaster of Government Girls Higher Secondary School, Pattukottai only for two months from 01.06.2016 to 31.07.2016 and on 01.08.2016, she was promoted to the post of District Educational Officer. Even during the two year period, on 24.06.2016 she had taken leave on medical grounds and re-joined duty only on 31.07.2016 and on the next day namely 01.08.2016, she was promoted to the post of District Educational Officer. It is further stated that due to personal animosity, the complainant by name D.Chandrasekar, working as Post Graduate Assistant in Geography in Government Girls Higher Secondary School, Pattukottai has given the complaint purportedly to wreak vengeance against the appellant. It is the case of the appellant that the said Chandrasekar submitted an application seeking incentive increment for having acquired M.Phil qualification. The appellant rejected the same, inasmuch as the said Chandrasekar had acquired the qualification without prior permission from the Department. Therefore, the respondents directed the said Chandrasekar to get the M.Phil degree ratified by the Department to get incentive increment. This has apparently irked the said Chandrasekar and he had given the instant complaint against her. The appellant therefore prayed for drop all further proceedings against her.

4. Not satisfied with the explanation offered by the appellant/writ petitioner, an Enquiry Officer was appointed by the second respondent on 24.04.2017. The Enquiry Officer issued a notice for enquiry on 21.08.2017 and called upon the appellant to appear before him for an enquiry on 23.08.2017. The appellant also attended the enquiry on 23.08.2017. According to the appellant, she was due for retirement on 31.03.2018 and therefore, she anticipated that the enquiry will be concluded before her date of retirement. While so, to her shock and surprise, the second respondent issued another charge memo dated 08.03.2018 on the same set of charges. According to the appellant, when already the charge memo dated 02.03.2017 was issued to her and she was also attending the enquiry, the second charge memo, dated 08.03.2018, for the same set of charges, is untenable. It is also stated that the first respondent issued G.O. Ms. No.(1D) No.143, School Education Department, dated 22.03.2018 placing the appellant under suspension by referring to the pendency of the Departmental Proceedings against her. Thus, the appellant was not allowed to retire from service on the date of her retirement on 31.03.2018. In such circumstances, the petitioner has filed the first writ petition being WP No. 7415 of 2018 to quash the charge memo dated

08.03.2018 passed by the second respondent and the consequential order of suspension issued by the first respondent in G.O.(1D) No.143, School Education (SE1(2) Department, dated 22.03.2018 and consequently direct the respondents to permit the appellant to retire from service on the date of superannuation on 31.03.2018 from the post of District Educational Officer, with all consequential and other attendant benefits.

5. After the first writ petition was filed by the appellant, the first respondent issued G.O.(1D).No.168, School Education (SE1(2) Department, dated 28.03.2018 by which the appellant was not allowed to retire from service. Challenging the same, she has filed the second writ petition being W.P.No.12478 of 2018.

6. The learned Single Judge, has noticed that the charges against the appellant relates to misappropriation of public funds and they are serious in nature. Hence, she has to face the disciplinary proceedings to prove her innocence. With such observation, the learned Single Judge dismissed the writ petitions filed by the appellant.

7. The learned counsel appearing for the appellant/writ petitioner submitted that when the earlier charge memo was given effect to and it culminated in an enquiry, for the same set of charges, the second charge memo issued by the second respondent is not legally sustainable. It is his contention that there cannot be two charge memos for the same set of charges and it amounts to abuse of process of law. In this context, the learned counsel for the appellant/writ petitioner relied on a decision of a Division Bench of this Court in the case of Mohammed Sadique Vs. Union of India, represented by its Secretary, Ministry of Home Affairs, New Delhi and others, reported in 2009 (4) CTC 209, wherein it has been held that the second charge memo issued to the petitioner on the same set of materials as contained in the first charge memo, is not sustainable.

8. The learned counsel for the appellant/writ petitioner also relied on G.O.Ms.No.144, P & A.R. Department, dated 08.06.2007, wherein it was specifically ordered that the disciplinary authority should not resort to last minute suspension of the Government servant and retain his/her service beyond the period of retirement. The decision either to allow the Government servant to retire or to suspend him beyond the period of his retirement, should be taken atleast three months in advance. In the present case, the Government Order passed in G.O.(1D).No.168, School Education (SE1(2) Department, dated 28.03.2018 had been passed two days prior to the retirement of the appellant and it contravenes the guidelines issued by the Government in the said G.O.Ms.No.144, dated 08.06.2007. The

learned Single Judge, without considering the above aspects has observed that the allegations of misappropriation of public funds is a serious offence and it warrants an enquiry. The learned counsel for the appellant also contended that the observations made by the learned Single Judge in the order dated 14.02.2019 would prejudice the Enquiry Officer while conducting the enquiry against the appellant and therefore, he prayed for expunging the adverse remarks made by the learned Single judge in the order dated 14.02.2019.

9. On the other hand, the learned Additional Advocate General only submitted that in the first charge memo dated 02.03.2017 was issued by the second respondent based on the inquiry report submitted by the Chief Educational Officer, Thanjavur in response to a complaint received against the appellant. The charges were to the effect that the appellant collected various amounts from the newly admitted students and did not deposit the amount in the Bank Account. In the meantime, on the basis of the complaint received from D.Chandrasekaran, Post Graduate Assistant, Government Girls Higher Secondary School, Pattukottai, a preliminary enquiry was conducted against the appellant and one Tmt.Manikeswari, Head Mistress, Government Girls Higher Secondary School, Pattukottai. The preliminary report states that the allegations as against the appellant and one Tmt.Manikeswari are prima-facie correct and therefore, the second charge memo dated 08.03.2018 was issued. In the second charge memo, the exact amount of excess fee levied by the appellant was mentioned as Rs.5,15,152/- and the actual number of students newly admitted with class wise details viz., 1145 students was mentioned. The charge memo dated 08.03.2018 was issued in supersession of the earlier charge memo dated 02.03.2017. Therefore, it cannot be said that the second charge memo dated 08.03.2018 would amount to abuse of process of law. The second charge memo was issued by the second respondent, who is the competent authority to issue it and therefore, it cannot also be said that the second charge memo was issued by an incompetent authority. As contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the disciplinary authority is at liberty to vary, amend, revise or modify the charges at any stage of the disciplinary proceedings on receipt of new materials and therefore, the second charge memo dated 08.03.2018 is in accordance with law. The disciplinary proceeding against the appellant was set in motion by virtue of the first charge memo dated 02.03.2017 and therefore it is futile on the part of the appellant to contend that she was not permitted to retire from service at the fag end of her retirement. The learned Additional Advocate General therefore prayed for dismissal of the writ appeals.

10. We have heard the learned counsel for both sides and

perused the material records. There are two charge memos issued to the appellant. One was issued on 22.03.2017 by the second respondent for which the appellant submitted her explanation on 21.08.2017. To prove the charges contained in the charge memo dated 22.03.2017, an enquiry officer was appointed and an enquiry was also conducted on 23.08.2017. On 23.08.2017, the appellant also appeared before the enquiry officer and submitted her explanation to the charges in the form of a questionnaire. At this stage, on 08.03.2018, the second charge memo was issued to the appellant by the second respondent, with the same set of charges. This according to the counsel for the appellant is legally not unsustainable, inasmuch as there is no necessity to issue the subsequent charge memo dated 08.03.2018 containing the same charge charges which were levelled against the appellant in the first charge memo dated 02.03.2017.

11. Repudiating the above contentions, on behalf of the respondents, it is submitted that the second charge memo dated 08.03.2018, is in supersession of the earlier charge memo dated 02.03.2017. In the first charge memo dated 02.03.2017, the exact amount alleged to have been collected by the appellant in excess from the students, was not mentioned and therefore the charge memo dated 08.03.2018 with precise and accurate particulars relating to the charge was issued.

12. We have gone through the charge memo dated 02.03.2017, as also the subsequent charge memo dated 08.03.2018. The charges contained in both the charge memos are verbatim identical. At the same time, in the second charge memo dated 08.03.2018, the alleged amount said to have been collected by the appellant in excess from the students was specifically quantified and indicated corresponding to the proportionate strength of students. In such circumstances, it cannot be said that the second charge memo dated 08.03.2018 would prejudice to the appellant in any manner. It is well open to the appellant to participate in the enquiry and prove her innocence by disproving the allegations by producing oral or documentary evidence. As the appellant had already reached the age of superannuation on 31.03.2018, the Enquiry Officer is directed to expedite the conduct of the enquiry and conclude it within a period of eight weeks. Thereafter, the second respondent shall pass final orders in the disciplinary proceedings within a period of four weeks thereafter. The appellant is also directed to extend her cooperation for completion of the enquiry within the time specified hereinabove.

13. The learned counsel for the appellant contended that the learned Single Judge had made certain observations against the appellant/writ petitioner as if the appellant had indulged in misappropriation of the amount. Such an observation, according

to the learned counsel for the appellant, would prejudice the Enquiry Officer and the Enquiry Officer should not be carried away by those observations.

14. We have gone through the order dated 14.02.2019 passed by the learned Single Judge. The learned Single Judge had opined that the misappropriated amount runs into several Lakhs of Rupees. Even though such an observation is generic in nature, we are of the view that without being influenced by such observations made by the learned Single Judge, the enquiry against the appellant shall be conducted independently by the enquiry officer, on merits, untrammelled by such observations made by the learned Single Judge.

15. With the above observations, we confirm the order dated 14.02.2019 passed by the learned Single Judge in W.P.Nos.7415 and 12478 of 2018. Consequently, both the writ appeals are dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsh/cs

To

1. The Principal Secretary to Government,
The State of Tamil Nadu
School Education Department
Secretariat, Fort St. George
Chennai - 600 009

2. The Director of School Education
DPI Campus, College Road
Chennai - 600 006

+2cc to Mr. G. Sankaran, Advocate, SR38599

+1cc to the Government Pleader, SR38648

WA Nos. 2291 & 2295/2019

CO (NMI)
BDL/11/01/2021